

COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEW YORK,

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PART I.

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

EMERANTINE KINGROV and  
ARTH. CHROVNYK.

Before  
HON. JAMES P. HILGREN, J.  
and a Jury.

New York, January 24th, 1908, etc.

Indicted for Publishing a Libel.

Indictment filed October 24th, 1908.

A P P E A R A N C E S :

For the People, ASSISTANT DISTRICT ATTORNEY FRANCIS P. GANVAN.

For the Defense, E. A. SWITKIN, ESQ.

James E. Lynch,  
Official Stenographer.



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MR. SMITH: If your Honor please, before the jury is empaneled in this case, I respectfully ask the Court for a suspension of action in this case, until the determination of the civil suit. I desire at this point to inform the Court that the complainant in this case, who is the plaintiff in the civil action, has instituted an action against the respective defendants and a publishing company, in the sum of \$25,000 damages, wherein the material parts of this indictment are also alleged and to be threshed out in the civil court, and it does appear to me, your Honor, that this criminal action ought to be stayed until the determination of the civil suit.

While it is true that there is no law impugning the discretion of the Court, I will simply cite instances within my personal knowledge, where cases of that kind have occurred, and where the presiding Justice stated that it would look as if you were practically aiding the civil suit by endeavoring to try a defendant on a criminal charge arising out of the very same action. These are precedents I can state to your Honor.

COURT: Well, not in a case of this kind.

MR. GAY: If your Honor please, I have been here almost eleven years now and it is not my recollection that is the custom at all, unless there were additional

facts shown, or tending to show that the criminal law was being used for that purpose.

THE COURT: The public are interested here. This is a charge which leads to a violation of the public peace, and I do not think that in a libel case, that action would apply. If they were business suits, or something of that kind, that might be different.

MR. DANVAN: And sometimes in a railroad action or a negligence case, where there might be the same thing.

THE COURT: I must deny the motion.

MR. BHITKIN: I respectfully except.

(A jury was then duly empaneled and sworn.)

THE COURT: Gentlemen of the Jury, the Court will now take a recess until half-past eleven o'clock to-morrow morning, and meanwhile be very careful not to discuss this case among yourselves or with anyone whatever, and do not come to any conclusion concerning it until it is finally submitted to you by the Court for your consideration.

You may go now until half-past eleven o'clock to-morrow morning.

(The Court thereupon adjourned the further trial of the case until Wednesday, January 6, 1909, at 11:30 o'clock A. M.)

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New York, January 6th, 1909.

TRIAL RESUMED.

THE CLERK: All witnesses on both sides are excluded from the courtroom.

MR. SHITKIN: I shall ask that the opening of the District Attorney may be taken down by the stenographer.

MR. Garvan opened the case on behalf of the People as follows:

If your Honor please, and you, Mr. Foreman, and each of you, Gentlemen of the Jury, the defendants at the bar are accused of the crime of criminal libel.

It is claimed that during this past year the defendants were the editors and managers of a paper called "Svoboda", published in this city. That in an issue dated June 25th of this year, they published an article, libelous to a priest of the Greek Catholic Church, the Right Reverend Arseny, who had recently been promoted to be Superior of the Saint Tikhon Monastery, and had been made "Abbot" Arseny, and who had been appointed to Canada with this freshly extended power.

There was another paper called "Svit", published, which was the representative paper of the Greek Catholic Organization. The "Svoboda" or "Liberty" paper was a paper antagonistic to the claims of the religious attitude of the Greek Catholic Church.

They published an article which was about as follows, and if it transpires that my translation is incorrect in any way, it can be corrected.

MR. SMITHKIN: Are you going to read that?

MR. GARVAN: I am going to read from my translation. Then of course, in my opening, I can only say that they published an article in the Russian language which will be translated to you, and under which we claim that the defendants published an article accusing the Reverend Arseny --

MR. SMITHKIN: Pardon me. I shall object to the District Attorney in his opening stating any part of that alleged libel to this jury, until the admissibility of that is passed upon by the Court at the proper time.

MR. GARVAN: Well, we never could make any opening in any case if that was the rule.

MR. SMITHKIN: Oh, yes. A libel case is different from the usual case that we try here. That is the very essence of it, the publication.

THE COURT: The objection is overruled.

MR. SMITHKIN: Exception.

MR. GARVAN: (Continuing) In which article we claim that the defendants accused the Reverend Arseny of having been the father of a child by a girl who worked in a monastery outside of Scranton, Pennsylvania.

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It is claimed there was some celebration at the church, this article claims, and that the priest drove the girl home from the celebration, and that going through the woods he took advantage of her.

It is claimed that took place on, I think, June 19th -- July 29th, 1906, the dedication of the cemetery of the church at Simpson, Pennsylvania. This article claims it was on this day that the alleged intercourse with Mary Krinitzky is said to have taken place. A child was born on June 4th, 1907, some eleven months later than the alleged intercourse in this article. The difference in dates did not appear to the defendants at that time.

We will call the priest, who will tell you his relations with the woman were pure, and tell you the circumstances of the malice in this publication, and we will call the girl herself, who will give you the true name of the father of her child, and who will also tell you that the priest's actions towards her were in every way decorous and correct.

Under these circumstances, we will ask you to find the defendants guilty of criminally publishing malicious libel.

REVEREND CHANOVEZOV ARSENY was called and duly sworn as a witness on behalf of the People,

through Official Interpreter Bernhard.

MR. GARVAN: This is not the witness I called for. I want Vasily Ousharowsky. I want to prove the publication first. Step aside, please.

THE COURT: Tell that witness to remain outside until called again.

VASILY OUSHAROWSKY, being called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Bernhard as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q Where do you live? A 49 Fifth Avenue.

Q What is your business? A I am working for a lawyer now.

Q What is his name? A Rosenthal.

Q During the month of June of this year by whom were you employed? A I think I had an employment office at that time.

Q Did you have anything to do with a Russian Library?

A I kept a reading room, Kachkovsky's reading room.

Q Is that for Russian literature? A Yes, sir.

Q Now, I ask you if, on or about the 25th day of June of this year, you received this paper (indicating)? A That paper came to the reading room and I received it, by the man in charge of this reading room.

MR. GARVAN: I ask that this paper be marked People's Exhibit 1 for identification.

THE COURT: Mark it.

(Marked People's Exhibit 1 for Identification.)

Q I call your attention to page 5 of this paper -- and I ask you have the first two columns of that paper marked People's Exhibit A for Identification, as the article in question, and we can distinguish it in that way.

(Marked People's Exhibit A for Identification.)

Q (Continuing) I ask you if at the time you received that paper you read that article?

MR. SMITKIN: Before that answer is given I object to it, on the ground that it is incompetent, immaterial, irrelevant and in no wise binding on either of these defendants.

THE COURT: Well, unless it is connected with the defendants, it will be stricken out. I will overrule the objection at present.

MR. SMITKIN: I respectfully except.

A It was.

MR. SMITKIN: I ask that the answer be stricken out on the ground that it is not responsive.

THE COURT: Repeat the answer.

(Answer repeated by the stenographer.)

THE COURT: Repeat the question.

(Question repeated by the stenographer.)

THE COURT: Strike out that answer.

A Yes, I did.

Q Where is your reading room ? A 220 Third Street.  
Q In the City and County of New York? A Yes, sir,

MR. GARVAN: I now offer the paper in evidence.

MR. SHITKIN: I object to it at the present time,  
on the ground that it is incompetent, immaterial and  
irrelevant, not properly connected.

MR. GARVAN: I have to prove the publication of the  
article. I will prove the defendants' connection after-  
wards.

THE COURT: Unless it is connected with the defend-  
ants, it will be stricken out. I overrule the objection,  
for the present.

MR. SHITKIN: I respectfully except.

(The paper is marked People's Exhibit 1 in Evidence.)

MR. GARVAN: I now ask the Interpreter to read the  
article in question.

THE INTERPRETER: I wish to state here, your Honor,  
that this is dialect, and I cannot say I am an expert  
on that. It is Russian character, but the language --

THE COURT: Well, cannot you agree upon a transla-  
tion with the defence, Mr. Garvan?

MR. GARVAN: Well, I have a translation, I do not  
know who made it, but I suppose it is correct. I think  
if we take a few minutes we can perhaps agree.

THE COURT: Well, suggest that to the defence.

MR. CARVAN: I think we have agreed that our translations are practically the same. If there is any little difference we can adjust that afterwards with the aid of an expert, so that with the consent of the defendants I will read the translation of the article. There is a word at the end that either means "Dean" or "a benevolence", meaning a benevolent one, I suppose.

MR. CARVAN: (Reading) "In the last <sup>number</sup> ~~part~~ of the 'Ovit'- Ovit is the name of another paper -- "of June 18, was printed that the Superior of Saint Tikhon Monastery, Abbot Arseny, had been appointed to Canada with expressly extended authority. At the end of the article, the editor of that paper expresses his pious wish that the results of the Abbot will perfectly correspond to the abundance of his energy and zeal. On this occasion I would like to explain to the public what these results of the Right Reverend Arseny's work is, and in what direction that Abbot's energy lies. To that end I will tell you the following story, if you like to listen to it. Some time ago, on my return from my work, I found in my house a woman about twenty-three to twenty-five years old, who was staying with my wife. When I looked at her I noticed that her eyes were swollen on account of tears, and I began to question her, and this is what I heard. She is Mary Krinitaky, and she comes from Galicia. She came here,

not on account of wealth and abundance, but poverty, as any one of us. The girl, looking for her bread, happened to come to the Tear-Worshipping Monastery of Saint Tikhon in Canaan, Pennsylvania, to serve for the monthly salary of ten dollars. At the time she was there, occurred the consecration of the Orthodox Cemetery in Simpson, Pennsylvania, to which attended a large number of the Tear-Worshipping clergy, with Bishop Tikhon at their head. To this festival came Mary Krinitaky with others, servants of the monastery. When the whole ceremony was over, Abbot Arseny called this girl, Mary Krinitaky, and ordered her to return to the monastery by train, even providing her with the money for a ticket. However, after a minute, changing his mind, he told her to wait because she has to go together with him in a buggy. The girl, of course, could not disobey her rector. Still more, such a pious man as was the Abbot, and so she stayed. They returned together <sup>to</sup> the woods. Here Abbot Arseny forced the helpless girl, Mary Krinitaky, against her will. So this fatal night drive with the Abbot through the woods remained memorable for her whole life, for the unfortunate girl. Now began dark, sad days. A little later, the consequences of the night drive began to show. She was thrown out of the monastery, far from relatives, having no acquaintances, in a foreign country, having no place to put her head on, not knowing the language, feel-

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ing besides that she will become a mother soon, found herself in the streets. All those she appealed to turned her away as a rotten being. Then she, unfortunate creature, was employed by a Jew at Mayfield, Pennsylvania, where she gave birth to a boy, who was baptised under the name of Andrew. From the very day he came to this world, little Andrew was obliged to wander among strangers, because his mother had to work hard to support herself and her baby. Now, this boy Andrew is nine months old and has already been left successively with eight different families. Now, the mother came to my wife, and on her knees and her eyes full of tears, begged my wife to take that baby boy, promising to pay us her whole monthly salary of nine dollars. And so she goes all through Mayfield, begging everyone for her son, and confessing her sins before all. To my advice that she should give her child to the home in the same Saint Tikhon's Monastery, organized for children, she answered that she had asked Abbot Arseny already four times, but he did not pay any attention to her request, but on the contrary he said, 'I would receive all other babies but yours, because it is from there. People would say that we have a baby shop in the monastery'. With regard to this monastery, to be accurate and to prevent at once all possible evasion by lying, I give the address of the unfortunate woman, M. Krinfaky,

Care of Mandalson, Mayfield, Pennsylvania. So this is how the Tear-Worshipping Workers appear in daylight, without masks. In papers, to blind the people, they are holy and godlike, they are so holy and so godlike that you could send them alive even in their shoes to heaven, but in reality they are rottenness, dirt and lousiness to the last degree. This is not surprising, for these people for the most part are uneducated and benighted, ordained without any selection, just to own the "business".

Signed, Parishoner of Mayfield."

MR. GARVAN: You may cross-examine.

CROSS-EXAMINATION BY MR. BRITKIN:

Q Now, what is your last name? A Vasily Ousharowsky.

Q Now, Mr. Ousharowsky, you are a lawyer's clerk, is that it, at the present time? A Yes, sir.

Q You speak no English in this lawyer's office? A He mostly has Russian cases there.

Q How long have you worked for this lawyer whose name you gave as Rosenthal? A About two months.

Q Where is his office, 308 Broadway? A Yes, sir.

Q Elias Rosenthal, is it? A Elias Rosenthal.

Q What was your business before you went into this law office? A I kept an employment office.

Q That is, by that you mean supplying servants, domestics for families? A Yes, sir.

Q Now, where was your place of business? A 84 Third Street.

Q When was that, that you were engaged in this business of keeping an employment agency? A I closed it up in June, because I was robbed there, and kept away from it for six months.

Q In June of what year did you close this place? A This year, 1908.

Q How long had you been in that business? A Six or seven months, about.

Q Did you conduct that under your own name? A Yes, sir.

Q Licensed in your own name? A I had a partner in that business.

Q Do that the license was in the partner's name? A Both names, mine and the partner's, Jombar & Ousharowsky.

Q That is the partner's name, Jombar? A That is the firm name, Jombar and Ousharowsky.

Q Now, you discontinued this business in June, 1908; what did you do after that? A I have not worked after that, but then I got employment with Rosenthal.

Q How long had you been out of work before you received employment with Rosenthal? A I cannot tell exactly, but probably about three months.

Q Now, then, before you had discontinued your business, you say you were engaged a number of months, is that right, in this employment office? A Yes, sir.

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Q Now, where is this reading room located that you have spoken of? A 220 Third Street.

Q Is it 120 or 220? A 220.

Q Now, who conducts this reading room? A It is kept by an organization, and there are people who are elected to take care of this reading room.

Q Do you belong to this organization? A Yes, I was the organizer of this society.

Q Is this reading room still in existence? A Yes, it is still in existence. There will be a meeting --

Q (Interrupting) At the same place? A The meeting will probably take place at 347 Fourteenth Street, in the Russian House, so-called.

Q What particular work did you do in this reading room? A My duties were to look after the reading room and see that the papers and all the books were in good condition.

Q Now, were you the only one that took care of this reading room in the month of June? A The president, Jombar, was also there.

Q Well, was Jombar there every night? A No, he was not.

Q Were you there every night in the month of June? A Only on Saturdays and Sundays I was there. I had to work the other part of the week.

Q Then you personally did not receive a copy of "Swoboda", did you, of June, 1908? A The reading room received it, and I took it.

Q Was it opened yet.

Q How many "Swoboda"? A received that

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Q Was it unwrapped when you received it? A It was not opened yst.

Q How many other papers had you received that day besides "Uvoboda"? A I don't remember exactly how many copies wa received that day.

MR. GARVAN: (Addressing the Interpreter) Tell us what that means, that word (indicating on People's Exhibit 1 in Evidence).

THE INTERPRETER: That means in Russian "reading room" and "Kach" was the abbreviation for the name of the reading room.

MR. GARVAN: (Addressing the Jury) That is a Russian word for "reading room", and "Kach" is the abbreviation of the name of the reading room at 220 East Third Street.

THE COURT: You will occupy some time with your cross-examination?

MR. SHIRKIN: Yes, sir.

THE COURT: I have an engagement at one o'clock.

MR. SHIRKIN: Their holiday starts in at sundown to-night, and last Thursday, for to-night is their Christmas Eve, and to-morrow is their Christmas. Now, I told Mr. Garvan of these facts before the case proceed- ed to trial, and asked him to adjourn it until after the holidays, which they, as well as the witnesses for the People, religiously observe.

MR. CANVANI: Well, I think we can arrange that satisfactorily. It is a case in which the jury can remember the evidence very clearly so far, or have it brought back to their minds. We can adjourn the case at the close of to-day's session, and then bring the jury back on Monday next, and in the meanwhile proceed with our regular calendar.

THE COURT: That will be agreeable, I suppose. The Court will now take a recess until two o'clock.

Gentlemen of the Jury, be careful not to discuss this case among yourselves, and do not come to any conclusion concerning it until it is finally submitted to your consideration.

(The Court thereupon took a recess until 2 o'clock P. M.)

AFTER RECESS.

TRIAL RESUMED.

VASILY OUBHAROWSKY, a witness for the People, resumes the witness-stand.

CROSS-EXAMINATION CONTINUED BY MR. SHITKIN through official Interpreter Bernhard.

Q Now, Mister, did you read the articles in any of the other papers that you had received that day? A What articles do you mean?

Q You have stated that you received other newspapers

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on that day besides "Swoboda," the name of which you could not tell the Court and Jury. Now, I ask you whether you can tell this jury whether you had read any other article in any other of those newspapers that you had received on that day?

A I read all the papers every day.

Q Now, could you tell us the name of any newspapers whorsin you read any other article besides "Swoboda"? A "Ovit" and "Trovda".

Q Well, now, the "Ovit", that is a Russian publication, isn't it? A Yes, sir.

Q That is not a Ruthenian publication, is it? A It is a Russian paper, in so-called Little Russia.

Q Well, I mean, is that in the Ruthenian language or Lithuanian? A It is written the same as this paper, only in the phonetic spelling.

Q Well, now, Mr. Witness, you say you read every article in every newspaper that day. Is that correct, that you had received? A I cannot state exactly that I have read every article in every paper, but I have looked at every one of the papers that day.

Q Now, you had been receiving "Swoboda" right along, hadn't you, before that day? A We usually got the paper right along, but some of the copies may have been gotten lost, but we were getting it right along. The subscription is paid for by the library.

Q When was your attention first directed to the article that has been indicated to you by the District Attorney?

MR. GARVANI: When did he first see it?

MR. BRITKIN: You understand me, don't you, Mr. Interpreter? Please put my question as I put it.

A My attention was called to this paper the same time when I took it in my hands, when I received it at the library.

Q I ask you when the article that has been shown you by the District Attorney was first directed to your attention?

A At the time when I received the paper, when I read it, I realized what that meant.

Q I ask you again, when was the first time that that article referred to by the District Attorney was directed to your attention? A I cannot state the exact date. I think it was in June. As I said before, as soon as I got hold of the paper and turned to the page 8, I noticed this article about Father Arseny, either the 25th or 26th.

Q You know Father Arseny, don't you? A Yes, sir; I do.

Q You are one of his parishioners, are you not? A No, I am not; I am only personally acquainted with him.

Q I see, you are personally acquainted with him, is that right? A I know him as a priest.

Q How long had you known him before the day that you saw you saw this article?

MR. COURT: Now, repeat whatever he says, if you under-

stand him. Do you understand him?

THE INTERROGATOR: I do, perfectly, your Honor.

THE COURT: Well now, put the question again.

BY THE COURT:

Q How long had you known him prior to June 25th? A About a month.

BY MR. SHITKIN:

Q When, after you had read this article, was it that you next saw the Reverend Arseny? A I saw him about a hundred times.

Q Well, can you tell us as near as you can recall now, when was the first time that you saw him after you read this article? A About the second or third Sunday after that.

Q Where did you see him? A In the church on 97th Street.

Q Have you ever been to Mayfield, Pennsylvania? A I was not.

Q Have you been to Oliphant, Pennsylvania? A No.

Q Have you been to New Canaan, Pennsylvania? A No.

Q Did you direct the attention of the Reverend Arseny to what you had read when you first saw him, yes or no? A I did not, because I was ashamed to talk to him about such a thing.

Q You have kept this newspaper, have you, in the files of your reading room right along, have you? A This paper is always in the library. Nobody takes it away.

Q Well, if you know, who took it away to bring it to court to-day? A I did.

Q Has it been on the files of your reading room up to the present day? A Yes, sir; the paper was in the library from the time it came.

Q Now, do I understand you correctly to tell this Court and Jury that you had not spoken nor directed the attention of the Reverend Arseny to what you had read in this paper, is that correct? A I only spoke to him at the time when I was called as a witness.

Q When was that? A About two or three weeks ago.

Q Where? A On 97th Street.

Q Was the Reverend Arseny at any time at your reading room? A No, he was not. He is not a member of it.

Q Are you a witness for the Reverend Arseny in his civil case in the Supreme Court? A No, I am not.

Q Have you been to the office of Kilroe & Schwartz, Number 6 Beekman Street? A I was not.

Q Do you know whether there was a civil action pending by the Reverend Arseny for damages in the Supreme Court? A I know now.

Q Now, who asked you to come to 97th Street two or three weeks ago? A I was asked already here while I was in court. Dr. Halowitzky, or Father Halowitzky.

Q Now, was it a Father or a Reverend A. Halowitzky

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that asked you to go to 97th Street? A Yes, he did.

Q Where did you meet the Reverend Malowitsky? A I met him in the Court House, and he asked me whether I have read the article in that paper, and I told him yes.

Q Now, how did you come to meet him in the Court House?

A Because I come here, and I knew that there was some Russian case pending here.

Q Now, just look at me, Mr. Witness. How did you know there was a Russian case pending here? A Because I knew there was this kind of a case in court. I know mostly all of the Russian cases that are pending through Mr. Rosenthal.

Q Did Mr. Rosenthal tell you this case --

MR. OARVAN: I object to the length of time consumed. This boy had testified to the fact of receiving this paper and reading it. I think we have spent now an hour. The paper bears his address and he has just testified to his having read it, and he has spent an hour cross-examining him.

MR. SMITKIN: If you object to it, the question is withdrawn.

Q Now, you say you have known the Reverend Arseny a month before this alleged publication. You have had a good opinion of him, haven't you?

MR. OARVAN: That is objected to. We do not care whether he has a good opinion or a bad opinion of him.

Objection sustained. Exception.

Q Has your opinion of the Reverend Arseny changed since the reading of that article?

MR. GARVAN: That is objected to. This is not a civil suit for damages.

THE COURT: Objection sustained.

MR. SMITHIN: I respectfully except. That is all.

EDWARD A. DELANEY, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q Mr. Delaney, where do you live? A Carbondale.

Q Carbondale, Pennsylvania? A Carbondale, Pennsylvania.

Q And what is your profession? A Lawyer.

Q Admitted to practice under the laws of the State of Pennsylvania? A Yes, sir, in all the courts.

Q And subsequent to the publication of the alleged article in the alleged paper "Swoboda", were you retained by anyone in that connection? A Subsequent -- I was retained --

MR. SMITHIN: I object to the form of the question, on the ground that it is incompetent.

Q Subsequent to June 26th, 1908? A No, sir.

Q You were not? Were you retained prior to that time?

A No, sir; it was after that.

Q Well, th  
A Oh, yes, it

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Q Well, that is what I say, subsequent to June 25th?  
A Oh, yes, it was after that.

Q Subsequent to June 25th? A Yes, pardon me.

Q And by whom were you retained in the matter? A By the Reverend Arseny Chahovsov, the priest that was libeled, or supposed to be?

MR. SWITKIN: I ask that the latter portion of it be stricken out.

MR. CARVAN: Consented to.

THE COURT: Strike out the latter part.

Q And in consequence of that retainer, did you go to New York City? A I did.

Q And did you visit any offices in New York City? A I visited the office of the "Swoboda", or "Liberty", at 184 Hudson Street.

Q In the City and County of New York? A City and County of New York, on the 29th day of June, 1908.

Q And were you accompanied by anyone at that time? A I was accompanied by E. P. Kilroe.

Q That is Kilroe? A Yes, sir.

Q And who is Mr. Kilroe? A He is an attorney in the Temple Court Building with Mr. Schwartz.

Q In other words, I assume that you retained a New York attorney to assist you when you came here? A By instruction of the Russian Bishop.

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Q Now, when you went into the office, did you see anyone in that office? A I did.

Q And whom did you first see? A I saw Mr. Kirosov.

Q And which one of the defendants is Mr. Kirosov? A The one next to Mr. Snitkin.

Q Was the other defendant, Gurkowskys, or did you see during your visit at all Anthony Gurkowskys in those premises?

A Yes, sir.

Q Did you have any conversation when you first went in there with the defendant ~~Gurkowskys~~ Kirosov? A I did.

Q Where did you first meet him? A I met him at the railing. He met me at the railing, rather.

Q What did you say to him and what did he say to you? In the first place, did you have anything with you? A I had a copy of the paper that Arseny had given me.

Q Will you tell us -- I cannot remember which one -- can you tell us which one of these three it was (indicating)?

A It is marked. I think that in the paper (indicating).

MR. GARVAN: Now, I ask to have this marked People's Exhibit B for identification.

(It is so marked.)

Q You say you had this paper with you? A Yes, sir; I am pretty positive that was the paper.

Q That is your best recollection? A Yes.

Q Now, what did you say to Mr. Kirosov when you first went in there? A I told him my mission.

Q No. You did not say, "I came here on a mission"?

A I handed him my card and told him who I was, and that I was an attorney in the employ of the Reverend Arseny, and that I came to his paper to have the article retracted.

Q Did you show him the paper? A I showed him the paper.

Q Showed him the article? A The article.

Q That is, the article on page 5 of this paper? A In that paper; yes, sir.

Q What did you say to him about that article? A I told him we wanted a retraction of that article, as it was very damaging, or words to that effect, to the priest, Father Arseny, and he replied that he would not retract until he had seen his counsel, and he said that it was true, the contents of the paper he said were true, and that they knew or in a few days would be in the possession of proof of its truth.

Q Did he say who he was? A He said he was the manager, and he gave his name as Kirozow. He did not give his first name -- I don't think he did.

Q Now, then, go on? A Then he went to the editor over at the desk. In the meanwhile --

MR. SMITKIN: Now, one moment.

MR. CARWAL: Oh, we will strike out the word "editor".

Q To whom did he go? A He went to the man second from Mr. Smitkin there.

Q That is the other defendant Curkowakys? A I don't know what his name is, and they talked in a dialect that I did not

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understand, or a language that I did not understand, and he came back to me and again said that they would not retract until they had seen their counsel, and they produced what he said was the original article, but would not tell us who wrote it.

MR. SMITKIN: That I object to.

Q Just say what he said. He produced the article?

A And said it was true; said it was the original article sent to them by the correspondent.

Q And did you ask him who the correspondent was? A I did.

Q What did he say? A He said he would not give us the name at that time. I think it was Mr. Kilroe asked that, in my presence and in the presence of the two men.

MR. GARVAN: I now offer this paper in evidence, that is, the article in this paper which he says he showed to the defendant at that time.

MR. SMITKIN: We object to it, on the ground that at the present time it is incompetent, immaterial and irrelevant, and not binding upon either of the defendants.

Objection overruled. Exception.

(Marked People's Exhibit 2 in Evidence.)

Q Now, did you then produce anything in there?

MR. SMITKIN: I object to the form of the question.

THE COURT: Well, what else did he do, if anything?

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Q Well, what else took place? A After that I talked with some helper or some young man in the office, I don't know who he was, and Mr. Kirosov noticed that we were talking, that I was talking --

MR. SWITKIN: Never mind, now.

Q Well, what did Mr. Kirosov do or say? A He said that any information I wanted I should get it from him, and I bought a paper from him then and paid him three cents for the paper, as I remember.

Q And was that a copy of the same paper? A A copy of the same paper.

Q Now, did you go back the next day? A No.

Q You never went back? A No.

Q That was your one and only visit? A That is all.

Q And is that the only time you ever had any interview with either of these two defendants? A That is all.

MR. GANVAN: You may cross-examine.

CROSS-EXAMINATION BY MR. SWITKIN:

Q Mr. Delaney, you say that you are a lawyer? A Yes.

Q And have acted for the person who was libeled, or for the priest about whom at least the article has been written? A Yes, sir.

Q You acted for him in Pennsylvania? A Yes.

Q And then coming on to New York, you retained the firm of Kilron & Schwartz? A Yes, sir.

Q Do you know that in the Supreme Court

Q Do you know that A I think it has not

Q Well, aren't you positive it has not.

Q Well, yes, then

Q Now, you say that tell you exactly. I

publication of that was the Saturday before or the 29th, or there

BY THE COURT:

Q The last Saturday BY MR. SWITKIN:

Q Well, now, was the priest, and in Pennsylvania you came to New York

Q And that you know the name of it?

Q Yes, that is A Yes, sir.

Q Did you observe had been? A I think I cannot remember.

Q The name of

Q Do you know that the Reverend has a civil suit pending in the Supreme Court for damages? A Yes, sir.

Q Do you know that that action has not yet been tried? A I think it has not.

Q Well, aren't you sure about it? A Yes, I am pretty positive it has not.

Q Well, yes, that it has not been tried? A Yes.

Q Now, you say your retainer dates from June? A I can tell you exactly. I came to New York on Sunday after the publication of that article, which was on the 26th, and it was the Saturday before that. It was about the 28th of June or the 29th, or thereabouts.

BY THE COURT:

Q The last Saturday of June, was it? A I think so.

BY MR. SMITH:

Q Well, now, we have it that you are in the employ of the priest, and in pursuance of your retainer as a lawyer, you came to New York, is that right? A Yes, sir.

Q And that you went to this publishing house -- do you know the name of it? A The "Gwoboda" or "Liberty", I think.

Q Yes, that is the name of the publication or newspaper? A Yes, sir.

Q Did you observe any other name at this office where you had been? A I think there was the name of a corporation. I cannot remember.

Q The name of a corporation? A I think so.

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Q Would you recall the name if I read it to you? Was it the Ruthenian Publishing & Exchange Company? A I am not sure, Mr. Snitkin. I could not swear to it.

Q Do you believe it is called the Little Russia National Union of America? A I only know it as the "Ewoboda" or "Liberty", I think, Mr. Snitkin.

Q Now, when you paid your first visit to this newspaper office, you were accompanied by Mr. Kilroe? A Yes, sir.

Q And the Reverend Arseny was not with you? A No, sir; he was not in New York with me.

Q And the first person that you had seen in the office, you say, was Kirozow, this defendant? A Yes.

Q Mr. Kilroe was there all the time that you had, if you did have any conversation, with this defendant? A He was there all the time.

Q Now, what you have testified here on your direct examination, was that the substance of what conversation you had with this defendant, or did you give it to us literally?

A We were not there very long. I think I gave it to you literally.

Q You think you did? Now, let us go back to the 29th of June. Tell the Court and Jury what was the first thing you said to this defendant Kirozow when you first went in there?

MR. CANNON: We might clear up something. The question of date is important. The 28th was Wednesday.

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Q Would you mind, Mr. Delaney, telling the Court and Jury, if you please, as near as you can remember, what was the first question you put to the defendant Kirozow? A I asked if he was editor or manager of the paper, or where the editor or the manager was.

Q Yes? A And he or someone else said that he was the manager.

MR. SMITH: Now, that I object to and ask that the answer be stricken out.

Motion denied. Exception.

Q Now, you have stated that he, or someone else, said he was the manager, indicating the defendant Kirozow. Now, are you certain that the defendant Kirozow said that he was the manager? A Yes, he repeated that several times, that he was the manager, during our stay there.

Q Well, after you asked for the manager and finally he was indicated to you, or you say he said he was the manager, what was the first thing you said to him concerning this article? A I told him that my business, my mission, was to get a retraction entered in his paper of the article, and showed him the article.

Q Well, just tell us all that you said to him. This is the substance of what you said, isn't it? What you are giving us now? A Yes.

Q I want more than the substance. I want the jury to get the substance, but I want you to give us the entire story.

A Well, I asked him for a retraction.

Q Was that the first thing you said to Kircow, or whatever you mean? A I told him what my name was, and I think give him my card, told him where I was from and what my business was there.

Q But tell the Court and Jury what you said your business was there? A To get a retraction.

Q Is that what you said? A Yes.

Q "My business here in New York is to get a retraction?"

A Yes, sir.

Q Sure about that? A Yes.

Q Well, did you use the language I am using to you in my question? A To get a retraction, that is the words I used.

Q Did not use "My business in New York is to get a retraction"? A I did not use the words "My business in New York".

Q Well, that is the way I asked you, whether you used the words I did? A I don't think I used the word "New York". I told him I was there to get a retraction.

Q You told him, didn't you, that you were looking out for the legal rights of the Reverend Arseny? A No, I told him that it was a bad article to print about a priest.

Q I see, did you use those words you have just stated?

A I think I used the words "damaging article to write about a priest".

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Q Instead of the word "bad", you used the word "damaging"? A Or a word to that effect.

Q Now, after you had said to the defendant that this was a damaging article to write about a priest, you say he told you he had the original article? A Yes.

Q Well, just look at this and state if that is the original article (indicating)? A He did not let us see the original article. He would not let us see the article.

MR. SMITH: I ask to strike out the latter part of the answer "he would not let us see".

THE COURT: Well, he had already said he did not let him see it.

A (Continuing) I did not examine the article. He would not let me, so I would not know.

Q All right. Did the defendant Kircow tell you that he had, or there was in that office, that ~~xxx~~ original article?

A Yes.

THE COURT: Well, he stated it. You must avoid repetition. That is in evidence, that he stated that the defendant told him he had the original article.

Q Now, suppose I ask you now, Mr. Delaney, if you had been in this office more than once, what is your answer to that? A No.

THE COURT: Well, do not make any suppositions. Just put a question.

Q Well, this is THE COURT

Q Well, had you A No, sir; never.

Q Is it not a for a retraction, the it", or "We will be this woman as to who

Q He did not my presence.

Q Now, at that the newspaper, did

Q But in spite one from this defend

Q For the pur naturally? That wa it?

THE COURT MR. SMITH

state of mind.

THE COURT purchasing it.

Q At this time had a copy of it in your mind, or the

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Q Well, this is a fact --

THE COURT: Strike out "This is a fact".

Q Well, had you been in this office more than once?

A No, sir; never.

Q Is it not a fact that after, as you say, you had asked for a retraction, that this defendant said, "We have an affidavit", or "We will be in position to obtain an affidavit from this woman as to what occurred in Mayfield"? A No, sir.

Q He did not say that? A No, sir; not to me, nor in my presence.

Q Now, at that time, Mr. Dalaney, you had a copy of the newspaper, didn't you? A Yes, sir.

Q But in spite of that, you went and purchased another one from this defendant directly? A Yes, sir.

Q For the purpose of predicated the criminal suit, naturally? That was present in your mind at that time, wasn't it?

THE COURT: Well, ask him what his purpose was?

MR. SMITH: I have a right to show the witness's state of mind.

THE COURT: No, ask him what his purpose was in purchasing it.

Q At the time you purchased that newspaper, although you had a copy of it in your possession, the object present in your mind, or the motive at that time in your mind was for the

purpose of laying foundations for the criminal prosecution?

A No, sir; not necessarily so. We were for to get a retraction, to justify the priest, so the priest could go back to his parish at Mayfield. I went there absolutely for the purpose of a retraction. We did not --

Q (Interrupting) Now, pardon my interruption --

THE COURT: Now, let him answer your question. Your question was very long, and when you put your questions in the form you do, you should wait for the answer.

MR. SMITH: I object to the witness's volunteering information.

THE COURT: You may move to strike out his answer, if it is not responsive. Let the stenographer repeat the question.

MR. SMITH: Well, the question is withdrawn.

THE COURT: No, repeat the answer.

(Answer repeated by the stenographer.)

MR. SMITH: Now, I ask that all that testimony given by this witness be stricken from the record.

THE COURT: Motion denied. Put another question.

MR. SMITH: I take an exception.

BY MR. SMITH:

Q At the time you came to the office of this publication, you knew that it was necessary, in order to predicate criminal prosecution for libel, you knew that it was necessary to

prove the public but --

Q Yes, and paper? A No, sir

Q That is

Q Well, when you had one?

we were not satisfied we had, and I went

the Cathedral building, and I wanted

with me, and we

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Q You saw

time you came

never present

defendant for libel

Q What

prove this publication, didn't you? A Why, as a lawyer, I did, but --

Q Yes, and that is why you bought the other copy of the paper? A No, sir.

Q That is not so? A No, sir.

Q Well, why did you want another copy of the paper when you had one? A For this reason, we were to get a literal -- we were not satisfied with the translation at that time that we had, and I wanted a paper for the Reverend Halowitsky at the Cathedral here in New York. He said he could translate it, and I wanted the other one to bring back to Pennsylvania with me, and we had no idea of the criminal procedure that time. In fact, the priest did not want criminal procedure, because he was in Canada at that time.

MR. HUNTZMAN: I ask that the latter portion of that answer with reference to "The priest did not want" be stricken from the record.

MR. DARVAN: I consent to it. It does not make any difference.

THE COURT: Yes, strike it out.

Q You say now that there was -- you say now that at the time you came to the office of this publication, there was never present in your mind the idea of prosecuting this defendant for libel? A I did not say that.

Q What was present in your mind when you came to his of-

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file? A A retraction was the whole reason that we went there. I think that I told him, the manager, that it was a very serious matter, and that retraction would be much more desirable than criminal prosecution. I might have intimated that to him, or --

Q Pardon me; go ahead? A That is all.

Q Did you use the words "criminal prosecution" to him?

A "Then to go into the courts", I think that was the term I used.

Q That is it, "to go into the court"? A Yes.

Q Now, you were instrumental in causing the arrest of these defendants, weren't you?

THE COURT: Well, that is a statement. Put a question.

Q Were you instrumental in causing the arrest of these defendants? A I think they were instrumental in it.

Q Well, you helped to arrest them, didn't you? A No.

Q You formulated the complaint? A What do you mean by that?

Q You understand my words, don't you?

THE COURT: Well, he asked you what you meant by it.

MR. SMITKIN: Well, he is a lawyer. He knows what I mean by formulating a complaint.

MR. CAJWAN: I do not think I would.

MR. SMITKIN: Oh, yes, you would, if you were on that witness-stand.

Q Well, as long as you do not understand my question, I will withdraw it. A All right.

Q You were in New York City all the time after your re- tainer until the arrest of these defendants? A Oh, no, no.

Q Very often, though? A No.

Q At intervals? A I did not come back to New York in regard to this until, until the meeting of the Grand Jury, not the meeting for the indictment, when that was found, but the meeting prior to that, at which time our case did not come before the Grand Jury.

Q So that you also appeared as a witness before the Grand Jury? A Yes, sir.

Q Have you known the priest before you were retained by him? A Yes, sir.

Q How long had you known him? A Probably three years. Maybe a little longer than that. Three years or thereabouts.

Q You have had a good opinion of him, haven't you? A Very good.

Q The publication of this article has not changed your opinion of him? A Not a bit.

MR. SMITKIN: That is all, sir.

REVEREND OKANOVEOV ARBENY, a witness recalled on behalf of the People, testified as follows:  
BY THE COURT:

Q Do you speak English? A A little bit.

BY MR. OARVAN:

Q Would you rather have an interpreter? A Yes, sir.

THE INTERPRETER: He says he would rather have an interpreter.

THE COURT: But you understand him?

THE INTERPRETER: Yes, your Honor.

DIRECT EXAMINATION BY MR. OARVAN:

Q Father Arseny, how old are you? A (In English) Forty-two years.

Q Where were you born? A In Russia.

THE COURT: Well, he had better either speak in English or Russian now.

A (Repeated through Official Interpreter Bernhard) In Russia.

Q (Through the Official Interpreter) You are a priest of the Greek Catholic Church? A Yes, sir; the Russian Orthodox Church.

Q That is the official title, the Russian Orthodox Church, and how long have you been a priest of the Russian Orthodox Church? A Going on twenty-two years, since 1937.

Q And were you ordained in Russia? A Yes, sir.

Q And how long ago did you come to this country? A In this January, six years.

Q When you first came to this country in January, six years ago, where were you first stationed? A My first parish was in Troy, New York.

Q And how long?  
A A year and a half.

Q And from where?  
A Mayfield, Pennsylvania.

Q Did you have anything to do with an institution?

Q And how long?  
A A couple of years.

Q And how long in Pennsylvania?

Q And where did you go to Canada?

Q In what place in Canada?

Q To take care of the parish in Canada?

Q And what was your appointment?

Q Appointed?

Q And was it a permanent appointment?

Q Where was the Catholic Church?

Q And how long were you stationed in Troy, New York?  
A A year and a half.

Q And from Troy, New York, where were you situated?  
A Mayfield, Pennsylvania.

Q Did you have a parish there, or were you connected with an institution? A A parish.

Q And how long did you, or were you, a pastor, or were you a curate? A I was the rector of the church.

Q And how long were you rector of the church in Mayfield, Pennsylvania? A Over four years.

Q And when you left the church in Mayfield, Pennsylvania, where did you go? A In the month of June, 1908, I was sent to Canada.

Q In what capacity? A To take charge of all the Russians in Canada.

Q To take charge of all the Orthodox Russian Catholics in Canada? A Of all the Orthodox Churches in Canada.

Q And what part of the month of June was that? A I was appointed about the 14th of June, and I left about the 30th.

Q Appointed about the 14th of June? A Yes.

Q And was your appointment made public at that time?  
A Yes, sir.

Q Where did you live, while you were rector of the Catholic Church or Russian Church, in Mayfield, Pennsylvania?

A In the rectory

Q Was there yourself.

Q You built

Q Where was

Q How far is

Q Did you

Q How far

Q Now, was

Q You built

Q And what

A Yes, sir.

Q How large

Q And how

Q Were the

A In the rectory in Mayfield, Pennsylvania.

Q Was there a monastery near there? A No. I built that myself.

Q You built what? A The monastery.

Q Where was that situated? A South Canaan, Pennsylvania.

Q How far is that from Mayfield, Pennsylvania? A About ten miles.

Q Did you ever live at that monastery yourself? A I was considered the Superior of that monastery, and I was there once in a while for a couple of days.

Q But you never lived there permanently? A No.

Q Now, was there an institution for children connected with the monastery? A I built an orphan asylum right there near the monastery.

Q You built an orphan asylum near the monastery? A Yes.

Q And what was or did the monks who lived in the monastery look after the orphan asylum; was that the object of it?

A Yes, sir.

Q How large an orphan asylum was it that you had there?

A For sixteen or seventeen children.

Q And how large was the monastery, how many monks were in it? A It varied sometimes, but now we have seven people there.

Q Were they working monks, or praying monks? A There

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is a prayer every morning and after that they do some work; they work on a farm.

Q Now, do you know Mary Krinitaky? A I do.

Q Did she ever work, either in the orphan asylum or in the monastery? A She worked in the orphan asylum.

Q And what position did she occupy in the orphan asylum? A Just as a domestic.

Q And do you know what the date, or have you looked up and found out, or do you know of your own memory, what the date was she came to work there? A Approximately it was in May, 1906.

Q Approximately in May, 1906; and approximately do you know how long she worked in the orphan asylum there? A Up until October, 1906. Up to November or the end of October; I don't know exactly.

Q Of the same year, 1906? A Yes, sir.

Q Did she work there at all during the year 1907? A No.

Q Do you know what became of her after November, 1906?

A She worked for a man named Mandelson, in Mayfield, Pennsylvania.

Q Now, do you remember the dedication of the Simpson Cemetery? A I do.

Q Was that a cemetery organized by you, established by you? A I was supervising it only. It was fixed up after I had organized the church there.

Q Now, do you remember the date of the dedication of that

cemetery? A The

Q And that was of Orthodox Russian

Q Now, after that, on, at that time, asylum? A Yes,

Q And did she have servants of the institutions? A On the

one of the priests BY THE COURT:

Q Called when the dedication took place.

Q Well, call did she attend the BY MR. BARWAN:

Q And the name was lovsky.

Q When you mention, you mean

Q Yes, not mention at the cemetery

Q And did

Q And how

cemetery? A The 29th of July, 1906.

Q And that was a cemetery designed to receive the remains of Orthodox Russian Catholics? A Yes, sir.

Q Now, after the ceremonies on that day, did you see -- Oh, at that time, was Mary Krinitzky working at the orphan asylum? A Yes, sir.

Q And did she attend the services, together with other servants of the institutions, of the Russian Catholic institutions? A On that occasion she was called by the wife of one of the priests to assist in receiving the guests.

BY THE COURT:

Q Called where? A Simpson, the place where the dedication took place.

Q Well, called to the ceremony at the cemetery there; did she attend the ceremony or not? A Yes, sir.

BY MR. CARVALL:

Q And the wife of which priest was it? A Alexis Vogoslovsky.

Q When you say attended to assist in receiving the guests, you mean as a servant? A Yes, sir.

Q Yes, not socially, as it were. Now, after the ceremonies at the cemetery, did you see her? A I did.

Q And did you take her home? A Yes, sir.

Q And how far was the cemetery from the monastery?

A Approximately seven miles.

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Q Now, did anything wrong take place between you and Mary Krinitaky on that day? A No.

Q Did you, while returning together through the woods, force Mary Krinitaky against her will, on that day? A No.

Q Did you have sexual intercourse with Mary Krinitaky upon that day? A No.

Q Was Mary Krinitaky thrown out of the monastery? A No.

Q Did Mary Krinitaky come to you four times and ask you to take her child into the orphan asylum, and did you in return, in answer, refuse to pay any attention to her request, but say to her, "I would receive all other babies but yours, because it is from there; people would say that we have a baby shop in the monastery" -- did you, yes or no? I will ask you for the details afterwards? A I did not.

Q Do you know this man Kirozow (indicating)? A No.

Q Nor the other man, Curkowskys? A No.

Q Were you a subscriber of the paper "Swoboda"? A I used to be, but I am not any more.

MR. HARVAN: You may cross-examine.

CROSS-EXAMINATION BY MR. SHITKIN:

Q When did you last subscribe to "Swoboda"? A Either in 1906 or 1908. I can't tell exactly.

Q Now, you have said that you know neither of these defendants? A I see them for the first time in my life.

Q Well, if you saw them in a place that I had mentioned in connection with the

Q Well, if you met these men in

A I cannot say faces and I never

Q Now, in Russia; what part of the State of Harkov

Q That is the name of the place that is spelled

Q Were you

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was in January

Q Did you

A Never.

Q Well, then, that is to-day is the first time that you saw them in court, is that what you mean? A It is possible that I have met them before, but I never had any conversation with them.

Q Well, Reverend, are you sure that you sure that you met these men before they were arrested upon your charge?

A I cannot say that positively, but I didn't know their faces and I never had any conversation with them.

Q Now, Reverend, you have stated that you were born in Russia; what part of Russia? A In the Village of Ghulsi, State of Harkov.

Q That is the government, is it not, the State of Harkov? That is spelled H-a-r-k-o-v? A Yes.

Q Were you a married man in Russia? A Yes.

Q Had children, didn't you? A No.

Q Do you know Mitrofen Bilussezenko? A I do.

Q Wait until I spell that name; M-i-t-r-o-f-e-n, Mitrofen, and his surname is B-i-l-u-s-e-z-e-n-k-o; now, how long have you known Mitrofen Bilussezenko? A In January, 1908, I returned from Russia to Mayfield, Pennsylvania, and there I met this party for the first time.

Q Well, now, do I understand you then by your answer to mean that the first time you ever saw Mitrofen Bilussezenko was in January, 1908? A Yes, sir.

Q Did you ever live in Tyronovka, in Gharkowako, Russia? A Never.

Q Well, p  
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Q Oh, I

Q Well, perhaps I have the name misspelled. It is Harkov; you lived in Harkov, didn't you? A Yes.

Q You had a home for the homeless in Harkov, too, didn't you? A Yes. Not in the City of Harkov proper, but nearby.

Q That is it, you had a monastery there too? A No. I want to explain that. When my wife died I became a monk.

Q And you have not married since you became a monk? A No.

Q How long had you lived in Harkov? A Not in Harkov, but near Harkov.

Q Well, near that place, how long had you lived there? A About thirteen years.

Q Didn't your wife give birth to a son to you? A No.

Q You said that you had organized, in that place in Russia, a monastery? How long were you connected with that monastery abroad? A I did not.

Q Well, you conducted a home for the homeless? A From 1900 until 1902 I was taking care of that place.

Q Were women admitted as inmates there? A That monastery is in existence over 300 years.

Q Oh, I am speaking of the home for the homeless that you say you founded near Harkov, and with which institution you say you were connected for two years? A It was a home for aged.

Q Oh, it was not for the homeless, then, was it, just

for the aged?

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for the aged? Were women admitted there? A Everybody.

Q Now, you have stated, Reverend, that your first parish was in Troy, New York? A Yes, sir.

Q That is, after you emigrated from Russia? A Yes, sir.

Q You lived in that rectory, didn't you, in Troy? A The congregation hired the house, and I lived there.

Q Alone? A Yes, sir.

Q Did you have a female servant?

MR. GANVAN: Objected to.

THE COURT: How is that material?

MR. SHITKIN: Well, I contend that it is material, your Honor.

THE COURT: Well, I will sustain the objection of the District Attorney to it. This man's character is not on trial now.

MR. SHITKIN: I take an exception.

Q Did you know a woman who resided in Troy and afterwards came to Mayfield, and worked in the rectory for you in Troy?

A I did not, no.

Q Now, we have it, as you have said, that you did know Mary Krinitsky? A In what way do you mean?

Q I do not mean in the biblical term; I mean you knew her by working there, didn't you?

THE COURT: Well, he said he knew her.

MR. SHITKIN: I know, but I have a right to ask him

on cross-examination.

A Yes, sir.

THE COURT: But you have no right to repeat and waste time. That is a waste of time. He says he knew her. Now, go on.

MR. SMITHKIN: I am going to go on in the proper way.

THE COURT: You will go on as the Court directs you. We have a thousand cases to try in these courts, and you must not consume time by your theatrical pose here.

MR. SMITHKIN: I never thought I was gifted with that, your Honor.

THE COURT: Well, you are. You waste more time than my attorney in these courts.

MR. SMITHKIN: I take an exception to your Honor's remark.

THE COURT: Go on, now. You are wasting time. Go on.

Q At any rate, that part of the publication that you complain of is true, that you did know Mary Krinitsky, and that she did work at this monastery, is that right?

MR. DARVANI: That has all been answered.

A Yes, sir.

Q And that she was present at this dedication or consecration of the cemetery? A Yes, sir.

Q And that you did go home with her that night? A Yes, sir.

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A Yes, s

Q Now, there were other servants there besides she?

A In the orphan asylum, you mean?

Q No, that day at the cemetery when Mary was there?

A No, they were not.

Q She was the only female servant, is that right? A Yes, sir; from the orphan asylum.

Q Did she come with you to the cemetery? A No.

Q Did you ask her to go home by rail, by train? A If I will be permitted, I wish to explain how this was.

Q Did you ask her to go home by train? A No.

Q Did you walk home with her or did you ride? A We rode.

Q In a carriage? A In a buggy.

Q Who drove that buggy? A I did.

Q So that, at what time of night was this that you drove home with her in the buggy? A We left Simpson about seven or eight o'clock in the evening.

Q What time did you arrive at Mayfield? A We did not go to Mayfield. We went to the monastery.

Q Where, where was the monastery located? A South Canaan.

Q How many miles is that from the cemetery? A About seven miles.

Q Did you travel through the woods for seven miles?

A Yes, sir.

Q Did you ever know that she gave birth to a child, Mary? A I was on my leave of absence in Russia when she gave birth to the child.

Q Can you tell us when that was? A The 4th of June, 1907.

Q Do you mean that on that day you had your leave of absence, is that it? A Not exactly that day, but that time I was away.

Q Do you know when it was that -- of course, if you know when it was, that she gave birth to this child?

MR. GARVAN: He has testified to that before.

MR. SHITKIN: He says on his leave of absence in June, 1907.

MR. GARVAN: He said the 4th of June, 1907.

BY THE COURT:

Q Do you know? The answer is yes or no? A Yes, sir.

BY MR. SHITKIN:

Q Can you tell us the date? A As I said before, the 4th of June.

Q That is, she gave birth to the child on the 4th of June, 1907? A Yes, sir.

Q And at that time you say you had leave of absence to Russia? A Yes, sir.

Q When did you leave Mayfield to go to Russia? A About the 14th of May, 1907.

Q How, I lived? A I c... Mandelson's.

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Q Can; first went to or June, 1907

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Q What I have read Mary Krint not true.

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time? A

Q Now, in May, 1907, do you know where Mary Krinitaky lived? A I cannot tell exactly, but I think she lived in Mandalson's.

Q How long, Reverend, have you known Mandalson? A All the time I lived in Mayfield; that is about four years.

Q Can you tell us, please, again, when it was that she first went to work at this monastery, Mary did? A About May or June, 1907 -- 1908.

Q How long did she remain there? A Until the end of October or the beginning of November, the same year.

Q Did she leave of her own accord or was she discharged? A She went away herself, of her own accord. She came to me and asked for her pay and she left.

Q Now, Reverend, after this article appeared in this "Swoboda", did you see Mary Krinitaky? A Yes, sir; I did.

Q Where did you see her? A On the following day after I have read this article, I went to the Squire, and saw this Mary Krinitaky there, and I wanted her to swear that this was not true.

Q That is it. Mandalson is a Squire? A Yes, sir.

Q Mandalson is the man for whom this Mary then worked? A Yes, sir.

Q And Mandalson is the one that prepared the affidavit? A Yes, sir.

Q And you had known Mandalson for four years before that time? A I knew that he lived in Mayfield, but I have never

been in his house

Q Oh, you did

THE COURT

Q Reverend, was christened when I returned

Q Now, let

A No, Andrew.

Q Your first

Q What is the

A (Spelling) A-

Q Well, God

BY MR. SARVAN:

Q What is A

BY THE COURT:

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BY MR. SHICKS:

Q Did you know

Canada at the time

Q Where are

been in his house up until that time.

Q Oh, you did say you had known him for four years?

THE COURT: Well, he has explained it now.

Q Reverend, did you know the name by which this child was christened when it was born? A Yes, I found out after when I returned from Russia.

Q Now, let us see; your first name is Arseny, isn't it?

A No, Andrew.

Q Your first name is Andrew? A No, Arseny.

Q What is the English of that word, do you know?

A (Spelling) A-r-s-e-n-y.

Q Well, does not that mean Andrew in English? A No.

BY MR. GARVAN:

Q What is Andrew in Russian? A A-n-d-r-e-i.

BY THE COURT:

Q How do you spell it? A A-h-d-r-o-w (In English).

MR. GARVAN: Is that correct, Mr. Interpreter?

THE INTERPRETER: Well, the real way it is pronounced would be A-n-d-r-e-i.

MR. GARVAN: But it is different than Arseny?

THE INTERPRETER: Oh, yes.

BY MR. SMITH:

Q Did you know when that child died? A No, I was in Canada at the time.

Q Where are you engaged now? A I belong to Canada now,

but I am waiting here for the last three months on account of this case.

Q That is, you belong to Canada, where you have been sent? A I belong to the American Mission.

Q In Canada? A No, here.

BY THE COURT:

Q Well, you have been assigned to Canada? A Yes.

BY MR. GARVAN:

Q Canada and the United States are under the one mission? A Yes.

BY MR. SMITH:

Q You have brought an action in the Supreme Court for damages, have you not? A That belongs to my lawyers. I don't know anything about it.

Q I see. Didn't you sign your name to the complaint in the Supreme Court? A Yes.

Q Did you know the contents of the complaint that you signed? A The same paper I signed my name on.

Q Did you read that paper before you signed it? A I did.

Q In the English language? A It was translated to me.

Q That action that you have instituted has as yet not been tried? A That all concerns my lawyers. I don't know anything about it.

MR. GARVAN: Well, I will concede it has not.

MR. SMITH:

Q Now, Reverend, Supreme Court, where I brought for \$25,000 damages cannot state that, because BY THE COURT:

Q Well, so far? A Probably not.

Q Well, you have? A No, sir.

MR. GARVAN:

court or not, yes

BY MR. SMITH:

Q Now, Reverend Mayfield, is that right?

Q And you were Canadian, weren't you?

Q And you sent that monastery until was transferred to

Q Up to June,

Q Were you for at Mayfield?

THE COURT:

at all.

A No, on the contrary

MR. MITKIN: No, no; I want his own answer.

Q Now, Reverend, don't you know that your case in the Supreme Court, where you are the plaintiff, and which you have brought for \$25,000 damages, has not yet been tried? A I cannot state that, because that all depends on my lawyers.

BY THE COURT:

Q Well, so far as you know, has it been tried or not?

A Probably not.

Q Well, you have never been in court yet, have you?

A No, sir.

MR. GANVAN: He does not know whether he has to be in court or not, your Honor.

BY MR. MITKIN:

Q Now, Reverend, you were the rector of this parish at Mayfield, is that right? A Yes, I was.

Q And you were the Dean of the monastery in South Canaan, weren't you? A Yes.

Q And you continued as the rector and as the Dean of that monastery until what month? A Up until June, when I was transferred to Canada.

Q Up to June, 1908? A Yes.

Q Were you forced to resign as the rector of the parish at Mayfield?

THE COURT: There is no evidence that he resigned at all.

A No, on the contrary, that was promotion for me.

Q Now, in your complaint in the Supreme Court, which you say you read, did you read that part of this complaint, that you were forced to resign as rector of the parish at Mayfield, Pennsylvania, and forced to withdraw as Dean of the said monastery at South Canaan, Pennsylvania? A It was translated to me this way --

MR. SMITKIN: No, I want to know if he so stated.

THE COURT: Let him answer the question, and if it is not responsive you can move to strike it out. Give us his answer.

THE INTERPRETER: This is what he says: --

THE COURT: Give us his answer.

THE INTERPRETER: (Continuing) It was translated to me this way, I want to explain, that I was dishonored in the eyes of the people. That is all.

MR. SMITKIN: I ask for the production of the original complaint. I served a subpoena upon the attorneys for the witness, and they have not obeyed it, and I cannot proceed with further cross-examination of the witness until that complaint bearing the signature of the witness is produced, which I am going to offer in evidence.

MR. GANVAN: Oh, I guess it is here. The lawyer is outside the door, as he is a witness, and he has to stay outside. If that is a copy you have, I will concede it. If there is any change, we can remedy that.

MR. SHITKIN: Then it is conceded on the record by the prosecution that the witness swore to a complaint and subscribed his name to it in the Supreme Court, New York County, in an action entitled Arasny Chahovsov, plaintiff, vs. Ruthenian Printing & Exchange Company, Little Russian National Union of America, Konstantine Kirosov and Anthoni Curkowskys.

MR. GARVAN: Oh, no. I concede he swore to a complaint, but I do not concede that the complaint is relevant here. He has asked him about something he swore to, which is purely collateral matter, and he is bound by his answers.

MR. SHITKIN: Well, in a libel case, a collateral issue becomes the main issue.

MR. GARVAN: And what becomes of the main issue that we came here to try?

MR. SHITKIN: The collateral issue becomes the main issue, and that is why considerable latitude is allowed, and the admission of testimony where it is not in other cases.

THE COURT: That may be in a civil action. I have only allowed you to cross-examine as you have, on the ground that it might affect the credibility of this witness.

MR. SHITKIN: That is the very object I have in asking these questions. I have a right to show a misstate-

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ment, perhaps an honest misstatement under oath, at a different time.

MR. GAIWANI: Oh, well, I will admit it. Read it.

BY MR. SMITKIN:

Q Then we have it now, Reverend, that that part of your complaint in the civil suit in the Supreme Court which has not yet been tried, in which this appears: "That you were forced to resign as rector of the parish in Mayfield, Pennsylvania, and forced to withdraw as Dean at the monastery in South Canaan, Pennsylvania, and could no more thereafter secure any more advantageous clerical assignment than the charge of an obscure parish in a desolate and distant region" was

not read by you? A It was translated to me this way, that I stated in that affidavit that if I was really guilty of it that I was not fit to occupy any decent position as a priest.

Q May I ask you, then, to indicate to the Court and Jury any part of that complaint wherein that is stated?

MR. GAIWANI: Well, I will allow the complaint to be marked in evidence.

MR. SMITKIN: All right. I offer it in evidence. Marked Defendants' Exhibit A.

Q Now, do you know Harry Needle, a lawyer in Oliphant? A If he is a short fellow, I think I know him?

Q Do you know Eugene Bosilenko, residing at Alden Station, Luzerne County, Pennsylvania? A No.

THE COURT: Well, give us all he said.

THE INTERPRETER: He repeated the name in English.

THE COURT: Well, you repeat for us whatever he said.

BY MR. SMITKIN:

Q Well, his Christian name is Organy, and the other name is Bosilenko; do you know him? A I don't know him.

Q Now, did you ever know that Mary Krinitzky went to the home of Mitrofon Biluszenko, at Oliphant?

MR. GARVAN: Did he know it of his own personal knowledge? Was he there and did he see it?

Q Of your own personal knowledge, that she went to Mitrofon--whatever his last name is, with the child? A I did not know it.

Q When did you first ascertain that she had been to Mitrofon's home with the child?

MR. GARVAN: Objected to me calling for a conclusion; he has not said anything about that.

Objection sustained. Exception.

Q Reverend, did you ever personally go to either of the defendants and ask for a retraction? A I was not.

Q Now, Doctor, do you know of your own knowledge whether or not Mary Krinitzky made an affidavit that you had illicit relations with her?

MR. GARVAN: Of his own knowledge?

A I don't know it of my own knowledge.

BY MR. HWITKIN:

Q Well, now, Reverend, after you had read this article that you say you did, and obtained Mary's affidavit, why didn't you, with that affidavit, go to the office of these defendants and show them that affidavit and ask for a retraction?

A Because that was the day when I have received my appoint-

want to go to Canada

Q In other words you were promoted?

MR. GARVAN:

received his appointment

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article recorded

MR. HWITKIN:

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MR. GARVAN:

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THE COURT:

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MR. HWITKIN:

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(Question)

MR. GARVAN:

THE COURT:

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MR. HWITKIN:

your Honor

publicly

ment to go to Canada.

Q In other words, in spite of this publication about you, you were promoted?

MR. GARVAN: I object to that. He says he had received his appointment on the 14th of June. His appointment is referred to in the article published. The very article recounts the appointment.

MR. SHITKIN: He said he did not leave until after the publication of the article. Now, the Code reads that not alone must publication be malicious--

MR. GARVAN: Does the Code say that a man who was called the father of a child in a publication must go around to the publishers and have them retract the statement?

THE COURT: If you had objected to the question I would have sustained the objection.

MR. SHITKIN: I take exception to Mr Garvan's remark just made. Will you repeat the question?

(Question repeated by the stenographer.)

MR. GARVAN: Objected to.

THE COURT: Objection sustained. It is not a question of damages here.

MR. SHITKIN: I take an exception. I believe, your Honor, I have a right to show that in spite of the publication of this article, that it did not bring him

into ridicule, that it did not hold him in contempt, because that is what he says. That is the very reading of the section.

THE COURT: An article that is calculated to, not among people that know him, but among people that do not know him, otherwise there would never be a libel.

MR. SHITKIN: In this case, it happens that the jury are the judges of the law and the facts.

THE COURT: I will so instruct them at the proper time. I will instruct them now, if you so desire, but I have a right to express my opinion of the law to them, and I think it is my duty to do so.

BY MR. SHITKIN:

Q Now, Reverend, was there a monastery called Saint Tikhon's Monastery? A That is the monastery.

Q And that was organized for children, wasn't it?

A No. A monastery and ~~and~~ an orphan asylum in connection with it.

Q I see. The monastery is where the monks worked and prayed, and the orphan asylum is where the children who had no parentage, or at least whose fathers and mothers died, were committed, is that it? A Yes, sir.

Q Well, was that the name that it was known by, Saint Tikhon's Monastery or Saint Tikhon's Orphan Asylum? A It is called in Russian--

THE COURT: Which was called?

BY  
A

MR. SHITKIN: The orphan asylum, what was the name of that?

BY THE COURT:

Q Yes, what was the name of the orphan asylum?

A "Russian Orphan Asylum" and "The Monastery of Saint Pikhon."

MR. SHITKIN: That is all.

THE COURT: Any other witnesses?

MR. GARVAN: Oh, yes, we have other witnesses.

THE COURT: Do you not wish to go on?

MR. GARVAN: No, sir. I just wanted to finish his cross-examination to-night. The next examination will take a couple of hours.

THE COURT: Well, Mr Shitkin, about the adjournment?

MR. SHITKIN: I beg your Honor's pardon. I have one or two questions that may take quite a little time, so I would ask permission to recall him.

MR. GARVAN: Oh, no.

MR. SHITKIN: Then I will have to recall him now.

MR. GARVAN: All right. Recall him.

THE REVEREND CHAROYZOV ARSENY, a witness for the People, recalled:

CROSS-EXAMINATION CONTINUED BY MR. SHITKIN: (Through Official Interpreter Bernhardt:)

Q Reverend, do you know a woman by the name of Mrs.

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Viluscsenko?

MR. SMITKIN: Pardon me. I asked him on this point before.

THE COURT: Then the question is withdrawn.

Q I ask you did you ever know a woman by the name of Mrs. Rubitska? A Zdravitsky.

Q Yes, do you know her? A Yes.

Q You know Mary Krinitaky lived with her, don't you?

A I heard so.

Q Well, did you ever go to the home of the last named person spoken of? A No.

Q Never spoke to her about this case? A Never.

Q Is she in court now? A Yes.

Q Who brought her? A My lawyer.

Q Well, not having spoken to her about this case, how did you come to give her name to your lawyer?

MR. SANVAN: I object to that.

THE COURT: There is no evidence he did give her name to his lawyer.

Q Well, did you give the name of Mrs Zdravitsky to your lawyer?

MR. SANVAN: Objected to as immaterial.

THE COURT: Well, let him answer it.

A Others gave it to them.

Q But you personally did not? A They picked up all

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A Not

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the witnesses without me. I was in Canada at the time.

Q Did you ever write any letter to her about this case?

A Not to Zdravitsky.

MR. SHITKIN: That is all.

MR. GARVAN: That is all.

MR. SHITKIN: Now, as to the adjournment, prior to the commencement of this matter, I went to Mr Garvan's office and told him about the difficulty we would encounter if we went on.

MR. GARVAN: I will do whatever you desire. I will go on to-morrow, if you desire.

MR. SHITKIN: I will go on to-morrow. We have subpoenaed eight witnesses here.

THE COURT: Well, I will commit the defendants to-night.

Gentlemen of the jury, we will now take a recess until half past 11 to-morrow, and meanwhile, be very careful not to discuss this case among yourselves nor with any one whatever, and do not come to any conclusion concerning it until it is finally submitted to you by the Court for your consideration.

(The Court thereupon adjourned the further trial of the case until Thursday, January 7, 1909, at 11:30 o'clock A. M.)

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New York, January 7th, 1909.

Trial resumed.

THE COURT: Gentlemen of the Jury, the Court will take a recess until two o'clock.

Meanwhile be very careful not to discuss this case among yourselves or with any one else, and do not come to any conclusion, until the case is finally submitted to you.

Do you think you can finish this afternoon, Mr. Garvan?

MR. GARVAN: Yes, sir; I will finish my case this afternoon, I think.

THE COURT: How about the defense, Mr. Smitkin?

MR. SMITKIN: We will have seven or eight witnesses, but I cannot stay here after 4 o'clock, as I have a very important court engagement.

MR. GARVAN: Then we can finish to-morrow.

THE COURT: Yes, well, then we will make arrangements to stop here all day, if necessary.

(Recess until 2 o'clock P.M.)

After recess. Trial resumed.

MARY KRINITSKY, a witness called and duly sworn on behalf of the People, testified through Official Inter-

preter Bernhard as  
DIRECT EXAMINATION BY M

Q How old are you

Q Where were you

Q Gilitia, in Rus

MR. SMITKIN:

A Austria, yes.

Q How old were you

A I am four years in A

Q Your years in A

Q Are you the mot

of a child. A It is

Q What date was

Q What year? A

Q Now, do you kn

A I do.

Q What is his na

Q Who was Andrew

MR. SMITKIN:

Q Who was Andrew

working around the hou

Q Where did he w

worked.

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preter Bernhard as follows:

DIRECT EXAMINATION BY MR. GARVAN:

Q How old are you, Mary? A 26.

Q Where were you born? A In Galitia.

Q Galitia, in Russia?

MR. SHITKIN: No, that is in Austria.

A Austria, yes.

Q How old were you when you came to this country?

A I am four years in America.

Q Your years in America? A Yes, sir.

Q Are you the mother of a child, have you been the mother of a child? A It is dead. I had a child.

Q What date was the child born? A The 4th of June.

Q That year? A 1907.

Q How, do you know who was the father of that child?

A I do.

Q What is his name? A Andrew Pretash.

Q Who was Andrew Pretash?

MR. SHITKIN: It is spelled P-r-e-t-a-s-h.

Q Who was Andrew Pretash? A He was a workman -- working around the house.

Q Where did he work? A He worked in the place where I worked.

Q And where did you work? A In an Orphan Asylum.

Q Was that in South Canaan, Pennsylvania? A Yes, sir.

A Yes

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Q And that was next to the Monastery, was it, or near by ?

A Yes.

Q And how long did you work in the Monastery, or in the Orphan Asylum ? A Six months.

Q Can you tell what time of the year it was he came to work in the Orphan Asylum ? A I can't exactly remember the month, but that was at a time when they work out in the fields.

Q What were they doing out in the fields at that time ?

A It was just the beginning of the season in the fields.

Q Now, do you know what time it was when you left there ?

A I don't know. I don't remember the month. It was in the winter.

Q What work did you do in the Orphan Asylum ? A I worked there around the children.

Q And do you remember the time when the dedication of the cemetery took place, not the date, but do you remember the occasion of the dedication ? A I don't know that.

BY THE COURT:

Q Well, were you at the dedication of the cemetery ?

THE INTERPRETER: She speaks a dialect now, your Honor.

MR. CARVAN: The defendant's counsel informs me that she speaks Lithuanian.

THE INTERPRETER: I understand what she says, but her expressions are a little different, and I have to make it clear.

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MR. SWITKIN: Her own way, which is entirely distinct from the Russian.

THE INTERPRETER: I can get along nicely, but with just that one expression.

THE COURT: Well, where was the cemetery?

BY MR. GARVAN:

Q Did you ever go to the cemetery? A I was, but I have not been there with anybody else.

MR. GARVAN: I will fix it in just a moment.

Q Do you remember the day when you rode home in a buggy with Father Arseny? A Yes.

Q Had you been to any ceremonies that day? A I was there helping in Simpson.

Q Helping in Simpson? A Yes.

Q What were you doing there? A I went there to help them to work, the priests and Father Arseny asked me to go there to help them to work. I went there to my sister. I had a sister there also.

Q Where was that? A In Simpson.

Q Now, that is the day we mean. Now, how did you intend to come home after the ceremony? A I was about to take the train, but I was late, because I spent a little time in my sister's.

Q Now, where had Father Arseny gone before you missed the train?

MR. SWITKIN: I object to that question on the ground that it assumes a state of facts not in evidence.

MR. GARVAN: If she had gone anywhere.

MR. SWITKIN: No, you said she missed the train.

MR. GARVAN: Well, she said so.

THE COURT: She said she was late for the train. Your objection is overruled.

MR. SWITKIN: I take an exception.

A Father Arseny had to go to a prayer meeting up in Mayfield, and when he came back he was late already for the train.

Q Now, tell just what happened ? A Then when Father Arseny came back he took the buggy, and I went with him.

Q And where did you go ? A To the Monastery.

Q Now, did anything wrong take place between you and Father Arseny on that ride ? A No, no, nothing. Not a word was said.

Q Now, how long after that was it that you had connection with Andrew, about ? A About two months after that.

Q That is about two months after July 29th ? Well, you don't remember that date. That date has been fixed by the priest.

MR. SWITKIN: Their calendar is different than our calendar.

THE COURT: Well, it is only eleven days difference.

MR. SWITKIN: Fourteen days, your Honor.