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**Writ of Error.**

(FILED DECEMBER 29, 1927.)

NEW JERSEY, ss.

10

(SEAL) To DANIEL T. O'REGAN, Esquire, Judge  
of the Court of Quarter Sessions of  
the County of Hudson:

Because in the record and proceedings and also  
in giving of judgment upon a certain indictment  
against Harris Greenberg, late of the City of New  
York, for conspiracy to defraud;

*Pro ut* the said indictment and the several counts  
therein, whereof, before you, he hath been in-  
dicted, and is thereof convicted by a certain jury  
of the county, taken between the State of New Jer-  
sey and the said Harris Greenberg, as it is said,  
manifest error hath intervened to the great damage  
of the said Harris Greenberg, as from his com-  
plaint we have received information, we being  
willing in this behalf, to correct the error in due  
manner, if any there shall be and that speedy jus-  
tice be done to him, the said Harris Greenberg  
command you that if judgment be thereon given,  
then that you distinctly and openly send, under  
your seal, the record and proceedings aforesaid,  
with all things touching the same to our Justices of  
our Supreme Court of the State of New Jersey,  
on the 18th day of January next and this writ,  
that the record and proceedings aforesaid being  
inspected, we may further cause to be done there-  
upon for correcting that error, what of right and  
according to the law ought to be done.

20

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40

*Writ of Error.*

Witness, William S. Gummere, Esquire, our  
Chief Justice, at Trenton aforesaid, the 29th day  
of December, 1927.

EDWARD J. KELLEHER,  
Clerk.

10 THOMAS J. BROGAN,  
Attorney.

The answer of Daniel T. O'Regan, Esquire, Judge  
of the Court of Quarter Sessions holden in and  
for the County of Hudson and within named the  
record and proceedings of the plaint whereof men-  
tion is within made, with all things touching the  
same I send to the Justices of our Supreme Court  
of Judicature, at Trenton, N. J., at the day and  
20 year within contained in a certain schedule to this  
writ annexed as within I am commanded.

DANIEL O'REGAN,  
Judge.

(Seal)

Attest:

JOHN J. MCGOVERN,  
Clerk.

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**Order.**

## NEW JERSEY SUPREME COURT.

|   |   |   |    |
|---|---|---|----|
| STATE OF NEW JERSEY,<br><i>Prosecutor,</i><br><br><i>v.</i><br>HARRIS GREENBERG and AMBROSE<br>GALLAGHER,<br><i>Defendants.</i> | } | On Indictment<br>for Con-<br>spiracy to<br>Defraud.<br><br>ORDER. | 10 |
|---|---|---|----|

This matter being opened to the Court by Thomas J. Brogan, counsel for defendant Harris Greenberg, in the presence of Thomas F. Meehan, counsel for defendant Ambrose Gallagher and John Milton, Prosecutor of Hudson County, representing the State of New Jersey, the Court having heard argument of counsel. 20

IT IS THEREUPON on this 17th day of January, 1928, ORDERED, that the defendants be and they hereby are granted thirty (30) days from January 17th within which to complete the proceedings under writ of error and to file briefs with this Court.

(Entered January 25th, 1928 on motion of Thomas J. Brogan.) 30

A true copy,

EDWARD J. KELLEHER,  
 Clerk.

**Judgment.**

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT:  
 Be it remembered, that at a Court of Oyer and  
 Terminer holden at Jersey City, in and for the said  
 County of Hudson, on the Third Tuesday of Sep-  
 10 tember in the year of our Lord one thousand nine  
 hundred and twenty-six before Honorable James  
 F. Minturn, one of the Justices of the Supreme  
 Court of Judicature of the State of New Jersey,  
 and Honorable Robert V. Kinkead, Honorable  
 Charles M. Egan and Honorable Daniel T. O'Regan,  
 Judges of the Court of Common Pleas in and for  
 the said County of Hudson, according to the form  
 of the Statute in such case made and provided by  
 the oaths of

- |    |                                |                                |
|----|--------------------------------|--------------------------------|
| 20 | 1. David Pindar<br>Foreman and | 13. Jacob I. Haas              |
|    | 2. Thomas Carey                | 14. Michael Donnellan          |
|    | 3. Louis Waterman              | 15. David I. Cohen             |
|    | 4. Charles Weinacht            | 16. Mrs. Agnes M.<br>Kloster   |
|    | 5. Paul A. Trost               | 17. Heinrich Cohen             |
|    | 6. Joseph B. McCourt           | 18. Harry Schreifer            |
|    | 7. Timothy F.<br>Sheehan       | 19. John J. Bannon             |
|    | 8. Theodore Voss               | 20. John DeMartini             |
| 30 | 9. James N. Cunneen            | 21. Mrs. Theresa<br>Kaiser     |
|    | 10. George H. Renker           | 22. Edward I. Hirsch-<br>field |
|    | 11. Frank Hohmeier             | 23. Stephen J.<br>McGough      |
|    | 12. Simon Connolly             |                                |

good and lawful men of said County, duly empan-  
 eled, sworn and charged to inquire for the State  
 in and for the body of the said County of Hudson,  
 it is presented in manner and form following, that  
 40 is to say, that the Bills following are true Bills.

DAVID B. PINDAR,  
 Foreman.

*Judgment.*

And the foregoing being presented to the said Court on Thirteenth day of December, in the year of our Lord One Thousand Nine Hundred and twenty-six with bills of Indictment Nos. 306 to 355 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 355 for Conspiracy, as charged upon Harris Greenberg, Edward Bruhns and Ambrose Gallagher be handed to the Court of Quarter Sessions for trial and disposal according to law, and said Bill is in words as follows: 10

## HUDSON OYER AND TERMINER.

SEPTEMBER TERM, A. D. 1926.

HUDSON COUNTY, to wit: 20

The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath, Present, that Harris Greenberg, Edward Bruhns and Ambrose Gallagher, being persons of evil minds and dispositions, together with other evil disposed persons whose names are to the Grand Inquest as yet unknown, heretofore, to wit: between the first day of January, in the year of our Lord one thousand nine hundred and twenty-five, and the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, at the Township of Weehawken, in the County of Hudson and State of New Jersey, and within the jurisdiction of this Court, intending for their own use unlawfully, corruptly, fraudulently and deceitfully to steal, take and carry away from the Jagels-Bellis and Company, a corporation, a large quantity of coal, to wit: Twelve hundred tons, did on divers days and times between the said first 30 40

*Judgment.*

day of January, in the year of our Lord one thousand nine hundred and twenty-five, and the said twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, at the Township of Weehawken aforesaid, in the County of Hudson aforesaid, unlawfully, wilfully, knowingly, feloniously and corruptly combine, unite, confederate, conspire and bind themselves together by agreement, from the said Jagels-Bellis and Company, unlawfully, corruptly, fraudulently and deceitfully to steal, take and carry away a large quantity of coal, to wit: twelve hundred tons, by the said Harris Greenberg paying to the said Edward Bruhns and Ambrose Gallagher, employees of the said Jagels-Bellis and Company, between the said first day of January, in the year of our Lord one thousand nine hundred and twenty-five, and the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, certain large sums of money to permit the said Harris Greenberg to steal, take and carry away a large quantity of coal from the said Jagels-Bellis and Company, by the said Harris Greenberg procuring, persuading, inducing and causing said Edward Bruhns and Ambrose Gallagher to deliver to him a larger quantity of coal than he was charged with on loads of coal purchased by said Harris Greenberg from the said Jagels-Bellis and Company, between the said first day of January, in the year of our Lord one thousand nine hundred and twenty-five, and the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, by the said Harris Greenberg procuring, persuading, inducing and causing the said Edward Bruhns and Ambrose Gallagher

*Judgment.*

to deliver to him a large quantity of coal of a higher grade and charging the price of coal of a lower grade.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Harris Greenberg, Edward Bruhns and Ambrose Gallagher, together with said divers other evil disposed persons, in execution of the last mentioned premises, and in pursuance of the said conspiracy, combination and agreement between and amongst them, as aforesaid, and to effect the object thereof, afterwards, to wit: between the said first day of January, in the year of our Lord one thousand nine hundred and twenty-five, and the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, at the Township of Weehawken aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did meet and come together and go to the place of business of said Jagels-Bellis and Company then and there situate in the said Township of Weehawken, County of Hudson, and then and there did steal, take and carry away large quantities of coal, and then and there did deliver to said Harris Greenberg a larger quantity of coal than he was charged with, and then and there did deliver to the said Harris Greenberg a higher grade of coal at the price and cost of a lower grade of coal.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Harris Greenberg, Edward Bruhns and Ambrose Gallagher, together with the said divers other evil disposed persons, in execution of the last mentioned premises, and in pursuance of the said conspiracy, combination and agreement between

*Judgment.*

and amongst them as aforesaid, and to effect the object thereof, afterwards, to wit: On the seventh day of October, in the year of our Lord one thousand nine hundred and twenty-six, and on the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and twenty-six, at the Township of Weehawken, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did steal, take and carry away on each of the aforesaid days, four tons of coal of the value of One hundred and three dollars and twenty cents, from the coal yards of the said Jagels-Bellis and Company, a corporation, in the Township of Weehawken, County of Hudson, State of New Jersey, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

JOHN MILTON,  
Prosecutor of the Pleas.

A True Bill

D. B. PINDAR,  
Foreman.

Presented Dec. 13th, 1926, and handed down to the Court of Quarter Sessions.

JOHN J. MCGOVERN,  
Clerk.

And afterwards to wit: to wit on the eighteenth day of December in the year of our Lord One Thousand Nine Hundred and Twenty-six at a Session of the Court of Quarter Sessions of the County of Hudson, aforesaid being now of the Term of December One Thousand Nine Hundred and Twenty-six in the said year before the Honor-

*Judgment.*

able Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Edward Bruhns and Ambrose Gallagher under the custody of their bondsman National Surety Company in whose custody they had before been committed for the cause aforesaid, who being brought herein in their proper person by the bail aforesaid, to whom they had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon them, how they will acquit themselves thereof, they say they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and John Milton, Esq., Prosecutor of the Pleas of said County who prosecutes for the State of New Jersey, in this behalf, doth the like. 10 20

And afterwards to wit: to wit on the thirteenth day of January in the year of our Lord one thousand nine hundred and twenty-seven at a Session of the Court of Quarter Sessions of the County of Hudson, aforesaid being now of the Term of December One thousand nine hundred and twenty-six in the said year Before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Harris Greenberg under the custody of his bondsman in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the bail aforesaid, to whom he had been committed and 30 40

*Judgment.*

having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he says he is not guilty thereof, and therefore for good and evil he puts himself upon the country, and John Milton, Esq., Prosecutor of the Pleas of said County who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictment be continued until December 1st, 1927, and on Motion of Counsel for Edward Bruhns the Court directs a Verdict of Not Guilty, and let a jury come before the Honorable Daniel T. O'Regan, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Quarter Sessions for said County, being now of the Term of September (1927) One thousand nine hundred and twenty-seven, of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin of the said defendants to recognize on their oath whether the said defendants Harris Greenberg and Ambrose Gallagher be guilty of Conspiracy as in the indictment aforesaid is charged against them, or not guilty thereof, because as well the said John Milton, Prosecutor of the Pleas of the County of Hudson, aforesaid who prosecutes for the State of New Jersey in this behalf, as in the said indictment have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time that is to say on the 1st day of December in the year of our Lord, One Thousand

*Judgment.*

Nine Hundred and Twenty-seven, at Jersey City, aforesaid in the County of Hudson aforesaid, before the Honorable Daniel T. O'Regan, Judge as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said John Milton, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said Defendants under the custody of their bail aforesaid, to whose custody they had hitherto been committed and who being brought to the bar in their proper person by their bail and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose, chosen, empanelled and returned, to wit: Harold E. Bird, Russell Graves, Edward Romaine, Nathan Wolford, Leo Herz, Dante T. Porsi, Joseph Mazzoni, Andrew J. Pichetto, Conrad Henkes, Edward J. Vogel, Jr., Ambrose Catterall, John Setti, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue after a Charge from the Court was submitted to the said jury in charge of the said Officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit: on December 1st, 1927, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton, Prosecutor of the Pleas as aforesaid and for the said defendants do say that the said defendants are Guilty of Conspiracy.

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*Indictment.*

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said Defendants Harris Greenberg and Ambrose Gallagher be and are hereby sentenced to be confined in Jail County Farm at hard labor for a period of Eighteen (18) Months and thence until the costs of prosecution are paid.

Judgment entered and signed this Twenty-seventh day of December A. D. 1927.

DANIEL T. O'REGAN,  
Judge of the Court of Quarter Sessions,  
in and for the County of Hudson.

Attest:

JOHN J. MCGOVERN,  
Clerk.

---

COURT OF QUARTER SESSIONS,

HOLDEN IN AND FOR SAID COUNTY.

THE STATE

*v.*

HARRIS GREENBERG  
EDWARD BRUHNS  
AMBROSE GALLAGHER

Sur. Indictment  
No. 355, Term of  
September,  
A. D. 1926, for  
Conspiracy.

State of New Jersey, }  
County of Hudson, } ss.:

Dec. 18/26.—The Defendants Bruhns and Gallagher being charged plead Not Guilty and they and their Bail National Surety Co., enter into a recognizance in the sum of Five hundred (500) dol-

*Indictment.*

lars each defendant conditioned that the defendants (both) appear from day to day for trial.

Judge KINKEAD.

Jan. 13/27.—The defendant Greenberg being charged pleads Not Guilty and he and his bail Louis Stern enter into a recognizance in the sum of Twenty-five hundred (2500) dollars each conditioned that defendant to appear from day to day for trial. 10

Judge KINKEAD.

May 23/27.—Case off.

Judge KINKEAD.

June 6/27.—Case off.

Judge KINKEAD.

Sept. 27/27.—Case off.

Judge KINKEAD.

Oct. 17/27.—Case off.

Judge KINKEAD.

Nov. 17/27.—Case off.

Judge KINKEAD.

Nov. 30/27.—Trial by Jury commenced and continued.

Dec. 1/27.—On motion of Counsel for Bruhns the Court directs a verdict of Not Guilty. 20

Judge O'REGAN.

30

Dec. 1/27.—Evidence closed and the Jury find the defendants Greenberg and Gallagher Guilty and they are continued on bail for sentence.

Judge O'REGAN.

Dec. 27/27.—The defendants Greenberg and Gallagher being placed to the Bar are sentenced to be confined in Jail County Farm for a period of eighteen months (18) at hard labor, and thence until costs of prosecution are paid. 40

Judge O'REGAN.

**Certificate of Reasonable Doubt.**HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

10

STATE OF NEW JERSEY,  
*Prosecutor,**v.*HARRIS GREENBERG,  
*Defendant.*Certificate of  
Reasonable  
Doubt.

20

Application being this day made to me on behalf of Harris Greenberg, the above named defendant, convicted in this Court on the 1st day of December, 1927, on conspiracy to defraud, I hereby certify that there is reasonable doubt as to the validity of the conviction.

DANIEL O'REGAN,  
Judge.

Filed Clerk's Office December 29, 1927, Hudson County, N. J.

HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

30

STATE OF NEW JERSEY,  
*Prosecutor,**v.*HARRIS GREENBERG,  
*Defendant.*Certificate  
of  
Reasonable  
Doubt.

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This matter being opened to the Court by Thomas J. Brogan, Esq., representing the defend-

*Stipulation.*

ant, and it being represented to the Court that the defendant who had heretofore been found guilty of conspiracy is desirous of prosecuting a writ of error and the Court believing that there is reasonable doubt as to the validity of conviction of said defendant,

10

IT IS on this 29th day of December, 1927, ORDERED, that the defendant be admitted to bail in the sum of Two thousand five hundred Dollars, pending the prosecution of a writ of error.

DANIEL O'REGAN,  
Judge.

Filed Clerk's Office  
December 29, 1927  
Hudson County, N. J.

20

**Stipulation.**

NEW JERSEY SUPREME COURT,

|   |   |              |
|---|---|--------------|
| <p style="text-align: center;">THE STATE,<br/><i>Defendant-in-Error,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">HARRIS GREENBERG and AMBROSE<br/>A. GALLAGHER,<br/><i>Plaintiffs-in-Error.</i></p> | } | Stipulation. |
|---|---|--------------|

30

It is hereby stipulated and agreed by and between John Milton, Prosecutor of the Pleas of Hudson County, and Thomas J. Brogan, counsel for the defendant, Harris Greenberg, and Thomas F. Meehan, counsel for the defendant, Ambrose A. Gallagher, which defendants were hitherto

40

*Stipulation.*

10 jointly convicted in the Hudson County Court of  
 Quarter Sessions upon an indictment charging  
 them with conspiracy to defraud, that the two  
 Writs of Error taken by the respective defend-  
 ants to have their convictions reviewed by the Su-  
 preme Court be consolidated so that one return  
 be made thereto, and the appeals presented to the  
 Supreme Court in one printed States of the Case,  
 with leave to counsel for the defendants to file  
 briefs on behalf of each defendant.

Dated Jan. 7th, 1928.

JOHN MILTON,  
 Prosecutor of the Pleas of  
 Hudson County.

20 THOMAS J. BROGAN,  
 Counsel for the Defendant,  
 Harris Greenberg.

MEEHAN BROTHERS,  
 Counsel for the Defendant,  
 Ambrose A. Gallagher.

Filed Clerk's Office,  
 January 7, 1928.  
 Hudson County, N. J.  
 30 JOHN J. MCGOVERN,  
 Clerk.

40

**Order for Consolidation.**

NEW JERSEY SUPREME COURT,

|   |   |           |
|---|---|-----------|
| <p>THE STATE,<br/><i>Defendant-in-Error,</i></p> <p><i>v.</i></p> <p>HARRIS GREENBERG and AMBROSE<br/>A. GALLAGHER,<br/><i>Plaintiffs-in-Error.</i></p> | <p>Order for<br/>Consolida-<br/>tion.</p> | <p>10</p> |
|   |   |           |

It appearing that the above plaintiffs-in-error were jointly convicted, in the Hudson County Court of Quarter Sessions, upon an indictment charging them with conspiracy to defraud, and

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It further appearing that writs of error were duly taken out by the respective defendants, to have their convictions reviewed by the Supreme Court, and

It appearing, by a stipulation herewith presented to the Court, and wherein counsel for all parties consent, that the writs of error taken out by the respective defendants be consolidated, so that one return may be made thereto and the appeals presented to the Supreme Court in one printed State of the Case, with leave to counsel for the defendants to file briefs on behalf of each defendant,

30

It is, on this 7th day of January, 1928, ORDERED that the writs of error hitherto taken out by the respective defendants to have their convictions reviewed be and they hereby are consolidated so that one return may be made thereto, and the appeals presented to the Supreme Court in one

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*Testimony.*

printed State of the Case, with leave to counsel  
for the respective defendants to file a brief.

JAMES F. MINTURN,  
J. S. C.

10 Filed Clerk's Office,  
January 7, 1928.  
Hudson County, N. J.  
JOHN J. MCGOVERN,  
Clerk.

**Testimony.**

HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

20 Before—Hon. DANIEL T. O'REGAN, J., and a Jury.

|  |   |
|--|---|
| STATE,   | } |
| <i>v.</i>  |   |
| HARRIS GREENBERG, EDWARD<br>BRUHNS, AMBROSE GALLAGHER,<br><i>Defendants.</i> |   |

30 Jersey City, N. J.,  
November 30, December 1 and  
December 2, 1927.

## APPEARANCES:

EUGENE SHARKEY, Esq., for the State.

THOMAS BROGAN, Esq., for Defendant  
Greenberg.

A. PETERS, Esq., for Defendant Bruhns.

40 THOMAS MEEHAN, Esq., for Defendant Gal-  
lagher.

*William B. Heller, direct.*

The Court: Are you trying all three counts, or just one?

Mr. Sharkey: Just the one, indictment number 355, conspiracy.

Mr. Sharkey made an opening statement to the jury on behalf of the State. 10

Mr. Brogan made an opening statement to the jury on behalf of the defendant Greenberg.

Mr. Peters made an opening statement to the jury on behalf of the defendant Bruhns.

WILLIAM B. HELLER, sworn for the State.

*Direct examination by Mr. Sharkey:*

Q. What is your occupation or business, Mr. Heller? A. General Superintendent. 20

Q. For whom? A. Jagels Bellis & Company.

Q. Where is your office? A. 35 Fourteenth Street, Hoboken.

Q. Where is the coal yard of Jagels Bellis & Company? A. At the intersection of Park Avenue and the East Boulevard.

Q. In what municipality? A. Weehawken.

Q. Have you an office there at the yard? A. Yes, sir. 30

Q. And you are the General Superintendent? A. Yes, sir.

Q. What other office do you hold? A. Vice-president.

Q. Of Jagels Bellis & Company? A. Yes, sir.

Q. How long have you held those positions? A. I have been General Superintendent for about 20 years.

Q. Continuously? A. Yes, sir.

Q. You were General Superintendent between 40

*William B. Heller, direct.*

January 1st, 1925, and October 28th, 1926? A. Yes, sir.

Q. During that period did you have in your employ Edward Bruhns and Ambrose Gallagher? A. Yes, sir.

10 Q. In what capacity was Bruhns serving? A. He was Weigh Master and General Manager of that particular yard.

Q. What was Ambrose Gallagher's position? A. Bruhn's assistant.

Q. What were Bruhn's duties as Weigh Master? A. To see that the coal was properly weighed.

20 Q. What were his duties in the yard? A. Well, his duties were to receive coal orders from the main order department and to see that they were dispatched properly. In other words, to see that the right amount of coal and the right kind of coal was loaded on our trucks and sent out for the customers.

Q. Did he have any duties such as hiring men? A. He hired men and discharged men. He had general supervision of the entire yard. In other words, he received money and took care of orders there; sold coal and took care of the customers coming in the yard.

30 Q. What were Gallagher's duties? A. To assist Bruhns.

Q. In the weighing of coal? A. Yes, sir.

Q. Between January 1st and October 28th, 1926, did you have an occasion to make an investigation at the yard?

Mr. Brogan: I object to that.

Mr. Peters: I also object to that.

40 Q. Between January 1st and October 28th, 1926, did you have an occasion to make an investigation?

*William B. Heller, direct.*

The Court: The indictment says the first of January, 1925, to the 28th of October, 1926.

Q. Between January 1st, 1925, and October 28th, 1926, did you institute an investigation at the yard?

A. Yes, sir.

Q. For what purpose?

10

Mr. Brogan: I object to that as immaterial.

The Court: I will allow it.

Mr. Sharkey: I will withdraw it.

Q. Did you, between January 1st, 1925, and October 28th, 1926, cause to be made an investigation of the conduct of the defendants in and about your yard? A. Yes, sir.

20

Q. What did you do in that respect? A. We employed the services of an investigator to place men there and note the general conduct of the business during my absence.

Q. What was your reason for making that investigation?

Mr. Brogan: I object to that as immaterial.

The Court: Sustained.

Q. For what purpose did you have the investigation made?

30

Mr. Brogan: The same objection.

The Court: The same ruling.

Q. As a result of any investigation that you made did you learn anything concerning the conduct of these men about that yard?

Mr. Brogan: The same objection.

The Court: Yes or no.

40

The Witness: Yes.

*William B. Heller, direct.*

Q. From whom? A. From the investigator.

Q. His name is what? A. Cavanaugh.

10 Q. As a result of what you heard from Mr. Cavanaugh, did you have any conversation with any of the defendants? Did you confer with any of the defendants as a result of what Cavanaugh informed you? A. Well I did, yes. What particular time?

Q. After the investigation was made did you, as a result of what Mr. Cavanaugh told you, get in touch with any of these defendants? A. Yes.

Q. With whom? A. With Edward Bruhns and with Ambrose Gallagher.

Q. Did you speak to both of them at the same time? A. No.

20 Q. You spoke to them separately? A. Yes, sir.

Q. To whom did you speak to first, Bruhns or Gallagher? A. Gallagher.

Q. What did you say to him? A. I asked him to tell me just what had been going on.

Q. What did he say? A. It is such a long story—his confession, you might say.

Mr. Brogan: I object to that as a characterization and ask that it be stricken out.

30 The Court: Strike it out.

Mr. Sharkey: It is withdrawn.

Q. You had a conversation with Gallagher? A. I did.

Q. You can remember parts of that conversation, can you not? A. Yes.

Q. Tell us the parts of the conversation that you can remember?

40 Mr. Brogan: I object to that. The proper foundation for this has not been laid.

The Court: I will allow it.

*William B. Heller, direct.*

Mr. Brogan: I want this objection, sir; I object to this witness answering to a characterization in any way of the conduct of Greenberg on the ground that this man has admitted that he knows spots of the conversation but that he does not know the whole conversation. I think we are entitled to the whole conversation or none of it. 10

The Court: I will allow it to go in. It applies only as far as Gallagher himself is concerned.

The Witness: I asked Gallagher if it was true that the coal he weighed for Greenberg was short weighted and he told me that it was.

Mr. Brogan: I object to that. Greenberg was not present. 20

The Court: That applies to Gallagher alone.

Mr. Brogan: That puts a severe burden on me. I think the Prosecutor might limit his questioning—

The Court: It is admissible as far as Gallagher is concerned. In my instructions to the jury that point will be limited to the one who made it. You may have an exception. 30

Mr. Brogan: I don't want an exception. Here is an incriminating conversation going in in a Conspiracy charge. Gallagher stands with the other defendants, whatever their names may be. He is now referring to a conversation carried on outside of his presence.

The Court: What do you say?

Mr. Sharkey: It is evidential and proper as against Gallagher. The weighmaster has 40

*William B. Heller, direct.*

admitted short weighing. Aside from the testimony affecting Greenberg it is admissible as against Gallagher.

10 Mr. Brogan: If the court please, I raise the point on the fundamental ground that the conversation was between a man who is now the Prosecutor's witness or the State's witness and a defendant which incriminates a third party who was not present. Fundamentally it is bad. I think this should be confined to Gallagher only.

The Court: I will let it stand and you may have an exception.

Exception signed and sealed.

DANIEL T. O'REGAN, J.

20 The Witness: He also told me that he received money for weighing coal this way.

Q. Did he tell you how much money he received?

Mr. Brogan: The same objection.

The Court: The same ruling.

The Witness: At times \$50.

30 Q. Did he tell you how many times? A. I can't remember.

Q. Did he tell you from whom he received it? A. He received it from Bruhns at times as his share and other times from Greenberg. He also told me that he knew that there was stove and nut coal underneath the small steam size.

Q. What sizes? A. Pea and buckwheat. He said he was getting the larger coal for buckwheat and pea.

40 Q. Did he say how long he had been shortweighing? A. I can't recall the dates but I should say four or five months.

*William B. Heller, direct.*

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

Q. How long have you known him? A. Since about April 1st, 1924.

Q. Was he a customer of yours— A. He became a customer of ours. 10

Q. How long did he continue to be a customer of yours? A. Up until October, 1926.

Q. During that period, from April 1st, 1924 to October, 1926, how frequently did you see Mr. Greenberg at your coal yards in Weehawken?

Mr. Brogan: I object to that.

Mr. Sharkey: Withdrawn.

Q. How often, between October 1st, 1925 and October, 1926, as near as you can recollect, did you see Greenberg at your yards? A. My first answer give that—frequently. 20

Q. Can you tell us approximately the number of times per week? A. A few times each week.

Q. Do you know how many trucks were used by Greenberg for hauling coal from your yard at Weehawken between January 1st, 1925 and October 28th, 1926? A. At times there were two, other times four or five.

Q. What kind of trucks? Were they of the same size or different capacity? A. Different capacity. 30

Q. Do you know what the largest truck was? A. I should say about eight tons.

Q. What is the smallest truck? A. Five tons.

Q. During the period from January 1st, 1925 to October 28th, 1926, did you observe the conduct of these three defendants with respect to each other at the yard? Had you any occasion to make such observation? A. I did.

Q. What did you observe? A. I observed that 40

*William B. Heller, direct.*

they seemed to be very friendly and that all conversations was just about in a whisper.

Q. What else? A. They were always outside or in one corner of the office—out of the ordinary for an office conversation.

10

Mr. Brogan: I object to that.

The Court: Strike it out.

Q. Did you see these three defendants in the same group between January 1st, 1925 and October 28th, 1926? A. Not the three together.

Q. Whom did you see together? A. I saw Greenberg and Bruhns together; at other times Greenberg and Gallagher together.

20

Q. On the occasions that you saw Greenberg and Bruhns together about how long did they remain together? A. A few minutes.

Q. How about the conversation between Gallagher and Greenberg? A. About the same length of time.

Q. About how many times did you see Greenberg and Gallagher together as near as your recollection serves during the period, of course, between January 1st, 1925 and October 28th, 1926?

30

A. I couldn't give you the number of times I saw them together; I never counted them.

Q. What was it, once in a while or frequently? A. I would go to see how everything was looking around the yard, and sometimes when I went in I would see them talking together—very low; I couldn't know what they were talking about.

Q. Are you familiar with the prices of coal, the retail prices of coal, as they were between January 1st, 1925, and October 28th, 1926? A. You mean the price of coal taken at the yard?

40

Q. Yes. A. I couldn't give you that.

Q. Do you know the prices charged Greenberg

*William B. Heller, cross.*

for his coal during the period I mentioned? A.  
No.

*Cross examination by Mr. Brogan:*

Mr. Brogan: As I understand it, the testimony, sir, as admitted, the supposed conversation, it is limited to Gallagher and the jury will be instructed and is actually stricken out as far as the question of incrimination of Greenberg is concerned. 10

The Court: Yes.

Mr. Brogan: No questions.

Mr. Peters: This applies to Bruhns, also?

The Court: Yes.

*Cross examination by Mr. Meehan:*

Q. When did you have a conversation with Gallagher that you detailed here this morning? A. In October, 1926. 20

Q. How long after the conversation did Gallagher remain in your employ? A. No longer after the conversation.

Q. Who else was present? A. There was no one present with Gallagher and I who could hear what we were talking about.

Q. When you first talked to him you had in mind that you were going to charge him with certain short-weighing. Isn't that a fact? A. Yes. 30

Q. Didn't you bring anybody along with you? A. No.

Q. You didn't think it necessary to have anybody there to hear these admissions that you have detailed? A. Let me have that question again.

(The stenographer repeated the last question.)

The Witness: I did not. 40

*William B. Heller, cross.*

Q. When you talked to him did you have any preliminary conversation leading up to these admissions? A. This was after he was brought down to the main office.

10

Mr. Meehan: That is not responsive.

The Court: Continue, Mr. Heller.

A. He had been questioned by others with witnesses present and even went so far as to sign a statement.

Mr. Meehan: I object to that and ask that it be stricken out.

20

The Court: Strike it out. No, don't tell that. Just tell us what you, yourself, had to say to Gallagher and what Gallagher at that time had to say to you?

A. I asked Gallagher what was going on out at the yards, and that was when he told me that he had been weighing loads of coal short, and taking money for doing so, and weighing the stove and nut and covering it over with buckwheat and pea coal and billing the loads as buckwheat and pea.

30

Q. You want this court and jury to understand that without any preliminary conversation whatsoever you asked Gallagher what was being done in the yard? Is that it? A. Yes.

Q. And right away he told you that he had been short weighing and taking money for it? A. I gave the sum and substance of the conversation.

Q. Did you regard as rather strange the conduct on the part of a human being to admit incrimination without a previous conversation at all, or a charge being made? A. There had been lots before that time.

40

Q. You said: "What is going on out in the

*William B. Heller, cross.*

yard?" and he told you? A. He told me what had been going on.

Q. Did you make any promises to him for his testimony? A. I did not.

Q. Did you promise him anything if he testified the way you wanted him to, to incriminate these other men? A. I did not. 10

Q. You did not? A. No.

Q. There was no hope at all of reward or promise extended to Gallagher?

Mr. Sharkey: I object to this witness testifying to that. He is incompetent to tell what Gallagher's hope was. Hope is something personal.

Q. You say he did not remain in your employ after this conversation with him? A. No, sir. 20

Q. Was Gallagher discharged right on the spot? A. Yes, sir.

Q. Did you help Gallagher out after he was charged with this offense, in any way? A. What do you mean helped out?

Q. Did you get him a bondsman? A. I did not.

Q. You didn't procure a bondsman for him? A. No, sir.

Q. Did you get the National Surety Company to go his bond? A. No, sir. 30

Q. Did your firm get it? A. I don't know.

Q. Isn't it your understanding that he had been bailed out through the instrumentality of your firm, through the National Surety Company? A. Yes; I won't say it was the National Surety Company, some company.

Q. Some bonding company? A. I can't remember for sure whether it was a bonding company or an individual. 40

*C. Herbert Jagels, direct.*

Q. Why were you or your company so solicitous for the welfare of Gallagher when he was charged—

Mr. Sharkey: I object to that. He can't tell why he was—

10

The Court: Yes.

Mr. Meehan: I withdraw the question. No further examination.

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C. HERBERT JAGELS, sworn for the State.

*Direct examination by Mr. Sharkey:*

Q. What is your business, Mr. Jagels? A. Treasurer of Jagels Bellis & Company.

20

Q. Treasurer? A. Treasurer, yes.

Q. Where is your place of business? A. 33 Fourteenth Street, Hoboken.

Q. Do your duties require your being at the Weehawken yard of your company? A. Occasionally.

Q. Do you know Harris Greenberg, Edward Bruhns, and Ambrose Gallagher? A. Yes.

30

Q. How long have you known them? A. Mr. Bruhns about nine years; Gallagher, I think, about five or six.

Q. How long have you known Greenberg? A. Mr. Greenberg I have known since about 1925— I will correct that, I have known Mr. Greenberg since about 1923.

Q. During the period from January 1st, 1925 to October, 1926, did you observe the conduct of these three defendants with respect to each other? A. In my position—

40

Mr. Brogan: I object to that.

Mr. Sharkey: I withdraw the question.

*C. Herbert Jagels, direct.*

Q. Have you made any observation as to the conduct of these three defendants, Greenberg, Bruhns and Gallagher at Weehawken? A. Yes.

Q. Between January 1st, 1925 and October 28th, 1926? A. Yes, sir.

Q. What did you observe? A. My duties— 10

Mr. Brogan: I object to that.

The Witness: In the handling of collections of the company—

*By the Court:*

Q. What did you observe?

Mr. Sharkey: Not your duties?

The Witness: I observed that there was a great deal of friendship between Mr. Bruhns and Gallagher. 20

Mr. Peters: I ask that that be stricken out.

The Court: Yes.

Mr. Sharkey: May I ask why that is done?

The Court: That must be a conclusion.

Q. Did you observe anything besides friendship?

Mr. Brogan: I object to the question.

The Court: Yes. 30

Mr. Sharkey: I withdraw the question.

Q. Tell us what you observed. A. On the attempt to collect money from Mr. Greenberg we advised the yard to discontinue the delivery of coal. The account was overdue. It was a singular fact that Mr. Bruhns also called Mr. Greenberg on the wire—

Mr. Brogan: I object to that.

The Court: Yes, that is a characterization. 40

*C. Herbert Jagels, direct.*

Q. What did Bruhns say? A. That he would discontinue the delivery of coal.

Q. Did you observe anything else that Bruhns would do? A. Except that he 'phoned Mr. Greenberg.

10 Q. Do you know he 'phoned Mr. Greenberg? A. Only through what I have heard.

Mr. Peters: I object to this 'phone business. There is no connection here with Bruhns.

The Court: Yes.

Q. Did you ever observe anything else? A. Not through personal observation.

20 Q. As to Bruhns, Gallagher or Greenberg in the yard? A. Enough that it aroused my curiosity.

Q. Do you know of your own personal knowledge of the conduct of Bruhns and Greenberg with reference to the coal business that took place there? A. Through personal experience?

Q. Yes, personal knowledge. A. No, only through what was told me.

30 Q. What dealings did you have with Greenberg during the period of January 1st, 1925, to October 28th, 1926?

Mr. Brogan: Might that be amplified? What kind of dealings?

Q. With reference to the purchase of coal by Greenberg from Jagels Bellis & Company.

Mr. Brogan: I object to that.

The Court: I will allow it.

40 A. Only the extension of credit and the collection of his account.

Q. Do you know of any joint dealings which

*C. Herbert Jagels, direct.*

Bruhns and Greenberg had with your company?

A. Yes, I know of dealings in 1925. Mr. Greenberg, Jr., gave our Weighmaster, Mr. Bruhns, a check aggregating a total of—

Mr. Brogan: I object to that. He succeeded to the father's business. Manifestly that is improper. This is a matter of endorsing notes and taking over the business.

10

The Court: You would not be able to do that with Greenberg on trial here. Do you say you are going to connect this particular transaction up with Greenberg, the defendant?

Mr. Sharkey: Yes.

The Court: Suppose you let it stand and make your motion later?

20

Mr. Brogan: Exception.

DANIEL T. O'REGAN, J.

The Witness: \$3,284.85. There were several checks. Three or four of them. Mr. Bruhns cashed them, which is against the rules of our company. As I understand the—

Q. Just a minute. After the checks were cashed did Mr. Greenberg, the defendant in this case, do anything?

30

A. The checks were returned because of insufficient funds from the bank. We got in touch with Greenberg, Sr., and he advised us that he would make them good, that he did not want us to prosecute his son. Mr. Greenberg gave us a check for \$1,785.84 and fifteen promissory notes, bearing interest at six per cent., coming due each month for fifteen months, which settled the account. Mr. Bruhns endorsed those notes to guar-

40

*C. Herbert Jagels, direct.*

antee payment in case Mr. Greenberg fell down. I question Mr. Bruhns as to why he cashed those checks and he did not give a satisfactory answer.

10 Mr. Peters: I object to that.

Mr. Sharkey: I withdrew the question.

Q. What did Mr. Bruhns say? A. He did not give a satisfactory answer.

Mr. Peters: I object to that.

Q. I consent that it be stricken out. What did he do? If you recollect say so and if you do not recollect, of course you do not. A. I don't recall.

20 Q. Are you familiar with the yard prices of the different kinds of anthracite coal which prevailed at your yard in Weehawken from January 1st, 1925, to October 28th, 1926? A. It is very difficult to give exact prices because they varied monthly.

Q. Do you know the different prices that existed as between for example nut coal and buckwheat? A. There is an average difference of approximately five or six dollars.

Q. For how many pounds? A. On a ton.

30 Q. A difference of five or six dollars on a ton? A. I will say that, approximately. Of course the prices averaged—I don't know the exact prices at that time.

Q. Between nut coal and buckwheat? A. Yes.

Mr. Brogan: As I understand this man's answer—

The Court: I will let it stand.

40 Q. During this period which was the more expensive coal, stove or buckwheat? A. Stove coal.

*C. Herbert Jagels, direct.*

Q. That is the price per ton at your yard was a greater price for stove than buckwheat? A. Yes.

Q. How much greater? Do you know the difference of the price between stove and buckwheat?

A. I couldn't give you that accurately; a different price existed at various times. 10

Q. Can you give us something of which you are sure? A. Six dollars.

Q. Tell us the difference between stove and pea coal per ton as sold at your yard during this period from January 1st, 1925, until October 28th, 1926? A. Three dollars.

Q. Was there a difference between the price of stove coal and nut at this period? A. Not at that time.

Q. Was there a difference between nut and buckwheat? A. Yes. 20

Q. What is the difference?

Mr. Brogan: I want to make an objection, if the Court please. There is a gentlemen in the second row nodding answers and I know who he is. This witness is taking a prompting in his answers.

*By the Court:*

Q. Is that a fact? A. No, sir. 30

*By Mr. Brogan:*

Q. (Addressing a man in the audience.) You did not?

A Voice: No, sir.

Mr. Brogan: I know that he did in spite of his denial.

The Court: Proceed. He says he did not. Of course if he did that is not proper. 40

*C. Herbert Jagels, cross.*

Q. What is the difference between nut and buckwheat from January 1st? A. Six dollars.

Q. Between nut and buckwheat? A. Yes.

Q. What was the difference between nut and pea? A. Three dollars.

10

Mr. Sharkey: Take the witness.

*Cross examination by Mr. Brogan:*

Q. What is your name? A. C. Herbert Jagels.

Q. Is the gentleman in the second row your father? A. He is.

Q. Is your father, who is in the second row, President of Jagels Bellis Corporation? A. No, sir.

20

Q. Is he an officer of that company? A. General Manager of the Board of Directors.

Q. Bruhns had charge of the cash at times during this period in which he cashed checks? A. At the Weehawken yard.

Q. At that time Greenberg, Jr., was a customer of Jagels Bellis at the Weehawken yard? A. A C. O. D. customer, yes.

Q. He had been a customer for how long? A. I don't know.

30

Q. Several years? A. I think so, but I am not sure. I know he was prior to 1925.

Q. Your company had from time to time cashed checks, Greenberg's own checks and checks that Greenberg had received from customers—Bruhns had cashed them? A. Not that I know of.

Q. When this thing happened Bruhns found himself with several checks from Greenberg which were returned for insufficient funds. Isn't that right? A. Yes.

40

Q. And your company put Bruhns on the carpet and said it was against the rules and regulations

*C. Herbert Jagels, cross.*

for him to cash checks for anybody? You did cash them for Greenberg, Jr.? A. Yes.

Q. Greenberg, Sr., came over from New York and said to your company, "My son presented \$3200 worth of checks and I will make them good," and proceeded to do so by paying 50 per cent. in cash. A. I don't recall whether he came over to our office, but he did that. 10

Q. And then for the balance of \$1700 he gave you fifteen notes, didn't he? A. Yes, sir.

Q. And those fifteen notes at six per cent. interest were met at maturity? A. Yes.

Q. Your company required something besides Greenberg Senior's notes? You wanted all the security you could get? A. Yes. 20

Q. Bruhns as endorser for Greenberg, if he didn't pay, he, Bruhns, would have to pay. Isn't that so? A. Yes.

Mr. Peters: The reason for Mr. Bruhns' endorsement is because the Vice-President of the Company asked him to endorse these notes. Don't you know that because Bruhns had trusted this man, that your company looked to Bruhns to guarantee the amount, and didn't he endorse the fifteen notes and didn't one of the Vice-presidents of the company ask him to endorse them in the office? I understand that and I know that that is a fact. 30

The Witness: Yes, sir.

Recess.

*Joseph Cavanaugh, direct.*

AFTERNOON SESSION.

JOSEPH CAVANAUGH, sworn for the State.

*Direct examination by Mr. Sharkey:*

- 10 Q. What is your business? A. Investigator.  
Q. And you are in business for yourself? A. I  
am.
- Q. Between January 1st, 1925, and October 28th,  
1926, did you make an investigation at the request  
of Jagels Bellis & Company? A. My office did.
- Q. Did you take any part in that investigation?  
A. I did not.
- Q. Do you know Harris Greenberg, Bruhns and  
Gallagher, the defendants in this case? A. By  
20 sight.
- Q. By sight do you know the three of them? A.  
Yes, sir.
- Q. Did you have any conversation with Am-  
brose Gallagher between January 1st, 1925, and  
October 28th, 1926? A. I did.
- Q. Where? A. In the office of Jagels Bellis &  
Company.
- Q. When was that? A. If I remember rightly,  
I think it was December 4th, 1926.
- 30 Q. Who was present at your conversation? A.  
A lady stenographer of Jagels Bellis, I believe, that  
was all at that time.
- Q. Did you personally have a conversation with  
Mr. Gallagher or somebody else? A. I had a con-  
versation with him.
- Q. What conversation did you have with him?  
A. I told him some of the facts that we had gath-  
ered in the matter, and asked if he had anything  
to say regarding it, and he cried and hesitated  
40 probably fifteen or twenty minutes—at last he said  
he wanted to make a statement. I then warned

*Joseph Cavanaugh, direct.*

him of his rights and told him that he didn't have to make a statement unless he wanted to, but that any statement he made would be used against him. He voluntarily made a statement which was taken down by the stenographer.

Mr. Meehan: I object to that as a characterization.

10

The Court: Strike out "Voluntarily made a statement."

Q. You warned him of his rights? A. I did.

Q. You told him that the statement would be used against him? A. Yes.

Mr. Meehan: I object to that.

The Court: I will allow it.

20

Q. He made a statement? A. He did.

Q. That statement was taken down by a stenographer, you say? A. Yes.

Q. And signed by Gallagher? A. I believe it was.

Q. I show you this instrument and ask you if you can identify it. A. To the best of my belief that is the statement he made.

Q. Can you identify it? Look at it carefully. A. Yes.

Q. Do you know whose signature is at the bottom? A. I don't know the man's signature, I couldn't swear to that.

30

Q. Did you see him sign? A. I was present.

Q. You don't know if this is the paper he signed? A. I do not.

Q. But he signed a paper? A. Yes, sir.

Q. It was presented to him by whom? A. I believe after the stenographer had completed the typing of the statement, I think Mr. Heller—I wouldn't say for sure.

40

*Joseph Brophy, direct.*

The Court: Don't tell what you think.

The Witness: I am not sure who handed him the statement.

10 Q. Did you actually see Mr. Gallagher—see the papers presented to him? A. I wouldn't want to swear, it is so long ago. I only want to say that I was present during all of the transaction.

JOSEPH BROPHY, sworn for the State.

*Direct examination by Mr. Sharkey:*

Q. What is your occupation, Mr. Brophy? A. At the present time?

20 Q. Yes. A. I am employed by the Hamburg-American Line.

Q. In October, 1926, what was your occupation? A. Investigator.

Q. By whom were you employed then? A. Mr. Cavanaugh, Bureau of Secret Service.

Q. During the month of October did you make an investigation at the direction of Mr. Cavanaugh? A. I did.

Q. What did you investigate then? A. Why, the general conduct of the office.

30 Q. Whose office? A. Jagels Bellis, the conduct of purchasers and others—Greenberg particularly.

Q. Did you investigate the conduct of any of the employees of Jagels Bellis? A. Employees at the Weehawken yards.

Q. Whose yard? A. Jagels Bellis.

Q. What employees did you investigate? A. Mr. Bruhns and Mr. Gallagher.

40 Q. When did you conduct your examination? A. It is so long ago I can't remember the dates very accurately—around the beginning of October, 1926.

Q. I show you a number of papers and ask you

*Joseph Brophy, direct.*

to identify them, if you can. A. These are reports I submitted, on the investigation.

Q. Look them all over and make sure that they are yours. A. There are a few other reports of investigators mixed in the papers.

Q. Will you take out the other reports of the investigators? A. Yes, sir. These are mine (indicating). 10

Q. Let me have what are not yours. As to the papers in your hand, those memoranda, in whose handwriting are they? A. My own handwriting.

Q. When were the entries made? A. Each night.

Q. At the end of each day you made a written report of your investigation of that day? A. Yes, sir.

Q. There is another person's handwriting in those papers. A. Not in my report, no. 20

Q. Referring to your report, can you tell us when you started your investigation? A. Wednesday, October 6th, 1926.

Q. Where did you start it? A. On the outside of the yards, in the neighborhood.

Q. On that day did you see any one of the defendants at the yard? A. Why, I was not thoroughly acquainted with the defendants that day; I recognized them after that as being at the yard. 30

Q. You know now the defendants in this case were in the yard on that morning? A. I do.

Q. Greenberg was there. You are sure?

Mr. Brogan: If the court please, while I have no objection to the witness refreshing his recollection, I do not think that a witness should be permitted to read those reports.

Q. You don't have to read them; they are only 40

*Joseph Brophy, direct.*

to refresh the witness's recollection. Is that not right? A. Yes.

The Court: I will allow it.

10 Q. Gallagher and Bruhns were there? A. In the office.

Q. What did you observe as to the conduct of these defendants on that day? A. On that morning I was not acquainted with the defendants Gallagher and Bruhns as yet.

Q. When did you become acquainted with them? A. Two or three days later, than October 6th, when I started to work inside, in the office.

20 Q. And you say you became acquainted with Gallagher and Bruhns some time later than the 6th of October? A. Yes, sir.

Q. Can you say whether Gallagher and Bruhns were in the yard on the 6th, the first day you started? A. No, I cannot.

Q. What did you do on the 6th with reference to observing Mr. Greenberg's conduct? A. I followed the trucks that morning from the yard to the place of delivery—Greenberg's trucks.

30 Q. What did you learn as a result of following them? A. I didn't—I don't believe I learned anything the first day. I merely became acquainted with the surroundings.

Q. Did you work on the case the next day? A. I did.

Q. What did you observe the next day as to the conduct of these defendants? A. The next morning I followed the trucks again.

Q. Whose trucks? A. Defendant Greenberg's.

Q. From where?

40 Mr. Brogan: I don't want to object but I think at this time the cross examination

*Joseph Brophy, direct.*

would be very pertinent. It is not shown that he knows Greenberg had these trucks. To continue would be an unnecessary waste of time.

The Court: Proceed. Ask him if he knew actually that these trucks were Greenberg's. 10

Q. How did you identify the trucks as Greenberg's? A. They had been described to me by Mr. Heller.

Mr. Brogan: I object.

Q. Did you have any other means of identification? A. I followed them right to their office in Astoria, Long Island.

Q. Whose office? A. Greenberg's. 20

Q. What did you learn there? A. I saw the trucks in front of the place and the drivers got off the trucks and went in the office.

Q. Did you see Greenberg at the Astoria office? A. I did not.

Q. Did you see him at the coal yard October 7th, 1926? A. Yes, sir.

Q. You are sure you saw Greenberg in the yard on October 8th, 1926? A. Yes, sir.

Q. What did you see the defendant Greenberg do there in your presence, if anything? A. On the arrival of the trucks in the yard, Mr. Greenberg relieved the truck and went into the office. 30

Q. What time on this particular day?

Mr. Brogan: I object to that. I don't know what relieved means.

The Court: Strike the answer out.

The Witness: I don't quite clearly recall.

Q. You say you followed the trucks. Whose 40

*Joseph Brophy, direct.*

trucks? A. The trucks owned by or hired by the defendant Greenberg.

Mr. Brogan: I object to that.

10 Q. How do you know these trucks were Greenberg's trucks? A. There was one big red truck bearing the sign, "Demand Coal & Ice Company" on it. Later it was identified by Mr. Heller speaking to me about Greenberg's trucks.

Mr. Brogan: I ask that that be stricken out.

The Court: Strike it out.

20 Q. Had you any other means of identifying the trucks as Greenberg's? A. After the name was located on the trucks, I found out that they actually were Greenberg's trucks.

Q. The bill were for the same trucks?

Mr. Brogan: I object to that.

The Court: Tell us how you know.

*By Mr. Sharkey:*

30 Q. How did you get that information? A. The trucks arrived in the yard the same time practically every morning. They were then loaded with coal and came to the scales.

Q. Was Greenberg present? A. Not every time.

Q. At the office he was present. A. There were times.

Q. When these trucks came to be loaded? A. Yes.

Q. Did Greenberg do anything in the loading or weighing of these trucks? A. The loading took place down in the yards.

40 Q. Did he do anything in reference to the weighing? A. He came out in the office and was stand-

*Joseph Brophy, direct.*

ing there when the weighing was being done and I saw the name on the trucks.

Q. And you saw Greenberg? A. Yes.

Q. On October 7th, 1927, did you see the trucks loaded? A. No.

Q. But you saw and followed them? A. I followed them. 10

Q. You are sure the trucks you followed are Greenberg's? A. Positive.

Mr. Brogan: I object to that.

Mr. Sharkey: That was only for emphasis.

Mr. Brogan: That is entirely inadequate.

*By the Court:*

Q. Did you see this on the trucks? A. Yes, Demand Coal and Ice Company. 20

*By Mr. Sharkey:*

Q. Do you know it was the Demand Coal and Ice Company? A. Yes.

*By the Court:*

Q. Do you know that? A. Yes, sir.

Q. Where did you get that information? A. By following from the office. 30

Q. How did you know who the Demand Coal and Ice Company was? A. The trucks came in and they had "Demand Coal and Ice Company" on the side and they were weighed up and entered on the weigh slip as Greenberg's. Afterwards this developed in the office.

Q. Did you see Greenberg actually being billed for the coal in the trucks, the trucks that had "Demand Coal and Ice Company" on them? A. Yes, sir. 40

*Joseph Brophy, direct.*

Q. Greenberg was present? A. On several occasions.

Q. Did he accept the weigh bills or receipts? A. The driver did.

10 Q. Was he present when the driver accepted them? A. At times.

Q. On this particular day? A. On that particular day I was outside.

Q. Were there any other identification marks on the outside of the trucks, outside of the name? A. Just the name, the office address, Astoria, Long Island on one truck and on the other truck it did not bear any name, but the coal was weighed and loaded into these trucks and then weighed up and billed to Greenberg, which afterwards developed.

20 Q. Did you see that done? A. Yes, sir.

Q. Greenberg was there? A. Several times.

Q. Did you see the report? A. The driver did.

Q. How do you know? A. I saw when the driver was handed the weigh slip.

Mr. Brogan: I ask that that be stricken out.

The Court: Yes, strike it out.

30 Q. How do you know they were drivers of Greenberg's? A. I saw them arrive with Greenberg.

Q. What do you mean with Greenberg? A. Greenberg was on the truck.

Q. You saw Greenberg on an occasion when he came on a truck with these drivers and get off and go into this coal office? A. Yes, sir.

Q. Did he leave with the truck? A. He left with the truck.

40 Mr. Brogan: I object to that.

The Court: I will allow that.

*Joseph Brophy, direct.*

*By Mr. Sharkey:*

Q. You say you followed the trucks? A. On October 7th.

Q. Tell us just what you did towards following those trucks and what you observed while you were following them? A. While the trucks were on the ferry boat—

10

Q. What ferry boat? A. The 14th Street ferry boat from Hoboken. I don't exactly recall whether it was the black truck or the red truck, but I climbed on the side when the driver had left it. I put my arm down in the load of coal and tried out some of the large coal underneath the buckwheat.

Q. What sort of a load was on the truck that you examined? A. Buckwheat was visible.

20

Q. What sort of a truck was it, a one-compartment or several compartments? A. I think there were several compartments.

Q. What kind of coal was in each compartment? Do you know? A. I don't recall.

Q. What part of that load did you examine? A. The front part, by the seat.

Q. Next to the driver? A. Yes.

Q. What kind of coal was in that compartment? A. Buckwheat on the front, stove or nut beneath.

30

Q. How much buckwheat was on top? A. I should say about half a ton.

Q. What sort of an examination did you make in order to determine what kind of coal was in that compartment? Tell us about your examination. A. I waited until the driver left the truck and watched where he went. He went into the Gents' Department and sat down to smoke. I went outside and knocked on the top of the truck

40

*Joseph Brophy, direct.*

and put my arm down in the load of coal and brought up one handful. Not being satisfied with that I brought up another handful.

10 Q. What kind of coal was the second handful that you brought up? A. Large coal, mixed with small coal which had partly fallen down when I put my hand down.

Q. Did you do anything else on the ferry boat towards examining that truck? A. No, just to make sure that it was one of Greenberg's drivers who was the driver of that truck.

Q. What else did you do that day in reference to that particular truck? A. I followed that truck to where it made its first delivery.

Q. Where was that? A. In Long Island.

20 Q. What did you observe there? A. I watched the first two sections being unloaded.

Mr. Brogan: I don't think the witness should be permitted to read this report.

The Court: Suppose you look that over to refresh your recollection and then lay it aside.

*By Mr. Sharkey:*

30 Q. What else did you do? A. I watched the two compartments being unloaded.

Q. Being unloaded; the first two? A. Yes, the rear and center.

Q. Proceed. A. It appeared to be stove coal throughout.

Mr. Brogan: I object to that.

The Court: Yes, strike it out.

40 Q. Did you follow the truck driver? A. After the coal was unloaded I noticed the first section

*Joseph Brophy, direct.*

of the coal on the truck being opened and the other coal allowed to slide down in the bottom and it was mixed up in general.

Q. That is the coal from the compartment nearest to the driver at the front of the truck?

A. Yes.

10

Q. What else did you observe? A. Then I followed the truck to Jamaica.

*By the Court:*

Q. What part of Long Island City was the first delivery made? A. Ridgeway Park.

Q. And then to Jamaica? A. Yes.

*By Mr. Sharkey:*

Q. What did you observe then? A. I saw the truck unloaded. I stayed there until he had gone away. After he left I went into the house.

20

Q. Where the coal had been delivered? A. Where the coal had been delivered.

Q. What did you observe there? A. I asked the lady if I may inspect her cellar. I went to the cellar and on the way down she said she was just after getting in her coal.

Mr. Brogan: I object to that.

30

Q. Did you observe coal in the cellar? A. I observed coal.

Q. In the cellar of the house where you say the last compartment was delivered?

Mr. Brogan: I object to that.

The Court: I suppose he will have to refer to his paper a little more.

Q. You went into the cellar? A. I went into the cellar.

40

*Joseph Brophy, direct.*

Q. Of the house where you saw the last compartment unloaded? A. Yes.

Q. You saw the coal of the last compartment actually put in the house; do you recall that? A. Yes.

10 Q. You went into the cellar? A. I went into the cellar.

Q. Did you see any coal there? A. I saw coal as I was going down the steps.

Q. In the cellar did you see coal? A. Just the coal that had been delivered.

*By the Court:*

20 Q. How do you know that coal had just been delivered? Did you see it put in? A. That was the coal the lady referred to as having received.

*By Mr. Sharkey:*

Q. What kind of coal was in the cellar? A. The coal in the cellar was nut coal, and I think stove coal, mixed.

Q. Mixed with what? A. Buckwheat.

Q. Was that the kind of coal you saw in the first compartment in the ferry? A. It was.

30 Q. Did you examine the coal in the ferry? A. I did.

Q. You found nut and stove mixed with buckwheat? A. I ascertained from the lady. I asked her what kind of coal she used.

Mr. Brogan: I object to that.

The Court: Strike it out.

Q. Did you examine the coal? A. I did.

Q. You saw what kind of coal it was? A. Yes.

40 Q. What kind of coal did you see in the car? A. Nut and stove coal.

Q. Did you look around the cellar?

*Joseph Brophy, direct.*

*By the Court:*

Q. Did you see the coal being delivered into the house? A. I saw it being carried into the house by the carriers.

Q. How was it carried in? A. In bags on their backs. 10

Q. Do you know where it was put in the house? A. Not until the lady pointed it out to me.

*By Mr. Sharkey:*

Q. You say you observed coal on the steps? A. Over the steps going down.

Q. On the steps leading from what part of the house? A. From the first floor I would say, down into the cellar. 20

Q. Did you do anything further? A. Why, I took some of the coal.

Q. How much? A. About two hands full.

Q. What kind of coal did you take? A. Pea and nut coal. The smaller coal was mixed in between and I just picked out some at random.

Q. Did you follow the truck further? The truck, the truck which contained this coal? A. It had just a little bit of a headway on me then. I went right back to the office that I had been at previous in Astoria and saw the truck standing in front of the door. 30

Q. Whose office? A. The Demand Coal and Ice Company.

Q. What did you observe? A. I observed an empty truck in front of the office.

Q. Which you saw in the ferry and followed to Astoria, you saw that in front of the Demand Coal Company? A. Yes.

Q. Did you do anything further that day in ref- 40

*Joseph Brophy, direct.*

erence to that truck? A. I stayed around about an hour and went home.

Q. Did you do anything the following day, October 8th? A. I followed the truck again the next day.

10 Q. The same truck? A. The same truck.

Q. Where did that lead you to? A. Right over in the same location again, in Astoria.

Q. On October 8th, did you see that truck loaded at the Weehawken yard? A. No, sir, I did not.

Q. Where did you start to follow them from? A. From the outside of the yard.

Q. Who was on the truck? Do you know? A. I do not quite recall.

20 Q. What did you do on October 8th in pursuit of this truck? A. I followed the truck around to verify the deliveries again. As far as I could ascertain everything was in order that day.

Q. Did you do anything the next day, or when was the next time you did anything? A. The next morning.

Q. What date was that? A. October 9th.

30 Q. October 9th what did you do? A. I arrived at the yard and was appointed by Mr. Heller as clerk in the office and started the following morning.

Q. You began to work when? A. The following Monday.

Q. What day was that? A. October 9th, Saturday.

Q. You were appointed clerk on a Saturday and you started to work the following Monday? A. Monday morning.

40 Q. Did anything happen on Monday? Did you observe anything on Monday in reference to the

*Joseph Brophy, direct.*

conduct of these three defendants? A. I will have to refer to these papers.

Q. Yes, refer to your memorandum. A. I notice five trucks apparently belonging to the Demand—

Mr. Brogan: I object to that.

10

The Court: Sustained.

Q. Don't tell us anything you are not sure of. Did you see Greenberg in the yard that morning?

A. Yes, sir.

Q. Did you see any trucks? A. Five trucks.

Mr. Brogan: The same objection to that.

The Court: He only identified two.

Q. How do you know they were Greenberg's?  
A. I saw the weigh slips containing the amount on them and each one was billed to Greenberg.

20

Q. Greenberg, himself was there and the Weighmaster? A. Yes, sir.

Q. Did you observe anything of Greenberg's conduct? A. I noticed Mr. Greenberg hand money to Mr. Bruhns and Mr. Bruhns handed change back. The nature of this transaction—

Q. You don't know how much money changed hands? A. No.

30

Q. You don't know what that transaction was? A. No.

Q. Did you observe anything else? A. No, I did not.

Q. When was the next time you observed anything in reference to the conduct of Greenberg, Bruhns, or any of these defendants? A. Thursday, October 14th.

Q. What did you do the next time? What did you notice then? A. Four trucks arrived that morning belonging to Mr. Greenberg.

40

*Joseph Brophy, direct.*

Mr. Brogan: I object to that.

The Court: Sustained.

10 Mr. Brogan: Two trucks were all that he saw and he simply saw slips made out and the coal delivered; the name might have been Jones or anything else. That is simply a conclusion.

Q. Why do you say these were Greenberg's trucks? A. In a general conversation later on it developed between Mr. Gallagher and myself that Mr. Greenberg had two trucks. Some mornings there were three others, sometimes four or five others.

20 Mr. Brogan: I ask that that be stricken out.

The Court: Strike it out.

Q. During the time that you were employed at the Jabels Bellis yard did you learn just what trucks Greenberg had hauling coal? A. I learned that Greenberg had two of his own trucks.

Q. Tell us when you learned that and the source of your information? A. I can't recall the exact date.

30 Q. As near as you can recollect? A. About the first week I was on the case.

Q. Did you see Greenberg with any truck. A. I did.

Q. What did you see? A. I saw him pay the ferriage for them.

40 Q. For how many trucks? A. That I don't know but I saw him pay the ferriage for the truck I followed and there were two on the boat this particular morning, the one he was on and the other truck. The truck he was on stopped and he paid for the trip.

*Joseph Brophy, direct.*

Q. Did you notice anything else that Greenberg did in reference to these trucks, anything other than paid the ferriage? A. Not outside of talking to the drivers.

Q. Where? A. In the yard.

Q. Did you notice anything else that Greenberg did in the yard with reference to the trucks? A. He would stand in the office and watch until all were weighed out. 10

Q. What would he do when those particular trucks left? A. He would leave with the last one.

Q. Did you see any other act of Mr. Greenberg in reference to these trucks in the yard? A. I can't say that I did.

Q. Did you see any of these trucks loaded? A. No. 20

Q. You never were present at the loading? A. No.

Q. Did you ever see these trucks weighed? A. I saw ninety per cent. of them weighed.

Q. I am talking of the five trucks, the five trucks in the case so far, Mr. Brophy. I am referring to the five trucks. Did you see any of these five trucks weighed at any time? A. I saw trucks drive up to the scale and I saw either Mr. Gallagher or Bruhns walk to the scale and weigh them. 30

Q. At the time you saw any of these trucks at the scales when Mr. Gallagher or Mr. Bruhns was there, was Mr. Greenberg there? A. He was in the office.

Q. Did you ever see him at the scales? A. No, sir.

Q. You never saw him at the scales? A. No, sir.

Q. Did you ever see him on the trucks? A. He would come in the yard and leave with the last truck. 40

*Joseph Brophy, direct.*

Q. On which truck did you see him riding? A. He rode on different trucks.

Q. Did you see him on each of the five? A. I saw him on the red truck and the black truck.

*By the Court:*

10

Q. By the red truck of these five you spoke of you are referring to your investigation of December 8th? A. Yes.

Q. After the five trucks you claim came into the yard on the morning of the 14th do you know whose trucks they were? A. Mr. Greenberg's.

Mr. Brogan: I object to that.

The Court: Sustained.

20

Q. Was the red truck there? A. Yes.

Q. Was the black truck there? A. Yes.

Q. And three other trucks? A. Three other trucks.

Q. Did you have any conversation with Greenberg? A. No, sir.

Q. Did you do anything on the 14th in reference to the red and black trucks? A. I was working in the office.

30

The Court: Are you eliminating the other three?

Mr. Sharkey: For the present purposes, yes.

Q. Did you do anything on Friday, the 14th? A. On the 14th I noticed Mr. Greenberg come into the office after the arrival of the trucks. The gate that leads within to where the cashier's place is is separated, but this gate was open and he came inside.

40

*Joseph Brophy, direct.*

Q. What did he do? A. He walked into the gents' room and Mr. Bruhns followed him in.

Q. Where was Bruhns or Greenberg after he went into the gents' room? A. Bruhns came in.

Q. How long did they stay? A. Two or three minutes. Mr. Greenberg walked as far as the threshold and called Mr. Gallagher in. The two came out a minute or two later. 10

Q. You mean the gents' room? A. Yes.

Q. How long did Gallagher remain in there? A. About a minute or two.

Q. Did you observe anything else? A. No, I did not.

Q. Did you make any observation the second day relative to the conduct of these three defendants or any one of them? A. Six trucks arrived that morning. 20

Q. The red and black trucks were among them? A. The black truck was among them.

Q. Did you observe anything with reference to the black or red truck? A. Only the name on the side of it.

Q. Did you follow the truck that day? A. No, I was inside in the office.

Q. Did you observe anything else that day? A. Why that day—may I refer to this thing (indicating)? 30

Q. Yes, surely. A. May I go back to the previous day?

Q. What day is that? A. The 14th.

Q. Yes, you may. A. The office notified Mr. Greenberg that he was not to receive any coal the next day.

Mr. Brogan: I object to that and ask that it be stricken out. 40

*Joseph Brophy, direct.*

Q. Do you know that of your own knowledge?

A. I have it in my reports.

Q. How did you get the information about Greenberg? A. I was told that by Mr. Gallagher.

10 The Court: Strike that out.

Q. Tell us what you observed on the 15th? A. Mr. Bruhns, after the trucks were loaded that morning—while they were being loaded at least—Mr. Greenberg was standing out by the scales and Mr. Gallagher was weighing the trucks of coal and Mr. Bruhns went out and talked to Mr. Greenberg.

Q. At the scales? A. Yes.

Q. The three were at the scales? A. Two outside and one inside.

20 Q. Did you observe anything else that day? A. In the afternoon Mr. Bruhns 'phoned the office to speak to Mr. Jagels, Junior.

Q. Did you hear the conversation? A. I heard the conversation.

Q. What was said? A. He wanted to find out if it was all right to give Greenberg coal.

Mr. Brogan: I object to that.

The Court: The only thing established—

30 Q. You say Bruhns called the office. How do you know that? A. I know Mr. Bruhns.

Q. This was a telephone conversation? A. Yes.

Q. How did you identify Mr. Bruhns at the other end of the wire? A. Mr. Bruhns was in the office with me.

Q. Who made the telephone call? A. Mr. Bruhns did to Mr. Jagels, Junior.

40 Q. You heard him call Mr. Jagels, Junior, and you heard the conversation on your end of the wire? A. Yes.

Q. Tell us what that was—

*Joseph Brophy, direct.*

Mr. Brogan: I object to that as far as Greenberg is concerned.

The Court: How much evidential value has this; if he does not know who was on the other end of the wire. He is at one end of the wire and Jagels is supposed to be at the other end of the wire in another building. How does he know who is at the other end? 10

The Witness: I heard Mr. Bruhns call for Mr. Jagels, and then—

Q. What was said? A. He wanted to know if it was all right to give Greenberg coal the following morning. I don't know what the reply was.

Mr. Peters: I object to that. 20

The Court: I will let it stand.

Q. When was the next time you observed anything concerning the conduct of these defendants?

A. On Saturday, October 16th.

Q. What did you observe that day? A. Mr. Greenberg's four trucks arrived that morning.

Q. What did you observe concerning Mr. Greenberg's conduct?

Mr. Brogan: I object to that. 30

Q. What trucks arrived that day? A. Two trucks.

Q. Was the red truck there?

Mr. Brogan: Please, Mr. Sharkey. This witness is a special investigator and is supposed to be intelligent. I object to your leading.

Mr. Sharkey: I withdraw the question. 40

Q. You saw four trucks? A. I saw four trucks.

*Joseph Brophy, direct.*

Q. Whose trucks were they? A. The trucks hired by Greenberg & Company.

Q. How do you know? A. I saw coal weighed up and the weigh bills given to the drivers.

10 Q. You saw the trucks before that day? A. I saw these trucks and these drivers.

Q. What did you observe with reference to the trucks? A. I noticed that after the trucks left the yard that morning Mr. Greenberg did not go with them but that he remained around the yard. He came into the office and walked over to Bruhns and tapped him on the shoulder and they walked into the lavatory together.

Q. How long were they in the lavatory together? A. I would say two or three minutes.

20 Q. Did you observe anything else that day? A. No.

Q. When was the next time you observed anything concerning the conduct of these three defendants? A. Mr. Greenberg sent four of his trucks and they arrived at the yard that morning.

Mr. Brogan: I object to that.

30 Q. How do you know that these were Greenberg's?

*By the Court:*

Q. By the red truck and the black truck?

Mr. Sharkey: I will identify them.

*By the Court:*

Q. You say there were four other trucks, the black and the red ones and they were among these four? A. Yes, sir.

40 Q. How about the other two? A. The other two

*Joseph Brophy, direct.*

I believe were handled by Mr. Greenberg's son, one or two of them.

*By Mr. Sharkey:*

Q. Just tell us about what you are positive. A. The coal that was loaded in these trucks belonged to Mr. Greenberg— 10

Q. The four trucks belonged to Mr. Greenberg? A. Yes.

Mr. Brogan: I object to that. It is all very glib to say that. They may have been gotten from somebody else.

The Court: I will sustain the objection.

Q. How do you know they belonged to Greenberg? A. I manifested the bills. 20

Q. You were then in the employ of— A. Of Jagels Bellis.

Q. Did you observe anything else that day? A. Mr. Bruhns was notified by Mr. Jagels, Junior—

Q. Did you hear the notifications given? A. I heard Mr. Bruhns talking to Mr. Jagels over the wire.

Mr. Peters: I object to that.

The Court: Strike it out. 30

Q. Did you have a conversation with Bruhns that day? A. No.

Q. Where did the telephone conversation take place? A. In the same office with me.

Q. Who was present with you? A. Mr. Gallagher, Mr. Bruhns and myself.

Q. Who spoke on the telephone? A. Mr. Bruhns.

Q. Did Mr. Bruhns call or receive the call? A. He received the call. 40

*Joseph Brophy, direct.*

Q. You heard him speak? A. I heard him speak.

Q. What did he say? A. He apparently received orders.

10 Mr. Brogan: I object to that.

Q. Don't tell only matters that you are absolutely sure of. What did you hear Bruhns say?

A. Bruhns referred to a message given over the telephone by Mr. Jagels.

Q. Give us the words, please, of what you heard Bruhns say.

20 Mr. Brogan: I object to the witness testifying to this alleged telephone conversation.

*By the Court:*

Q. How do you know Bruhns was talking to Jagels? A. I heard him address him as "Yes, Mr. Jagels."

Q. What did Bruhns say after or before that, if anything? A. I don't think I can recall the exact words.

Q. Give us your best recollection.

30 Mr. Brogan: I think that is an important point. He was an investigator or detective hired to catch these men as Mr. Peters suggests and now at this crucial point he says that he does not recollect. The Prosecutor then says, "Give us your best recollection."

The Witness: There was a message which afterwards developed that Mr. Greenberg was not to receive any coal the following day.

40 Mr. Brogan: I object to that.

*Joseph Brophy, direct.*

Mr. Sharkey: That is not it. I am trying to have you—

The Court: All you can tell is what you actually know; what you actually saw yourself, not what someone told you took place or what you believe took place, or what apparently took place. It is your exact knowledge that you must give to the jury, now. Try to confine yourself to things that you know personally from your own observation. 10

Q. You may refresh your memory. Can you give us what Mr. Bruhns said at the time you received a telephone call? If you can't recollect say so. A. I can't recollect what Mr. Bruhns said. 20

Q. Did you observe the conduct of Gallagher and Bruhns this day? A. I did.

Q. What did you observe? A. I observed that when Mr. Bruhns was leaving the office that day that Mr. Gallagher followed him out. I will have to give you the reason of why he followed him out.

Q. You are here to tell your observations and answer questions only. What else did you observe in reference to Bruhns and Gallagher that day? A. I noticed an uneasiness. 30

Mr. Brogan: I object to that and ask that it be stricken out.

The Court: Strike it out.

Q. Don't tell us the emotions of these men; just what you saw or heard. Refer to your memorandum. That day did you notice anything else, did you make any observation concerning these three defendants, either this day or the next day? A. 40

*Joseph Brophy, direct.*

Yes, sir. This is very important testimony right here. On this particular day—

Mr. Sharkey: You can't tell that.

Mr. Brogan: I object to the characterization.

10

The Court: Yes, sustained.

Q. Did you observe anything else on this 18th day of October, 1926, concerning these three defendants? If not, say so. A. I noticed Mr. Gallagher walk outside after Mr. Bruhns and I noticed Mr. Gallagher come in the office again.

Q. Did you have a conversation with Gallagher?

A. Yes.

20

Q. What was said? A. They wanted to get word to Greenberg.

Mr. Brogan: I object to that.

The Court: Strike it out.

Q. What did Gallagher say to you? A. Gallagher said he was going to notify Greenberg about the next morning.

Mr. Brogan: I object to that.

*By the Court:*

30

Q. Can you remember what Gallagher said? A. No, sir, not the exact words.

Q. Tell us as nearly as you can the words he used. A. He said, "Ask Eddie if it would be all right to call up Greenberg and let him know about the showdown tomorrow morning." Eddie said he would take care of it himself.

Mr. Peters: I object to that Eddie would take care of it himself.

40

Q. Do you know who Eddie was? A. Mr. Bruhns.

*Joseph Brophy, direct.*

Q. Did you observe anything else that day? A. I did not.

Q. Did you make any further observations on the next or any other day? A. I noticed Mr. Greenberg did not arrive in the office the next morning.

10

Q. Did you have a conversation with Gallagher that day? A. I mentioned the fact to Mr. Gallagher.

Q. Did Gallagher say anything to you that morning? A. Mr. Gallagher said yes, he notified him.

Q. Gallagher said that to you? A. Yes.

Mr. Brogan: I object to that; that applies only to the man who uttered it.

The Court: Yes, and my ruling applies to all.

20

Mr. Peters: Mr Bruhns as well?

The Court: Yes.

Q. When was the next time you observed anything concerning this man? A. Wednesday, October 20th.

Q. What did you observe then? A. I observed that Mr. Greenberg did not arrive in the yard that day?

Q. Did you have any conversation with Bruhns and Gallagher that day? A. I asked Mr. Gallagher if the ban had been lifted on Greenberg's trucks and he said no.

30

Q. When was the next time you observed anything as to the three defendants or any one of them? A. Wednesday, October 27th.

Q. What did you observe that day? A. A telephone message for Mr. Greenberg.

Q. How do you know it came to Mr. Greenberg?

40

*Joseph Brophy, direct.*

A. I heard it repeated by Mr. Bruhns to Mr. Gallagher.

Mr. Brogan: I object to that.

The Court: Yes, sustained.

10 Q. Did you have any conversation with Gallagher or Bruhns that day? A. No, sir.

Q. Did you hear them say anything to each other or to anybody else that day? A. I heard Mr. Gallagher say that he had had a telephone call from Mr. Greenberg and that he would be over the next day for coal as usual.

Q. Did he say anything? A. He said, "All right."

20 Q. What was your next observation? A. Thursday, October 28th.

Q. What did you observe that day? A. A load of coal that I weighed myself for Mr. Greenberg.

Q. A load of coal in whose truck? A. Mr. Greenberg's.

Q. How do you know? A. Because Mr. Greenberg objected to the weight.

Q. You weighed that? A. I did.

30 Q. Tell us what happened at the weighing of that truck. A. I filled the weight slip out, 19,000 pounds, and Mr. Greenberg objected to the weight and Mr. Gallagher said he couldn't help out because I had weighed it.

Q. What kind of a truck was that, the red or the black truck? Do you recall anything else that happened that day? A. Not on that day.

Q. Did you have any conversation with Gallagher that day? A. No, I did not.

40 Q. You say you weighed the truck that day? A. I weighed the truck.

*Joseph Brophy, direct.*

Q. What time of the day was it? A. This was in the afternoon.

Q. Did you see Greenberg at the yard that morning? A. In the morning but not in the afternoon.

Q. Did he get coal in the morning? A. He got coal in the morning. 10

Q. Who weighed that coal? A. I don't know; I didn't.

Q. Look at your memorandum and refresh your recollection by referring to that? A. Mr. Gallagher weighed it.

Q. Mr. Gallagher weighed the truck? A. Yes.

Q. Were you personally present when it was weighed? A. I was.

Q. Did you know the weight of the truck as indicated by the scales? A. 17,500 pounds. 20

Q. According to whose weighing? A. Mr. Gallagher's.

Q. Did Mr. Gallagher do anything after the weighing, or did you do anything else? A. I walked around from the scales and wrote the ticket.

Q. You walked to the scales to verify the weight? A. I noticed that he had 500 pounds more than the weight on the ticket.

Q. Was Bruhns present at that time? A. That I don't know. 30

Q. In the afternoon did you observe anything concerning Greenberg or any of Greenberg's trucks? A. Only the objection on the part of Mr. Greenberg as to the weight.

Q. Did you observe the kind of coal that was in the truck in the afternoon? A. Pea coal and stove coal.

Q. How many compartments were there in the truck? 40

*Joseph Brophy, direct.*

*By the Court:*

Q. Was this the truck you referred to as having 500 pounds more weight?

10 Mr. Sharkey: No, this is the afternoon weight.

The Witness: That I don't know.

Q. Do you know what kind of coal? A. According to my records right here, if I may read it—8000 pounds of pea coal and 11,000 pounds of stove coal.

Q. Did you make any observations as to the pea coal? A. I noticed the truck weighed in with pea coal first.

20 Q. And then where did he go? A. He drove down the yard and loaded with stove coal.

Q. He came back? A. Yes.

Q. Did you notice anything in reference to the part of the truck that the pea coal was on? A. There was nothing but stove coal appearing then.

Q. But weighed as pea? A. Yes.

Q. Then he went for another load? A. Then he went for another load and came back with stove coal visible.

30 The Court: I don't understand. First pea coal was put in the truck and then the truck was weighed?

A. Weighed with pea coal.

*By the Court:*

Q. And then what happened? A. Then he went to the yard to the pocket and then he came to the scales with a full load of stove coal.

40 Q. On top of the pea coal? A. Evidently.

*Joseph Brophy, direct.*

Q. Do you know if the pea coal was unloaded?  
A. I do not.

*By Mr. Sharkey:*

Q. Do you know how the slip was made out,  
how Greenberg was charged? 10

The Court: He said the pea coal was weighed and that he don't know what happened to the pea coal on the truck. Subsequently he came back with stove coal.

*By the Court:*

Q. That is all you saw in the truck? A. Yes.

Q. To the best of your knowledge that was all there was in the truck? A. Yes, that was all. 20

Mr. Sharkey: He was getting stove coal and charging for pea coal.

The Court: Is it your contention in this case that he was charged on this particular load for all pea coal?

Mr. Sharkey: No.

The Court: What was he billed for?

Mr. Sharkey: Half the load was billed as stove as it properly should have been; the other half was stove but billed as pea coal. 30  
In other words, half at the pea coal price.

*By the Court:*

Q. Did you follow this truck after he weighed the pea coal and went into the yard? A. No.

Q. Do you know what happened to that pea coal? A. No, sir.

Q. Do you know if it was unloaded? A. No.

Q. Do you know if there was pea coal under this load? A. No. 40

Q. Was it weighed again? A. Yes.

*Joseph Brophy, direct.*

*By Mr. Sharkey:*

Q. The whole truck? A. Yes.

*By the Court:*

10 Q. He came back with the stove coal and had it weighed? A. Weighed again.

*By Mr. Sharkey:*

Q. In reference to the first part of the truck, was it weighed, Mr. Brophy? Was the slip made out for that? A. No, sir, there was no slip made out for that.

Q. So that when he came back the truck was entirely loaded and it was weighed again? A. Weighed again.

20 Q. It was all stove coal, as far as you saw? A. The second time.

Q. How was the slip made out for that load? A. 8,000 pounds of pea and 11,000 pounds of stove coal.

Q. Do you know how many compartments there were in the truck?

*By the Court:*

30 Q. Who weighed it?

*By Mr. Sharkey:*

Q. Who weighed the truck? A. I weighed it the second time—19,000 pounds.

Q. Where was the pea coal when you first noticed it, on what part of the truck? A. In the—that I don't know.

40 Q. Where you were weighing at the scales did you have a view of the truck? A. The pea coal in the first section, near the driver.

*Joseph Brophy, direct.*

*By the Court:*

Q. You now know that? A. Yes.

Q. When the truck came back where was the pea coal? A. I didn't see any pea coal.

Q. How many compartments were there in this truck? A. That was the question I did not know. 10

Q. You say the pea coal was in the front compartment? A. It was in the compartment near the driver.

Q. There was more than one compartment? A. There was more than one compartment.

Q. The pea coal was in the compartment near the driver? A. Yes.

Q. And then it went away? A. Down the yard.

Q. With the pea coal in the compartment? A. Yes. 20

Q. Do you know if there was buckwheat in any other compartment in the truck? A. I don't know.

Q. Was there pea coal in the compartment when he came back? A. I don't know.

Q. Was there stove coal there? A. There was stove coal on top of that.

Q. Of the place where you formerly saw pea coal? A. Yes.

Q. You don't know if there was pea coal there or not? A. No. 30

Q. But you weighed the second trip at 19,000 pounds of coal? A. That is right.

Q. As far as you could see it was all stove coal? A. Yes.

Q. Who billed that coal, who made out the slip? A. Mr. Gallagher billed it for 8,000 pea and 11,000 pounds of stove.

Q. How do you know that? A. I saw him.

Q. On this particular load he charged it that way? A. Yes. 40

*Joseph Brophy, direct.*

Mr. Brogan: May I ask a few questions?

The Court: Yes.

*By Mr. Brogan:*

10 Q. So far as you know there might have been 11,000 pounds of stove coal and 8,000 pounds of pea coal? A. Yes.

Q. You are absolutely dead accurate on that?

A. Yes, sir.

Q. Do you know whether there were 8,000 pounds of pea coal? A. No, I do not.

Q. But you are sure the truck came back a second time and the only coal that you could see was stove coal? A. I am, and it weighed 19,000 pounds.

20 Q. It weighed 8,000 for the pea and 11,000 for the stove? A. That is right.

*By the Court:*

Q. You didn't, at any time, dig down in the coal from the top to see what was underneath? A. No.

Q. You made no other investigation but what you testified to here? A. No, sir.

*By Mr. Sharkey:*

30 Q. How was the pea coal compartment loaded when it first came up—what part of the truck was that on? A. The fore part, next to the driver.

Q. How high on the sides was it loaded? A. The part close to the top—it was high enough to see it was pea coal, in addition to the driver calling out "pea coal," I could verify it by seeing it.

Q. Did you make any other observations? A. Not that day, no.

Q. When did you make your next observation? A. Saturday, October 30th.

40

*Joseph Brophy, direct.*

Q. What did you observe then? A. Mr. Greenberg arrived with one truck, the red truck.

Q. What happened then? A. The truck went down in the yard to load up. He came into the office and walked into the gents' room and came out. Mr. Gallagher walked in after he came out again. Everything was normal. 10

Mr. Brogan: I object to that. I don't know what "everything normal" means.

The Court: Strike out "normal."

Mr. Brogan: Mr. Peters has called my attention to the fact that the State has passed the last date mentioned in the indictment.

The Court: Yes, you are limited only within the scope of that. 20

Mr. Sharkey: We can show—

Mr. Peters: I object, also.

The Court: I sustain your objection.

Mr. Peters: They cannot go beyond that date.

Q. Did you have any conversation with Gallagher after the 28th of October? A. On several occasions.

Q. When was the first one after the 28th? A. I don't recall the date; I can refer to these reports. 30

Q. Refer to your memorandum. A. On the morning of Saturday, October 30th.

Q. On the morning of Saturday, October 30th, you spoke to Gallagher or did he speak to you? A. He spoke to me.

Mr. Brogan: I object to that as far as my client is concerned.

The Court: Yes, sustained.

Q. What did he say? A. He asked me to go to the drug-store to get me a bottle of bromo-seltzer. 40

*Joseph Brophy, direct.*

Q. Did you have any further conversation? A. Not that I recall.

Q. When after that do you recall having a conversation?

10

Mr. Brogan: May I ask the court to hear my objection? He should not state any conversation that would tend to mention those not present.

The Court: It is limited to the one who makes the statement.

The Witness: I don't recall any.

20

Q. You don't recall having any conversation with Gallagher since that date, the day he asked you to go to the drug-store? A. I spoke to him several times after that but the dates I don't recall.

Q. Can you give us the period in which the conversations took place? A. Every day.

Q. Up until what date?

Mr. Brogan: Perhaps we can help you out. Do you know when Gallagher left the employ of—

Mr. Meehan: I object to that.

30

Q. Have you a memorandum on that, Mr. Brophy? A. Friday, November the 12th, 1926.

Q. You had a conversation then with Gallagher? A. Just a general conversation.

*By the Court:*

Q. Did you get any admission? A. Not that day.

Q. Did you get an admission from him on the 28th of October up to the time that Gallagher severed his connection with Jagels Bellis & Company?

40

A. Mr. Gallagher told me—

*Joseph Brophy, direct.*

Q. Did you have any conversation with him?

A. I did.

Q. Did you have more than one conversation during that period? A. I did.

Q. Tell us what happened in the first of those conversations? 10

Mr. Meehan: This witness should be pinned down to when it took place.

The Court: Yes.

*By the Court:*

Q. Did you get an admission of anything from Gallagher? A. Yes, sir.

Q. Do you know when? A. After October 28th.

Q. About when? A. I will say around the first week of November; I can't get the exact date. 20

Q. Do you remember that conversation now?  
A. I remember what the conversation was about but not the exact words.

Q. Can you find the exact date by looking in there? A. I think that part of my report is missing.

*By Mr. Sharkey:*

Q. Do you recollect parts of the conversation? 30  
A. Yes, sir.

Q. Tell us according to your best recollection the basis of what was said by Gallagher in that conversation.

Mr. Meehan: He said he couldn't give the exact words.

The Court: I will allow it.

The Witness: I asked Mr. Gallagher why there was so much intimacy between Mr. 40

*Joseph Brophy, direct.*

Greenberg and Mr. Bruhns and Mr. Gallagher told me—

Mr. Brogan: I object to that.

The Court: No; sustained.

10 Q. Did you have any conversation with Mr. Gallagher concerning his conduct? A. No, sir, not his conduct.

Q. Not his conduct with either of these two defendants? A. Mr. Bruhns and Mr. Greenberg.

Q. In any conversation between you and Gallagher was anything said about his own conduct with any of the two defendants mentioned, when telling about these relations? Did he speak about their relations? A. He included himself in the statement.

20 Q. Tell us what he said concerning himself.

Mr. Brogan: I object to that. I object to that without disparaging the State's case, because there is a lack of evidential value and that should not go in. After picking through his voluminous reports for the last hour he cannot say what the conversations were without going through the papers, it develops.

30 The Court: I will allow it. Gallagher, himself, not Bruhns and not Greenberg, what Gallagher said about his own conduct.

*By the Court:*

Q. Did he say anything about his own conduct?  
A. No, not about his own conduct.

*By Mr. Sharkey:*

40 Q. Did he say anything about his own conduct in relation to the other two defendants?

*Joseph Brophy, direct.*

Mr. Meehan: I object to that.

The Court: I think he has asked that twice.

Q. I mean Gallagher's conduct in the weighing of coal or dealing with any of the two defendants in the matter of weighing coal. 10

Mr. Brogan: That is objected to.

The Court: If you introduce anything now that is detrimental to the other two defendants it could not go to the jury.

Mr. Sharkey: Oh, yes, you could, with the instruction that we have spoken of earlier in the case.

The Court: I don't think that you should build up the case on anything without evidential value. 20

Mr. Sharkey: This has value.

Mr. Meehan: He has answered it twice already.

The Court: Well, I will allow it.

The Witness: No, he did not.

(Adjournment was taken to December 1st, 1927.)

December 1, 1927. 30

Mr. Sharkey: If the Court please, I wish permission to further question this defendant. There are several matters that I overlooked on direct examination. I wish a further opportunity for direct examination.

The Court: You may re-open.

*By Mr. Sharkey:*

Q. Mr. Brophy, you testified yesterday of following two truck loads of coal October 7th, 1927? 40

A. That is right.

*Joseph Brophy, direct.*

Q. Did you see either of these two trucks loaded on that day? A. No, I did not.

Q. Did you see them loaded? A. No, sir.

Q. Did you see them weighed? A. No, sir.

10 Q. From what part did you begin your pursuit of these trucks? A. They left the yard at 19th Street and Park Avenue.

The Court: Have you fixed the date?

Mr. Sharkey: October 7th, 1926.

Q. You testified that you examined one of the trucks. Will you tell us now what examination you made of the truck that you claim you examined October 7th, 1927?

20 Mr. Brogan: We have gone into that at great length yesterday.

The Court: Yes, the entire procedure. He said he put his arm down and examined the coal.

Mr. Sharkey: In one compartment.

Q. Did you examine the entire compartments while the truck was on the ferry? A. Not at that time.

30 Q. You testified yesterday that you then followed the truck into Rigo Park. A. Rigo Park, Long Island.

Q. You testified you saw that truck unloaded. How long did you watch the unloading of the truck at Rigo Park? A. Until they completed unloading the rear center section and until the truck left the spot where it was standing.

*By the Court:*

40 Q. You say you completed the rear center sec-

*Joseph Brophy, direct.*

tion. Now the examination that you made was of the front section? A. The front section.

Q. How was that truck unloaded, by what means? A. Carriers carrying in baskets of coal.

Q. How did the coal come out of the truck? A. Through a chute. 10

Q. At what part of the truck was the chute? A. The rear end of the truck.

Q. During the time you were watching the unloading of the truck did you have a view of the rear end of the truck? A. Yes, sir.

Q. Did you make any investigation as to the kind of coal coming out of the chute? A. I did.

Q. Will you tell me what kind of coal was coming out of the chute? A. Stove coal.

Q. You are sure you watched the entire unloading? A. Yes. 20

Q. Did you notice any kind of coal other than stove coming out of the chute from the time you watched? A. No, sir.

Q. You testified yesterday that after the middle and rear compartments of the truck were unloaded at Rigo Park you followed the truck further to a place in Jamaica? A. Yes.

Q. It stopped at the house there? A. Yes.

Q. What kind of a house was it at which the truck stopped? A. I am not positive. 30

Q. Are you positive? Don't tell us anything except matters of which you are absolutely positive about. A. It was one—more than one, a two-family house.

Mr. Brogan: I ask that that be stricken out as a conclusion.

The Court: I suppose that is right, but I don't see any harm in it. I will allow it. 40

*Joseph Brophy, direct.*

Mr. Sharkey: I will withdraw the question.

Q. How many stories to the house where the last compartment was delivered, do you know?

10 A. I don't know, no, sir.

Q. Did you watch the unloading of the last compartment at Jamaica? A. I did.

Q. Through which part of the truck was this compartment unloaded? A. Through the rear end, also.

Q. Through the chute? A. Through the chute.

Q. Through the same chute the other two compartments had been unloaded? A. Yes.

20 Q. Did you watch the entire unloading of the entire compartment? A. I did.

Q. Did you have a view of the rear of the truck?

A. I was within 200 feet of the truck at the time.

Q. By what means was the coal conveyed from that truck? A. It was carried in baskets into the cellar of the house.

Q. How many men? A. I can't say for sure whether there was one or two carriers.

Q. You later entered the house? A. I did.

30 Q. Through what part of the house did you enter? A. The entrance.

Q. What part, the main entrance? A. Main entrance.

Q. Through what part of the house was the coal carried? A. The coal was carried around the left side of the house and emptied through the window into the bins.

Q. It was emptied through the window? A. Through the window.

40 Q. On what side of the house was that window?

A. The left side.

Q. You later went into the cellar? A. Yes, sir.

*Joseph Brophy, direct.*

Q. In what part of the cellar with reference to the windows through which you saw the bags of coal dumped did you go?

Mr. Brogan: If the Court please this situation has been outlined in great detail yesterday.

10

Q. You are sure the coal was dumped into the side window? A. Yes.

Q. Have you any recollection as to what part of the house that window was located? A. On the left side of the house from the outside.

Mr. Brogan: I ask that that be stricken out. That means nothing.

Q. The left side of the house. On what part of the house as you entered the main entrance? A. The house is on the north side of the street and the window is on the left side of the house.

20

Q. On what side of you as you entered this main entrance or the front door? A. What do you mean?

Q. You walked into the house through the front door? A. Yes.

Q. On what side entering the front door, on what side of the house was the window, on the left or the right? A. On my left.

30

Q. As you entered the house you saw it was on your left. On what side of the house was the part of the cellar where you claimed you made your examination of some of the coal? A. On the left side of the house.

Q. The same side? A. The same side as the window.

Q. Where was the coal in reference to the window you claimed it was dumped into? A. Right directly under the window.

40

*Joseph Brophy, cross.*

Q. What kind of coal did you find in the cellar?

A. I found nut coal and buckwheat coal mixed.

Q. Can you tell us about how much buckwheat coal was there? A. It was all mixed with the nut at the time.

10 Q. Can you say that there was more stove or buckwheat? A. The greater amount was nut coal.

The Court: He didn't say stove, he said nut and buckwheat.

A. The greater amount was nut coal.

The Witness: Nut and buckwheat.

Q. Before the actual unloading of the truck was begun, Mr. Brophy, did you notice anything? A. 20 When the truck was getting ready to leave from the house at Rigo Park, after it was dropped down to its level from the vertical position, the driver shoveled coal to the rear of the truck.

Q. How; can you tell us? A. He opened the compartment.

Q. Did he push or shovel it? Tell us what he did, how he did it. A. He opened the compartment so the coal might slide back.

Q. Did it slide back? A. It slid back and then 30 he got into the truck and shoveled towards the back of the truck. The stove coal that did not go—

Q. What else did you observe? A. That is about all I observed at that particular time.

Mr. Sharkey: Take the witness.

*Cross examination by Mr. Brogan:*

Q. How long have you been a detective?

40 Mr. Sharkey: If the Court please this is not the State's witness—

*Joseph Brophy, cross.*

Q. Are you a detective?

Mr. Sharkey: I object, if the Court please.

Mr. Brogan: He stated that he is an investigator.

The Court: I will allow it.

The Witness: Not at the present time.

10

Q. When were you a detective last? A. February, 1927.

Q. For whom? A. Joseph A. Cavanaugh, Bureau of Secret Service.

Q. What were your duties? A. To investigate.

Q. What kind of investigating? A. All kinds.

Q. Divorces? A. No divorces.

Q. Fraud of various kinds was your specialty?  
A. Frauds and thefts.

20

Q. Are you giving us to understand, Mr. Brophy, that you can stand a distance of 200 feet away from coal coming out of a truck, the coal being in compartments, sliding down a chute and going into canvas bags or baskets—which I assume was the container, and being carried to a side window and from a distance of 200 feet, which in this city is an ordinary city block, you can tell the difference between the various grades and sizes of coal, from approximately 200 feet of distance? A. With the assistance of powerful field glasses I used.

30

Q. You stood on the highway? A. No, sir, in my machine.

Q. What kind of a machine? A. Studebaker.

Q. A Studebaker. Open or closed? A. A Studebaker, open.

Q. You took out your field glasses to enable you to see the coal in a large coal truck, that approximately held many tons of coal? A. I could see

40

*Joseph Brophy, cross.*

the coal in the truck and see the coal standing in the basket that was to be carried in the house.

Q. And you do not know how many men it took in this operation? A. I am pretty sure it was two men.

10 Q. You were not pretty sure a few minutes ago on direct, were you? A. I was not positive if he was carrying, the driver.

Q. Did you testify—I want the facts and I am not trying to trip you—isn't it a fact that you testified that you did not know how many men were engaged in this operation of delivering this coal in the manner suggested by you? A. I was not sure, that is why I testified that way.

Q. Now are you sure? A. Not positive.

20 Q. What happened to strengthen your recollection?

Mr. Sharkey: I object to that.

The Court: Strike it out.

Q. Are you now surer than you were five minutes ago about that? A. I am not positive.

Q. Are you more positive than you were? A. More than I was.

30 Q. What happened in the intermission to strengthen your recollection? A. The fact that you brought back to my recollection that I was sitting in the car with field glasses.

Q. You didn't remember that you sat in the car with field glasses then? A. I was not asked that.

Q. You were asked to describe what you did. A. What I saw.

Q. What you did. You don't know how many stories were in this second house that you spoke of, do you? A. No, sir.

40 Q. Notwithstanding the fact that you had field glasses? A. No, sir.

*Joseph Brophy, cross.*

Q. But you were willing to testify and did testify until objected to that it was a two-family house? A. Two or more families.

Q. What gave rise to that conclusion on your part? A. I went to the second floor. I know there were families above the second floor. 10

Q. Why? A. I saw the stairway.

Q. Every time you see a stairway you always come to the conclusion that there is another family above that? A. Not always.

Q. If you were so sure that this coal was delivered, that it was stove or nut or buckwheat, why was it necessary for you to go to the house to make an examination? A. Because I wanted to make sure.

Q. Apparently you were not sure? A. I wanted to be positive with my findings. 20

Q. In other words, if I understand you, when you were finished with your operations with the field glasses from the car which you were driving, you were not sure what kind of coal it was? A. I was sure but I wanted to get a specimen.

Q. Did you? A. I did.

Q. Where is it? A. I turned it over to Jagels and Bellis.

Q. What specimen was it? A. Nut and buckwheat coal mixed. 30

Q. A couple of fistfulls? A. I didn't count them.

Q. How much, a half a bag, or twenty pounds? A. Two handfuls.

Q. How many pieces of stove coal would be a handful? A. That I do not know, sir.

Q. A very small amount? A. Very small.

Q. Mr. Brophy, you don't intend for us to believe that you sat in your car. Did you sit in your car? A. Yes, sir. 40

*Joseph Brophy, cross.*

Q. 200 feet away and you took out your field glasses and looked through them in a dramatic fashion and looked at this operation and then and there you could take a solemn oath that there was stove or nut or buckwheat? Are you still testifying to that? A. When sent out—

Q. Do you want us to understand that when you were sitting 200 feet away in this car with your field glasses and watching this operation whereby coal was coming from one compartment to another in a big truck and sliding down a chute to be put in canvas bags, or containers, to be carried in the house, you could get on the witness stand after that and in spite of the fact that you were over 200 feet away you could take an oath and tell us as to the sizes of this coal? You don't intend to so testify, do you? A. I am sure of that.

Q. When did you make sure? When you went into the house or was it when you were sitting 200 feet away with your field glasses? A. I was positive when I went into the house.

Q. But up to that time, Mr. Brophy, it was not humanly possible that you could go on the stand and swear without a subsequent investigation and be sure of what you were talking about? You don't want us to understand that, do you? A. No, not exactly.

Q. When you testified here, Mr. Brophy, that you knew as a matter of fact, that in the cellar there was coal of the nut size or stove size plus the buckwheat, that testimony is offered by you as a fact only after you made that investigation yourself by going into the cellar, isn't that right? A. Yes, sir.

Q. If you had not had that opportunity of mak-

*Joseph Brophy, cross.*

ing this actual test, Mr. Brophy, of course you could not so swear? A. No, I could not.

Q. How do you know, therefore that the coal that you saw in the cellar was stove?

The Court: Nut and buckwheat.

10

Q. Nut and buckwheat, I mean.

*By the Court:*

Q. It is a fact, is it not, that it was nut and buckwheat? A. Yes, sir.

Q. (Continuing) Was not in the cellar prior to your coming there for some time then. A. The fact that when she went to get coal she pointed to that coal.

Q. That is your only explanation? A. I asked where they got the coal there and they told me.

20

Mr. Brogan: I object to that because; what is the answer?

(The stenographer read the last question and answer.)

Q. You know as you say that this is the coal that came from this truck because as you say you were told so? A. Yes, sir.

30

Mr. Brogan: Now, your Honor, I ask for that reason that it be stricken out.

The Court: The man has testified that the only reason that he knows the coal in the cellar was the coal delivered by this truck was because the woman in the house told him that that was the coal delivered by the truck—

Mr. Sharkey: That can't be stricken out; it all goes into the record and is to be con-

40

*Joseph Brophy, cross.*

sidered as testimony by the jury. This is not the proper time to strike it out.

The Court: I will allow it.

10 Mr. Brogan: I ask that this testimony, which is manifestly predicated on a happening that was told to him should be eliminated from this case.

The Court: What do you say?

Mr. Sharkey: First of all that it can't be done; this is not the proper time for that. All the testimony must be considered in toto, if responsive; if not responsive it might be properly stricken out.

20 The Court: Suppose I let it stand until cross examination is concluded and then I will give my ruling.

Mr. Brogan: Mr. Sharkey, if I may say so to the court, has an idea that I have asked to have a responsive answer stricken out and in his objection to that there is some merit, but I wanted to call the court's attention to testimony that I believe is predicated on hearsay and has no value.

30 Mr. Sharkey: Wait until summation for that.

*By Mr. Brogan:*

Q. When you went into this cellar were you accompanied by anyone, Mr. Brophy? A. No, sir.

Q. I take it, Mr. Brophy, if I am wrong, correct me, that the cellar window is the usual cellar of let's say about two feet square? A. About that.

Q. About as large, for instance, as the upper or lower half of the windows in the rear of you?

40 A. About that.

Q. What other windows were there in the cel-

*Joseph Brophy, cross.*

lar, Mr. Brophy, if any, that you noticed? A. I didn't notice any.

Q. Will you say there were no others? A. I would say so.

Q. The cellar was not lighted? A. By an electric light, that is all. 10

Q. By an electric light? A. It was lighted when I went down. The tenant went down before me, they had just received the coal and they went down before me and turned on the lights.

Q. You did not have a pocket lamp or any other equipment detectives usually have? A. No, sir.

Q. How far away was that coal from that window? A. Right directly underneath it.

Q. You went right to the coal itself? A. Yes.

Q. And took specimens and samples of it? A. Yes. 20

Q. You did not see this coal put on this particular truck, if I remember your testimony, you didn't see that, did you? A. No.

Q. You merely picked it up and followed it from the time it left the yard? A. Yes.

Q. And for all you know, of course, that coal before it was actually delivered might have been weighed in just that way for all you know? A. It might have been. 30

Q. The first delivery was where? A. Rigo, Long Island.

Q. The first delivery was only stove coal. Is that right? A. Yes, sir.

Q. Do I understand you to say that the two rear compartments of the truck were emptied by this delivery? A. Yes, sir.

Q. In the front compartment of the truck there was stove coal and some buckwheat? Is that right? A. Nut coal and buckwheat. 40

*Joseph Brophy, cross.*

Q. So there were three kinds of coal in the wagon? A. Three kinds.

Q. There was some stove? A. Stove, nut and buckwheat.

10 Q. What is the difference between nut and stove?  
A. Stove coal is larger.

Q. Stove coal is as large as your head or as large as your finger, which? A. Twice as large as nut.

Q. That does not mean much. I want the size. As big as your fist? A. No, it is not.

Q. What coal are you talking about? A. Stove coal, about half the size of your fist.

Q. And nut coal? A. Nut coal is half the size of stove coal.

20 Q. And stove is half the size of the average man's fist you say? A. Yes.

Q. Nut coal is one half that size again? A. Yes, sir.

Q. What is rice coal, do you know? A. Rice coal is a little larger than dust.

Q. And what is pea coal? A. Pea coal is between buckwheat and nut, about half the size of nut coal.

30 Q. What is buckwheat coal in size? A. Buckwheat coal is just in between pea coal and dust—I mean pea coal and rice.

Q. You testified yesterday about an instance of weighing in which you say the scales indicated 18,000 pounds, if I am not mistaken, and 17,500 pounds was called for as the weight on the ticket. Is that right? A. Yes, sir.

Q. And that calling off was done by whom? A. By Mr. Gallagher.

40 Q. There were none of the other defendants present as I understand your testimony, that is Mr.

*Joseph Brophy, cross.*

Bruhns was not present nor was Mr. Greenberg present? A. I don't recall.

Q. Will you try to refresh your recollection, because I understood you distinctly to say that Mr. Gallagher was alone so far as the other group of defendants is concerned. You were in the office with him at that time. Is that right? A. That is right. 10

Q. So that he was alone. You are clear about that? A. Yes, sir.

Q. You got your information, I understand by noticing that Gallagher called off 17,500 pounds and marked down 17,500 and you peered over his shoulder and saw it was 18,000 pounds? A. I didn't look over his shoulder. I weighed it myself. 20

Q. You mean the truck stood on the scale with Gallagher in it? A. Gallagher went to the machine.

Q. You gave it a turn and it showed 18,000 pounds? A. Yes.

Q. Was there a change of condition between the time that Gallagher weighed it and you weighed it? A. The driver was not on the truck at the time I weighed it. 30

Q. Was he on the truck when Gallagher weighed it? A. He was.

Q. That should be so much less. A. So much more.

Q. So much more when the driver is on. When the truck weighed going in light without the driver; that is done as a rule? Right? A. Yes, sir.

Q. When the truck comes out and is weighed heavy, the driver, as a rule, is sitting on the truck? A. Yes, sir. 40

*Joseph Brophy, cross.*

Q. What was the reason the driver was not on there? A. He came in the office for the ticket.

Mr. Sharkey: I object. He is not competent to answer that.

10 Q. He is not competent to lots of things yet he has. Do you know whether or not your weighing was a proper weighing under the circumstances? A. I do.

Q. What leads you to that conclusion? A. I was broken in on the scales by Mr. Bruhns and Mr. Gallagher himself.

Q. They taught you the rudiments of the trade? A. Yes, sir.

20 Q. Have you ever done any weighing for that company? A. Yes, sir.

Q. How frequently? A. I would say about ten times a day.

Q. For a period of how many days? A. Over a period of about three weeks.

30 Q. Why didn't you, Mr. Brophy, wait and make a weighing under exactly the same conditions or situation that existed when Gallagher made his weighing so that your weighing might be a proper comparison under the same conditions with the one called for and outlined by Gallagher? A. I don't understand the question.

40 Q. Why didn't you, when you made your weighing, weigh the truck contents under exactly the same conditions, with the same circumstances, with the driver on so that your weighing might be a proper comparison of the weighing called for and made out by Gallagher? A. One man went to the scale to weigh the truck. I didn't see any necessity of weighing it after that to verify his weight—only for my own personal reasons.

*Joseph Brophy, cross.*

Q. And that you did as a matter of fact— A. At that particular time I did.

Q. Wouldn't it be more fair in your judgment, as an investigator, if you made your weighing under exactly the same circumstances—would it not be more fair? A. I don't know whether it would or would not. 10

Q. Did you go to Gallagher and say, "Gallagher, you turned in 500 pounds light on that?" A. No, I was not supposed to.

Q. You were not supposed to? A. No.

Q. Who told you to do that? A. I was supposed to report the facts and findings.

Q. In other words, did you feel, Mr. Brophy, that you were there to do one job and that you were doing it? A. I did. 20

Q. Will you look at these papers that you have written out. All of these are yours? A. Yes, sir.

Q. Is this first one Wednesday, October 6th, yours? A. Yes, sir.

Q. Now I shall read you one paragraph, the second paragraph, in fact, that you have written on this case according to your testimony: "Wednesday, October—"

Mr. Sharkey: I object to counsel reading anything that is not in evidence. That was used for the sole purpose of testing his recollection. 30

The Court: I will allow it.

Mr. Sharkey: May I ask the Court, please, is this allowance going to extend to counsel a right to read all of this?

The Court: As questions come up make your motions and I will rule on them.

Mr. Brophy: This is on page 1 of your 40

*Joseph Brophy, cross.*

10 first report and it is the fifth line for the second paragraph. We find the following: "A black motor truck bearing no name or marks, left the yard heavily loaded with coal, but not knowing at the time that same belonged to the Demand Coal Company, I did not follow it."

Mr. Sharkey: Just a minute. The reason I object, is, it is a red Mack truck.

Mr. Brogan: I am reading part of it.

Mr. Sharkey: You did not complete that paragraph; you are not reading all of it.

20 Mr. Brogan (continuing): Number 28895—646 and then 722, red Mack truck left the yard under the supervision of the driver accompanied by a man about 52 years old, apparently, from his actions one of the owners.

Q. That is your report, is it? A. Yes, sir.

Q. That is true? A. To the best of my knowledge.

30 Q. Didn't you testify that these two trucks yesterday were known to you or that they belonged to Greenberg because they had written on them "Demand Coal Company"? A. No, sir, only on one truck.

Mr. Sharkey: I object to that.

The Court: Proceed.

Q. I read from your testimony of yesterday:

"Q. How did you know these trucks were Greenberg's trucks? A. There was one big red truck bearing the sign Demand Coal & Ice Company on it. Later identified by Mr. Heller speaking to me about Greenberg's trucks."

40 Mr. Sharkey: I object to that unless you give a particular day.

*Joseph Brophy, cross.*

The Court: As I remember it, he testified at the time he left on October 6th that he did not know who they belonged to and subsequently he knew they belonged to the Demand Coal & Ice Company.

Mr. Sharkey: Because it was written on the side of it. 10

Q. Did you so testify? A. On one truck.

Q. On one only? A. Yes.

Q. So, so far as you know the black truck might have belonged to Santa Claus?

Mr. Sharkey: I object to that. This is a serious matter and there is nothing in the testimony as to that. This man knew on October 6th that the only— 20

The Court: Are you referring to the testimony of October 6th?

Mr. Brogan: Yes, sir.

*By the Court:*

Q. Did you so testify? A. On October 6th only one truck had Demand Coal and Ice Company on it.

Q. Now, Mr. Brophy, with the trucks which you have described as engaged in carting coal, which I now understand you to testify, there was only one of them on which was written Demand Coal & Ice Company? 30

Mr. Sharkey: I object to that, do you understand.

The Court: Sustained.

Q. Did you testify that of these six trucks only one had the writing "Demand Coal & Ice Company" on it? A. That is all. 40

*Joseph Brophy, cross.*

Q. Who the Demand Coal & Ice Company is we do not know? A. That is all it had on it.

Q. Mr. Brophy, your handwriting is clear. This is clearly written, and even "October 6th."

10 Mr. Brogan: I ask that this be identified and marked for identification.

(Paper referred to marked as D-1 for Identification of this date.)

Q. Is this the original you have written here or is this a copy? A. May I look at it?

Q. Certainly. A. That is a copy.

Q. Where is the original? A. The original was delivered to Mr. Heller.

20 Q. How were these things delivered, in bulk or one by one, separately? A. One by one.

Q. Personally or by mail. A. Personally.

Q. By whom? A. By me.

Q. In each instance? A. Yes, sir.

Q. Did you write these reports all in the same place? A. At my home, yes, sir.

Q. Invariably? A. As a rule.

30 Q. I now submit one dated October 23rd, 1926. I will ask the stenographer to mark it D-2 for Identification and ask you if that is an original or a copy.

(Paper referred to received and marked for identification D-2 of this date.)

The Witness: Yes, sir, that is the original.

Q. Mr. Heller has— A. Mr. Heller has the copy of it.

40 Q. Did you write the original on yellow paper and the carbons on white? A. As a rule I make all reports out on white paper and then I use the yellow as a carbon.

*Joseph Brophy, cross.*

Q. Isn't it a fact that this is a copy of the report you gave to Heller? A. No, sir.

Q. Isn't it a fact, a further fact, that each and every one of these were written up within the past month? A. No, sir.

Q. In order to check up my own recollection of these trucks which you have described only one of them had written on it "Demand Coal and Ice Company"? A. Yes, sir. 10

Q. I now call your attention to your testimony of yesterday. This is the examination, incidentally, by the Court.

"Q. How did you know who the Demand Coal & Ice Company was? A. The trucks came in and they had 'Demand Coal & Ice' on the side and they were weighed up and entered on the weigh slip as Greenberg's. Afterwards this developed in the office." 20

Q. Which is right, your testimony of this morning or what you testified to yesterday?

Mr. Sharkey: I object to that unless the time is fixed. All right, I will withdraw the objection.

A. If I said trucks I was in error; I only saw "Demand Coal & Ice" on one. If I remember distinctly right now there was a placard with "Demand Coal & Ice Company" on one side—a printed placard. 30

Q. The further we go the more appears and the worse it gets for somebody. You now say that yesterday you said trucks had on them "Demand Coal & Ice Company" and today you say on further cross examination that of these six trucks only one had "Demand Coal & Ice Company" when jacked up on that. You now say that there was a 40

*Joseph Brophy, cross.*

placard on another truck with "Demand coal & Ice Company" on it. Which one is a fact? A. The last statement made.

Q. Why didn't you state that yesterday? A. This matter is one year old.

10 Q. Why didn't you say that yesterday? A. As we go deeper into the case it becomes more clear.

Q. If we proceed more we will find more facts that you forgot. A. Not more than is in my report.

Q. When you found the discrepancy of 500 pounds in weight you did not tell Gallagher that he misstated this weighing, did you? A. No, sir.

Q. Can you tell us who the man was who was driving the truck?

20 Mr. Sharkey: I object to that unless you identify the truck.

Q. The truck carrying the load which this gentleman says was 500 pounds light according to the weighing of Gallagher. A. I can't testify as to the driver.

Q. Do you know who he was? A. No, sir.

Q. Did you ever inquire as to the identity of these drivers? A. No, I did not.

30 Q. If there was coal being stolen wouldn't you think it necessary in making reports to state that John Jones was driving that truck? A. If working for Jagels and Bellis.

Q. You were working for Jagels and Bellis, weren't you? A. For the Cavanaugh Bureau of Secret Service.

Q. Jagels and Bellis was a client for the employer? A. My instructions came from Cavanaugh.

40 Q. Didn't you think it was necessary to ascertain when a truck left the yard with eight tons

*Joseph Brophy, redirect.*

of coal on them—when you say there were only six on them—to ascertain the name of the driver?

Mr. Sharkey: I object to that.

The Court: Reframe it.

Q. How do you know if it was not a case where the driver was not stealing coal unknown to his employer? A. I don't know; that is what we tried to develop. 10

Q. Was the driver a big or a little man? A. If I remember they were all big men.

Q. Doesn't it strike you as singular, here is a truck, with 18,000 pounds of coal and the driver leaves his seat—you go and read it and it says 17,500 pounds, the driver leaves his seat and when you go to read it it shows up an even 18,000 pounds. Doesn't that strike you at all as singular? A. No. 20

Q. Wasn't it 18,001 pounds? A. No, the scales are arranged at 50 pounds notches. There was not over 18,000 pounds; there may have been 17,955 pounds.

Q. That would register 18,000 pounds? A. That would register 18,000 pounds under the system.

*By Mr. Peters:*

30

Q. Do you know anything about how the cars come in from the mines while you were in Jagels Bellis's office? A. No.

Q. You don't know whether the coal was mixed up, the buckwheat and the pea came together or whether they were mixed with the nut? You don't know how it came from the mines? That was not part of your function? A. No.

*Redirect examination by Mr. Sharkey:*

40

Q. Did you ever see anyone give instructions

*Joseph Brophy, recross.*

to any driver of the trucks bearing the "Demand Coal & Ice Company"?

Mr. Brogan: I object to that on the ground that it calls for a conclusion and is incompetent from this witness.

10

The Court: Reframe it.

Q. Did you ever see anyone speak to any drivers of the trucks bearing the name "Demand Coal & Ice Company" at the Weehawken yard of Jagels and Bellis? Yes or no? A. Yes, sir.

Q. Whom did you see or hear speak to these drivers? A. Both Mr. Bruhns and Gallagher.

Q. And did you hear anyone else in your presence except Bruhns and Gallagher speak to the drivers? A. No, I did not.

20

Q. Did you see those drivers in the company of anyone at the yard except Bruhns or Gallagher? A. I saw them arrive there with Greenberg.

Q. The drivers arrived with Mr. Greenberg? A. Yes.

Mr. Sharkey: If there is no objection I will now offer all of these reports.

Mr. Brogan: You certainly will not with my consent.

30

*Recross examination by Mr. Peters:*

Q. Mr. Brophy, your work started there as investigator in the early part of October, 1926. Is that right? A. Yes, sir.

Q. And it continued practically through the month of October? A. Until around December, I should say.

Q. You said yesterday that on one occasion you saw Mr. Greenberg give some money to Bruhns

40

*May Dempsey, direct.*

and that Bruhns gave him some change? A. Yes, sir.

Q. Do you know whether or not it was a frequent occurrence for Bruhns to change money for ferriage—five and ten dollar bills? A. That was the only time I saw it. 10

Q. The only time you saw any money passed was on this one occasion? A. Yes.

Q. And some change was given to Greenberg? A. Yes, sir.

Q. You don't know whether it was change for ferriage or if he asked him to change money? A. No, sir.

Q. Do you know how much money was given to Bruhns at this time? A. No.

Q. Do you know if it was a five dollar bill he wanted changed for ferriage? A. No, sir. 20

Q. That was the only time you saw money passed. Is that correct? A. Yes, sir, correct.

Q. Now you were there from the beginning of October to some time in December? A. The first part of December.

Q. Of last year? A. Of last year.

(Recess.)

MAY DEMPSEY, sworn for the State. 30

*Direct examination by Mr. Sharkey:*

Q. Where are you employed, Miss Dempsey? A. Jagels Bellis & Company.

Q. In what capacity are you employed there? A. As stenographer.

Q. How long have you been employed there? A. Three years in March.

Q. In October, 1926, were you at the office of Jagels and Bellis at Weehawken at a time when 40

*May Dempsey, direct.*

Mr. Gallagher and Mr. Cavanaugh were present?

A. Yes, sir.

Q. Was anyone else present, if you know? A. No, not in the room.

10 Q. Will you tell us what happened on that occasion? A. Mr. Jagels called me up—

Mr. Brogan: I object to that.

Q. What happened in the presence of Gallagher, Cavanaugh and yourself? A. I took Mr. Gallagher's confession.

Mr. Brogan: I object to that and ask that it be stricken out.

The Court: Strike it out.

20 Q. I want you to confine your remarks to what was said and done in the presence of Gallagher, Cavanaugh and yourself. Did any conversation take place there? A. Only that Mr. Cavanaugh told him to state in his own words—

Q. Told whom? A. Mr. Gallagher.

Q. Mr. Cavanaugh told Mr. Gallagher to state in his own words. Go on. A. What he knew.

Q. Did Mr. Cavanaugh say anything else? A. Not that I remember.

30 Q. Did Mr. Gallagher say anything? A. Not that I recall.

Q. Do you recollect Mr. Gallagher's speaking at all; did he talk at all while you were there? A. In the confession—

The Court: Strike that out.

Q. Did he say anything? A. Yes.

40 Q. Did you do anything with reference to the words spoken by him? A. I took them down in shorthand.

*May Dempsey, direct.*

Q. What did you do with the shorthand notes that you took? A. I transcribed them to longhand—on the typewriter.

Q. You transcribed your notes from the shorthand to the typewriter, in other words? A. Yes.

Q. I show you this paper and ask you if you can identify this? A. Yes. 10

Q. What is that? A. Mr. Gallagher's confession.

The Court: No, don't say that.

Q. Has that any relation to your stenographic notes? A. I don't know what you mean.

Q. Have you seen it before? A. Why, yes, I wrote that.

Q. How did you write it? A. I typed it. 20

Q. From what? A. My notes.

Q. Your notes which you told us about. Gallagher said these things in your presence? A. That is right.

Q. And then you typewrote from your stenographic notes? A. Yes, sir.

Q. You are sure that is the paper? A. Yes, I am sure.

Q. Do you know whose signature that is? A. Mr. Gallagher's. 30

Q. Do you know that? A. I was present.

Q. Did you see him sign? A. Yes.

Q. Would you say that is his signature? Is this the paper he signed? A. Yes.

Q. Did you see him sign? A. I saw him sign a paper, yes.

Mr. Sharkey: I now ask that this be marked for identification.

(The paper referred to was marked S-1 for Identification of this date.) 40

*May Dempsey, direct.*

Q. Did you take down stenographically everything Mr. Gallagher said in your presence? A. Yes, sir.

10 Mr. Brogan: I am going to object to this line of leading questions.

Mr. Sharkey: I withdraw the question.

Q. How much of what Mr. Gallagher said did you take down stenographically? A. Just what I typed there.

Q. How much of what he said? A. All of what he said.

Q. How long have you been a stenographer and typist? A. Three years this March.

20 Q. Is this an accurate copy of a transcription of your stenographic notes? A. Yes, sir.

Mr. Sharkey: I offer this in evidence.

Mr. Brogan: I object to that.

The Court: You object as far as Greenberg is concerned?

Mr. Brogan: Yes.

Mr. Peters: I object as far as Bruhns is concerned.

30 Mr. Meehan: I object. No proper foundation has been laid for that. There is no proof here.

The Court: I will allow it.

(The paper referred to is marked in evidence and marked S-1 of this date.)

Mr. Sharkey: Cross examine.

Mr. Meehan: If the court please, we have nothing here but a statement. I want to cross examine on that paper.

40 Mr. Sharkey: I won't ask counsel to examine; I will read it into the record.

Mr. Brogan: I object to that. It has evi-

*May Dempsey, cross.*

dentiary value against no one but the man who made the statement, if he did make it. If it is read into the record, and even though the court instruct the jury to disregard certain parts of it, the jury is humanly unable to disassociate their mind from the part they should not hear. 10

The Court: The same ruling.

Mr. Brogan: I have an exception to that.

The Court: Yes.

Mr. Brogan: If this is to be read into the record I understand that this witness is to be turned over for cross examination. Certainly two and a half pages of closely typed statement should be read by us before it goes in. 20

The Court: Yes, cross examine.

*Cross examination by Mr. Meehan:*

Q. What did you say your name was? A. May Dempsey.

Q. Do you live in Jersey City, May? A. No, I live in Union City.

Q. How long have you worked for Jagels and Bellis? A. Three years this March.

Q. When Gallagher was brought into the room this day that you say this statement was taken were there any preliminary warnings given to him as to whether it was to be used against him? A. Mr. Cavanaugh said before I took any dictation, "Don't say anything that you don't want to give us because it will be held against you." 30

Q. You mean if he didn't say what was true it would be held against him? A. Yes, sir.

Q. Was that all that was said? A. Yes.

Q. You took the statement? A. That is right. 40

*May Dempsey, cross.*

Q. Have you your stenographic notes with you?

A. Yes, sir.

Q. Will you turn to them, please. Now, May, was there any conversation with Gallagher before this statement was taken, that you recall? A. Not  
10 that I recall.

Q. Wasn't Mr. Gallagher told that he would be taken care of when he made this statement? A. No, sir.

Q. He wasn't told that he would be allowed to stay in his job? A. Not in my presence.

Q. Were there any inducements made to him to make the statement? A. No, sir.

Q. You are sure of that? A. Not in my presence.

20 Q. Not in your presence? Were they made within your hearing at any other place in the room? A. No, sir.

Q. Will you now turn to those notes? These are the stenographic notes from which you transcribed this paper? A. Yes.

Q. Will you read what you have there? A. (The witness reading from a stenographic note book): About two years ago Greenberg approached me and made an inducement to me about  
30 giving him a little over on the weights.

Q. Is it weight or weights, Miss Dempsey?

Mr. Sharkey: I object unless he shows here that it is weights.

Q. You said your notes said weights. It is weight there? A. Yes, sir.

Q. Go on. A. I used to take it and go fifty-fifty with Eddie, sometimes it wouldn't amount to much, and if I did not get it I did not let on to  
40 Eddie—

*May Dempsey, cross.*

Q. Read that again, "If I did not get it." A. If I did not get it I did not let on to Eddie how much I got.

Q. Will you just follow me on this? Is it if I did get it, if I didn't get it, or is it did not? A. It is written the same way in shorthand.

10

Q. It is not an accurate transcript. Go ahead from I didn't let on to Eddie how much I got. A. (Continuing.) And Greenberg would say, "Don't be so foolish, keep the money yourself and I will fix Eddie up." At that time I went to Greenberg's store in New York at Avenue D. Bruhns and I—

Q. Will you read that again? "At that time I went to Greenberg's store in New York 'at' Avenue D." I show you this paper and read to you: "At that time I went to Greenberg's store in New York 'on' Avenue D." Is that right? A. That is right.

20

Q. That is another little error? A. Yes, sir.

Q. On Avenue D. Go ahead. A. Bruhns and I had several drinks there with Mr. Greenberg, Senior, but at that time he gave me \$20 or \$25.

Q. Is that dollars written out after the twenty? A. No, before.

30

Q. Read it again exactly as it is. How did you put that in your notes? A. The dollar sign is before the twenty. (Continuing.) But did not make any attempt to Bruhns at that time. Several years ago Greenberg's checks were—

Q. Read that again. A. Several years ago when Greenberg's checks were coming back as no funds or gone bad, Bruhns told me that Greenberg had come to his house and stated that he had a chance to make a lot of money by purchasing some liquor, but that he was financially embarrassed, and that

40

*May Dempsey, cross.*

if Bruhns would loan him some money he would see that he would get his share of the profits in the matter. From what Bruhns tells me Bruhns loaned him about \$600 in cash.

Q. Do you recognize that handwriting there?

10 A. No, I do not recognize it.

Q. That is your handwriting? A. No, I don't think it is.

Q. This handwriting upon this paper, not the typewriting, is not yours? A. Yes, I typed that.

Q. I mean the handwriting, other than the typewriting. A. That handwriting, no. (Continuing.) Shortly after the loan of this money Greenberg's checks started to come back—

20 Q. You have here "Started coming back." Is that right? A. Yes.

Q. I call your attention to this handwriting on this paper. Before you said it was not your handwriting? A. No, sir.

Q. Was it there at the time Gallagher signed the paper? Do you know? A. I don't recall.

Q. You didn't put it there? A. No, sir.

30 Q. You are the one who prepared the paper exactly from Gallagher's statement, which you took down stenographically? As far as you know it was not there when he signed it? A. Yes, sir.

Q. You have seen this paper within the last few days, since this trial started? A. No.

Q. Wasn't this shown to you? A. No, sir.

Q. Did you have a copy of it? A. No, I have not had a copy of it.

Q. Did you compare this paper with your notes since this trial started? A. You mean the confession, this here (indicating)?

40 Q. Yes? A. I read it over.

*May Dempsey, cross.*

Q. Did you compare it with your notes? A. Not that I recall.

Q. You know that counsel—I don't mean Mr. Sharkey—but counsel in Hoboken, for your firm, showed you this paper here, a copy of it, and you compared that with your notes before the trial started? A. No, I did not compare it with my notes; I read it over. 10

Q. When? A. I couldn't say exactly.

Q. A long time after it was signed? A. Yes.

Q. How often did you read it over? A. Once.

Q. Who gave it to you to read? A. I asked Mr. Heller for a copy of it.

Q. Why did you ask him? A. I wanted to read it over.

Q. You said before you had no copy of it. A. Well, but Mr. Heller had. 20

Q. Isn't it a fact that you got a copy of this statement and compared it with your notes before you came to the trial? A. I read it over.

Q. Did you read your notes in conjunction with it? A. In comparison, you mean?

Q. Yes. A. No.

Q. Why read it over? Why did you read this paper over? What is your answer, young lady? A. No doubt to be familiar with it. 30

Q. So that you could come here for this cross examination with reference to this paper and your stenographic notes? A. I don't get what you mean.

Q. You read it so as to familiarize yourself and have it square with your stenographic notes. Isn't that right? Was that the purpose—wasn't it? Why hesitate? A. I don't know; I just read it. 40

Q. Is that the best reason you can give, "I just

*May Dempsey, redirect.*

read it"? A. Well, to be familiar with it so I could read it off easier.

Q. That is the only reason you can give of why you got a copy of this paper presented to you so that you could read it over and familiarize yourself with it? Is that right? A. Yes, sir.

Q. You have no interest in this trial at all? Is that right? A. No interest?

Q. No interest in this trial? A. Not as far as I am concerned.

Q. As far as you are concerned you are trying to help out Jagels and Bellis? A. No, sir, I don't mean that.

Q. You don't care whether Mr. Gallagher or these other gentlemen go to jail? A. It is not my concern.

Q. If it is not your concern why did you care about getting a copy of the statement? A. (No answer.)

Mr. Meehan: I guess that is all.

*Redirect examination by Mr. Sharkey:*

Q. Will you start at the beginning of your notes and read it all? Speak up loud so that juror number twelve can hear you. A. About two years ago Greenberg approached me and made an inducement to me about giving him a little over on the weight, and at the end of the month he would give me so much.

I used to take it and go fifty-fifty with Eddie, sometimes it wouldn't amount to much, and if I didn't get it I didn't let on to Eddie how much I got, and Greenberg would say, "Don't be so foolish, keep the money yourself and let Eddie up."

*May Dempsey, redirect.*

At that time I went to Greenberg's store in New York on Avenue "D." Bruhns and I had several drinks there with Mr. Greenberg, Sr., but at that time he gave me \$20.00 or \$25.00, but did not make any attempt to Bruhns at that time.

Several years ago when Greenberg's checks were coming back as no funds or gone bad, Bruhns told me that Greenberg had come to his house and stated that he had a chance to make a lot of money by purchasing some liquor, but that he was financially embarrassed, and that if Bruhns would loan him some money he would see that he would get his share of the profits in the matter. From what Heinz tells me Bruhns loaned him about Six Hundred (\$600.00) Dollars in cash. 10

Shortly after the loan of this money Greenberg's checks started coming back from the banks as N. G. The main office phoned us to give Greenberg no more coal until further orders. Upon hearing this I immediately got in touch with Bruhns and informed him of the instructions issued from the main office and Bruhns got all excited and turned white. 20

That afternoon Bruhns left very early and went to New York to try and locate Herman Greenberg, Jr. About 9 o'clock next morning Bruhns said to me, "I think I will go over to New York and try to locate Greenberg, as I am worried about the way conditions are." He then changed his mind and did not go. 30

On the second trip to New York by Bruhns he went to Greenberg's house and he informed me that he had met Mrs. Greenberg and that she said that Greenberg was out. The following night he asked me to take a trip over to Greenberg's and we went over the Barclay Street Ferry and over 40

*May Dempsey, redirect.*

the Brooklyn Bridge and took a car to Greenberg's house. On arriving there, Bruhns told me to wait. I then said it was pretty cold to stay outside waiting, so he said "Come on in." We were there about one-half an hour. While we were there two gentlemen arrived, one of whom was a brother-in-law of Greenberg's, and Bruhns, in conversation with Mrs. Greenberg and the brother-in-law explained the predicament he was in due to young Greenberg's actions. He was only talking at this time about going to Jagels Bellis & Co. for coal, but did not mention anything about the personal loan to Greenberg. The brother-in-law said to Bruhns, "Don't worry, everything will be all right." After the conversation the phone rang and it was Greenberg. Mrs. Greenberg then turned to Bruhns and said, "Don't let on that you are here." She asked her husband where he was and he stated, "Up town trying to get some money," and she told him to hurry home. We remained there for about one-half hour and then we both left. On the boat our conversation was about the checks that was given to the Company and no mention was made to Bruhns' personal loan. I said to him, "Suppose I had loaned money to this man, where would I get off?" As we were coming to the Jersey shore he said to me, "You know the time that I was up to Greenberg's house he asked me for Six Hundred (\$600.00) Dollars, and I was foolish enough to give it to him." He did not want me to know that he had loaned money to Greenberg. I told him that I knew it all the time. He did not answer. No further conversation occurred that evening. We both went to our respective homes.

40 A few days later I said to Eddie, "Why don't you tell Mr. Heller about these things that are

*May Dempsey, redirect.*

happening here?" He said, "What does Mr. Heller want to know for?" I then stated that if it was me I would tell Mr. Heller the entire story. The conversation was then dropped.

One day the brother-in-law of Greenberg came over and Eddie and he retired to the washroom. They remained there for about ten minutes. After Greenberg's brother-in-law left, Eddie said to me that he didn't want anybody to know that Greenberg's brother-in-law had been over here and tried to make some kind of an agreement so that Greenberg could get coal credits.

10

Shortly after Greenberg's trucks began to come over again, and about a week after he started obtaining coal he said, "Make the weight (stipulating weights what the actual other than tonnage was) in this manner I carried on.

20

I want to say here at this point, that Bruhns previously or during this period had not instructed me in any way to short weight Greenberg, but that within the last several months, I have objected to the manner in which Greenberg has practically been doing what he pleases. An instance of this is: One morning upon weighing the coal I asked him what kind of coal, and he told me different sizes, and I instructed him to weigh them separately. This particular morning Bruhns had weighed one of Greenberg's trucks, this particular load was a mixed one. This started an argument between Bruhns and I, due to the fact that I had instructed Greenberg previously to weigh all coal separately, and I so informed Bruhns that I thought it should be done, and he said to me, "What's the use of two butting in." I said, "If that's the case and you feel that I am butting in, I won't butt in any more."

30

After Greenberg left, we talked the matter over,

40

*May Dempsey, redirect.*

and I said to him, "When I go to the scale I weigh up all of Greenberg's trucks and ask him what kind of coal he wants, telling him to weigh separately, but when you go to the scale and he says that he wants Buckwheat, Pea, Stove or Mixed coal, you don't tell him to make it separate. What does it make it look like for me?" Nothing further was said.

Reverting back to the previous paragraph, Greenberg then started to pay me money, I do not recall the exact amount, but from twenty to twenty-five dollars. About several months from that period, Greenberg paid me from Twenty to Fifty dollars a month, this was for services rendered, or in other words for falsifying tickets, re: the weights as trucks left the yard, that I had given him the advantage of from 1,500 pounds.

I want to say here that when Greenberg first started to pay me money, I said to him, "I am going to divide this with Eddie," and he, Greenberg, turned to me and said, "Never mind, mind your own business." But during this period I used to give Eddie several dollars from the time I obtained money from Greenberg. He never asked me why I was giving him this money, and never commented on it in any shape or form.

Sometime after this when Greenberg had given me Fifty dollars, I turned to him and said, "I'm going to split this with Eddie," and he said, "You just keep that for yourself, I am taking care of Eddie."

Previous to the Christmas of 1925, Greenberg, Sr., invited Bruhns and myself to New York, Bruhns frequently taking his wife along, and all bills being paid by Greenberg. This was never more than to a supper club. I only made two trips

*C. Henry Jagels, direct.*

to the dinners, but Bruhns went out quite frequently on these affairs. There were different times when Greenberg, Sr., would bring over cigars and bottles of wine, and we used to divide it among us.

A few months ago, Heinz, coming into the office one day, saw a package on Bruhns' desk, and said, "I guess Greenberg dropped over a bottle." And I said, "How do you know?" And he replied, "Well, I can tell by the shape of the bottle." 10

The opening part of this conversation was when I said to Heinz, "How did you get wise?" and he said, "I knew by the shape of the bottle."

In conclusion I would say that these things have been going on for approximately two years, and during that period I have received approximately One Thousand (\$1,000.00) Dollars from Greenberg. 20

I would say roughly that during this period it must have been an average of 1200 pounds per day or a total of 250,000 pounds in the two years.

Mr. Sharkey: Take the witness.

Mr. Meehan: That is all.

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C. HENRY JAGELS, recalled for the State.

*Direct examination by Mr. Sharkey:* 30

Q. Are you a member of the firm of Jagels Bel-  
lis & Company, Coal Dealers? A. I am.

Q. Do you know the defendants in this case,  
Harris Greenberg and Edward Bruhns? A. I do.

Q. How long have you known Harris Green-  
berg? A. About a little over, about two years or  
two or three years.

Q. During any part of that time did you do  
business with him? A. I did. 40

Q. What kind of business? A. Selling of coal.

*C. Henry Jagels, direct.*

Q. During that time that Mr. Greenberg did business with you did he deal in his own name or under a firm name? A. The account as I recall it was in the name of Greenberg.

10 Q. Do you know what kind of trucks he used during the time he did business with you? A. I believe motor trucks.

Q. Do you know if it bore any designation? A. I am very seldom at the yard; I don't recall seeing it.

Q. In the month of October, 1926, did you have a conversation with defendant Harris Greenberg? A. I did.

Q. Where did it take place? A. In my office.

20 Q. Who was present? A. Just Mr. Greenberg and myself.

Q. Will you tell us just what conversation took place between you and Mr. Greenberg?

Mr. Peters: I object to any conversation between this man and Greenberg.

Mr. Brogan: The same objection.

The Court: I will allow it.

30 The Witness: I had had reports submitted to me showing irregularities in the Weehawken yard.

Mr. Brogan: I object.

Q. As a result of that did you get in touch with Greenberg? A. I did.

Q. You had a conversation with him? A. I did.

40 Q. What conversation did you have? A. He came in my office and as he came in the door I asked him to take a seat. I said to him, "Mr. Greenberg, why did you come into our organization and break it up?" He made no answer to me and then I said to him, "Mr. Greenberg, do

*C. Henry Jagels, direct.*

you know you have spoiled the entire future of this industry and my confidence in one of the best men I have in my organization, a man of whom I thought a great deal, a man who has been with me almost 20 years?" He looked at me but he made no answer. Then I said to him, "Didn't you have enough trouble in your own family with your own boy; why come into the family of these men and bring all this misery to women and innocent children?" Then he sat down and collapsed and went into a heap in the chair in front of the window. Then he moved over to the other chair. He seemed to be completely overcome. 10

Mr. Brogan: I object to that and ask that it be stricken out. 20

The Court: Yes, strike it out.

Mr. Sharkey: Continue.

A. He said to me, "What do you mean?" I then told him that I had a statement of Gallagher's as to what he had done in the short weighting of coal on his tickets.

Q. Whose tickets? A. On the charge ticket to the office, and also that I had positive proof that he had taken the largest sized coal—

Q. Who had taken that? A. Greenberg's wagons. That he had taken the largest size coal and had entered into a conspiracy with these men to put this coal down as an inferior grade on the ticket. He said to me, "You have no proof." I said, "Yes, I have." Then he said, "What are you going to do?" I said, "I am going to have you arrested." Then he repeated again, "You can't prove anything." I said, "That is not for me to decide." He seemed to be upset completely. 30 40

*C. Henry Jagels, direct.*

Mr. Brogan: I ask that that be stricken out.

The Court: Strike it out.

10 Q. What did he say? A. He said, "Please don't have me arrested." I said, "Why not?" "Well," he said, "I will make everything good." He said then if I would let him go until Monday morning—this was Saturday morning—that he would bring over his records and his papers and that that was the only way I would get any money. He said he would make everything good. He repeated that several times to me, "I will make everything good." He gave me his word that he would come back on Monday, but he did not come.

20 Q. Have you related the entire conversation, at least the chief part of the entire conversation?

A. That was the entire conversation in my office.

Q. Did you have a conversation with Gallagher at any time? A. Yes.

Q. October, 1926? A. Yes.

Q. When, in reference to the conversation you had with Gallagher did you confer with Gallagher? A. I believe it was the day ahead of that.

30 Q. What conversation did you have that day? A. I called Gallagher into the office and Gallagher told me very frankly that he had entered into this arrangement with Mr. Greenberg of short weighting on the coal.

Mr. Brogan: I object to that.

The Court: Strike it out.

You can only testify to what you saw and heard.

40 Q. What was said to Gallagher and what did Gallagher say to you? A. I said, "Gallagher, what have you been doing out at the yards?" He told me

*C. Henry Jagels, direct.*

that he had made this arrangement to alter the tickets and weigh the coal incorrectly and that he had been paid for it, that he had received money at various times.

Q. Did he tell you from whom? A. From Mr. Greenberg.

10

Q. Did he tell you whose coal he short weighed? A. It was our coal.

Q. In whose behalf did he weigh it short? A. To favor Mr. Greenberg.

Q. And he so told you? A. He so told me and he told me he had been paid for it. I asked how much money he had gotten and he told me that he wasn't sure, but he knew it was over a thousand dollars and he was quite sure it was \$1,200. I had no realization of the amount involved; that was the reason I asked him that again.

20

Q. Did you have any conversation with him concerning the amount of coal that Greenberg got in this manner? A. Yes, he told me it was about 1,500 pounds to the load. We went over the records and figured it would be about 1,200 tons that had been taken out of the yard over and above the ticket weight.

Q. Did you have any conversation as to who got this, from your conversation? A. Yes, he told me it was Greenberg's trucks.

30

Q. Did you have any further conversation with him? A. Yes, I spoke to him in reference to Bruhns.

Q. What did he say? A. He told me he had been over in New York with Bruhns.

Mr. Peters: I object to any statement made by Gallagher as to Bruhns.

The Court: Yes, sustained.

40

*C. Henry Jagels, cross.*

A. I had a conversation with Mr. Bruhns at that time.

10 Q. Give us the conversation with Gallagher, the further conversation you had? A. I asked if Bruhns was mixed up with him in the transaction and then he told me that he had given Bruhns money at different times which he received from Mr. Greenberg.

Q. Did you have any further conversation with him? A. He told me he had been over to New York and had dinner with Greenberg several times and that once over there Mr. Greenberg had given him money.

Q. Did you have a conversation with Bruhns in October, 1926? A. I did.

20 Q. What conversation was it? A. I asked Mr. Bruhns how he was mixed up in this thing, and Mr. Bruhns denied being mixed up in it at all. I said, "I happen to know that you received money." He said they were checks received in business deals that he had. I said, "What business dealings did you have with Mr. Greenberg?" He made no definite reply to it except that Greenberg owed him money and he stoutly maintained that he had not been mixed up in the matter so far as receiving any bribes from Mr. Greenberg is concerned.

30 Q. Did you have any conversation with regard to the weighing of Greenberg's coal? A. Yes, but Mr. Bruhns never made any admission as to that as far as he was concerned. He said that he had done no wrong.

*Cross examination by Mr. Peters:*

40 Q. Mr. Bruhns is the man that you had a great deal of confidence in? A. Absolutely.

*C. Henry Jagels, cross.*

The Court: Mr. Jagels did not say it was Mr. Bruhns.

Q. When you had this conversation with Bruhns in your office did he tell you about a statement that Gallagher made? A. Yes.

10

Q. When you confronted him with the whole situation Mr. Bruhns absolutely denied that he had anything to do with the transaction? A. He did.

Q. As to the short weighing and receiving of any money? A. He did.

Q. And he told you if anything like that had been done by these other two parties that he knew nothing about it? A. That is what he told me.

*Recross examination by Mr. Brogan:*

20

Q. For how long had you been doing business with Greenberg, Sr.? A. That is a detail of the office that I am not familiar with without looking up the record—several years.

Q. Prior to your doing business with Mr. Greenberg, Senior, you had done business with his son? A. Yes, sir.

Q. And the son's account was in bad shape? A. Absolutely.

Q. From time to time it developed that checks had been turned into your office which were made by or collected by or from somebody else and cashed by your office? A. Yes, sir.

30

Q. That had been going on for some time, until finally several checks came back that were no good amounting to something around \$3,200? A. I believe that was the amount.

Q. It was then that Greenberg, Senior, came into the picture. Your concern was going to bring suit or was attempting to collect this money properly, and then Greenberg came over and asked you not

40

*C. Henry Jagels, cross.*

to bring suit, that he, the father, would make good the deficit and he proceeded to make good? He paid over to your firm \$1,700 in cash and signed 15 notes bearing interest? A. That was my understanding.

10 Q. And every note was paid at maturity with interest? A. That is right.

Q. Upon these notes Bruhns was the endorser? A. Yes.

Q. Bruhns was the endorser, he felt liable because of cashing the check? A. That is right.

Q. From that time on Greenberg, Senior, did business with you and carried on an account? A. That is right.

20 Q. There is also no question about the fact that he was depending on his business to pay these notes and he subsequently did pay them? A. I couldn't answer that.

Q. At the time you and he had this conference when you say he collapsed, you knew he had a great deal of trouble of his own? A. I did.

Q. Greenberg is a man a good deal older than you? Past the middle of life? A. I don't know how old he is, Mr. Brogan.

30 Q. You say he collapsed, when you mentioned this about his boy? A. Yes, sir.

Q. At that time, Mr. Jagels, Greenberg was actually indebted to you in the sum of \$6,000? A. I believe that was the amount.

Q. The Jagels Bellis account? A. The account.

Q. When he told you that everything would be all right and you had threatened him prior to that, you had threatened suit? A. Not on the account as I recall it.

40 Q. Subsequently suit has been called? A. Oh, yes, since.

*C. Henry Jagels, cross.*

Q. You have a suit, you are suing out that claim?

A. It has not come to trial.

Q. I understand, but you have started the legal machinery on its way to collect from him, what is due you? A. Yes, sir.

Q. And you also have an account in there as to certain coal he received and did not pay for? You are suing for that also? A. 1,200 tons we are suing for.

10

Q. Answer has been filed? A. I didn't see it.

Mr. Sharkey: I object, unless he did himself.

The Court: There is no harm there.

Q. You do not, Mr. Jagels, intend to have us understand on your oath as a witness in this case between the State and this defendant Greenberg that he ever admitted to you that he was part and parcel of this? A. I do.

20

Q. From the language you have given us? A. Yes.

Q. But he said to you, "Everything will be all right." A. "I will make it all good." Those were his exact words.

Q. About what? A. The deficit, the transactions involving false weights, the false weight tickets, everything, everything from the records.

30

Q. Mr. Jagels, you didn't tell us on your direct examination that you said anything to him about overweight, false weight. A. Oh, yes, I did. I told you what Gallagher said.

Q. Didn't you say, "You have destroyed my faith in my men in this organization and brought misery on them and on a man who was very valuable to me?" A. That was an open statement to Mr. Greenberg.

40

*C. Henry Jagels, redirect.*

Q. You now say it was on your direct examination that you charged him with the falsifying of the weights? A. I didn't say that.

The Court: It is there.

10 Q. Mr. Jagels, how long had you suspected that there was an alliance which was not to the best interest of Jagels and Bellis? A. According to my recollection all of two months.

Q. You never did anything personal, yourself, to unferret this thing? A. No, not personally, only to give orders as to what there was to be done.

Q. Now you know nothing of the merits of this case, yourself, except from the records, the reports, made by the investigators for this case? A.  
20 That is right.

Q. The only thing that you know personally about the defendant Harris Greenberg is that concerning his breaking down as you say and then this conversation in which you say he said, "I will make it good." A. That is what he told me that day.

*Redirect examination by Mr. Sharkey:*

30 Q. You had the conversation with Greenberg which you related? A. I did.

Q. Do you know what Greenberg told you? A. I do.

Q. Do you know what Gallagher told you? A. Yes, I do.

Q. That is your knowledge of the case as to their participation in the case? A. Yes.

Q. Mr. Brogan said to you something about a suit being started by your company against Greenberg, Mr. Jagels? A. Yes.

40 Q. Are you suing for any part of the 1,200 tons

*C. Henry Jagels, recross.*

of coal which you claim you were defrauded? A. We added that in this suit.

Q. Is that part of this suit? A. I think it is; I haven't seen the papers.

Q. Did you see the papers? A. No.

Q. Did you read the papers? A. No, I know nothing about it. 10

Q. You did state on direct examination that Bruhns admitted to you receiving money from Greenberg? A. Oh, yes.

Q. Did he tell you what the amount was? A. He said several checks for a hundred dollars each.

Q. What did you do? A. I asked him where he deposited and he said at the Hudson Trust Company.

Q. Was there any other conversation? A. No, except if he had received money from Gallagher. 20

Q. Did he tell why Gallagher gave him those checks? A. He said he had business transactions with him.

Q. Did he tell you anything of the nature of the business? A. No, he closed up on that, wouldn't tell me.

Q. You are sure you related all the conversation you had with Gallagher? A. All that I can recollect. 30

Q. All the conversation you can recollect that you had with Gallagher? A. All that I can recollect.

*Recross examination by Mr. Brogan:*

Q. You had Julius Lichtenstein as your counsel? A. Yes.

Q. Mr. Schwartz is his partner? A. Yes.

Q. You had instructed Lichtenstein to bring suit for 1200 tons of coal? A. No, Lichtenstein is not handling that case. 40

*C. Henry Jagels, redirect—recross.*

Q. It is a New York case? A. It is a New York case.

Q. Mr. Jagels, isn't it a fact that he is being sued for this other count in this complaint? You are suing for these 1200 tons of coal? A. Yes, we want to get paid for it.

*Redirect examination by Mr. Sharkey:*

Q. Did you see it? A. No.

Q. Your instructions were to sue or not to sue? A. To sue.

*Recross examination by Mr. Brogan:*

Q. You do not know what is in the complaint? A. No.

20 *By Mr. Sharkey:*

Q. Your instructions were to sue for the difference that was due from the New York account?

Mr. Brogan: I object to that as rather unfair.

Mr. Sharkey: Withdrawn.

*Recross examination by Mr. Peters:*

30 Q. You say that Mr. Bruhns told you that he had received \$150 or \$200 from Greenberg? A. I said the checks, I believe, were a hundred dollars each.

Q. He told you that he had deposited them in his own personal account? A. Yes.

Q. That was personal business transactions that he and Greenberg had made? A. I don't recall. You know Greenberg—

Q. Didn't he tell you that he had loaned \$600 in a personal transaction? A. No, he said he had—

40 Q. Loaned Gallagher \$600? A. I don't recall the loan.

*Motions for Acquittal.*

Q. He said it was a business transaction and that it had nothing to do with your coal company?

A. He didn't mix the coal company in it at all.

Mr. Sharkey: That is the State's case.

Mr. Peters: I make a motion for the acquittal of defendant Bruhns. 10

The Court: The motion is granted.

Mr. Sharkey: I must confess that I am in no position to reasonably oppose that motion.

The Court: The motion is granted.

Mr. Brogan: I make a motion for the acquittal of defendant Harris Greenberg on the ground that no overt act has been shown and no conspiracy has been proved. As a matter of fact, Mr. Jagels brings in a scintilla of evidence which is subject to grave doubt as to what the parties or the party intended at the time it was said, whether it was for one account or another, and under all the circumstances I believe that if this case should go to the jury I am firmly convinced that a verdict against defendant Greenberg would be set aside. 20

The Court: I deny your motion. 30

Exception: Signed and sealed. Daniel T. O'Regan, Judge.

Mr. Meehan: I make the same motion on behalf of the defendant Gallagher. My first ground is that there is nothing shown here against Gallagher in this case to show that a conspiracy was entered into. Under the Court's ruling he cannot conspire with himself and that admission alone is not sufficient to prove him guilty of a conspiracy according to my reasoning. He has not 40

*John Kaslo, direct.*

10 proved the *corpus delicti*. There are cases which hold that the admissions of one defendant are not sufficient to convict another defendant. In this case we have a charge of conspiracy or confederation to do an unlawful act with somebody else, an overt act. We have Gallagher's admission; there can be no conspiracy on that.

The Court: For the purpose of this motion, I do not know whether there was or was not an overt act; that is a question for the jury to decide. Motion denied.

Mr. Meehan: Exception.

Exception: Signed and sealed. Daniel T. O'Regan, Judge.

20 The Court: Gentlemen of the jury, we won't go into the reasons why I granted the direction of a verdict as far as Bruhns is concerned. I will cover that entirely in my charge to you. The direction of a verdict of not guilty against Bruhns will be explained to you and the reasons given to you in my charge to the jury.

30 Mr. Brogan made an opening statement to the jury on behalf of the defendant Greenberg.

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JOHN KASLO, sworn for the defendant.

*Direct examination by Mr. Brogan:*

Q. Mr. Kaslo, you live in this City now and have lived here for some time and were in the employ of Mr. Greenberg? A. Yes, sir.

40 Q. Mr. Greenberg, Senior, or Junior? A. Mr. Greenberg, Sr.

*John Kaslo, direct.*

Q. How long had you worked for Greenberg?

A. About two and a half or three years.

Q. You drove trucks of Greenberg, loaded trucks? A. Yes.

Q. What type? A. Five-ton.

Q. Did you drive that truck over to Jagels and Bellis to get coal? A. Yes, sir. 10

Q. This procedure that you went through when you called with your trucks in order to get loaded down with coal of a certain amount—tell us of this procedure? A. I was to drive in on the scales and Mr. Gallagher or Mr. Bruhns would come out and wait to know what kind of coal we wanted and proceed to weigh. Then he would give us the word to go ahead into the yard to find the yard man. He would always ask us what kind of coal we wanted. We were never told from one day to the other where we had to go. We would be instructed what pockets to go to. We had to find the grades of coal and were then instructed to weigh the stuff which we had and when we were loaded up we came to the scale to be weighed off and sign the ticket. That is all. 20

Q. What color was your truck? A. Black.

Q. Did your truck have any sign on it of any coal company? A. No, sir. 30

Q. How many trucks were there besides yourself engaged by Greenberg in carrying coal from the yards of the complainant? A. There was one other Red Mack truck and once in a while he would hire one or two or three trucks.

Q. When you got coal of a certain quality what would you do? A. What do you mean?

Mr. Sharkey: Wait a minute.

A. If I signed I generally took the ticket with me. 40

*John Kaslo, cross.*

Q. On any occasion that you know of did you ever sign for less coal than was in your truck?

A. I never did to my knowledge because I wouldn't know.

10 Q. Did you ever get coal at the instruction of your employer or without his instructions of a higher quality, like stove or nut coal and then proceed to cover it over with buckwheat or some cheaper coal and then only sign the slip as though it all was buckwheat or the cheaper grade? A. No, sir.

Q. Was that ever done on your truck? A. No, sir, it was never done on my truck.

Q. Was it ever done on any truck of Greenberg's that you know of? A. Not that I know of.

20 Q. Were you working for Greenberg this day in October, 1923? A. I don't know if it was October or November. I was off five weeks sick; I couldn't say. I don't recollect what month it was.

Q. You were there two solid years or more during this time? A. Yes, sir.

Q. You don't work for Greenberg today? A. No, sir.

30 Q. Where do you work? A. As a mechanic.

*Cross examination by Mr. Sharkey:*

Q. How long did you work for Greenberg? A. About two and a half years.

Q. When did you stop working for him? A. I think the strike in 1925, I think.

Q. When you stopped? A. I stopped last December, I think.

40 Q. When did you start? A. I think just before the coal strike in 1925.

*John Kaslo, redirect.*

Q. Where was Greenberg's office? A. The office was in Woodside.

Q. Where, what street? A. Roosevelt Avenue.

Q. What is the name of Greenberg's coal company? A. Demand Coal Company.

Q. Demand Coal and Ice Company? A. Demand Coal and Ice Company. 10

Q. You had no sign on your truck? A. No, sir.

Q. Weren't you ever stopped by the police for not having a sign on your truck? A. No, sir.

Q. All the while you were working for Greenberg you had no sign on that truck saying who owned it? A. We had a sign but the placard came off.

Q. There was a placard. What was it? A. Demand Coal and Ice Company. 20

Q. You said you never covered one coal with another? A. Yes.

Q. And for five weeks in November or December you don't know when it was that you were off? A. No, sir.

Q. You don't know when it was? A. I don't know if it was October or November.

*Redirect examination by Mr. Brogan:*

Q. Did you describe the system of getting coal when you wanted two or three different kinds? Suppose you were sent out to get three tons of stove, two tons of pea coal and two tons of buckwheat, how would it be done, give us the system? A. I would get out the ticket and see where the first delivery was to be made and load the coal accordingly. 30

Q. The first delivery was put in last? A. In last.

Q. I mean at Jagels Bellis's yard. Suppose you came here today for nine tons of coal, three tons 40

*Joseph Savitsky, direct.*

10 of buckwheat and three of pea and three of stove or nut. What is the system by which you get it and by which it would be weighed? A. I would ask the yard man, we would tell him what we wanted. I would tell him we wanted stove, pea or egg and he would tell us what he wanted loaded first and we would take the truck to the pocket.

Q. After you put the coal on what did you do?

A. Go to the scale and weigh it.

Q. And then what? A. Go back and get the next.

Q. And then what? A. Go up and weigh again.

Q. Until you finally got what you wanted and then it was weighed in the whole? A. Yes.

*Recross examination by Mr. Sharkey:*

20 Q. At the pockets there were chutes through which coal passed from the pocket to the trucks?

A. Yes.

Q. It would be a simple matter on the part of the driver to go to the stove chute instead of the buckwheat if you wanted to do it? A. Yes.

*Redirect examination by Mr. Brogan:*

Q. Did you ever do it? A. No.

30 Q. Did you ever know it to be done? A. No, sir, it was never done on my truck, and I don't know of any other truck that it was done on.

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JOSEPH SAVITSKY, sworn for the defendant.

*Direct examination by Mr. Brogan:*

Q. You live in Brooklyn and you were in the employ of Mr. Greenberg for three or four years?

A. Yes.

40 Q. Are you now employed? A. No.

*Joseph Savitsky, direct.*

Q. When did you leave his employ? A. Last year, in May or June.

Q. How many drivers did he have during your time? A. Two.

Q. Just you and the other man steady? A. Yes.

Q. When did he have the other drivers; when he had extra work? A. When he had extra work. 10

Q. Did you make an effort to find those other drivers? A. No.

Q. What kind of a truck did you drive? A. A Mack truck.

Q. Did you go to get coal from Jagels and Belis for Greenberg? A. Yes.

Q. Did you with the instructions of Greenberg or without obtaining instructions get more coal than was marked on the slip? A. I used to get an order for coal from Mr. Greenberg and when we got to the yard I was given a slip in the office, and they used to weigh the truck light and then we would stop in the yard and ask for the foreman. The foreman used to go out and tell us where to get the coal and load up. We would then pull up on the scale and weigh it. 20

Q. Did you ever enter into any agreement or every carry out an agreement to steal coal? 30

Mr. Sharkey: I object to that unless the court is willing that this witness should say anything that might incriminate him. He is not represented and he is being asked about his participation in a criminal act.

The Court: Strike it out.

Q. Did you ever, at the instructions of Greenberg, as his driver, to your knowledge, receive more coal than he was being charged with or paying for? A. No, sir. 40

*Joseph Savitsky, cross.*

Q. Would it often happen or rather would it ever happen that when you came to the yard that you would have coal undelivered from the night before? A. It happened several times.

10 Q. You heard the last witness describe the manner in which you called for the different grades of coal? A. Yes.

Q. Did you ever take a high grade of coal and screen it over to deceive? A. My truck could only take two kinds. My truck is high and couldn't go into the pockets on the inside.

Q. Did you ever cover nut coal or stove with a screen of buckwheat or pea in order to steal? A. No, sir.

20 *Cross examination by Mr. Sharkey:*

Q. Are you sure you did not cover your nut coal with buckwheat or you don't remember? A. Sure, I did not.

Q. What kind of a truck did you drive? A. A Mack.

Q. How many tons? A. To have eight and seven, whatever I need.

30 Q. You stated that you sometimes had coal left over? A. When I used to deliver a load at night on Long Island, sometimes I couldn't find the party at home and I had a few tons, or sometimes two tons left and I used to go back with them.

Q. Did you ever have any buckwheat left over to take back? A. No, sir.

Q. Did the coal you had to take back, was it on the bottom of the truck? A. Yes, sir.

Q. And you would fill the truck up right on top of that? A. Yes, sir, right.

40 Q. I suppose if you received more coal than

*Joseph Savitsky, redirect—recross.*

was charged for that you would tell us, wouldn't you?

Mr. Brogan: That is unfair.

Q. If you received nut coal for pea coal prices you would not tell that? A. What do you mean if you received? 10

Q. If you received that you would tell us? A. I don't understand.

Q. You said you never short weighted? A. Not that I know of.

Q. If you had you would tell us? A. If I know and you ask me I would.

Mr. Sharkey: That is all.

*Redirect examination by Mr. Brogan:* 20

Q. You do not work for Greenberg? A. No.

Q. Who? A. Astoria Coal Company.

Q. The same line, in the same capacity? A. Yes, sir.

Q. Do you know the foreman of Jagels Bellis while you were in the yard? A. Yes.

Q. Who was he? A. Louis and another man over the pocket.

Q. Who was the other fellow? A. I don't know, I know the head foreman, Louis. 30

Q. Louis what? A. I don't know exactly the names.

Q. Louis Heintz? A. I couldn't tell you.

Q. Who owns the Astoria Coal Company? A. I don't know the name.

*Recross examination by Mr. Sharkey:*

Q. Who is your boss? A. My boss?

Q. Yes. A. The Astoria Coal Company. 40

*Edward Bruhns, direct.*

Q. Who is your boss; who told you what to do?  
You work for that company? A. Right.

Q. Who told you what to do? A. I didn't see  
the boss; I am only working for him about a week.

10 Q. You haven't seen the boss yet? A. I seen  
the young fellow.

*By Mr. Brogan:*

Q. What he is after is, is Greenberg your boss?  
Do you work for Greenberg? A. No.

*By Mr. Sharkey:*

Q. Don't you work for Greenberg? A. No.

20 EDWARD BRUHNS, sworn for the defendants.

*Direct examination by Mr. Brogan:*

Q. Mr. Bruhns, you live in this county, do you?  
A. Bergen County, 421 Grand Avenue, Greenville.

Q. You worked for Jagels and Bellis during the  
time we are discussing here? A. Yes.

Q. For how long? A. Twenty years.

Q. You are married? A. Yes.

Q. You have a family? A. Yes.

30 Q. How old is your oldest child? A. Fourteen,  
going on fifteen.

Q. And you have never been convicted of crime?  
A. No, sir.

Q. What was your job with Jagels and Bellis  
for all these years? A. Why, for the last 18 years  
I was manager of their Weehawken yard.

Q. Did you know Greenberg? A. Yes, sir.

Q. He was a customer? A. A customer.

40 Q. You had loaned him money? A. Not Senior,  
Junior.

Q. Senior made it good, finally? A. Yes, sir.

*Edward Bruhns, cross.*

Q. Did Greenberg, Senior, to your knowledge, carry on a system described of obtaining coal and being billed for less than he received? A. Not that I ever knew of; I never saw him.

Q. Could anything well go wrong without your knowledge, if it was going on? A. Hardly, unless it was done while I was out to lunch. 10

Q. Greenberg's trucks came, I suppose, at odd times, in the morning, no particular time? A. Every morning about a quarter to seven and then they would possibly return about eleven o'clock or later than that and then they came back again in the afternoon, that is, not the full force, only those working for him, probably one or two, according to how the orders were.

Q. What time did you used to get there in the morning? A. Half past six, sometimes earlier in the morning. 20

Q. What time did you go to your lunch? A. A little after eleven.

Q. So far as you knew there was no alliance, nor did he ever defraud in this fashion? A. Not that I know of.

*Cross examination by Mr. Sharkey:*

Q. When you went to report for work you went to the office first? A. No, directly to the Weehawken yard, where I worked. 30

Q. Did you stay at the scales all day? A. No, I did not stay at the scales all day.

Q. Did you go on to the scales when you reported first in the morning? A. No.

Q. You were Superintendent of the yard? A. Yes.

Q. You had the responsibility of the yard? A. Yes. 40

*Harris Greenberg, direct.*

Q. Greenberg's trucks, in the morning, could be loaded and go to the scale and you would not know anything about it? A. I had assistants.

Q. You would not personally see it? A. Not all the time, no.

10 Q. You are a friend of Greenberg's? A. In a business way, yes.

Q. In other words, you are a friend of his, you are associated intimately as a friend of the family? A. Not with Senior.

Q. With Senior's son, to shows and cabarets? A. Yes, to shows several times.

Q. And to dinner after the show? A. Yes.

Q. And again to his house? A. On one or two occasions.

20 Q. He asked at times to see you? A. Yes.

Mr. Sharkey: That is all.

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HARRIS GREENBERG, the defendant, sworn.

*Direct examination by Mr. Brogan:*

Q. Mr. Greenberg, how old are you? A. Fifty-one.

Q. Where do you live? A. 105 Avenue D.

30 Q. New York City? A. New York City.

Q. How long have you been in the coal business? A. I was in the coal business since 1902.

Q. I am talking about the taking over of your son's business? A. Oh, the son's late in 1924.

Q. Under what circumstances did you take the business over? A. I was forced to take it over, the coal business, because my son was in debt.

Q. Did you pay his debts? A. Yes, sir.

40 Q. What transpired after that, what took place after that? A. When I went over first I went

*Harris Greenberg, direct.*

over to make arrangements how much I owe the creditors. I went over a couple of times to make an appointment with Jagels and Bellis a few times; I wanted to make a bond and other things. I promised to do this and a couple of days later I went to take over the account and pay for him. 10  
 Next I went over to two other creditors and went over the books and the list of the men, the creditors to know what to do with the account. I got an order to pay \$10,000. Mr. Jagels' was \$3,200 or \$3,300 and I was just making arrangements to pay little by little. The first arrangement I made with Jagels and Bellis when I went over there was to arrange to pay them \$1,700, money in cash and the rest with fifteen notes of \$100 a month.

Q. Those were paid? A. I paid every month a hundred dollars. 20

Q. You have heard the State's case and the testimony and you know what the indictments are. Before coming to that, did you ever converse with Mr. Jagels and say to him that you would make everything right? A. No, sir.

Q. Did you ever confer with him at all? A. I got a demand to take up that account, you know, Jagels was over to me, over on a Friday. I got a check for \$1,700 and went over to the bank to have it certified. I got the check and sent it over with my daughter. 30

Q. Jagels took your check in payment of the bill, the new bill? A. Yes, sir.

Q. This was towards the end of December? A. Yes.

Q. You gave him a check for \$1,705? A. Yes.

Q. Do you know that Mr. Jagels came over that day? A. There was no funds in the bank. 40

*Harris Greenberg, direct.*

10 Q. What did you do? A. I took the check over to Mr. Jagels and I said, "Wait and we will have a cup of coffee in the restaurant in my place." I sent my daughter over with the certified check and I sent over my daughter fifteen or twenty minutes later to go for the certified check. It was brought over and I handed it over to Mr. Jagels.

Q. When was it you saw Mr. Jagels, Senior? A. I saw him many times because he is only by—my office.

20 Q. Did you ever have a conversation with Jagels, Senior, in which he claims you admitted a conspiracy to defraud him? A. No, I came over on a Saturday to see Mr. Jagels to see if I can settle the account. I went downstairs to the son and the son said, "My father will take up the matter because you have to give a note."

Q. Where was the father? A. Upstairs.

Q. Upstairs in the same building? A. Yes.

Q. In Hoboken or Weehawken? A. Hoboken, near the ferry.

Q. You went upstairs to see the father? A. Yes.

30 Q. Under what circumstances? A. The father was sitting in the chair, when I went in the door, Mr. Jagels sat on the chair. A cop was standing by the door.

Q. A cop? A. Yes, from his post.

40 Q. And what then? A. "Mr. Jagels," I said, "I have an appointment with your son to straighten out the account. I will give you cash and the balance in some notes." Then he started to talk some other business. Then he said, "Listen, what business have you done with Gallagher and Bruhns?" I said, "What?"

Q. Eddie or Harry Bruhns? A. Eddie.

*Harris Greenberg, direct.*

Q. The man who was on the stand? A. Yes.

Q. What did you say? A. I said, "No business at all." He says, "What business have you done?" "I got a statement signed by Bruhns and a statement signed by Gallagher. What have you been doing?" I said, "If you have a statement I don't know of anything wrong; I don't know anything about it. If you have a statement the only thing to do is to have me locked up; if you have not got any I want to go home; I don't know anything about it." 10

Q. What did he then do? A. Then he started to raise—holler words, words of abuse, to abuse me. I said, "Please, if you have anything on me, lock me up, and if you haven't I want to go home." "Give me a chance to go home." He is keeping me and fighting and arguing. Mr. Lichtenstein was there at the time and two detectives were there at the time. He said, "Will you come back Monday?" I said, "Yes." They let me go home and I went home. I went to my lawyer and told him about the story. I advised going back to Jersey. He said, "don't go. If they want you they will find you in New York." 20

Q. And then you stayed at your place of business in New York? A. Yes, sir. 30

Q. When you had this talk with Jagels you said the people present were Lichtenstein, the two detectives and an officer from the Hoboken police? A. It was—I know a cop was right near the office in the ferry.

Q. Were all these people in the room or did they come in after? A. Sometime they was in the room. Lichtenstein went upstairs later with his assistant, the black fellow who was here yesterday. 40

Q. Mr. Schwartz? A. Yes.

*Harris Greenberg, cross.*

Q. Did you ever enter into an alliance or conspiracy with Mr. Bruhns, who was on the stand here, and with Mr. Gallagher so that you could get more coal than you paid for? A. No, sir.

10 Q. Did you ever make any such arrangement with them to obtain a high grade of coal and cover over the top with a screen of buckwheat or rice and pay for the less valuable coal, the cheap coal? A. No, sir, I wouldn't take that chance; my name is very, very valuable and responsible.

Mr. Brogan: I think that is all.

*Cross examination by Mr. Sharkey:*

20 Q. How many persons were in Mr. Jagels' office the Saturday you spoke of? A. There was that old man there with the glasses (indicating) and another fellow was there and Mr. Jagels.

Q. Can you describe the other fellow that you don't know? Was he a big man, a short man or a thin fellow? A. I know there was another man; if I seen him I would know him.

Q. Was he stout? A. A stout man. I know the man with the eye glasses was there and the cop was near the door.

30 Q. When you went in? A. When I went in I didn't see the cop. When I went over to shake hands with Mr. Jagels and say hello to Mr. Jagels and then when I turned around I saw the cop at the door.

Q. When you got in to see Mr. Jagels you say the son was there? A. No, sir.

Q. Who was there when you went in the office? A. The old man.

Q. Stand up. Is this the man? A. Yes.

40 The Court: Indicating Mr. Cavanaugh.

*Harris Greenberg, cross.*

Q. Was this man there? A. Yes.

Q. He was nearby? A. Yes (indicating).

Q. Did you see that man? A. Yes.

Q. Who else? A. Mr. Jagels and the detective with the glasses and after that Mr. Heller and the cop was by the door.

10

Q. Stand up, Jagels, Jr. Was this man there?  
A. No.

Q. You didn't have a brief conversation, with Mr. Jagels? A. No, sir.

*By the Court:*

Q. Did Mr. Heller go in the door that time? A. He started to go when I had the big argument.

Mr. Brogan: As I understand it Heller was in the adjoining room.

20

Q. During any of that time that day were you and Mr. Jagels alone in the office? A. No.

Q. Mr. Jagels accused you of conspiring and cheating on the coal? A. No, sir.

Q. What did he do? A. He said he had affidavits that mixed me with crooked work.

Q. He told you that? A. He said—

Q. He charged you with being connected with the short weighting? A. Sure, he told me that in front of them.

30

Q. You said you could have me locked up? A. I said, "If you have anything on me, lock me up."

Q. He told you to come back the following Monday with records? A. No, sir.

Q. What? A. I made an appointment for Monday.

Q. For what purpose? A. Because I promised him to be back.

Q. On Monday? A. Yes.

40

*Harris Greenberg, cross.*

Q. On Saturday you promised to be back on Monday? A. No, sir, I promised Saturday to be back Monday.

Q. When did you promise on Saturday? A. Between ten and eleven.

10 Q. Who were there? A. Mr. Jagels, the detective, the cop and Mr. Heller.

Q. What promise did you make Mr. Jagels; what were you to do Monday? A. I promised to be back Monday, and if he had anything on me to lock me up; if not to let me go home.

Q. Didn't you tell him that you would have your records and weight slips? A. They didn't need my weight slips; they had their own.

20 Q. Did you ever tell him that you would be there with the weight slips? A. No, sir.

Q. How long have you known Gallagher? A. Gallagher I knew since I took over the business.

Q. Since the time you took your son's business over? A. From before; of course I didn't know him so good—no connections—only when I went over there and took a ton and a half of coal and went away.

30 Q. Will you tell us why you went to Jagels' office that Saturday? A. I had an appointment to straighten up the bills.

Q. For what? A. For the coal bills, over \$6,000.

Q. Did you pay that? A. No.

Q. Why? A. Because they started proceedings. I telephoned many times for an appointment and before I got there that Saturday to see him he sued me for \$26,000.

Q. You haven't paid any part of this \$6,000 they claim is overdue? A. No, sir.

40 Q. You were in business when you took your son's business over? A. Yes, sir.

*Harris Greenberg, redirect.*

Q. You did business under the name of "Demand Coal and Ice Company"? A. Yes.

Q. Where is your principal office? A. 107 Avenue D, New York.

Q. During the month of October how many trucks did you have working for you? A. What year? 10

Q. 1926. A. I couldn't remember, sometimes one truck, sometimes three. I never owned more than two trucks.

Q. Did you hire trucks? A. Yes, sometimes.

Q. Did you know the men who testified here? A. They work for me.

Q. Who? A. Savitsky and the other fellow.

Q. What is the other fellow's name? How long did he work for you? A. Two and a half years. 20

Q. What is his name? A. Jack.

Q. Is that the only name you know him by? A. The only name, Jack.

Q. You never heard of his other name? A. I never asked.

Q. And they were on your payroll? A. Yes.

Q. You had him down as Jack? A. Yes, sir.

Q. You don't know his name? A. No.

Q. And he worked for you two years? A. Yes, sir. 30

*Redirect examination by Mr. Brogan:*

Q. The other drivers that you had there during your busy period, did you try to find those men that used to come on the hired truck? A. I was trying to find them, but I couldn't get them.

*Recross examination by Mr. Sharkey:*

Q. Who were the other drivers; what were their names? A. I don't know. 40

*C. Henry Jagels, direct.*

Q. You say you searched for them. Where did you look for them? A. I am looking for the boss who hired the trucks.

Q. Don't you know his name? A. I know the business.

10 Q. Where? A. The business house where I hired the truck.

Q. Where is that? A. Seventh Street.

Q. Is that the only place? A. Only that particular man; he has a lot of trucks.

Q. How long did he work for you? A. Not steady, only sometimes when I need them.

Mr. Brogan: That is the case.

20 C. HENRY JAGELS, recalled for the State in rebuttal.

*Direct examination by Mr. Sharkey:*

Q. You have testified that you had a conversation with defendant Greenberg on a Saturday during the month of October, 1926. A. I did.

Q. What time of the day was that, about? A. In the morning.

30 Q. Who was present at the time you had that conversation? A. No one at the Saturday meeting except Mr. Greenberg and myself.

Q. Was any other person present during any part of this conversation? A. Not until we finished all of it.

Q. Was it finished or was the conversation still in progress when any one else came into the room? A. My conversation was about finished when I called Mr. Cavanaugh in.

40 Q. Who else? A. He is the only one I recall having called in at that time.

*C. Henry Jagels, cross.*

Q. Was Mr. Heller there? A. Not at that time.

Q. This conversation took place at your Hoboken office? A. Yes, sir.

Q. Was your son present? A. He was not.

Q. Was there a police officer there? A. While debating if I should have him arrested or not I sent for the officer. 10

Q. Before or after you had this conversation? A. After.

Q. Did the officer come then? A. He did.

*Cross examination by Mr. Brogan:*

Q. Mr. Jagels, is that all the people there were that you have outlined just now? A. That is all I recall.

Q. Wasn't Mr. Julius Lichtenstein there? A. He came later. 20

Q. Weren't all these people present while he was there? A. Later in the morning.

Q. While you were still talking to Greenberg? A. I went downstairs after that.

Q. What did you do with Greenberg; lock him in the room? A. No, Mr. Lichtenstein went in; I was through.

Q. You called the officer? A. I did.

Q. During Greenberg's presence there was a policeman there also? A. He came when I sent for him. 30

Q. Greenberg said that your son was not there. A. Not in the room.

Q. That is a fact, he was not there? A. I don't recall seeing him there.

Q. He said Mr. Heller was in another room and subsequently came into your room.

The Court: Was Heller actually in there during this conversation? 40

*Joseph Cavanaugh, direct—cross.*

A. Not during the time of the direct conversation.

*By the Court:*

Q. At any time? A. I cannot recall his being there.

10

JOSEPH CAVANAUGH, recalled for the State in rebuttal.

*Direct examination by Mr. Sharkey:*

Q. Were you present at Mr. Jagels' office on a Saturday in October, 1926, when Mr. Greenberg was there in Mr. Jagels' office? A. I believe it was in November, not October.

20 Q. Were you asked to come into that room, or did you go in voluntarily, of your own volition? A. My recollection is that Mr. Jagels came to the door and called me in.

Q. You went into the room? A. I did.

Q. Did you make conversation with Greenberg? Did he say anything? A. He wouldn't say a thing.

Q. Did anybody try to make conversation with him? A. I did.

Q. What did he say? A. He wouldn't say anything; he wouldn't answer questions.

30 Q. Was there a police office there? A. There was not, not until later.

Q. Who was in the room when you entered? A. Mr. Jagels and Mr. Greenberg.

Q. Anybody else? A. I believe Mr. Bellis was at his desk for a time there. I am pretty sure he was.

*Cross examination by Mr. Brogan:*

40 Q. So that if friend Greenberg said that you were there with him it is so? A. Yes.

*C. Henry Jagels, direct.*

Q. How about young Bellis? Who? You never mentioned him, did you? A. Who?

Q. Young Bellis, I mean young Jagels. Didn't you say that young Jagels wasn't there? A. My recollection is that I said he was there; if I did not then I misunderstood you. 10

Q. He said the boy was downstairs. A. He never was in the room.

Q. As I understand it, Greenberg would answer no questions; he stood mute. Is that right? A. He sat at the window; he was sitting there when I came in the room.

Q. How many years have you been at this business? A. About 18.

Q. With all your experience you could not get him to say anything? A. He wouldn't answer any questions put to him. That is my recollection. 20

Q. Would any man go in and make a confession if he was guilty of anything? A. I can't say; I can't judge that; he wouldn't answer.

*By Mr. Sharkey:*

Q. You don't know what happened before you got in the room? A. I don't know.

C. HENRY JAGELS, recalled by the Defense in rebuttal. 30

*Direct examination by Mr. Brogan:*

Q. Did you ever have a foreman at that time by the name of Heintz? A. I think there was a man there by that name, but I don't know.

Mr. Brogan: That is all.

Mr. Brogan: I renew my direction for a verdict for the same reasons urged by me at the end of the State's case. 40

*Court's Charge.*

The Court: I deny your motion and you may have an exception.

Exception. Signed and sealed. Daniel T. O'Regan, Judge.

Mr. Meehan: I make the same motion.

10 The Court: I deny your motion and you may have an exception.

Exception. Signed and sealed. Daniel T. O'Regan, Judge.

---

**Court's Charge.**

The Court thereupon charged the jury as follows:

20 The Court: Gentlemen of the Jury, the defendants, Harry Greenberg and Ambrose Gallagher, together with Edward Bruhns, were indicted by the Grand Jury of the September Term, 1926, for the crime of conspiracy. The indictment is here and you will take it into the jury room with you and you can read it for yourselves. It consists of three pages and I do not think it necessary to read it to you as long as you will have it there. What is necessary for you to know, "What is a conspiracy"?

30 Now, the statute says: "Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement or other alliance to commit any crime, or falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime, or falsely to move and maintain any suit, or to cheat and defraud any person of any property by any means which are in themselves criminal, or to cheat and defraud  
40 any person of any property by any means which,

*Court's Charge.*

if executed, would amount to a cheat, or to obtain money by false pretences, or to conceal or spread any contagious disease, or to commit any act of perversion or obstruction of justice of the due administration of the laws, shall, on conviction, be deemed guilty of a conspiracy, and be liable to punishment, and so forth, but no agreement to commit any crime other than arson, burglary, manslaughter, murder, rape, robbery or sodomy shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement." 10

Now, the crime alleged to have been perpetrated or with which they are charged is not arson, burglary, manslaughter, murder, rape, robbery or sodomy and in order to convict of conspiracy some act must be done by one of these defendants in execution of the conspiracy, but the acts of one of several defendants are not binding upon the others, unless the knowledge and consent of each defendant be shown, or that each acted with a common purpose. Where two or more defendants are tried together, the declarations of one, which have a legitimate tendency to establish his guilt, are admissible against him, even though not admissible against his co-defendant; the proper remedy is to request a limitation of its application to the defendant who made it. 20 30

Mr. Gallagher made certain statements. Those statements were made by Gallagher and are to be confined to Gallagher himself and any admission that Gallagher made in the statements which you heard read which refers to the other defendant, Greenberg, cannot be used by you in determining Greenberg's guilt. 40

*Court's Charge.*

10 Bruhns was discharged because there was nothing in this case that connected Bruhns in any manner with the conspiracy, other than the statement made by Gallagher, and that statement is applicable to Gallagher alone; consequently, Bruhns should not be convicted on that statement. Therefore, it is necessary for the Court to direct a verdict of not guilty against Bruhns.

20 The same situation applied to Greenberg up to the testimony of the last witness, or rather, the testimony of Mr. Jagels. Up to the time Mr. Jagels took the stand there was nothing in the case which connected Greenberg with this conspiracy, but the statement made by Gallagher. Now, if that was all, Greenberg would have to have been discharged the same as Bruhns was, but Mr. Jagels testified as to the conference in his office and for that reason and for that reason alone you are to consider Greenberg in this case with Gallagher. You are to eliminate any statement made by Gallagher which incriminated Greenberg and confine your deliberation on Greenberg to the conference held in the office by Mr. Jagels and Mr. Greenberg. So, therefore, in order to convict Greenberg you must first find as a matter of fact that he did make  
30 certain admissions to Mr. Jagels and also that some act in furtherance of this conspiracy was actually done by one of the conspirators. You cannot convict Greenberg alone; you cannot convict Gallagher alone; you must convict the two of them or acquit the two of them.

40 The defendants have certain rights which you are bound to respect. One of those rights is the presumption of innocence to which they are entitled. In other words, they do not have to prove to you that they are innocent; you are to presume

*Court's Charge.*

that they are innocent and that presumption of innocence runs throughout all of the case and throughout all the essential elements of the crime, and the State must rebut that presumption of innocence and convince you beyond a reasonable doubt that they are guilty. Now, what is a reasonable doubt? The Appellate Court has instructed us to use a certain definition in charging reasonable doubt to a jury and that definition is as follows: "Reasonable doubt is not a mere possible doubt; it is that state of the case, which, after an entire comparison and consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge." Now, what does that mean? It means that each of you jurors, after you have considered this case in its entirety, say to yourself: Have I an abiding conviction to a moral certainty of the truth of this charge? If I answer in the negative and say, No, I have not an abiding conviction to a moral certainty of the truth of the charge, then I have not found them guilty beyond a reasonable doubt, and I must vote for acquittal, but if I answer in the affirmative and say, Yes, I have an abiding conviction to a moral certainty of the truth of this charge, then I have found them guilty beyond a reasonable doubt and I must vote for conviction. Whenever in your deliberations you have a reasonable doubt about any essential element of this crime, that reasonable doubt must be resolved in favor of the defendants. You cannot give them the benefit of every whimsical doubt, but only of reasonable doubt.

Counsel for both of the defendants, at various

*Court's Charge.*

times during the conduct of the trial, asked the Court to direct a verdict and those motions were denied. Those were denied for purely legal reasons and you are not to take into consideration the fact that because the Court denied those motions that the Court was expressing any opinion about the guilt or innocence of these defendants. That was not a fact. The Court has no right to an opinion in this case. The motions were denied because of legal reasons and legal reasons alone; the question of the Court's opinion did not enter into the decision of them. The Court has no right to an opinion. You are the only ones who may decide whether or not these defendants are guilty. According to our system of jurisprudence no one can be found guilty of a crime without the unanimous consent of twelve men. You are the twelve men in this case.

You have a serious duty to perform. You realize, of course, its seriousness, both to the defendants and to the State, and, of course, the State and the defendants expect you to perform that duty honestly and justly.

Before giving this case into your hands, there is one thing else I might say to you, and that is as to the failure of defendant Gallagher to take the stand in his own behalf. Gallagher was one of the defendants; he was here in court; he heard the confession read which made certain accusations against him. He stayed mute; he did not take the stand to deny those accusations. You have a right to presume that the reason he did not take the stand to deny those accusations was because he was unable to do so; in other words that he stayed mute because he could not deny what was said against him.

*Stipulation.*

Gentlemen of the Jury, you have heard the testimony. The Court has made it a rule not to discuss the facts with the jurors. The case passes into your hands. You have taken a solemn oath to render a verdict according to the evidence alone. That is what the defendants expect of you and what the State expects of you; that, of course, is what you promised to do when you called upon Almighty God to witness your oath. Deliberate on the case carefully and if, after you have arrived at your verdict, you can reconcile that verdict with your conscience, then you will have performed your full duty. 10

**Stipulation.**

20

HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

|   |   |                          |
|---|---|--------------------------|
| STATE,<br><i>Defendant-in-Error,</i><br><br><i>v.</i><br>HARRIS GREENBERG and AMBROSE<br>A. GALLAGHER,<br><i>Plaintiffs-in-Error.</i> | } | On Indictment.<br><br>30 |
|---|---|--------------------------|

It is hereby stipulated and agreed by and between John Milton, Esq., Prosecutor for the defendant-in-error, and Thomas J. Brogan and Thomas F. Meehan, representing the plaintiffs-in-error, that Exhibit P1 be not inserted in the state of the case as it is contained in the testimony of witness Mae Dempsey, starting on Page 136 under 40

*Judge's Certificate.*

the direct examination by Mr. Sharkey and ending on Page 143 of the stenographer's minutes.

JOHN MILTON,  
Attorney for Defendant-in-Error.

10

THOMAS J. BROGAN,  
Counsel for Harris Greenberg,  
Plaintiff-in-Error.

THOMAS F. MEEHAN,  
Counsel for Ambrose A. Gallagher,  
Plaintiff-in-Error.

**Judge's Certificate.**

20

HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

THE STATE,  
*Defendant-in-Error,*

*v.*

HARRIS GREENBERG and AMBROSE  
A. GALLAGHER,  
*Plaintiffs-in-Error.*

On Indictment.

30

I, DANIEL T. O'REGAN, Judge of the Court of Quarter Sessions in and for the County of Hudson, before whom the above entitled indictments were tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the foregoing indictments of the above stated causes.

Dated Jan. 18th, 1928.

40

DANIEL T. O'REGAN,  
Judge.

**Stenographer's Certificate.**HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

|   |   |                       |    |
|---|---|-----------------------|----|
| <p style="text-align: center;">THE STATE,<br/><i>Defendant-in-Error,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">HARRIS GREENBERG and AMBROSE<br/>A. GALLAGHER,<br/><i>Plaintiffs-in-Error.</i></p> | } | <p>On Indictment.</p> | 10 |
|---|---|-----------------------|----|

I, the undersigned, do hereby certify that I was the stenographer who took the testimony and proceedings in the cause entitled the State *v.* Harris Greenberg and Ambrose A. Gallagher, before Honorable Daniel T. O'Regan, Judge, and a jury on the thirtieth day of November, 1927, and the first day of December, 1927, and that I transcribed the same and the same is full, complete and correct.

JOHN P. DENGLER,  
Official Stenographer.

30

40

**Assignments of Error.**

NEW JERSEY SUPREME COURT.

10

THE STATE,  
*Defendant-in-Error,*

*v.*

HARRIS GREENBERG,  
*Plaintiff-in-Error.*

On Writ of  
Error.

20

And now comes the said Harris Greenberg, by Thomas J. Brogan, his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following causes:

1. Because the trial court refused to direct a verdict in favor of the defendant, at the end of the State's case, on the ground of failure of proof, although thereto moved by the defendant.

2. Because the trial court refused to direct a verdict in favor of the defendant at the end of the entire case, although thereto moved by the defendant.

30

THOMAS J. BROGAN,  
Attorney for plaintiff-in-error.

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**Specification of Causes for Reversal.**

## NEW JERSEY SUPREME COURT.

|  |   |                      |    |
|--|---|----------------------|----|
| THE STATE,<br><i>Defendant-in-Error,</i><br><br><i>v.</i><br><br>HARRIS GREENBERG,<br><i>Plaintiff-in-Error.</i> | } | On Writ of<br>Error. | 10 |
|--|---|----------------------|----|

And now comes the said Harris Greenberg, by Thomas J. Brogan, his attorney, and says that in the record and proceedings and also in giving judgment aforesaid, there is manifest error, and for error assigns the following causes:

20

1. Because the trial court refused to direct a verdict in favor of the defendant at the end of the State's case, on the ground of failure of proof, although thereto moved by the defendant.

2. Because the trial court refused to direct a verdict in favor of the defendant at the end of the entire case, although thereto moved by the defendant.

3. Because the verdict of the jury is contrary to and against the weight of the evidence.

30

THOMAS J. BROGAN,  
 Attorney of plaintiff-in-error.

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**Opinion of Supreme Court.**

NEW JERSEY SUPREME COURT,

Nos. 82 and 83. January Term, 1928.

10

STATE OF NEW JERSEY,  
*Defendant-in-Error,**v.*AMBROSE GALLAGHER,  
*Plaintiff-in-Error.*No. 82. Writ  
of Error.

20

STATE OF NEW JERSEY,  
*Defendant-in-Error,**v.*HARRIS GREENBERG,  
*Plaintiff-in-Error.*No. 83. Writ  
of Error.Submitted January Term, 1928: Decided June  
21st, 1928.Before Gummere, Chief Justice, and Justices  
Black and Lloyd.

30

For the Defendant-in-Error: JOHN MIL-  
TON, Prosecutor of the Pleas.For the Plaintiff-in-Error Ambrose Gal-  
lagher: THOMAS F. MEEHAN, Esq.For the Plaintiff-in-Error Harris Green-  
berg: THOMAS J. BROGAN, Esq.

PER CURIAM:

40

The defendants Ambrose Gallagher, Harris  
Greenberg, and Edward Bruhns were tried, in the  
Hudson County Court of Quarter Sessions, upon  
an indictment charging them with conspiracy to

*Opinion of Supreme Court.*

defraud the Jagels-Bellis Co. of underweighing and undervaluing coal. Edward Bruhns was found not guilty by the direction of the Court. Ambrose Gallagher and Harris Greenberg were found guilty of a conspiracy by the jury.

They each sued out a writ of error from this Court. They each assign two grounds of error and three specifications of causes for reversal, which are identical. 10

It is argued in the brief on behalf of Greenberg, that neither a conspiracy to defraud, nor an overt act in pursuance thereof was proved by the State, and on behalf of Gallagher, it is argued, the crime was not proved, as the only case made against him consisted of his admissions and confession. The crime charged was conspiracy and the admissions and confession of the defendant Gallagher did not prove the conspiracy. Moreover, the verdict of conspiracy was against the weight of the evidence. 20

The whole case, so it is argued, went to the jury on the confession of Gallagher, which did not involve Greenberg.

None of these points are tenable, because, they are not true in point of fact, as a reading of the record will reveal. The defendant Gallagher made a written confession, p. 108, *et seq.*, testimony of May Dempsey. He did not take the stand in his own defense. His failure to offer himself as a witness may be considered and commented on, *Parker v. State*, 61 N. J. L. 308. C. Henry Jagels, a witness, at page 123 charged Greenberg with short weighting of coal on his tickets. "Well," he said, "I will make everything good." 30

The State contends, that it has proved two overt acts, one overt act, when the defendant Gallagher in the presence of Greenberg deliberately under- 40

*Rule on Affirmance.*

10 weighed the coal purchased by the defendant Greenberg 500 pounds, Record, p. 72, line 14, *et seq.*, p. 73, line 22. The other overt act, the defendant was charged with an inferior grade of coal, when he actually received a higher grade of coal. These acts were within the two years period and were proved to have been done at the time laid in the indictment, testimony of witness Joseph Brophy, Record, p. 73, line 25, *et seq.*

The State does not rest its case upon the confession of Gallagher to prove a claim against the defendant Greenberg.

20 Finding no error in the record, the judgment of the Hudson County Court of Quarter Sessions, in each case, is affirmed.

**Rule on Affirmance of Judgment and Order  
of Remittitur.**

NEW JERSEY SUPREME COURT.

|    |   |   |
|----|---|---|
| 30 | <p style="text-align: center;">THE STATE OF NEW JERSEY,<br/><i>Defendant-in-Error,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">HARRIS GREENBERG,<br/><i>Plaintiff-in-Error.</i></p> | <p>On Error to<br/>Hudson Quarter<br/>Sessions.</p> |
|----|---|---|

40 This cause having been duly argued at the January Term, A. D. 1928, of this Court, by John Milton, Prosecutor of the Pleas of the County of Hudson, Counsel for the State of New Jersey, Defendant-in-Error, and Thomas J. Brogan, Counsel for Harris Greenberg, Plaintiff-in-Error, and the Court having considered the same and having

*Writ of Error.*

examined the records and proceedings of the Hudson Quarter Sessions, in the said cause, and finding no error therein:

IT IS HEREBY ORDERED AND ADJUDGED that the judgment of the Hudson Quarter Sessions in the above entitled cause be and the same is hereby affirmed with costs;

10

AND, IT IS FURTHER ORDERED that the record in the said cause be forthwith remitted to the said Hudson Quarter Sessions there to be proceeded with according to law.

Entered June 25th, 1928.

On motion of

ALOYSIUS McMAHON,  
Acting Prosecutor of the Pleas,  
Counsel for State of New Jersey,  
Defendant-in-Error.

20

A true copy.

FRED L. BLOODGOOD,  
Clerk.

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**Writ of Error.**

New Jersey, ss.:

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The State of New Jersey to the Chief and other Justices of our Supreme Court of Judicature, GREETING:

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Harris Greenberg, late of the City of New York, for conspiracy to defraud;

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury

40

*Writ of Error.*

of the county, taken between the State of New Jersey and the said Harris Greenberg, as it is said, manifest error hath intervened to the great damage of the said Harris Greenberg, as from his complaint we have received information, we being  
 10 willing in this behalf, to correct the error in due manner, if any there shall be and that speedy justice be done to him, the said Harris Greenberg command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the Fifteenth day of September, 1928, together with this writ, that the record and  
 20 proceedings aforesaid being inspected, we may cause to be done thereupon, for correcting that error what of right and according to the law and custom of the State of New Jersey, ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 27th day of August, 1928.

30 JOSEPH F. X. FITZPATRICK,  
 Clerk.

THOMAS J. BROGAN,  
 Attorney.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.  
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WILLIAM S. GUMMERE,  
 Chief Justice.

14

# Court of Errors and Appeals

OF THE STATE OF NEW JERSEY.

THE STATE OF NEW JERSEY,  
Defendants-in-Error,

vs.

HARRIS GREENBERG,  
Plaintiff-in-Error.

ON WRIT  
OF ERROR  
FROM  
SUPREME  
COURT.

## BRIEF OF RESPONDENT.

### Statement.

Harris Greenberg, Ambrose Gallagher and  
~~These defendants, together with one~~ Edward  
Bruhns, were indicted by the Hudson County  
Grand Jury in the September Term, 1926, by In-  
dictment No. 355, charging that the three defend-  
ants did, unlawfully, wilfully, knowingly, feloni-  
ously and corruptly combine, unite, confederate,  
conspire, and bind themselves together by agree-  
ment, from the said Jaegel-Bellis & Company, un-  
lawfully, corruptly, fraudulently and deceitfully  
to steal, take away and carry a quantity of coal,  
to wit, twelve hundred tons. \* \* \* between the  
first day of January in the year of our Lord Nine-  
teen hundred and twenty-five, and the twenty-  
eighth day of October, Nineteen hundred and  
twenty-six \* \* \* and were further charged that  
in the execution of the aforesaid combination and  
in pursuance of said conspiracy and to effect the  
object thereof, between the said first day of Janu-  
ary in the year 1925, and the 28th day of Octo-

ber, 1926, at the Township of Weehawken, in the County of Hudson, did meet and come together and go to the place of business of the said Jaegel-Bellis & Company, and then and there did steal, take and carry away large quantities of coal, and then and there did deliver to said Harris Greenberg a larger quantity of coal than he was charged with, and then and there did deliver to the said Harris Greenberg a higher grade of coal at the price and cost of a lower grade of coal.

In support of this charge the State presented testimony showing that the defendants Ambrose Gallagher and Edward Bruhns during the period in question, were employed by the Jaegel-Bellis Company, Bruhns serving as weighmaster and general manager of the yard at Weehawken, and Ambrose Gallagher as Bruhns' assistant. Bruhns, the weighmaster, was to see that the coal was properly weighed, to receive coal orders from the main order department, to see that they were dispatched properly and to see that the right amount of coal and the right kind of coal was loaded on trucks and sent out to customers. Among other duties he had general supervision of the entire yard, and hired and discharged employees and sold the coal and took care of customers coming into that yard. Gallagher assisted Bruhns in the weighing of coal, and in all of the charges laid in this indictment and the proofs thereunder, actually weighed the coal in each instance.

The defendant, Harris Greenberg, a retail coal dealer, had been a customer of Jaegel-Bellis & Company for some time. His principal place of business was in New York City.

Because of certain happenings in this yard an investigation was made by the owners, which resulted in the owners discovering that Mr. Greenberg on the 28th day of October, 1926, objected

to the weight charged against him for coal delivered. The witness, Joseph Brophy, an investigator employed by the complaining witness Jaegel-Bellis Company, weighed the coal and made out a slip for 19,000 pounds. Mr. Greenberg, the defendant, objected to the weight and Mr. Gallagher, the other defendant, said he could not help out because the witness Brophy had weighed it. In the morning of that day Mr. Greenberg was again at the yard of the defendant and got coal. Mr. Gallagher, the defendant, weighed the coal and the truck, and it was discovered that the weight of the coal and truck as turned in by Mr. Gallagher was five hundred pounds more than that charged against the defendant Greenberg. (This testimony may be found on page 66, commencing on line 19, and continuing on page 67 to line 29, S. C.)

With reference to the substitution of high priced coal at a charge made for cheaper coal, the testimony of the witness Brophy, commencing at line 32, page 67, and continuing to line 36 on page 72, of the State of the Case, may be summarized as follows: A truck of several compartments, with one of its compartments next to the driver's seat loaded with pea coal, was weighed, and eight thousand pounds of pea coal was charged against the defendant Greenberg. The truck then went to another part of the yard, and again came back to the scales. The pea coal had disappeared and all the compartments were then filled with stove coal. The charge ticket turned in against the account of Greenberg showed that the truck when finally weighed, contained eight thousand pounds of pea coal and eleven thousand pounds of stove coal.

On page 35, line 13, of the State of the Case, it appears that the difference in price between stove and pea coal per ton, as sold at the yard during

this period from January 1st, 1925, to October 28, 1926, was three dollars per ton.

The defendant Gallagher made a written confession which will be found on page 110 of the State of the Case, commencing at line 28 and continuing to line 24 on page 115 of the State of the Case. This confession was offered in evidence. The defendant Gallagher, who made the confession, did not take the stand in his own defense.

In addition to the written confession made by the defendant Gallagher, Gallagher also told his employer Jaegels, in substance what was set forth in his confession, and that may be found on page 118, commencing with line 29 and ending on line 36, page 120, S. C.

The defendant Greenberg, according to the witness Henry Jaegels, had a conversation with the witness Mr. Jaegels, in which he was asked why he came into the organization of the complaining witness, to break it up, and that he had destroyed the confidence of the complaining witness in one of his best men who had been with him twenty years, and that Greenberg collapsed and went into a heap in a chair in front of the window, and when he was informed that Gallagher had made a statement as to what had been done in the weighing of coal on his tickets, and that he had taken the larger sized coal and entered into a conspiracy with these men to put his coal down as an inferior grade on the ticket, he replied, "You have no proof". The witness said, "Yes, I have." Then Greenberg said, "What are you going to do?" The witness said, "I am going to have you arrested." Then the defendant Greenberg said, "You cannot prove anything," and he said, "Please don't have me arrested." The complaining witness said, "Why not?" He said, "I will make everything good". This was on a Saturday morning, and Greenberg said if he would let him

go until Monday morning he would bring over his records and his papers, and that was the only way the complaining witness would get any money. He repeated several times that he would make everything good, but he never came back. This testimony will be found on page 116, commencing at line 33, and ending on page 118, line 23, of the State of the Case.

The Court directed a verdict in favor of the defendant Bruhns.

The defendants Gallagher and Greenberg were convicted.

### POINT I.

**The charge laid in this indictment against the defendants Gallagher and Greenberg was duly proved.**

In an indictment for conspiracy under the statute it is enough if there be one overt act within a two-year period. In this case the State contends it has proven two overt acts, one overt act when the defendant Gallagher in the presence of Greenberg deliberately underweighed the coal purchased by the defendant Greenberg, the other one when the defendant was charged with an inferior grade of coal when he actually received a higher grade of coal. These overt acts were within the two-year period, and were proven to be done at the times laid in the indictment. (*State vs. Unsworth*, 85 Law, 237.)

That there was an unlawful combination of which the foregoing overt acts were the natural result, is evidenced in the first place from the confession of Gallagher, recited at length in the testimony, and also from the admissions of the defendant Greenberg in his conversations with

Jaegels, and again when Mr. Greenberg in the presence of the witness Brophy, when Mr. Greenberg complained about the weight of the coal charged against him and was informed by the defendant Gallagher that Gallagher could do nothing for him because the coal had been weighed by the witness Brophy, the investigator for the complaining witness Jaegel-Bellis & Company.

Conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparently criminal or unlawful purpose in common between them. The existence of the agreement or joint assent of the minds need not be proved directly. It may be inferred by the jury from other facts proved. It is not necessary to prove that the defendants came together and actually agreed in terms to have the unlawful purpose, and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same so as to complete it, with a view of the attainment of that same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. If, therefore, one concurs in a conspiracy, no proof of agreement to concur is necessary in order to make him guilty (Ruling Case Law, Vol. 5, page 37).

In this case the purpose was to cheat Jaegel and Bellis, and to take from them more coal than the defendant Greenberg was entitled to, or to get coal of a superior grade and be charged for an inferior grade of coal.

This logically follows from the proof of the two overt acts, the State alleges it has sufficiently proved in addition to the complaint made by the conspirator Greenberg to the defendant Gallagher that he wanted the weight changed, but that it could not be done by Gallagher, because someone else had weighed the coal.

The State does not rest its case upon the confession of Gallagher to prove a claim against the defendant Greenberg. The State contends that this is competent evidence against the man making the confession, and does not rely upon that confession to in any way connect the defendant Greenberg with the conspiracy.

Greenberg's connection with the conspiracy is primarily proven by his own acts and his own admissions, and the Court properly instructed the jury to limit its consideration of the confession of Gallagher to Gallagher alone.

The criticism of the Court's charge made in the brief of Greenberg on the bottom of page 3, that the use of the word "incriminated" with respect to Greenberg, was harmful error, does not bear the aspect attempted to be put upon it by this defendant. The whole charge should be read. The Court was particular in telling the jury that they must eliminate any statement made by Gallagher which incriminated Greenberg, and confine their deliberations to Greenberg's conversation with Mr. Jaegels in the office of Jaegel-Bellis & Company. It appears to the State that this charge was highly beneficial to the defendant, because as the State views the case, the State was entitled to have brought to the jury's attention Greenberg's objection to the weight on one occasion and his presence at the weighing when his load of coal was short-weighted. In determining the guilt or innocence of the defendant Greenberg, they were not to be confined solely to the confession made by

Mr. Greenberg in the office of Mr. Jaegels, so that if any one was harmed by this charge it was the State and not the defendant.

The defendant Greenberg in his brief on page 5, argues that the confessions of Greenberg were stricken out by the Court. This manifestly is not so. The witness was narrating a story uninterruptedly until he got down to a point and said, "Then he (meaning the defendant Greenberg) moved over to the other chair, and he seemed to be completely overcome." Mr. Brogan objected to that and asked that it be stricken out, evidently meaning the last sentence testified to by the witness, because the Prosecutor directed the witness to continue after the Court had stricken that out, and he continued to testify until he said once more, "He seemed to be upset completely", and Mr. Brogan asked that that be stricken out and the Court struck it out. It is manifest that the Court intended only to strike out these two sentences immediately preceding the objection, which should have been stricken out as being conclusions, because the Court itself told the jury that this testimony was the only thing connecting Greenberg with the case.

The ingenious argument of counsel in the brief that the statement made to Greenberg by Jaegels that he Greenberg, entered into a conspiracy with these men to put coal down is a conclusion, and is illegal evidence as against the said Greenberg, is not true, because Jaegels was charging the defendant with the transactions in his yard and said to him that he had taken the larger sized coal, and had entered into a conspiracy with these men to put down coal, and so forth. There was no objection to that, and there could not be. The objection was to the last sentence of that paragraph. At any rate, the succeeding admissions that he would make everything good, and that he

would bring over his records and papers, and that was the only way that the complaining witness would get his money, was not challenged in any manner.

## POINT II.

**The Court properly refused to direct a verdict for the defendant Greenberg at the end of the State's case, and again at the end of the entire case.**

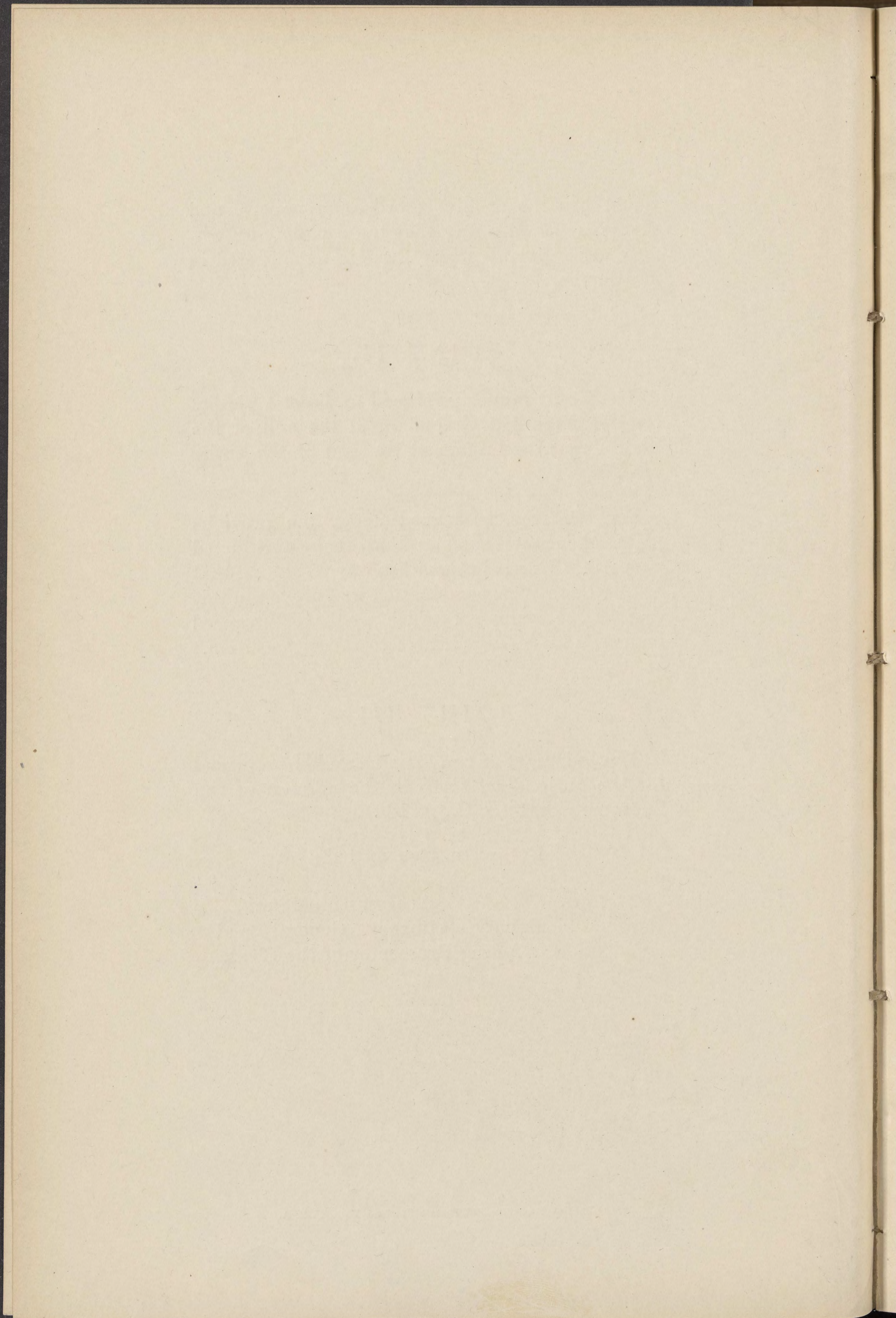
For the reasons argued under the previous point, the State submits that the Court acted properly. This is but another way of stating that no overt act, or no combination was proven in this case. The argument which we have advanced under Point I, is applicable to this proposition.

## POINT III.

**The judgment of conviction should be affirmed for the reasons set forth in the opinion of the Supreme Court (S. C., p. 160).**

Respectfully submitted,

ALOYSIUS McMAHON,  
Deputy Attorney General and  
Acting Prosecutor of the Pleas.



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# Court of Errors and Appeals

OF THE STATE OF NEW JERSEY.

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STATE OF NEW JERSEY,  
*Defendant-in-Error,*  
*v.*  
 HARRIS GREENBERG,  
*Plaintiff-in-Error.*

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On Writ of Error  
 from Supreme  
 Court of the  
 State of New  
 Jersey.

## BRIEF OF PLAINTIFF-IN-ERROR.

### Statement.

This defendant Harris Greenberg was indicted with two others, Edward Bruhns and Ambrose Gallagher, on the charge that between the first day of January, 1925, and the 28th day of October, 1926, the three, Greenberg, Bruhns and Gallagher, intending for their own use, unlawfully, corruptly, fraudulently and deceitfully to steal, take and carry away a large quantity of coal, to wit, twelve hundred tons, did on divers days and times between the first of January, 1925, and the 28th day of October, 1926, at Township of Weehawken, County of Hudson, wickedly, unlawfully, wilfully, knowingly, erroneously combine, unite, confederate and bind themselves together by agreement to steal, take and carry away a large quantity of coal by the said Greenberg paying to Bruhns and Gallagher certain large sums of money to permit the said Greenberg to steal, take and carry away a large quantity of coal \* \* \*, and in execution of the agreement on the seventh day of October, 1926, and the 28th day of October, 1926, did steal,

take and carry away on each of said days four (4) tons of coal of the value of One Hundred Three and 20/100 (\$103.20) Dollars in the yards of Jagel & Bellis.

#### POINT I.

**The Trial Court erred in refusing to direct a verdict for the defendant Greenberg at the end of the State's case upon defendant's motion so to do.**

The defendant Greenberg is indicted for conspiring with one Bruhns and Gallagher to defraud Jagels & Bellis Coal Company of twelve hundred tons of coal, between January 1st, 1925 and October 28th, 1926, at Weehawken, and with bribing the two last mentioned, and in pursuance of the conspiracy charged, stealing four tons of coal on October 7th, 1926, and four additional tons on October 28th, 1926, of the value of One Hundred Three and 20/100 (\$103.20) Dollars (see Indictment, Case, pp. 7 to 10).

**(A) Neither a conspiracy to defraud nor an overt act in pursuance thereof was proved by the State.**

If this point be demonstrated from the testimony in this case, the proof of the indictment has failed and the defendant Greenberg should have been acquitted by the Court's direction.

The definition of a conspiracy is found at 2 Compiled Statutes, sec. 37, page 1757, and for the purposes of this case provides any two or more persons, who shall combine, unite \* \* \* to cheat and defraud any person of any property by any means, which are in themselves criminal \* \* \*, shall on conviction be deemed guilty of a conspiracy \* \* \* but no agreement to commit any crime other than arson, burglary, manslaughter, murder, rape, robbery or sodomy shall be deemed a con-

spiracy unless *some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement.*

This point, of necessity, must be argued negatively instead of affirmatively. A careful scanning of the entire record does not disclose one scintilla of evidence of these persons under indictment combining, uniting, confederating, conspiring or binding themselves to commit any *theft*.

One looks in vain through the testimony of the State's witnesses—Messrs. Heller, Jagels, Cavanaugh, Brophy, Dempsey—for any evidence whatever of a combination or confederacy to defraud as is charged in the indictment.

From the testimony of the witness May Dempsey, it appears that one of the defendants, Gallagher, signed a statement, which if true and competent as to Greenberg and Bruhns, would incriminate them. This statement, however, was made by Gallagher alone, Greenberg not being present and yet the Court (pp. 104-105, Case) admitted this statement over objection of Greenberg's counsel. The Court, however (see Case, p. 152, 2nd par.) said that statement (which is the one under discussion) is applicable to Gallagher alone. Manifestly, therefore, the Court attempted to disassociate the statement from Greenberg, for the Court says further (see Case, p. 152, line 24), you are to eliminate any statement made by Gallagher which incriminated Greenberg, and we contend that the language in the Court's charge about incriminating Greenberg was prejudicial to the rights of this defendant.

The testimony of the witness Jagels (Case, p. 116, lines 35, *et seq.*) is the crux of the case according to the mind of the Trial Court. The testimony is as follows:

“Q. You had a conversation with him? A. I did.

“Q. What conversation did you have? A. He came in my office and as he came in the door I asked him to take a seat. I said to him, ‘Mr. Greenberg, why did you come into our organization and break it up?’ He made no answer to me and then I said to him, ‘Mr. Greenberg, do you know you have spoiled the entire future of this industry and my confidence in one of the best men I have in my organization, a man of whom I thought a great deal, a man who has been with me almost 20 years?’ He looked at me but he made no answer. Then I said to him, ‘Didn’t you have enough trouble in your own family with your own boy; why come into the family of these men and bring all this misery to women and innocent children?’ Then he sat down and collapsed and went into a heap in the chair in front of the window. Then he moved over to the other chair. He seemed to be completely overcome.”

Certainly there is nothing in this testimony that legally makes out a conspiracy to defraud and an overt act on the part of this defendant to consummate that conspiracy. Further in the testimony of the same witness (Case, p. 117, line 30) the witness says that the largest size coal was taken by Greenberg’s wagons. This, of course, was in the usual course of trade, Greenberg being a retail coal dealer, and yet if this testimony be damaging to Greenberg (lines 30 to 40, p. 117 and head of p. 118) as the Trial Court concluded, where is there any evidence of conspiracy to defraud plus an overt act in pursuance thereof?

Again (Case, p. 118, lines 8 to 22) taking the testimony of Greenberg for the sake of argument as an admission of irregularities, is there anything in his testimony which, if true, could connect this defendant with a conspiracy concocted with two others to defraud the complainant company?

At page 117, line 32, where the witness says "with these men," it will be noted that he does not even mention who they are, nor at any place on the preceding page of his testimony, which is considered by the Trial Court as being the only testimony that held Greenberg in this case, does the witness Jagels, who is the chief party in interest mention the co-defendants that are charged in the indictment, by name. It will also be noticed that an objection was made to the testimony, and a request that the testimony be stricken out, which was granted, because manifestly the statement of the witness Jagels at line 32, that Greenberg "had entered into a conspiracy with these men to put coal down, etc.," is a conclusion and is illegal evidence as against the said Greenberg.

That the admission in writing of Gallagher cannot be used against Greenberg, or Bruhns for that matter, is elementary. It is only necessary to quote a case decided in this Court to substantiate that position (see *State v. Doherty*, 86 Law, p. 525, at 536). "Nothing can be better settled than the main proposition that the declarations of one alleged conspirator cannot be admitted against his associates unless the conspiracy be established."

**(B) No overt act proven.**

The Grand Inquest of Hudson County, we must assume indicted these defendants upon the sworn testimony of someone. First, that there was a conspiracy to defraud. And secondly, upon the sworn testimony of someone that the said Greenberg did on October 7th, 1926, steal four tons of coal, and on the 28th day of October, 1926, did steal four additional tons of coal. This proposition too, must be argued negatively rather than affirmatively. This Court will look in vain through the testimony of each of the witnesses above mentioned to find one iota of evidence of that character.

The only evidence in the case is that on one occasion there were five hundred pounds short weight on a truck, whose driver the witness could not identify (Case, p. 98, lines 25 to 29), when this witness, who by the way, was an operative of a detective agency hired by the coal company, to inquire into the situation complained of was asked (Case, p. 99, line 10) "Q. How do you know, if it was not a case where the driver was not stealing coal unknown to his employer? A. I do not know, that is what we tried to develop." The testimony of this witness is the only testimony in the entire record that shows the slightest irregularity, and how unassuring and lacking in positiveness it is.

The indictment was predicated upon the larceny of eight tons of coal, and all that the State can show is a shortweight of one-quarter of a ton of coal. Is this the overt act required by the statute and the decisions of this State, and on top of this, the witness, who is the State's mainstay has to admit that he did not know whether or not this overweight was or was not a case of a driver's pilfering.

The testimony of Brophy is too much that of a detective in the moving pictures. It is unnecessary to argue about the lack of definiteness of the testimony of a man who will stand off at a distance and watch coal being delivered to a customer through a pair of opera glasses (Case, lines 11-21, p. 86).

If the complainant had enough evidence to go before a Grand Jury and prove *prima facie*, a conspiracy to defraud plus a larceny on two different occasions of four tons of coal, what became of this testimony at the trial?

There is no evidence in the case whatever that the shortweighing was the result of any plan or

scheme or confederation between Greenberg, Gallagher and Bruhns.

There is no overt act whatever proven in the case as alleged in the indictment.

There is no conspiracy whatever proven. The Court will find by reference to the indictment mentioned above that the defendant Greenberg is charged with bribing his alleged co-conspirators with money.

There is no competent proof of any such charge.

### POINT II.

**The Trial Court erred in refusing to direct a verdict in favor of the defendant Greenberg at the end of the entire case.**

If, as the Court said at page 152 of its charge mentioned above, that there was nothing in the case to connect the defendant Bruhns with any conspiracy, certainly the same thing is true of Greenberg, because the statement of Gallagher (see *State v. Doherty, supra*) not having any competency as to Bruhns, certainly had no competency as to Greenberg. The argument made under Point I, must of necessity be repeated and referred to in substantiation of Point II, which we here make.

After the entire case, however, the Court was in a better position as far as the parties were concerned, because it had had the advantage of hearing the testimony of this defendant, which was in direct conflict with the testimony of the witness Jagels, and further, which was substantiated by the testimony of the drivers Kaslo and Savitsky, as well as the testimony of the co-defendant Bruhns.

The State has solemnly alleged in its indictment (Case, p. 6, line 17) that the said Greenberg, as

part of the conspiracy, paid to Bruhns and Gallagher, in the making of this conspiracy, certain large sums of money to permit the said Greenberg to steal, etc., a large quantity of coal, and nowhere in the record is there a word of testimony about such conspiracy or such bribery as is alleged.

The State has charged (see Case, p. 7, Indictment, lines 26 to 33) that Bruhns and Gallagher did deliver to Greenberg a higher grade of coal at a price and cost of a lower grade of coal, and nowhere in the case is this charge upon which the indictment is founded proved or attempted to be shown in a legal fashion.

The testimony of the State's witnesses as contrasted with that of the witnesses for the defense is greatly weakened, and is not the kind of testimony, assuming even that a crime had been made out, upon which a conviction should be upheld. The witness Jagels testified that this conversation with Greenberg occurred in October, 1926 (Case, p. 146, line 26); that there was no one present except Greenberg and himself; that there was (line 30) no one present until the conversation was finished (line 34). This witness then changes his testimony, and said, "Mr. Cavanaugh came in when the conversation was about finished" (line 37). At page 148, State's witness Cavanaugh says this particular conversation occurred in November, not October (line 17). That Greenberg "would not say a thing" (line 25). That he tried to make conversation with him (line 26); that Mr. Bellis was at his desk (line 34); again testimony of Cavanaugh (p. 38, line 28), the witness testifies that Gallagher's statement was made on December 4th, 1926. Will the Court contrast this with testimony of the witness Jagels' (Case, p. 117, line 24) alleged conversation between Greenberg and Jagels, "I told him (Greenberg) that I had a statement of Gallagher's

\* \* \*," and turning again to page 146, the same witness, Jagels, says (line 26) that this conversation took place during the month of October, 1926, while the witness Cavanaugh (p. 154, line 12) says it was in November? 148, L 16,

We submit that this character of testimony is not very creditable in the face of the defendant's denial plus the corroboration which has been mentioned.

The Supreme Court in its opinion (Case, p. 161, lines 38 to 40 and p. 162, lines 6 to 8) bases the proof of one overt act upon the testimony of witness Brophy, citing the Record, page 72, line 14, etc., and page 73, line 22, etc. The testimony referred to by the Supreme Court will be found in the State of the Case before this Court on page 66, line 18, etc., and page 67, line 27, etc. In this we contend the Supreme Court erred, as an examination of the testimony referred to, considered in the most damaging aspect to the plaintiff-in-error, would indicate that there had been some discussion about the weight of the coal. Mr. Brophy contended it was five hundred pounds heavier than contended by the defendant-in-error. This is far from saying that the defendant-in-error had entered into a conspiracy to defraud the coal company of this amount of coal; and in the absence of a conspiracy proved, should not be taken as the proof of an overt act in pursuance thereof.

The other overt act, the Supreme Court stated (Case, p. 162, line 7, etc.), the defendant was charged with an inferior grade of coal when he actually received a higher grade of coal, and holds that the testimony of witness Brophy (Case, p. 73, line 25, etc.), establishes this overt act. The testimony referred to in the Court's opinion will be found in the present State of the Case on page 67, line 27, etc. The witness stated in answer to a

question that he noticed he had five hundred pounds more than the weight on the ticket. As stated before, in the absence of proof of a conspiracy and the possibility of a mistake occurring, it is entirely against the weight of the evidence to charge this as an overt act by the plaintiff-in-error.

The only other testimony connecting the plaintiff-in-error, according to the opinion of the Supreme Court, was the testimony of C. Henry Jagels, which will be found in the present State of the Case on pages 117 and 118. Certainly there is nothing in this testimony that legally makes out a conspiracy to defraud, and an overt act on the part of this defendant to consummate that conspiracy. This witness says that the largest sized coal was taken by Greenberg's wagons. This, of course, was in the usual course of trade, Greenberg being a retail coal dealer, and if this testimony be damaging to Greenberg, as the Trial Court concluded, where is there any evidence of conspiracy to defraud, plus an overt act in pursuance thereof?

Taking the testimony of Greenberg, for the sake of argument, as an admission of irregularity, is there anything in his testimony which, if true, could connect this defendant with a conspiracy concocted with two others to defraud the complainant company?

At page 117, Case, line 32, where this witness says "with these men," it will be noted that he does not even name who they are, nor at any place on the preceding page of his testimony, which is considered by the Trial Court as being the only testimony that held Greenberg in this case, does the witness Jagels, who is the chief party in interest, mention the co-defendants that are charged in the indictment by name.

The Supreme Court did not pass upon the point raised by counsel that the verdict was contrary to

the weight of the evidence. The testimony of the main witness linking Greenberg in this case is considerably weakened. The witness Jagels testified that this conversation with Greenberg occurred in October, 1926 (Case, p. 146, line 26); that there was no one present except Greenberg and himself (line 30); that there was no one present until the conversation was finished (line 34). This witness then changes his testimony and said, "Mr. Cavanaugh came in when the conversation was about finished" (line 37). At page 148, the witness Cavanaugh says that this particular conversation occurred in November, not October (line 17); that Greenberg would not say a thing (line 25); that he tried to make conversation with him (line 26); that Mr. Bellis was at his desk (line 34). Against the testimony of Cavanaugh (line 28, p. 38), the witness testifies that Gallagher's statement was made on December 4th, 1926. We submit that this character of testimony is not very creditable in the face of the defendant's denial, plus the corroboration of his drivers, Kaslo and Savitsky, and the testimony of the co-defendant Bruhns.

It is respectfully submitted from a study of the whole record in this case, *no conspiracy has been proved*, no overt act has been proved, and that none of the material elements of the indictment have been substantiated in the State's case, and that on the weight of the evidence as well, the judgment of the Court below should be set aside.

THOMAS J. BROGAN,  
Counsel of Plaintiff-in-Error  
Harris Greenberg.

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