



IN THE COURT OF APPEAL.

R E X

VS.

LUM MAN BOY and HONG

SPECIAL CASE RESERVED.

For the consideration of the Court of Appeal
by His Honour Judge McInnes sitting in the County
Court Judges Criminal Court in and for the County
of Vancouver.

x Messrs. Tupper & Griffin
Solicitors for the Appellant.



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Evidence Page 94

Re: Langmaid
Goy C.C. 464



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Sumner

R. v. Lamont

*A. Com. C.C. 101
at p 104*

State v. Hurdman 1901

58 Atlantic 356

*In circumstances
to strengthen*

to evidence against Hurd



I N D E X

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IN THE COURT OF APPEAL FOR THE PROVINCE OF
BRITISH COLUMBIA

R E X

VS

LUM MAN BOW and HONG

NOTICE IS HEREBY GIVEN that the Judge of the
County Court of the County of Vancouver has reserved
a question for the Court of Appeal in respect to the
trial of the prisoners Lum Man Bow and Hong. A Copy
of the case stated is hereunto annexed.

AND NOTICE IS HEREBY GIVEN that the Court of
Appeal will be moved by Sir C. H. Tupper K. C. of
Counsel for the prisoners for its opinion on the said
case at its sittings to be held on Tuesday the 4th day
of January, 1910 at Victoria or so soon thereafter as
the Court shall be ready to hear the same.

DATED at Vancouver this 28th day of December 1909.

Tupper & Griffin

Solicitors for Lum Man Bow and Hong

TO The Honourable the Attorney General.



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IN THE COUNTY COURT OF VANCOUVER HOLDEN AT VANCOUVER.
 COUNTY COURT JUDGES CRIMINAL COURT.
 Before His Honour, Judge McInnes.

Dec. 18th, 1909.

REX V. LUM MAN BOW and HONG)))))	CHARGE:
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C. M. WOODWORTH. ESQ., (Messrs Smith & Woodworth) appeared for the Crown.

SIR. HIBBERT TUPPER, K.C.M.G., K.C. (Messrs. Tupper & Griffin) and D. G. MARSHALL, ESQ., (Messrs Davis, Marshall & Macneill) appeared for the accused Lum Man Bow.

J. W. DeB. FARRIS, ESQ., (Messrs Macdonell, Killam & Farris) appeared for the accused Hong.

Mr. D. G. Marshall asked that witnesses be excluded.
(Witnesses leave Court room)

EVIDENCE.

WILLIAM KINNEAR. SWORN. EXAMINED BY MR. WOODWORTH:

MR. WOODWORTH: It may be that the Counsel for the Defence may like the Exhibits in Court - 26 chickens.



William Kinnear
Dir- Examp.

COURT: Any dispute as to the identity of the chickens?

SIR. HIBBERT: Yes.

COURT: Well when it is necessary we can step down to the basement.

Q MR. WOODWORTH: You live in the City of Vancouver?

A. Yes.

Q Whereabouts? A. 1856 Barnard street.

Q What occupation do you follow? A. I have about an acre of land and cultivate that and keep some chickens and a couple of cows; that is what I have done since I came here.

Q In regard to chickens have you lost any lately? A. Not since I lost those.

Q What about those in dispute? A. *See page 6* ~~On the 3rd of November~~ *Drank* On the 3rd of November I went out and locked the chicken house--

Q *4/10* Up where you are residing? A. Yes. And on Saturday morning I went out and one door was standing ajar and I could see someone had put in a bar and pried the door back from the casing and I went in; I missed my chickens.

Q When did you last look over your chickens? A. About 4 days previous to that I counted them and I had 85, and I killed three before that. Before they were stolen, and when I counted them roughly that morning I had fifty and some, I could not exactly say because I didn't count them correct, and I phoned to the Police - I saw I lost between 30 and 35 after I counted them and I had about 50 left.

Q So the day before that you noticed this door pried open,



William Kinnear
Dir- Exam.

had you looked over the chickens? A. I did in the morning.

SIR HIBBERT: I dont think you need lead him.

WITNESS: I always when I go to them in the morning I unlock the doors and take the feed in.

Q MR WOODWORTH: This morning before the morning when the door was pried open what precaution did you take?

A. Not any more caution than I did any other morning.

Q What did you do then? A. Took and fed them. I feed them inside, mix their grain with the straw; sometimes I stand a few minutes and watch them and I could tell if there was not the number of chickens, just as soon as I went in. If the door had been locked I would have missed them as soon as I went in.

Q Now in regard to the chickens that were gone. Were any of them marked in any particular way? A. A couple of them.

SIR HIBBERT: Is this question in regard to any of the chickens gone or does he mean that he marked---

Q MR. WOODWORTH? Have any of your chickens marks, and if so, what? A. I kept them in yards and about half a dozen used to fly over and the night previous to when they were stolen the boy and I went out and cut those ones right wings.

SIR HIBBERT: When? A. On Thursday night - that would be the 2nd.

COURT: I understand you only had six with the wings out?



William Kinnear
Dir- Exam.

A. About six; might be five or seven.

- Q MR WOODWORTH: Do you know of what particular breed the chickens were with the wings cut? A. Some a cross between Plymouth Rock and the Brown Leghorn; and some a cross between the Plymouth Rock and the White Leghorn.
- Q What breeds have you? A. I had some true Plymouth Rock and some crossed and some Black Minorcas.
- Q Now you need not tell me because it is not evidence, your talks with the Police, but what did you do when you lost the chickens? A. We phoned to the Police.
- Q You need not tell what you said, what did you do after, next? A. They said to come down about half past two.
- Q Did you go down? A. Yes.
- Q What did you do when you went down? A. I went into the office and the gentlemen there - one of the police, and he told me ---
- Q Dont tell what you talked with the police. A. Aint I supposed to tell the whole truth?
- Q Yes, but that is only hearsay. What you say may or may not be true. What did you do after you went down to the Police, that's what I want to know. A. I saw Mr. Jackson and he told me to go with these two gentlemen that he was sending and I went down.
- Q Where did you go? A. We went down into Chinatown they called it.
- Q Along what street? A. Pender street.
- Q What did you do first? A. Went into several places, looking about chickens.



William Kinnear
Dir. Exan.

Q Did you see any chickens in those places? A. Yes, in every place we visited there was chickens.

Q. Did you find any of yours? A. No, I didn't find any. I just knew as soon as ever I went in that none of mine was there -- those gentlemen they went in with a pretense of buying chickens, and when we went in I said, no ---

SIR HIBBERT: I don't think my learned friend should continue what happened at those other places.

WITNESS: Just as soon as I went in I knew none of my chickens were at those places.

Q MR WOODWORTH: Come down to the time when you went into the place where these gentlemen were. First, do you recognise these two men? A. Yes.

Q. Were you in their place of business that morning? A. Afternoon, about half past two.

Q What day? A. On Saturday, between half past two and three.

Q Saturday, the 4th of December? A. Yes.

Q What did you do in there? You can tell what you did and said. A. I didn't say anything.

Q Did the men with you say anything? A. Yes, asked if they had any chickens for sale, and there was a crate of chickens up in a kind of little store I think - I didn't take much notice, and they said those chickens --

Q Now who said this? A. This smallest one.

Q That smaller man's name is what?

MR MARSHALL: HONG,



William Kinnear
Dir. Exam.

Q MR. WOODWORTH: Hong said--? A. That them chickens were for sale, and I looked at them and said they didn't suit me and one of the Detectives asked if they had any more and I was a little behind and I understood the Chinaman to say there was no more chickens--

SIR HIBBERT: I object. If he is going to say what the man said, all right, not what he understood him to say.

MR WOODWORTH: In regard to what he understood him to say. I consider that depends some on the weight of the evidence. It may have been the witness understood him.

COURT: Ask him what he said.

Q MR WOODWORTH: What did Hong say? A. I understood him to say---

SIR HIBBERT: That is what I object to. He either knew or he didn't.

COURT: Do you remember what he said? A. Well, I would not swear positively what he said, because I didn't pay a great deal of attention.

COURT: The conversation was between the Chinamen and the Detectives? A. Yes. I thought it was my place to identify the chickens.

Q MR WOODWORTH: What did you do after? A. I heard the police say to them that they would go and see anyway and we went down in the basement, and just as quick as I went down I recognized one of my chickens in the corner of the coop. I went down there---

Q Where was Hong, or Lum Man Bow? A. Neither of them down.



William Kinnear
Dir. Exam.

- Q What particular description was the chicken you first recognized? A. It was a Plymouth Rock or a cross of a Plymouth Rock and a Brown Leghorn, and it had a double comb.
- Q Did you go and examine this chicken? What did you do in regard to this chicken? A. I just passed by in front of the coop and then I saw several of my chickens in there and I told the detectives my chickens were there.
- Q What further did you do to find out as to how many and what of your chickens were there? A. The detectives said - he went up and got a wire rod with a crook on it and when I would point the chickens out he would put in this rod and fetch them out. There was a chicken standing away back in the corner and you could just see its head and I told the detective--

SIR HIBBERT: Never mind--

WITNESS: I told the detective that that was my chicken, or if it was my chicken it had its right wing out, and put in the hook and fetched it out and it had its right wing out. All you could see was its head -

- Q MR WOODWORTH: How many of those did you find? A. Either 26 or 27, I think 26. There was some other ones that I thought was mine but I was not positive and I would not take them.

Q Now Mr. Kinnear, tell us, or can you give the Court any idea how you identify all these chickens? A. Well, just by knowing them.

- Q If you could explain that a little more fully. Illustrate? A. I don't know as I could. Supposing I



William Kinnear
Dir. Exam.

want to identify a man, if you ask me just how I could do it I dont know as I could explain satisfactory, only I knew him. And that would be the same way with the chickens, or a horse, or anything. I would know some of those chickens just as well as I would a neighbor. I look after them and feed them twice a day.

Q How long had you had those chickens? A. From 18 months to three years. They were hatched out there, and I looked after them all the time. No one else takes any care of them, except the little boy and he had some to care of his own.

Q Have you examined a crate of chickens in the basement? A. I never saw those chickens since they were at the Police Court, except in a box; it is two weeks today since I saw them.

~~Q~~ (Court, Counsel and witness adjourn to the basement to examine the chickens.)

After their return: Witness in box.

COURT: You are still under oath.

Q MR WOODWORTH. You have looked at certain chickens along with Counsel and Judge, what do you say as to those you just looked at? A. There is some of them I am positive is mine, but they have been in the coop for five or six days and some of them the appearance of them is a little changed. But there is some of them, no matter how they are mixed I could pick them out.

~~Q~~ Now, how many of them can you pick out? A. Half a dozen.



William Kinnear
Dir. Exam.
Cross-exam.

Q At the time that these chickens were picked out down in Chinatown were you or were you not positive as to the whole of them? A. I was positive to the number I took out. Any I was not positive about I didn't take.

Q Can you give us instances of how you identify these chickens down here this morning? A. Well, I could not just describe at all only that I know.

Q How many of the chickens whose wings were cut did you take that morning down in Chinatown? A. Two.

Q And after verifying it, how many chickens altogether had you lost? A. Between 30 and 35 I lost, I would not say--

Q Did these men, Hong and Lum Man Bow, give any explanation of where they got the chickens?

SIR HIBBERT: Coming again to the question as to how he understood.

Q MR WOODWORTH: Did they say anything? A. Not to my knowledge. The detectives told me what they said, but that don't go as evidence; I didn't bother with what they said.

CROSS-EXAMINED BY SIR. HIBBERT TUPPER:

Q How many leghorns and how many Plymouth Rocks did you leave in the cellar of this place you visited where you hooked them out? A. Did I leave?

Q Yes; how many Plymouth Rocks and Leghorns? A. I could not say; about 200 in there.

Q Will you swear to that? You say about 200 in the cellar



William Kinnear
Cross-exam.

on Saturday? A. Different coops.

Q Do you say there was that number in the cellar altogether? Will you say that? A. There was different coops.

Q I didn't ask you about different coops; will you swear there were 200 in that cellar? A. No, I wont.

Q Will you swear there were 100? A. Yes, there was 100.

Q You counted 100? A. No, I didn't.

Q Why do you swear to it? Will you swear there were 80? A. Yes.

Q Did you count 80? A. No.

Q Are you guessing or not? A. I don't know whether you could call it guessing or not.

Q Will you swear there were 80 hens and chickens there December, 3rd.? A. Yes.

Q Will you swear there were 90? A. I will swear there were 80 chickens.

Q And there you will stop. Will you go beyond that? A. It is not necessary.

Q I am asking you whether you are able to, not whether it is necessary. A. No, I wont.

Q How many Plymouth Rock? A. I could not say.

Q How many Leghorns? A. I could not say.

Q How many did you leave? A. Yes.

Q Did you leave any? A. Yes.

Q White Leghorns? A. I would not say they were pure Leghorns.

Q We are not discussing that. We saw Leghorns and



William Kinnear.
Cross-exam.

- and Plymouth Rocks down below just now. Having that idea, how many did you leave? A. I could not say.
- Q Well, how many? A. I could not say.
- Q Three? A. I dont know, but there was some.
- Q How many Plymouth Rocks? A. I don't know.
- Q Will you swear you left more than three? A. Yes.
- Q How many more? A. I dont know.
- Q Now as a matter of fact you substantially-- as a matter of fact, you took practically all the Leghorns and all the Plymouth Rocks? A. No, I didn't.
- Q If you can't say that the number might have been three that were left, that would account for you taking practically all? A. I didn't say three was the number left.
- Q Do you want to change the number? I understand you can't pledge your oath you left more than three Plymouth Rocks or three Leghorns. Can you pledge your oath, when you took those Plymouth Rocks and Leghorns you left more than half a dozen of that kind in the cellar? A. Same kind of mine?
- Q No, Leave yours and mine and all that out. A. Tell us what you want to know?
- Q Did you leave more than that, of that kind of hens in the cellar, Plymouth Rock and White Leghorns? A. Yes.
- Q You can't give me an idea how many you left? A. No.
- Q Did you take the most of the Plymouth Rocks and Leghorns? A. I would not say whether I did or not.
- Q Now, how many did you find with their wings cut?



MP

William Kinnear
Cross-exam.

A. Two.

Q Two out of, about what number did you examine? What number were the two out of with their wings cut? A.

A. 26 or 27.

Q 26 or 27 here. Did you examine all the chickens in the cellar? Didn't you tell my learned friend that you did? A. I saw them.

Q Didn't you look for your own? A. Yes.

Q How long were you down there looking for your own.

A. I could not exactly say. Half an hour or an hour.

Q And that is only a guess? A. I could not swear positively.

Q You might have been only a quarter of an hour?

A. More than that.

Q Will you swear you were more than that? A. I will swear to half an hour.

Q And in that time how many chickens did you count or examine? A. I don't know what you mean by examine. I saw a lot of them there.

Q You know what I mean by count? A. Yes.

Q How many did you count? A. After we got them out we counted over 26 or 27.

Q You knew when you went in how many chickens you lost with their wings cut? A. No, I didn't.

Q You didn't know how many chickens of those that were lost had their wings cut? A. No.



William Kinnear
Cross-exam.

- Q Didn't you tell my learned friend how many chickens you cut, of your own chickens? A. Between 5 and 7.
- Q Out of 85? A. Out of 83.
- Q How many had you at your own place with the wings cut? A. I don't know.
- Q You didn't take the trouble to find out? A. No.
- Q And don't know now? A. No.
- Q That was your main clew, to see which had their wings cut? A. No., it was not.
- Q You didn't ask him to pull out a chicken and if it had its wings cut it was yours? A. I didn't say that.
- Q Did you or did you not ask the Constable to pull out a chicken and say, if it had its wing cut you would know it was yours? A. No sir.
- Q You never said anything to that effect? A. Yes.
- Q What do you mean by yes and no? A. What I did was, I saw a chicken at the far side, just saw its head, and I told the Detective, there's one of my chickens, and if it hadn't one of its right wing cut, then I knew nothing about it.
- Q Then I am right when I say that one of the best means of identifying is by the cut wing? A. No, but I told them that as a proof that I did know them.
- Q Now, I ask you as a candid man, do you mean to tell me, with fowl of the kind we just saw in the Court building here, Plymouth and White Leghorns, that you could, if those Plymouth Rock were put with a hundred other Plymouth Rock you never saw before, and the Leghorns with a hundred Leghorns you never saw be-



William Kinnear
Cross-exam.

fore, that you could in half an hour pick out our own birds? A. I could at the time.

Q No, but could you now? A. The appearance of those--

Q I am asking you, are you going to ask His Honour to believe that you could pick out every particular hen we saw if put with a hundred of each kind and mixed up?

A. I could immediately after I lost them.

Q That is what you ask to be credited? And that, whether with their wings cut or not? A. Yes.

Q Only two with their wings cut? A. That is all.

Q And you could do that in half an hour? A. Yes.

Q And that is your candid statement? A. Candid statement.

Q You thoroughly understand what I am asking? How long have you been in the business? Do you consider yourself an expert? A. No, I am not.

Q It is just a pastime with you? A. Yes.

Q Earn your living out of it? A. No sir.

Q Have you studied the breeds at all? A. A little.

Q Can you tell the colors of the ear lobes of the various fowl? A. No.

Q Do you know the distinguishing marks of the different breeds? A. No.

Q Know anything about the color of the legs in different breeds? A. Yes.

Q What do you know about the color of the legs in the different breeds? A. In the Brown Leghorn they have yellow legs.



William Kinnear
Cross-exam.

- Q. What have white legs? What breed has white legs?
A. I think you got that wrong.
- Q. I am not going to ask you to show them to His Honor; you know nothing about ear lobe identification? Know nothing about double combs and single combs? A. No, not particular, no.
- Q. Do you know the color of the Hamburg? A. I never had those fowl at all; I don't know anything about them.
- Q. Do you know anything about the different number of toes and know that poultry differ in regard to that, different breeds? A. Perhaps they do.
- Q. Do you know anything about that? A. No.
- Q. I am only testing your knowledge as a man who could tell much about them. A. I told you at the start I am not an expert and I am not.
- Q. That is quite clear. Just on that point of identification: from my learned friend's examination, which preceded mine, I take it this is true in the whole the reason you know those fowl to be yours, you can't explain, but you know - just as one man from another - just as you distinguish Chinamen. Don't you think most Chinamen look alike? A. Yes.
- Q. And don't you think most Plymouth Rocks look alike?
A. Yes.
- Q. And don't you think most Leghorns look alike?
A. A good deal alike.



William Kinnear
Cross-exam.

- Q And don't you think there is a good deal of difference as between man and man and between Plymouth Rocks?
- A. In some men.
- Q Isn't there a good deal of difference? A. I don't understand the question.
- Q Isn't it far easier to tell the difference between two men and identify one man than it is to tell the difference between two plymouth rocks? A. Between some men it would be.
- Q You wont give any other answer than that to that question? A. Well, I could not, no.
- Q So practically you would not pledge your oath that all of those hens came from your coop? I understand that was your answer to my learned friend? Do you want to correct it, you would not identify all? A. Yes.
- Q And you would not at the Police Court? A. Yes, I did.
- Q And the difference is the effect of feed on the hens and their absence from your sight, how many days? A. Two weeks today since I saw those chickens.
- Q That accounts for your difficulty in identifying them?
- A. Outside of a box, and being closed up and in a different coop.
- Q You could tell them better when dirty than clean?
- A. No, I could not.
- Q You say that. A. I don't say it that way.
- COURT: The Court didn't take it that way.
- SIR HIBBERT: I stand corrected.
- Q In regard to the examination you made when you counted



William Kinnear
Cross-exam.

- 85, did anyone assist you in counting them? A. No sir
- Q Were they on the roost, asleep or running about? A.
- A. I had them in different yards. Four different yards.
- Q How many kind in each yard? A. I could not say.
- Q How long before you missed them did you count them?
- A. About 3 or 4 days.
- Q Why did you say about a week at the Police Court?
- A. Well, I don't think it was a week.
- Q Why did you say a week there? That was two weeks ago, that was nearer the time? A. I didn't say that it was a week I don't think.
- Q Question 6. "How many chickens have you - - - ?
- Ans. About a week before this I counted them."
- A. It might be more and it might be less.
- Q It might be more than a week and It might be less?
- A. It would be a few days.
- Q You told me it might be more and it might be less, is that right? A. It would be within a few days of a week.
- Q Either more or less? A. Either more or less.
- Q Anyone with you when you counted them? A. No.
- Q And you never counted them after that? A. No,
- Q So as a matter of fact you don't know how many you had the night that you locked them up, the last night?
- A. I could not swear positively to the number.
- Q You come to your office every day? You are in the real estate business, aren't you? A. No,



M

William Kinnear
Cross-exam.

- Q Are you in the real estate business? A. No, I handle real estate.
- Q Why did you give the answer in the Police Court that you were in the real estate business? A. I didn't.
- Q Question; "What is your business", and you say you deal in Real Estate. A. Well, I do, but I have not an office.
- Q I asked you if you were in the real estate business. That is your business? A. I invest in real estate.
- Q You mean you invest your own money? A. Yes.
- Q And attend to that? A. Yes.
- Q Do you live at your own place during the day? A. Yes.
- Q And do your business there? A. Yes.
- Q And this little lad, this son of yours, does he feed the poultry? A. Sometimes.
- Q Are you a married man? A. Yes.
- Q And sometimes other members of your family feed them? A. Not often.
- Q I didn't ask you how often. I say sometimes; don't be frightened now. A. Well, very seldom.
- Q But sometimes they do? A. If you know better than I do, that is all right.
- Q Is it right - sometimes they do? A. I could not swear.
- Q Are you perfectly candid with me in that answer? A. Yes.
- Q You went swear that they do? A. No.
- Q And yet you know they do? A. I don't know they do.



William Kinnear
Cross-exam.

- Q Have you not already said they occasionally do?
A. Well, my wife -
- Q Isn't that right, occasionally other members of your family feed them? A. My wife used to, but for quite a while she has been in California.
- MR WOODWORTH: My learned friend should let the witness answer.
- Q When did she go to California? A. About the 15th of September.
- Q When you were all at home, it was no one in particular?
A. Yes, it was.
- Q It was your son sometimes and you sometimes and your wife sometimes? A. If I was at home, which is pretty nearly always the case, I always feed the chickens.
- Q How far is your place - an acre and a half? A. I didn't say I had an acre and a half.
- Q About an acre; how far is your acre from the cellar in question? A. Which cellar, the Chinaman's?
Q Yes. A. I don't know.
- Q You know what I mean very well; About how far? How long would it take you to go there? A. If I took a street car it would not take me near as long.
- Q Are you not sufficiently intelligent to give me an idea of the distance between your place and this business place of the Chinaman's? Are you or are you not sufficiently intelligent? A. What do you say?
- Q Will you kindly answer me. I ask you about how far



William Kinnear
Cross-exam.

is your property from this place of the Chinaman's business? A. Well, it would be somewhere about 20 blocks, as near as I could tell.

Q That is quite a distance? A. Quite a distance

Q You know from the examination you made of this cellar that the business carried on at that place is quite extensive in poultry? A. It appeared to be.

Q It is a regular poultry establishment? A. I don't know.

Q It is called "Market Alley" isn't it? A. I don't know.

Q You saw the arrangement? There was no secrecy; you don't want to suggest the fact that chickens in the cellar meant any secrecy in regard to their being there? Do you or do you not want to suggest that? That that was any extraordinary place for them or an ordinary place? A. You could call it whatever you like.

Q I want to test you all through. You have quite a difficult job, even if someone did steal them, to identify them. Do you want to suggest that there was anything peculiar in keeping chickens in a cellar, or was not that a regular place for them? A. I would not swear whether it was or not.

Q You observed in that half hour's examination the arrangement of the place did you not, the appearance of the cellar? A. In part, yes.

Q I should say when you were looking through an indiscrim-



William Kinnear
Cross-exam.

inate lot of poultry for 26 chickens, you made a careful examination of the place? Did you or did you not?

A. No, I did not.

Q Just a careless examination? Are you able to tell His Honour the arrangement of the place below? You went down the stairway? A. I went down the stairway, and on the right --

Q There are regular tiers around the place for the retention of chickens? A. I just saw two places.

Q You only saw two tiers. This is of some importance to me, try and follow me now. You only saw two tiers. As a matter of fact you saw ducks there didn't you?

A. I would not say I did. I saw ducks in others--

Q Didn't you see a locked coop with a great many hens and chickens in it on the right of the stairway as you go down? Didn't you see the locked coop?

A. Yes.

Q With a great many hens and chickens? You did see those?

A. Yes.

Q And you observed they were locked? A. Yes.

Q Did you know that in that coop there were Plymouth Rocks and Leghorns? A. Yes.

Q A large number? A. Well, quite a lot. It would depend on what you call a large number.

Q We will leave that for a moment. Let us get on. You found out while you were there the reason that coop was locked did you not? A. No.

Q Didn't you know that traders had the key of that locker?



William Kinnear
Cross-exam.

A particular trader did keep his chickens in this place till he required them for his store, didn't you ascertain that? A. No.

Q Did you put your hook into that pen or coop? A. The detective went and got the key, or the Chinaman came and unlocked it and I examined and none of mine were in there I could swear.

Q Was it not explained to you whose chickens those were? A. Not to me; I had no conversation with the Chinamen at all.

Q On your right again as you go along beyond that locked coop, did you observe three tiers or shelves running around? A. No, I didn't.

Q You didn't observe that? A. No.

Q Four coops with divisions and some coops -- well any coop you saw was on a shelf was it not? A. It was up off the floor.

Q It must be on something then? A. Yes.

Q Was there not for instance, one shelf here with a coop on it, and another shelf above that and a third - three altogether? A. No.

Q You have forgotten that, whether it was so or not.

A. The coop that I got those chickens out of I don't think ---

Q Keep your mind off those particular chickens. I am asking about the system of arrangement around this place. We have a locked coop with a great many chickens



William Kinnear
Cross-exam.

in it. Coming around you see a shelf and you don't re-
collect whether there is one above that and another above
that or not? A. No, I dont.

Q Dent you remember there was a division on those shelves?
A. No.

Q Your examination didn't take in the style of arrangement
for chickens? A. No.

Q At any rate you saw it was a regular supply store, the
chief articles being chickens and poultry? A. I did
not take very much notice of the surroundings at all;
I saw my own chickens in this particular coop and all I
wanted to do was to identify the chickens and get them
out. I didn't take any particular notice.

Q Cant you tell us at this date, after examination, how
many coops you did examine? A. No, I saw two.

Q Didn't you see geese? A. I may have but I dont re-
member because I paid no attention.

Q I am instructed the geese were right under that
locked tier of this poultry? A. You know more than
I do about it maybe.

Q I am only trying to see the amount of intelligence you
exercised while down there. As I understand, you were
absolutely oblivious to all except Plymouth Rocks and
Leghorns? A. I was looking for my fowl.

Q You didn't look at anything else? Didn't see any
geese? A. No.

Q Didn't see any black fowl? A. They might be there
but I cant say.



William Kinnear
Cross Exam.

- Q What do you call those chickens? Those fowl we saw below, why do you call them chickens? A. Why do you call them?
- Q I am asking you; leave my thought to myself. A. Well, aint them chickens?
- Q Can you give me a reason for calling them chickens? You dont want to answer that? If you don't, I will pass on.
- COURT: Probably because they are not cattle. You might give that reason.
- SIR HIBBERT: He has no reason.
- Q How long had you 86 chickens of that kind? A. How long have I?
- Q When did you count them before that week? A. I didn't count them.
- Q Never counted them before? A. I never counted them.
- Q When did you count them before? A. I don't know.
- Q Can't give us the slightest idea? A. No.
- Q Did you raise them yourself? A. Yes.
- Q How many did you start with? You say you began keeping chickens two or three years ago. Did you start with those hens? A. Yes.
- Q How many did you start with? A. After we came here I bought about two dozen.
- Q And you started therefore with two dozen? A. Yes.
- Q How many years ago? A. Three years ago.
- Q And dont you remember counting them so as to keep the count up to the week before those were lost? A. No sir.



William Kinnear

Cross-exam.

- Q How many did you kill after counting them? A. Three
- Q What were those? A. Three cockerels.
- Q What breed? Were they Plymouth Rocks or Leghorns?
- A. They were crossed.
- Q Between those two? A. Yes.
- Q What color like? What was the color? What was the plumage, resemble the Plymouth Rock? A. Yes.
- Q -Or the Leghorn most? A. Resemble the Plymouth Rock most.
- Q Had any of those the wings cut? A. No.
- Q Sure of that? A. Yes.
- Q You killed them yourself? A. Yes.
- Q. You know enough about poultry I suppose to know it is a very common thing to cut wings of hens to prevent flying? A. It should be.
- Q That is the object? A. In some cases I guess.
- Q In all cases where the wings are cut it is for that purpose? A. I could not say.
- Q You dont know enough to say that generally? A. No.
- Q You dont know exactly how many chickens you had after you missed those on Friday night? A. No.
- Q You didn't count the remaining ones? A. Yes I counted them in the morning when I missed those.
- Q Why did you tell my learned friend that you had about 50? A. Yes sir.
- Q Were you estimating what you had left or had you counted 50? A. I counted.
- Q Exactly 50? A. No, I would not swear positively.



William Kinnear
Cross-exam.

- Q When did you count the hens that were left, when you missed them? A. When I missed those.
- Q Well, but when? A. About 8 o'clock in the morning.
- Q Did you have a light? A. No sir.
- Q Is the barn or coop where you kept them, light?
A. Yes.
- Q At 8 o'clock in the morning? A. Yes.
- Q In December? A. Yes.
- Q You swear to that? A. It was light that morning;
it might not be this morning.
- Q You say the 4th December it was light at 8 o'clock?
A. Yes.
- Q How is this place lighted, one window? A. It had
two windows, and there is a large screen about
four or five feet across, and I have a trap door that
goes down and covers that and I raise that up in the
morning.
- Q You counted exactly 50? A. I would not say.
- Q How many did you count? A. Between 50 and 55.
- Q Why do you say between 50 and 55? What confuses you?
A. Yes.
- Q Didn't you estimate about what you had? A. Yes sir, I
estimated; I counted as near as I could.
- Q They were running about? A. No, they were mixed in
two pens.
- Q How many in one pen did you count? A. I could not
give the figures.
- Q You can't give the figures of either pen? A. No.
- Q Did you count them since? A. Yes.



William Kinnear
Cross-exam.

- Q When did you count them since? A. I counted them then about 10 or 11 o'clock.
- Q When? A. On Saturday.
- Q What time on Saturday? A. Well, I told you.
- Q Well, what time, give it to me? A. About 10 or 11 o'clock.
- Q At night? A. No, in the morning.
- Q How many did you count in the morning? A. I counted them twice in the morning.
- Q How many did you count the first time? A. Between 50 and 55 I made it. Rough estimates.
- Q You got it in a rough way. You can't say whether 50 or 55? A. No.
- Q The second time, what was it? A. 52.
- Q 52 exact? A. 52 exact.
- Q When was the second time? A. About 10 or 11 o'clock in the forenoon on Saturday.
- Q How did you reach your count in the Police Court? You said you lost 35? Those figures dont make 35. A. Well, I counted them first and told the boy when he went to the Bank to phone down and he asked me how many had we lost, and I told him between 30 and 35, and he phoned to the Police we lost between 30 and 35, and they put it down 35 I suppose, and when I went down at 2 o'clock I told them not more than 30.
- Q Why did you, after having made that statement, state on oath at the Police Court that you lost 35?
- A. I don't think I did.



William Kinnear
Cross-exam.

- Q Question 7 "On the 4th December - - - A- - - - and came to the conclusion I lost about 35." Is that right? Did you say that in the Police Court? A. Perhaps I did.
- Q Now, it is about 30. A. Between 30 and 35.
- Q In fact you don't know exactly what you lost? A. Not to one or two.
- Q Did you count them below to-day? No sir.
- Q While we were there? A. No sir.
- Q Can you give us an estimate of how many ~~was~~ were there? A. I should think about all there.
- Q About all that you lost? A. About all that I got.
- Q How near to what you lost are they? A. I could not say.
- Q What time was it you told them in the Police Court you saw your chickens in the cellar of this establishment on Saturday? What time was it you told them in the Police Court you saw the chickens in Chinatown? A. I think somewhere between two and three o'clock.
- Q Between two and three; about three you said; that is about right? A. Yes.
- Q That is right? A. I think so.
- Q Although it may have been two? A. No I don't think so. I got at the Police Court at half past two and we had a conversation for a few minutes and went down ---
- Q Leave that alone: now come to another point. If I am right - if I am not, correct me - I understand from your answers generally to my learned friend and myself, that you can't give me an idea of how many hens there were from which you took these chickens in the coop?



William Kinnear
Cross-exam.

- Q. No, I could not, because I didn't count them, but there was quite a number.
- Q. How many would you say? A. I did say.
- Q. Well I am asking you now, on the question of veracity; how many? A. I would say 80 anyway.
- Q. Does that include what was in the locked coop? A. Yes. There might be twice that many for all I know.
- Q. You said in the Police Court 100; you saw them in a coop; those were not in one coop, the chickens you collected out of that cellar? You don't want to suggest that they were in one coop, do you? A. The chickens I claimed?
- Q. The chickens in Court were not taken out of one coop? A. Taken out of one coop.
- Q. What do you mean by one coop? A. I mean one division.
- Q. How many divisions were there there? A. I saw two.
- Q. On the right going down? A. On the right after going down.
- Q. Outside of that locked coop? A. No.
- Q. That was one of the two you saw? A. Yes.
- Q. And these were in the other coop? One tier or out of two tiers? A. I don't think there was two tiers.
- Q. But you are not sure about that? A. I would not swear.
- Q. Is it not right that out of that coop you took those chickens there were a hundred or more? A. There might be but I would not swear what there was.
- Q. In the Police Court you did swear; you say "in a coop in Chinatown. How many down there? Ans. 100 or more." Did you find out while there that these Chinese dealers have been in business for a long time? A. No sir



William Kinnear
Cross-exam.

I did not.

- Q Did you make any inquiries at all? A. No.
- Q About where they got their chickens? A. I did not.
- Q Didn't you hear the constables asking them and they told them Chilliwack, New Westminster and Abbotsford?
A. No.
- Q Didn't you hear any of that conversation? A. I heard either the Chinaman or Detective saying that they bought them and that the man they bought from had gone to Westminster to buy more.
- Q Didn't you hear the explanation, that they supply these places from Abbotsford, Westminster and Chilliwack?
A: No.
- Q Would you be surprised to know they are receiving hundreds of them every week and selling them, that is the business they carry on? A: I don't know anything about the business.
- Q Would you be surprised to know that? A. No.
- Q There were no distinguishing marks on any of your Leghorns and Plymouth Rocks? A. No, nothing particular.
- Q In regard to this conversation about a little deception: There was deception on both sides in regard to your visit. You were pretending to buy chickens when you went to the Chinaman's store? A. The Detectives asked them if they had any chickens for sale.
- Q Come up to the mark quick. Isn't it true you went there pretending to buy chickens? A little pious fraud - pretending to buy? A. Yes.
- Q But you didn't intend to buy? A. No.



William Kinnear
Cross-exam.

- Q Don't you know in regard to the statement "no more for sale" you asked in the top storey they showed you chickens?
- A: Yes.
- Q And then you said they would not suit? A. I said they were of no use.
- Q And when you asked if they had more and they said no - ?
- A. I didn't ask, one of the Detectives did.
- Q Didn't you know enough about Chinese traders-- A. I don't know anything about Chinamen and I don't want to know.
- Q You never knew that when they see a customer is too particular they simply tell him they have no more, to get rid of him? A. I know nothing about them.
- Q They didn't attempt to stop you going down? A. No.
- Q They didn't know he was a constable? A. I don't know.
- Q You said he pretended to go in buying? A. I didn't say that.
- Q He asked if they had any for sale? A. Yes.
- Q And he was in plain clothes? A. Yes.
- Q And there was no resistance on their part to either of you going down? A: No.
- Q They didn't insist on keeping them, did they? A: No.
- Q You told them they had been stolen? A. I didn't tell them anything about them.
- Q You quite understood that you left them with the knowledge that they were yours? A. Yes, I had no conversation with them.
- Q And they didn't resist or attempt to keep what you claimed to be your own property? A. No.
- Q And you didn't suggest, nor did the constable in your



William Kinnear
Cross exam.

1

presence, that they were parties to any theft?

A- I think he did.

Q- Now what makes you say you think he suggested they were parties to any theft?

A- I could not explain the conversation but I know I was led to think that these fellows were accused for taking the chickens.

10

Q- You heard no accusation of theft? They have not been charged with that; but your idea was he suggested they stole them?

A- No, the chickens were stolen.

Q- Would you be surprised to know that the constable said they were very frank in their answers where they got the chickens?

A- The most of the conversation between them I think took place upstairs.

20

Q- We will leave you with this statement, that from what the constable said you inferred he charged them as parties to the theft and not merely claimed the property was yours; that is all you want to say, isn't it?

A- Yes.

Q- How long were you downstairs before you discovered what you supposed to be your Plymouth Rocks and other hens?

A- Just as soon as I went down I saw one of mine in the corner of the coop.

Q- What was that? A- Plymouth Rock - a cross.

Q- Between the Plymouth Rock and the -- A- Brown Leghorn.

Q- How did you know that one? You don't know how you knew it.

30

A- Well just because I knew it.



1

Q- Isn't that the one you said, if it has not got its right wing clipped it is not my chicken?

A- No, that is not the one.

Q- You did make that remark about one?

A- Yes.

Q- And therefore you were going by the clipped wings?

A- No, I was not.

Q- You were not going by the clipped wing? A- No.

10

Q- Is it true where one of the witnesses in the Police Court says "The Complainant identified one of these chickens in this way. 'They have a round hook and if you have any doubt this is not my chicken, pull that one with its gray head up, and if it has not got its right wing clipped, it is not my chicken.'" Did that occur? Do you say that is correct? A- If you give me time I will tell you what I did say.

Q- I ask you did you say that first? A- Say it.

20

Q- "They have a long hook and he said, if you have any doubt about this not being my chicken, pull that gray one out with his head up, and if it has not got its right wing clipped, it is not my chicken."

A- He said, if any doubt -

Q- You said "-and if it has not got its right wing clipped it is not my chicken." One of the Constables swore that is what you said; I ask you, is that correct? A- ~~That is~~ The way you have the thing mixed up I can't hardly understand it.

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Q- I will read it to you again. This is one of the Constables, Thompson, do you remember him? At any rate he is one of the men who went with you. "In one particular instance where the complainant identified one of these



William Kinnear
, Cross exam.

35

1 chickens, in this way. They have a long hook, and if you have any doubt about this not being my chicken, pull that gray one out with his head up, and if he has not got its right wing clipped, it is not my chicken." A- Yes.

Q- Did you say that?

A- Yes, I told him that.

COURT: He has already said that today twice.

SIR HIBBERT: He has been in grave doubt about five minutes.

10 WITNESS: The way you have things complicated - I want to understand it.

Q- How many chickens had you with the right wing cut?

A- Between five and seven I cut.

Q- How do you get those figures? Why can't you tell me how many?

A- I didn't count them.

Q- Would you say as many as five?

A- Yes.

Q- Or is that a guess? Who cut the wings?

A- I did.

20 Q- You alone? A- No, the boy held them for me.

Q- And you cut the wings of how many? A-, Between 5 and 7; I will not swear positively.

Q- At the Police Court you said five or six, now you have got up to seven. Are you not making a guess? Wasn't it the very day before you missed them that you cut them.

A- No sir -- yes-

Q- What day did you cut the wings? A- Thursday night.

Q- Are you not making a guess when you say five or seven?

A- I don't think so.

30



William Kinnear
Cross exam.

1

CROSS EXAMINED BY MR. FARRIS:

Q- Did you inspect the hens upstairs? You said you wanted to buy hens, did you inspect them? A- I just saw them.

Q- You didn't look at them as a buyer would look at them?

A- I looked at them enough to see that none of mine were amongst them.

Q- You showed enough indifference to the Chinamen to show you didn't want to buy chickens?

A- I don't think so.

10

Q- Was there a pretty good variety upstairs?

A- Yes, quite a few.

Q- Just as good a variety upstairs as down stairs? A- I don't think so.

Q- As far as you know, just as good a variety upstairs as down stairs? A- I looked enough at them to know mine were not among them.

Q- You didn't look among them as if to buy them? A- No.

Q- So the Chinamen might conclude you were more rubber necks than anything? A- What do you mean by 'rubber necks'?

20

Q- Just men looking around. Be a little more careful in your answers.

COURT: I think he is careful in his answers.

MR. FARRIS: His answers are offensive.

COURT: The term you used is an offensive term. He took it that way; because the term 'rubber neck' is an offensive term, he is justified in taking offense.

Q- MR. FARRIS: Didn't you think a Chinaman would be justified in thinking you men were looking around instead of serious buyers? A. I could not say.

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Q- You would not be surprised if he took that view? A' No



William Kinnear
Cross exam.

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Q-. That might be why he didn't want to bother any more with you? A- It might.

ROY KINNEAR. SWORN. EXAMINED BY MR. WOODWORTH:

Q- Before calling him I might say, I don't know whether he is expert on higher philosophy or metaphysics.

Q- Now, I want you to tell us --

SIR HIBBERT: Get his age.

MR. WOODWORTH: How old are you? A- Twelve.

10

Q- Your father is the man who just gave evidence?

A- Yes.

Q- You live at what number on Barnard Street? A- 1857

Q- In the City of Vancouver? A- Yes.

Q- How old did you say you were? A- Twelve.

Q- You attend school? A- Yes.

Q- And go to Sunday school? A- Yes.

Q- And you know there is a God? A- Yes.

Q- Does your father keep some chickens? A- Yes.

Q- Do you attend to those chickens yourself? A- Sometimes

20

Q- How long has he kept chickens? A- Three years.

Q- Do you know about how many chickens he kept?

A- About 80.

Q- Do you know anything about any of the chickens being lost or taken? A- My father went out Saturday morning -

Q- Did you go with him? A- No.

Q- You must not tell anything your father told. Did you go out? A- I went out after.

Q- What did you see? A- I saw about 20 -

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Q- Just speak so that the gentleman sitting at the desk, the Judge, will hear you.



Roy Kinnear,
Direct exam.

1

A- I saw that the door was barred open -- (Witness commenced to cry)

Court; Take a seat up here. Now, we will get along a little better.

Court: (To Mr Woodworth) Ask the questions as quietly as you can.

Q- MR WOODWORTH: What did you see when you went out?

A- I saw the door barred open and some of the chickens gone.

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Q- Can you tell us how you would know that there were chickens gone, by looking?

A- You could easily tell by the number he had.

Q- Now you remember, or do you remember, these two men in the box, when you saw those?

A- Yes, I saw them down at the other place.

Q- At the Police Court? A- Yes.

Q- At the time you were down there did you go down about the Police Court to see some chickens? Did you find any chickens when you were down at the Police Court?

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A- Yes, they were over in the other place.

Q- When you went to look at the chickens down in the Police Court did you recognize any of the chickens?

A- Some, one that I recognized down there.

Q- And did you recognize any others?

A- No sir, I was looking for one and I could not find it.

Q- Now, that chicken that you recognized, did you know whose chicken - who that chicken belonged to?

A- To myself.

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Q- It belongs to yourself? A- Yes.

Q- You call that chicken yours? A- Yes.



Roy Kinnear
Direct exam.
Cross exam.

1

Q- Your father I suppose has given it to you?
 A- I raised it.
 Q- So you took special interest in that one chicken?
 A- Yes.
 Q- Now, this morning did you see that chicken or any other chicken you knew? A- I recognized that as soon as I saw it.
 Q- Down in the Court House? A- Yes.
 Q- Are you sure of that? A- Yes.
 Q- Could you tell that chicken among a great many?
 A- Yes sir.
 Q- Any more difficulty in telling that chicken than in recognizing me if you saw me again? A- No sir.
 Q- How old is that chicken? A- Two years.

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CROSS EXAMINED BY SIR HIBBERT TUPPER:

Q- You know that little chap to be yours? A- Yes.
 Q- Because he has a yellow breast and is a leghorn?
 A- Yes.
 Q- Can you remember another little thing? When was it that you thought there were about 80 hens, all told? Did you ever count them or help your father count them?
 A- Yes.
 Q- When was it you helped your father count them? About a week before? A- No sir.
 Q- About a month? A- Yes, sir.
 Q- And did he count them several times? A- I just remember once.
 Q- And did he tell you how many there were? A- Yes.
 Q- Did he say about 80?
 A- Yes sir.

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DETECTIVE JOHN HAMES THOMPSON: SWORN: EXAMINED BY
MR. WOODWORTH:

Q- What is your business? A- City detective.

Q- And as such did you have anything to do with the case in question, Lum Man Bow and Hong? A- Yes.

Q- How will you tell us just what you did in regard to the discovery of these chickens?

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A- On December 4th, between three and four in the afternoon I was talking to Detective McLeod and Mr Kinnear. We went through five or six places in Chinatown to see some chickens and finally we went into No. 10 Market Alley and there was some chickens sitting under the window in an enclosure and also a crate of chickens sitting on the floor, and we asked the Chinaman if he had any for sale, and he said yes.

Q- What chinaman did you ask? A- Hong. He says, yes; and then we asked if he had any more; he says no more.

Detective McLeod says, I think some more, and we stepped down stairs. Went down and found quite a number of chickens

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Q- Where was Lum Man Bow at that time?

A- Now in then. This man followed us downstairs, that is Hong. Mr Kinnear looked in a crate there and seen a chicken He says, that's mine. So he looked and seen more that he said belonged to him. So we pulled a number of them out and put them in sacks and took them upstairs. Also took the two accused.

Q- When did Lum Man Bow come on the scene?

A- After we got the chickens in the sack and coming upstairs.

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Q- What was said to him then?

A- Lum Man Bow was in the office at the time.



J.J.Thompson
Direct exam.

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Q- Did you say anything to him? A- We asked him if he was the boss, he says, yes, and that Hong, his partner. Asked him where he got the chickens, and he said his man was buying them out through the country.

Q- Did he say where? A- No, just out through the country he said.

Q- In identifying the chickens did the witness Mr Kinnear use any particular way of identifying? Tell any instance.

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A- There was a white hen there, had its head up a little, He says, you see that white hen, he says, that is mine - no, he says, if that hen has got its right wing clipped it will be my chicken, if not, why it is not; so we pulled it out and it had its right wing clipped.

Q- Did you ask the Chinaman about any of these particular coops? A- No.

Q- Didn't make any particular inquiry? A- No.

Q- After they were arrested did they give any explanation?

20

A- No. This Hong didn't appear to be very anxious for us to go down stairs; insisted there were no chickens down there.

CROSS EXAMINED BY SIR HIBBERT TUPPER:

Q- You know I suppose a good deal about Chinese in the town here these merchants and their little ways? A- Yes.

Q- Isn't it a fair statement that irrespective of any wrong doing, that a Chinese merchant, if he finds you are simply asking about his goods and doesn't think you are going to buy, he tells you he has got no more? Take the case of silks or dressing gowns. A- I never had any dealings of that kind.

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Q- You have not had any experience of that kind? A- No.



J.J.Thompson
Cross exam.

1 Q- At any rate they are peculiar in their ways of trade?
 A- Oh yes.
 Q- They didn't attempt to prevent you & they didn't know you were a Police Officer? A- No.
 Q- You and Mr Kinnear rather approached them on the basis of intending purchasers? A- Yes.
 Q- And assumed that character throughout till he claimed his hens? A- Yes.
 Q- And they answered you frankly as to where they got their poultry? A- Yes.
 10 And didn't attempt to resist your taking these hens when you claimed they had been stolen? A- No.
 Q- You didn't suggest that they stole them? A- No sir.
 Q- You were simply claiming property that had been stolen - from Mr Kinnear? A- Detective McLeod said -
 Q- Is that not right. You didn't charge them with stealing
 A- No sir.
 Q- They are not charged now with stealing? A- No.
 Q- They are charged with retaining property; you understood that in the Police Court? A- Yes.
 20 Q- And it was on your information and that of Mr. Kinnear I suppose the charge was framed? A- Yes.
 Q- Well, then, as I say, you were going to mention Mr McLeod or someone in connection with the suggestion to them it was stolen? A- Yes. Detective McLeod said, 'you got chickens, steal them?' and he said 'no, I bought them.'
 Q- Was that the only suggestion made? A- That is the only suggestion.
 Q- They gave you information as to where they were obtained?
 30 A- Yes. bought them in the country.



J. J. Thompson
Cross exam.

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Q- It was evident they carried on quite a business in chickens, geese, - you saw geese there didn't you, and ducks?

A- I didn't notice any geese; saw some ducks.

Q- Did you observe how the cellar was arranged with tiers?

A- Yes.

Q- Were there not three shelves for coops, one above the other?
A- Do you mean in this coop where we got these chickens?

10

Q- Yes. First, there is a place with a lock on? A- There is a crate with a lock on.

Q- And in that case a large number of poultry? A- Yes.

Q- Did you learn how that was managed? One customer has his own particular poultry kept there and takes them when he requires them? A- Yes.

Q- And then these other coops are for general sale.

A- Apparently.

20

Q- You didn't learn whether all these others were sold. For instance, these others locked up were really not the property of the Chinaman at all, they were the property of the customer who had the key of the lock? A- Yes, a man running a restaurant.

Q- Now then, these others, so far as you know, were not for sale, as far as you know? A- As far as I know.

Q- Now take the arrangement after that locked place. Is this not correct; that there were shelves there one above the other about three and divided by partitions? A- I won't swear to three; there were two.

30

Q- That was the system, and then the coops were on some of these shelves? A- Where we got these chickens it was



- 1 entirely open.
- Q- And about how many did you see outside of the locked lot?
- A- I would judge there would be a hundred chickens, or may be more, in that coop that we got these chickens out of.
- Q- About what preponderated - black or white? A- White and Plymouth Rocks.
- Q- And Leghorns? A- Yes.
- Q- And some Black Spanish? A- I didn't notice.
- Q- Plymouth Rocks and White? A- White and some yellow ones.
- 10 Q- Cochin? A- Yes.
- Q- You say about a hundred in all.? A- In that coop.
- Q- Now, about the hour. You say it was between three and four. Can you fix that at all definitely, as to when you reached this place? I understand between three and four you started on your trip to Chinatown and this was the last place? A- This was the last place.
- Q- How long were you in the other places? A- Walked through, took a look at the chickens and he could not
- 20 identify any in the other places.
- Q- What time about would you reach this place? A- This, No. 10?
- Q- Yes. A-, Between three and four.
- Q- How long were you in the cellar? A- Down there probably half an hour.
- Q- So that examination was very careful? A- Yes.
- Q- And you looked for cut wings? A- Yes.
- Q- And for Plymouth Rocks? A- Yes.
- Q- And for Leghorns? A- Yes.
- 30 Q- When you refer to a conversation about a white hen, are



J. J. Thompson
Cross exam.

- 1 you sure that that was a white hen it was referred to?
A- Yes.
- Q- The time he said if you find the wings cut? A- Yes.
- Q- Positively, swear it was not a gray one? A- Yes.
- Q- Then if Mr McLeod has sworn it was a gray one, he is wrong? A- Yes.
- Q- I have no doubt this is the time you are referring to. I will read from Mr McLeod's examination in the Police Court. "If you have any doubt about this not being my chicken, pull that gray one out with its head up and if its right wing is not clipped it is not my chicken" That is the instance? A- Yes, I understood it was a white one.
- 10 Q- Having read you that are you positive it was white?
A- Yes.
- Q- He is wrong; but that is correct in other particulars?
A- Yes.
- Q- If it has not got its right wing clipped it is not my chicken." A- Yes.
- Q- And the only discrepancy is as to the color of the hen?
20 A- Yes.
- Q- The men were very frank in their answers about where they got these from? Giving information? A- Yes.
- Q- At that time they knew, I suppose that this man was claiming his property to be stolen, when they were asked where they got the goods? A- This Lum Man Bow we asked.
- Q- They knew, you made known that you were Police Officers then, did you not? A- Yes.
- Q- And their demeanor, from Mr McLeod's testimony in the Police Court, was frank. Gave you answers to all questions.
30 A- Yes.



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Q- And told you they got these chickens out in the country?

A- Yes.

Q- Mention Abbotsford, Chilliwack and New Westminster?

A- Not to me.

Q- Just the country? A- Just the country.

Q- Were you present when Mr McRae - oh no, I think he visited afterwards. A- He was there -

CROSS EXAMINED BY MR FARRIS:

10

Q- Do you know what a rubber neck is, in common use?

A- A fellow that peeps around quite a bit.

Q- Isn't it true that there are a great many people in this city, out of curiosity, go down to Chinatown and rubber around? A- Yes, a common thing.

Q- And it is quite often that the Police are asked to take people down through Chinatown? A- Yes.

Q- And show them through - the stores and all that? A- Yes.

Q- And Chinamen are accustomed to seeing these, termed rubber necks, through that portion of the town, are they not?

A- Yes.

20

Q- And isn't it possible they rather resent it, you would not be surprised? A- No.

30

McLeod
Direct

- 1** DETECTIVE DANIEL MCLEOD. SWORN. EXAMINED BY MR. WOODWORTH.
- Q- You are a detective on the City force? A. Yes.
- Q- Did you go with Mr. Kinnear on the 4th December to look for certain chickens? A. I did.
- Q- I will lead some. Did you look at several places before you came to Lam Man Bow's and Hong's place? A. We did, yes.
- Q- Tell us what occurred when you came to No. 10 Market Alley? A. In company with the complainant and Detective Thompson in passing No. 10 Market Alley we could see underneath the window some chickens, so we went in there and we asked the Chinaman, the small one here, Kong I think is his name, if he had any chickens to sell; he says, yes, how many you want? I said we would like three or four dozen, and he opened this crate, pulled the crate open and pulled one out, and the complainant, Mr. Kinnear, he says, oh I like big ones. So, I says, I think some down stairs, and the accused say no, no more. I say, no more chickens down stairs? He says, no more, no more. Hong said. He was the only one there at that time. However, I went down stairs and saw a great
- 20** number of chickens down there and called Mr. Kinnear down. He came down and looked to see if he could see the chickens. Looked in the first crate to the right at the foot of the stairs and didn't see anything there; didn't look very much, but stepped over to the other crate; he says, there is one of my chickens now, and pointed out one, which he identified. After he says, there's a lot of them in there. He started to pull them out, at least I did; he would point out which one was his and I would pull them out. In one case, I told him he would have to be absolutely certain they were his chickens.
- 30** MR. MARSHALL: The Chinaman was not down? A. Yes, Hong came



McLeod,
Direct

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down with us. He says, I am certain; if you have any doubt pull out one big gray one, standing up there, a Plymouth Rock--

10

Q- In looking at that one, do you say gray, or white, or what color? A. Plymouth Rock, gray I would call it. So I pulled that one out. He said, it will have its right wing cut and we looked and it had its right wing cut, and he said, there's a white one in there too with its wing cut if they are mine chickens. I pulled it out too and I had no doubt then they were his chickens; we pulled out 26 I think it was and took them to the Police Station.

Q- During the time you were picking out these 26 did Lum Man Bow come back? A. Yes, he did; after I was satisfied it was his chickens I told Detective Thompson---

SIR HIBBERT TUPPER: Never mind what you told him.

WITNESS: The accused was with us down below.

SIR HIBBERT: He didn't hear and didn't understand it either.

20

WITNESS; I think he did. I said you watch these Chinamen till I call Detective Jackson down to give us some assistance in this matter. When I came back Lum Man Bow had come in, in the meantime. And then I commenced to talk to Lum Man Bow about the matter. Lum Man Bow said he was in partners with another man; Hong was working for them. Hong said, sometimes he would buy, sometimes sell, he alone there sometimes and he do the business when the others were away buying chickens. When we were taking the chickens out, I says to Hong, I says, what for you steal them? He sayd no, I buy them, buy chickens He appeared to understand pretty well what I was saying.

30

Q- Where did you keep these chickens, or do you know where they were kept up to the time of trial? A. Yes, kept in the--



1 SIR HIBBERT TUPPER; There is no dispute; they are the same chickens.

CROSS EXAMINED BY SIR HIBBERT TUPPER.

Q- You have developed a little incident rather suddenly, between the gray and white; you have added an incident to what you remembered in the Police Court. A. Not that I know of.

Q- You heard something today about a white and gray hen?

A. I did not.

10 Q- Never did? A. No sir.

Q- It is a remarkable coincidence you didn't give the incident about the white hen or chicken till in that box although you were examined very fully in the Police Court.

A- I did give about the white as well as the gray.

Q- It is not recorded? A. I don't know, I gave it anyway, because I took it out before Mr. Kinnear.

Q- You stated that you told in the Police Court in your examination both as to the white and gray? A. I told about the white and gray.

20 Q- And you were fully examined about the white? What you told my learned friend, you told all that in the Police Court?

A- I don't know as I was examined very fully.

Q- I am asking in regard to the statement you made in your examination. The story about the white hen, did you explain it the same as you did to my learned friend? A. I don't know as I used word for word.

Q- Not word for word at all, but the important feature of it, Now what did you say about the white hen at the Police Court?

30 A- I said that Mr. Kinnear said that white hen would have its wing cut, and I pulled out the white hen and it had its right wing cut.



1

Q- And the same about the gray? A. Yes.

Q- And you were asked separate questions as to the white hen and gray? A. I don't think I was.

Q- And the same answer referred to the two? A. I don't think it did.

10

Q- I will refresh your memory; Question 83, "one particular instance where the complainant identified his chickens in this way. They have a long hook that they hook around any chickens leg; he said if you have any doubt about it being my chicken, pull that gran one out and if it has not its right wing clipped it is not my chicken. I pulled it out and it had its right wing out". Do you mean to say that is not taken correctly? A. That is correct.

Q- Observe you said, One particular instance? A. Yes.

Q- And do you observe today you gave two? A. Yes.

Q- Do you suggest that the stenographer left that out?
A. No that is correct.

Q- You didn't refer to the white? A. I may not have.

20

Q- And you only knew one instance? A. No, I knew both instances.

Q- And that particular instance - on the head of that you accused this man of stealing chickens? A. Yes.

Q- And yet you say that is not correct? Before you accused him of stealing you put the test to the white hen?

A. They were not both taken out right together. These two chickens were not taken out right together.

CROSS EXAMINED BY MR. FARRIS.

30

Q- What was your object in going there pretending to buy chickens? A. These Chinamen usually if they know we are Police Officers they try to cover up.

Q- And you wanted to make them believe you were purchasers?

A. Yes.



McLeod
Cross-exam
Jackson
Direct.

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Q- Did you ask the price of chickens? A. No I don't think so.
Q- He pointed to these chickens and you looked in a general way and said you wanted to see some other chickens? A. Yes.

DETECTIVE JOHN JACKSON: SWORN: EXAMINED BY
MR. WOODWORTH.

Q- You are a detective on the City Police Force? A. I am.
Q- Can you tell what investigation you made regarding the chickens in dispute in these proceedings?

10

A- On Saturday evening the 4th of December I went down to--
SIR HIBBERT TUPPER: Unless my learned friend is proposing to put in some conditions I hardly see how this investigation the night after the chickens are removed, and two men in the Police Court, how this can be evidence. Perhaps my learned friend will tell his object. We don't want to put any unnecessary objection up.

MR. WOODWORTH: I have not had an opportunity of seeing Detective Jackson. Will you just proceed?

Q- Were you there at the time the other two detectives were there? A. I was, yes.

20

Q- While the two accused were there? A. Yes, in the store while I was there.

Q- Now will you go on and state what occurred? A. While the complainant in this case and Detectives McLeod and Thompson were there, I went down and while they went down stairs into the cellar I remained up there and had a conversation with both the accused. I asked them who run the place. The large man said "it is my store" I asked, he run it himself He said his partner he out buying chickens. During the 15

30

minutes I was in the store with the two men, two accused now, there were four Chinamen came in and the largest man of the two



Jackson
Direct

1 here sold three chickens and a customer came in, another Chinaman and the smaller man sold one. Detective McLeod I believe it was, came up then to the store upstairs and said "the old man was identifying some of his chickens." I asked the big man to go downstairs with me. While there I seen the old gentleman pick out three or four chickens---

SIR HIBBERT TUPPER: Not one of the prisoners? A. No, the complainant.

10 MR. WOODWORTH; Q-- What did Lum Man Bow say about the chickens that were picked out? A. He said that his partner, he buy them. I said how long since these were bought? "Oh, he say might be two days."

Q-- Did Hong say anything about them? A. That is the small man?

Q-- Yes. A. Well, I asked the big man what connection this man had with the premises and he said he worked for them, that was all.

COURT: Not that he was a partner? A. He was not a partner, he was working there.

20 Mr. Woodworth asks that the case for the Crown be left open.

Objected to by Sir Hibbert Tupper.

Allowed.

Case adjourned at 12.30 p.m. until Tuesday 21st inst. at 2 p.m. 153 folios.

I hereby certify that the foregoing is a true and accurate transcript of the proceedings here.

"Elizabeth Ferguson"

Deputy Official Stenographer.

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IN THE COUNTY COURT OF VANCOUVER HOLDEN AT VANCOUVER
IN THE COUNTY JUDGE'S CRIMINAL COURT.
BEFORE HIS HONOUR JUDGE McINNES.

Dec. 21st, 1909

R E X
V
LUM MAN BOW AND HONG } CHARGE; Retaining stolen property.

MR. C. M. WOODWORTH (Messrs Smith & Woodworth) appeared
for the Crown.

10

SIR C. HIBBERT TUPPER K.C. (Messrs Tupper & Griffin)
appeared for the prisoners.

Continuation of evidence from 18th Dec. 1909.

MR. WOODWORTH; The Crown will close its case.

D E F E N C E.

MRS. JENNIE MAYNARD. SWORN.

EXAMINED BY SIR HIBBERT TUPPER:

Q- You reside where? A. Chilliwack.

20

Q- And you have a chicken ranch there? A. I have not a
ranch altogether.

Q- But you deal in chickens? A. Yes sir.

Q- And you sell to various purchasers? A. Yes.

Q- And about what experience have you had in raising
chickens and selling them - how long? A. About 15 years
I have raising some.

Q- And you know Mr. Pattenson? A. Yes.

Q- How long ago since you had a transaction with him.

A- I sold him some chickens Wednesday.

30

Q- What week, early or late in December? A. On the first
of December.



Jennis Maynard
Direct

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Q- Do you recollect what kind of chickens these were?

A- Yes, I know what kind they were.

Q- What kind? A. I had some rocks and some leghorns - some Leghorns and white, and some black ones.

Q- Black Minorca? A. No, cross.

Q- Leghorns and Plymouth Rock hens? A. And a white chicken in with the lot.

10

Q- Do you know for what purpose Mr. Pattenson was getting them? A. To bring them to market.

Q- In Vancouver? A. Westminster.

Q- And you have been down stairs to see the chickens in the cellar of the Court House today? A. Yes.

Q- What would you say as to these chickens, yourself?

A- Well, there is some there looks just like what I sold.

Q- Did you remark upon any particular one? A. There is a white one and a rock, looks like mine.

Q- What was the mark on the white one that looked just like yours? A. Well, only just a---

20

Q- Was it a large or small one? A. It was not a big chicken.

Q- And the white one looked like the white one you sold?

A- Yes, and I just had one.

CROSS EXAMINED BY MR. WOODWORTH.

Q- You just deal in chickens yourself? A. It is myself that raises them.

Q- You raise them yourself? A. Yes.

Q- Had you raised these chickens? A. Yes.

30

Q- How many chickens have you? A. I could not tell you exactly, between forty and fifty, something like that.

Q- Are you positively sure about the identification of these



Jennie Maynard
Cross-exam.

- 1 chickens, that they were yours? A. I would not like to say for sure, they looked like them.
- Q- They look in a general way like your hens? A. Some do.
- Q- And some don't? A. Yes.
- Q- You don't recognize them except by a general resemblance? A. Yes.
- COURT: How many chickens did you sell to Mr. Pattenson?
- A- One dozen and a half.
- COURT: 18? A. Yes.

20

WILLIAM BROWN PATTEKSON: SWORN:

EXAMINED BY SIR H. TUPPER.

20

- Q- What is your business, Mr. Pattenson? A. Dealer in live stock and poultry.
- Q- Where do you live? A. Chilliwack.
- Q- Do you know this firm of Chinese, in No. 19 Market Alley, in Vancouver? A. Yes.
- Q- What is the name of the establishment? A. The Quong Wah Company.
- Q- Do you know - do you recognize these two men in the box?
- A- I recognize the big one; I have seen the other one around.
- Q- But the big one you recollect in what capacity?
- A- Being boss around.
- Q- How long have you been dealing with these people?
- A- Ah, about four months.
- Q- And about - generally speaking - about what quantity of chickens have you sold? A. Well, I have shipped a lot and sold at Westminster market, sold to his other partner.
- Q- Who? A. Well, I don't know his name.
- 30 Q- The same place? A. Yes.
- Q- What have you shipped to them? A. Sometimes 100 in a week.



Pattenson,
Direct.

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Q- And these are sent from the Westminster market? A. Well what I sell them at Westminster and what I ship I ship from Chilliwack.

Q- I believe you were in the Court Room when Mrs. Maynard gave her testimony? A. No.

Q- Oh, you weren't? You know Mrs. Maynard of Chilliwack?

A- Yes.

Q- Had you many dealings with her? A. Oh yes.

10

Q- When did you buy any chickens from her? A. Well, the last dealings was on the 2nd of December, what was in poultry.

Q- About how much did you buy from her? A. About a dozen and a half.

Q- What kind? A. Plymouth Rocks and Brown Leghorns, and some white.

Q- And what did you do with these? A. I shipped them to 10 Market Alley.

Q- And about when would they arrive, in the ordinary course? A. On the 3rd.

20

Q- Have you been in the cellar to see these chickens?

A- No, I bought them on the 2nd and shipped them on the 3rd.

Q- When would they arrive in the ordinary course?

A- They would arrive, let me see - I could tell you in a minute.

Q- Shipped from Westminster? A. Yes, but whether I have the night before or the next morning, I can't tell, but I have it down in the book here, when I shipped. (Examining book) Shipped on the 3rd.

30

Q- And what hours? There are three shipments a day from Westminster? A. Oh, I don't know.



Pattenson
Direct

1

Q- And have you been in the cellar in the Court House to see the chickens that are in charge of the Court? A. Yes.

Q- You saw them today? A. Yes.

Q- What would you say as to the resemblance, if any?

A- Well, there is one that if it is not the same chicken it is just the spit a picture of the one I shipped down, because I know the box was too crowded and I took some out and showed one to our boy and I have always had it in mind, and when I opened the box I saw the chicken.

10

Q- What color? A. A Plymouth Rock.

Q- You recognized that - at least/ you think you did?

A- Yes.

Q- How do they carry the appearance of other chickens?

Looking at them how does it compare with the chickens you bought and sold? A. Several very like them.

Q- Is it a difficult thing to identify Plymouth Rocks?

A. Well, it is rather.

Q- How long have you been in the business? A. Oh about 12 years.

20

Q- You have been dealing for three or four months with these people?

A- Yes.

Q- Do they carry on a large or small chicken trade?

A. A large, I would think.

Q- Have your dealings been satisfactory with them?

A. Quite satisfactory.

Q- Ever found them attempting to cheat?

A. No, finest firm I ever dealt with in my life.

30



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CROSS EXAMINED BY MR. WOODWORTH:

Q: What time on the 3rd did you ship those chickens?

SIR C. H. TUPPER: Excuse me -- (To witness) Do you know anything about the cellar in No. 10?

A: No, never down there.

MR WOODWORTH: (Continuing) What time on the 3rd did you ship those chickens?

A- Morning.

10

Q- Where from?

A- The River.

Q- On the boat at Chilliwack?

A- Yes.

Q- That boat would land where, in the ordinary course?

A- Westminster.

Q- At what time?

A- I don't know.

Q- You have travelled up and down on that boat?

A- Yes.

Q- According to the regular schedule, what time?

20

A- Well, I have got there at one o'clock and got there at nine.

Q- At night?

A- Yes; I don't know what time she gets there.

Q- And you can't tell any closer than that?

A- No.

Q- The chicken that you spoke of as recognizing: Did you examine to see whether it had its wings clipped?

A- No.

30

Q- How long did you see that chicken, altogether? How long during the time you had it did you see that chicken?



- 1 A- I didn't see the chicken long.
Q- How long?
A- Oh, perhaps five minutes.
Q- And your memory is so good you could identify a Plymouth Rock chicken you had seen five minutes?
A- No, not all Plymouth Rocks.
Q- But this particular one had something in its eye you took particular notice of?
A- No, it is one just the same.
- 10 Q- What do you mean? One just very similar?
A- Yes.
Q- You do not attempt to identify that with any degree of positiveness?
A- No, because I could not, not with only seeing it that time. If it had been one I had reared it would be a different thing.
Q- One you had reared - still, if you had been caring for them a great deal you would be able to identify them?
A- No, not all.
- 20 JOHN HALE WOOLLIAMS. Called and sworn. Examined by
Sir Hibbert Tupper:
Q- I believe you are in the Vancouver Poultry Supply Company, Mr. Woolliams?
A- Yes.
Q- How long have you been in that business?
A- Three years.
Q- And from its name I infer you handle a considerable amount of poultry?
A- Yes.
- 30 Q- In both live and dead?
A- Yes, undressed.



J. H. Wooliams.
Direct.



1 Q- Do you know this firm at No. 10 Alley, Chinatown?

A- Yes.

Q- What name is it? A- Quong Wah.

Q- Do you recognize these men in the box? A- The tall man there I have had dealings with.

Q- Considerable? A- Yes, during the last three months.

Q- Where have you had the dealings with him? A: Sometimes at his store, other times he will come to my store and probably buy right there without coming down to see the birds.

10

Q- Do they do a large business in poultry? A: Considerable business in poultry.

Q- How long have you dealt with them? A- Three months. I can give you an exact statement of my dealings with them.

Q- It is not necessary. You were there in December, do you recollect the day? A- Friday, December the 3rd.

20

Q- Would you tell His Honor something about the arrangement of the business premises from the time you go into the door and where the poultry are kept? A- To the right of the stairway going down there is a pen with four compartments, and this afternoon when I was down there on December the 3rd there were some fowls on the upper part, I should say anywhere from 6 to 8 dozen, and some ducks in the lower division, and then sideways on this side and on that side adjoining this pen there were some pens which were empty; then a little further along were some more pens in which there would be some 3 or 4 dozen fowl, and it was out of these pens I bought the chickens.

30

Q- Would you refer to the system about the locked - there is a locked pen there; what is that? A- Well this



J. H. Woolliams,
Direct.



1 tall man here took me down and showed me the pen of birds with the 4 dozen in on this side (indicating) and I then noticed these birds on this side and I asked him if they were for sale and he said no they were sold to a Chinese Restaurant and I went over and saw a lock on the door.

Q- Now in the birds you saw - do you know about birds, the Leghorns and the Plymouth Rocks and Minorcas?

A- Yes, I have bred different breeds myself, in periods during the last 20 years.

10 Q- You have had considerable experience in raising chickens?

A- Yes.

Q- Can you state what particular birds? Judging from the coloring you saw there, what breeds? A- In the pen I bought from the majority were barred Rocks or part barred Rocks, having the feather of a barred. There were also some white barred, some leghorns and others crossed between a Leghorn and a Plymouth rock.

Q- What is the difference between a Plymouth Rock and a barred Rock? A- The standards run the same in regard to

20 shape, size, weight, but the feather makes the difference; they are a large, blockier bird than the Leghorn.

COURT: What time of the day was it you were there?

A- Two o'clock.

Q- Sir. Hibbert Tupper: Is that place lighted well?

A- No.

Q- About what time can you recollect did it become dark, the early part of December? A- Well, I don't know as I know; of course it was daylight when I went, but the cellar was very dark and has to be lit at all times.

30 Q- Are there lighting arrangements? A- No, no electric light, used candles.



- 1 Q- Is there any difficulty in reaching the place?
A- No.
Q- How far is the door away? A- Just immediately to the left, I didn't notice any windows.
Q- Have you gone there frequently? A- Yes.
Q- Have you seen people going up and down there?
A- I can't say I have; I have seen a good many Chinamen there and they buy poultry sometimes.
Q- Now I was going to ask you referring to your experience in poultry; is it or is it not a difficult thing for a man say having no expert knowledge, no particular knowledge of the distinctive characteristics of the different breeds, but having three or four experience in feeding hens, 80 or 90,- is it not a difficult thing to be able to identify a lost fowl or a number of lost fowl, if they are in with the same breed in another place?
A- Well, Sir Charles, I should say if the bird had some particular characteristic --

Objected to by Mr. Woodworth

- 20 MR WOODWORTH: This witness is not an expert on this question. That matter is entirely a question for Your Honour to decide. The witness does not show he is any expert.
SIR HIBBERT TUPPER: I submit that while your Honour is certainly the Judge and Jury on the question, it is only evidence which is not a matter of common knowledge - unless my learned friend admits with me that it is a most difficult thing.
COURT: This man has qualified himself as an expert
30 subject to cross-examination.
Q- SIR HIBBERT TUPPER: Would you kindly state what your opinion is as to the difficulty or otherwise?



J. H. Wooliams,
Direct.

1 A- I should say that if a bird had some peculiar characteristic color or oddity in shape, that a person not having expert knowledge could distinguish, but you take a bunch of common bred birds it might be difficult for a person unless they had some expert knowledge as to the standard requirements of it, so I consider that unless they would know the breed and quality of that bird it would be rather difficult to distinguish.

Q- You went down to the cellar to-day and saw the birds?

10 A- Yes.

Q- And saw the birds in this case? A: Yes.

(At this stage witness Chee excluded from the Court room)

Q- How you saw these fowl? A- Yes.

Q- And how would you refer to them in connection with your last answer as to picking these out of 100 Plymouth Rocks and Leghorns mixed, for a man who did not profess to be an expert? A- Somewhat difficult, because they are not birds bred to standard requirements at all, while they are Barred Rocks in the general accepted term, still they are not exceptional birds; there were some cross-breeds, although they show the Barred Rock feather.

Q- Can you tell me Mr. Wooliams about the arrivals of freight and stuff from Westminster market? What time of the day?

A- I can tell you better what time they leave Westminster; 11, 1 and 4 are the hours.

Q- And does that freight come quickly or --

A- I think about the usual time the passenger cars take.

Q- Or Electric trams? A- Yes.

30 Q- How long - what kind of people have you found these men to be in business transactions? A- All business



J. H. Wooliams,
Direct.



1 transactions I have had with them, have been straight, honorable and honest.

CROSS-EXAMINED BY MR. WOODWORTH:

Q- How you say that it was easier to go into a pen of pure bred birds and distinguish one from the other, than from mongrel? A- No, I didn't say that.

10 Q- Wouldn't that be absolutely untrue if you had said it? Wouldn't it be untrue if you had said you could go into a pen of pure bred birds and distinguish one from the other more readily than you could a pen of mongrel birds?

A- You infer, that is that the man had bred them himself?

Q- Would have more difficulty in telling if he was a breeder of pure bred Barred Rocks - he would have more difficulty in telling one bird from another than if he was dealing in mongrel or mixed? A- I think a man who has had some training on expert knowledge of the breeds and the different qualifications of those breeds, he would know the difference --

20 Q- Between a Barred Rock and a Cross Bird? A- Yes.

Q- He would be able to recognize the individual birds quicker? A- Yes.

Q- Now you think it is possible that a breeder of any pure bred fowl, if he had 80 or 90, would be able to recognize the individual birds if they got mixed up with other pure bred fowls? A- Yes.

Q- And yet am I not correct in saying the more pure bred the birds are, the more they resemble each other?

A- Certainly.

30 Q- And it would be possible to distinguish even among pure bred birds of the same strain in large numbers at



1

any place? A- Yes, to the breeder.

Q- The breeder would be helped if he had three different kinds of pure Barred Rocks? A- If he had bred them himself he could tell.

Q- You said you were an expert on the question of the difference between a white Rock and a Barred Rock. You said there was no difference except the color of the feather; is that true? A- Yes, according to the American Standard of Perfection.

10

What book would say that? A- The American Standard of Perfection.

Q- In the American Standard of Perfection does it not say that the White Rock is a bonier, coarser Rock than a Barred Rock? A- I said - the shape, color and feather we were talking about, and the weight.

Q- They resemble each other by weight? A- Yes.

Q- And they are somewhat smaller in shape too. Is it not possible to tell the difference between a Barred Rock and a White Rock with all the feathers off it, and dressed without any sign to indicate the feathers?

20

A- The color of the two birds are practically the same, - the color of the skin, a light orange yellow - the feet and legs, the color of the legs are the same in both breeds.

Q- Isn't it possible to tell the difference for even an ordinary expert or a mere novice? A- No, not if all the feathers are taken off.

Q- Are there not distinct marks by which you can easily tell? A- No, I should say not.

30

Q- And you say this American Standard of Perfection will



- 1 support you in that statement? A- I believe so.
- Q- Do you know so? A- Well, it is some years since I have read up on the subject. I have attended different Poultry Shows; I have been on committees.
- Q- You would not, though, be qualified as a Judge?
- A- No.
- Q- And you havent heard those that were qualified as Judges say that the difference in the shape and the fibre of the meat Brown was very marked between these two breeds? A- No.
- 10 Q- Never heard it suggested? A- No.
- Q- You better read up on that. Now the difficulty of telling the different birds, between individual birds, even though very small, is not at all troublesome, to the breeder? You are not at all surprised that any breeder could tell any individual hen?
- A- Yes, I have bred 100 birds in a season.
- Q- And you would be able to tell each individual bird?
- A- Yes.
- 20 Q- Recognize it almost as well as you would a member of your family? A- I take it from it being my training and my breeding.
- Q- And you say that a man who has not got that expert training would not be able to judge? A- Not exactly, unless the bird had some peculiar characteristic.
- Q- Your idea that only a man who is a scientist could recognize human beings. Do you think it is a matter of expert training, that recognition of the individual birds? A; I think it has a good deal to do with it.
- 30 Q- You have found it somewhat difficult to tell between white rocks and barred rocks. How would your expert training the difference between yearling hens and



1 Plymouth Rocks? What book would you get that would tell you the difference between two hens of a pure strain? Is there any treatise in the world? A- You mean is there a standard to go by.

Q- Yes, in which you would recognize hen A from hen B, each of which was one year and six months old of a certain recognized standard of Barred Rocks? A- There were 100 points in the fowl.

10 Q- And the expert in being able to recognize the feathers would make a list of these points. A- Yes.

Q- And he would remember hen A because she had 85 points while hen B had 86, is that right? A- Yes.

Q- And you always kept that when you had these 150 hens, you kept the pocket book and put down that she is an 85 point hen and she is a 84 point? A- I would have a tag on them.

GEORGE HENRY BAILEY. SWORN. EXAMINED BY SIR HIBBERT TUPPER:

20 Q- You are the freight agent of the B. C. Electric Railway Co?

A- Yes sir.

Q- In this City? A- Yes.

Q- You know this firm of Quong Wah? A- Yes.

Q- In what way do you know them Mr. Bailey?

A- In connection with business, as one of the largest dealers in chickens in Vancouver.

30 Q- Have you any recollection of a shipment early in December? A- On the 3rd, 4th, and 5th they received 11 boxes of chickens and fowl. Four, Chilliwack; 6 Westminster, and one from unknown.

Q- Speaking roughly, can you give an approximate idea



G. H. Bailey
Direct.

1 of what quantity. A- One dozen to the box.
Q- And there were 11 boxes? A- Yes.
Q- What were these dates? A- 3rd and 4th.
Q- Of December? A- Yes; of course my official papers show.

Q- How long have you known this firm? A- I suppose ever since they commenced business. Of course they have changed names. I know Quong Mow; this big man is Lum Bow, the other man is a worker.

10 CROSS-EXAMINED BY MR. WOODWORTH:

Can you tell us when the chickens from Chilliwack arrived?

A- I could not exactly swear; they came down I think on Thursday's boat and would arrive sometime on Friday; freights are delayed sometimes on account of fog every other day.

Q- Came down on Thursday's boat. So that chickens shipped at Chilliwack on Friday would not arrive until Saturday? A- There is no boat on Friday.

20 Q- And this chicken delivery would remain over until Saturday? A- No, it was on Saturday night we got a box from Chilliwack, and we went to deliver to Quong Wah -

Q- The question I am asking you is this: Supposing I am an exporter of chickens and I deliver chickens at the landing on the 3rd of December, what time would they arrive in Vancouver? A- Just depends on the cars. The boats travel sometimes on the same day and sometimes the day after; they should be the same day.

Q- You say that the boat would come down on Thursday?

30 A- Yes.

Q- That would be the 2nd? A- Yes.



- 1** Q- No boat on the 3rd? A- No.
Q- And on the 4th the boat would go? A- Yes.
Q- The bill would be dated the 3rd, but not delivered until the 4th? A- Yes.

SIR HIBBERT TUPPER: With my learned friend's consent the witness who was examined has just brought me his book and he says he has made a mistake which he would like to correct.

- 10** MR WOODWORTH: I make it a point that I can ask questions of the other witnesses who have followed.

COURT: Yes.

MR PATTERSON (Former witness) On December 2nd they were shipped.

COURT: You said the 3rd? A- Yes, but I see it was the 2nd; it is there in the book.

MR. WOODWORTH: Where is your note? A- There is the bills of these to Quong Bow; 12 spring chickens, and 30 fowl, December 4th.

- 20** Q- On December - A- These was all shipped on Dec. 2nd from here (indicating) - this is on Dec. 4th.

Q- You have not any date at all? A- Yes, Dec. 2nd, '09.

Q- When did you discover that error? A- Just now when I went back. My eye sight is not good, and sometimes my glasses is blocked up and I can't see.

Q- How many chickens in the box you shipped to Quong Bow?

A- Four boxes I think on Dec. 2nd and on on Dec. 4th.

Q- So five boxes in all? A- I think there was four boxes. It does not say the number here - 30 and 12, 42.

- 30** Q- How mahy boxes would that be? A- I think there was 4.



G. H. Bailey,
Cross-exam.

1 Q- Four boxes on the 2nd? A- Yes.
Q- And one box on the 4th? A- Yes.
SIR H. TUPPER: Is that the shipment of the Chilliwack -
the way bill, that is Dec. 2nd? A- Yes.
Q- There it is: Four boxes chickens, Dec. 2nd, I was
going to ask my learned friend if he would admit that.
"This station - - - - Vancouver, C.P.R.
debtor for transporting undermentioned freight, way bill
781. Shipper, W.H.P. Four boxes chickens 400 lbs.
10 Received payment."

(Document marked Exhibit 1)

G. H. BAILEY (continued) BY MR. WOODWORTH:

Q- Will you tell us in regard to this particular bill,
if you have any means of telling when these goods were
delivered? A- Should be delivered the next day
and possibly would be and probably was. Of course we
didn't keep the dates of the signatures, but the chickens
came in on one night, on Thursday night the boat is gen-
erally late and the freight doesn't get there till next
20 morning, and as far as I know Quong Bow got the 10 boxes
of chickens, 4 from Chilliwack and 6 from Westminster.
This bill of course has been through my hands.

Q- Now in regard to that, you say as far as you know;
can you say with positiveness?

SIR HIBBERT TUPPER: Would my learned friend allow me to
put in a memorandum, Mr. Bailey's own memorandum.

MR. WOODWORTH: In regard to this I am only wanting assist-
ance; put in the memorandum.

WITNESS: There were 11 boxes shipped.

30 Q- Can you say when these four boxes were delivered, with
a certainty; not your general impression, can you say



G. H. Bailey,
Cross-exam.

1 for certain? A- You can see the position of these chickens on the way bill is 2135 - 2139 - 40 - 46 - 50, these chickens would come in together.

Q- And so your regular course would be to deliver when?

A- As soon as they Chinaman came after them.

Q- What time, in your opinion, would they be delivered?

A- These 4 boxes from Chilliwack was at half past 9 or 10 in the morning of the 3rd.

PAUL CHEE JUNG. SWORN AS INTERPRETER.

10 LUM GEE. SWORN. EXAMINED BY SIR HIBBERT TUPPER:

Q- To (interpreter) I am speaking to you as though you are the witness.

Q- You were one of the accused in the Police Court and were discharged? A- Yes.

Q- What connection is there between him and the accused? What connection is there between him and Lum Man Bow in business?

A- Partner.

Q- And with Hong? A- He is employee.

Q- His business is carried on at No 10 Market Alley?

20 A- Yes.

Q- How long have you been carrying on business, chicken and poultry and vegetable? A- In partnership for 3 months.

Q- Who was carrying on the business before that? A- Before that time I carry on business myself.

Q- At same place? A. He said - I ask - I was not in the place, but I put my chicken in the cellar.

Q- The name of the business is Quong Mow? A- Yes.

Q- When did you get a lease of the building? I understood

30 there is no dispute he is the lessee. A- No lease.

Q- Oh. How does he hold it? A- I rent it.



Iam Gee
Direct.

- 1 Q- When did he rent the building? A- 5 months ago.
- Q- Do you remember Friday the 3rd of December in question?
- A- Yes, I remember Friday.
- Q- What did he do on that day in connection with his business, with the chickens? What was he doing? A- On that Friday morning at half past seven o'clock I went over to Westminster to buy chickens.
- Q- How many did he get from Westminster? A- I bought 5 boxes containing six dozen.
- 10 Q- What kind of poultry? A- I don't know the name of chickens, but 4-1/2 dozen big and 2 dozen small ones.
- Q- What color chickens? A- Mixed, black and white color, and some yellow and some white.
- Q- When did these arrive at No. 10 Market Alley? A- The chickens was arrived at half past three that afternoon.
- Q- That would be what day? A- Friday.
- Q- Half past three Friday. Did he get any chickens from any other place? A- No, not at that date.
- Q- When did he next get them? A- On Saturday morning,
- 20 half past seven o'clock I went opposite Westminster Five miles and I bought one dozen and a half.
- Q- What kind? A- Some white and some black.
- Q- Then does he recollect any coming by the Dominion Express on any day? A- The goods came - he only remembers in general as to the color.
- Q- But my last question is, do you remember getting any by The Dominion Express, and if so on what date? A- I returned Friday night from the country but my partner tell me there were some chickens come by the Dominion Express.
- 30 Q- Yes. What time did they come by the Dominion Express. Did he see them after his partner told him? A- I see



Lum Gee
Direct.

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- 1** the chickens kept in the crate.
- Q- What time did he see them in the crate? Chickens that he bought at Chilliwack he said, and Westminster so many coops; he saw some chickens that came by Dominion Express, what time did he see those? A. I came back Friday night; I see the chickens two o'clock in the afternoon.
- Q- What afternoon? A- Friday afternoon.
- Q- Did he see any on Saturday? A- Saturday morning I
- 10** went to buy goods, Saturday morning, so I don't know.
- Q- How many boxes altogether does he know came on Friday?
- A- Nine boxes.
- Q- Then how many boxes, does he know, came on Saturday morning? A- Saturday morning I don't know, but Saturday night I bought one case.
- Q- He says he went out Saturday morning to buy chickens, so that he was not there on Saturday, is that right?
- A- Yes.
- GROSS-EXAMINED BY MR. WOODWORTH:
- 20** Q- You were there Saturday evening - Friday evening, were you not?
- INTERPRETER: What do you say? Where?
- Q- At his own place? A- Yes.
- Q- Yet you told the Police that you were away on Friday night, and Friday evening, is that so? A- I never told the Police that.
- Q- And didn't you go further and say that you were away on Saturday up till Saturday night? A- I leave Vancouver at half past seven in the morning and come back
- 30** quarter to five.
- Q- Saturday? A- Yes.



Lum Gee,
Cross-exam.

1 Q- Yes. Isn't it a fact that the reason you urged that you could not possibly be guilty of this was that you were away during the whole of Friday night at Westminster and Chilliwack? A- I returned in the afternoon on Friday.

Q- That is what I thought. Now did you buy any chickens from Chilliwack yourself? A- No.

SIR HEBBERT TUPPER: I don't think the cross-examination of the man should be at all misleading, and I think my learned friend's insinuation is that he told the Police that he was a-

10 way on Friday and that was one reason why he could not have stolen them. It is what the Policeman said at the Police Court. "I asked him where he got the chickens and he was very frank about it - - - - - came in Friday night, and he goes away Saturday afternoon." The Magistrate was clearly misled; still that is not on trial here.

MR. WOODWORTH: You bought no chickens in Chilliwack yourself? A- I told a friend to buy for me.

Q- What friend did you tell to buy for you? A-

SIR HEBBERT TUPPER: My Chinaman sitting here says he

20 thinks the Interpreter missed something, and said friend; he gave the name, not friend - Pattenson - Hong.

MR. WOODWORTH: Did Pattenson buy chickens for you? When did you get these chickens at New Westminster? A- The chickens sent direct to my store.

Q- So that he didn't have anything to do with buying any chickens in Chilliwack? A- No.

Q- You pointed out the box where these chickens were chiefly taken out as the box you got at New Westminster? Ask him if he did point out to the detective the box

30 where these chickens were taken out from and say they were the ones he got at New Westminster, and the country



1 himself? A- Yes, I did point out to the detective the box of chickens I bought opposite West Minister on Saturday.

SIR HIBBERT TUPPER: That is Abbotsford.

MR WOODWORTH: He said Westminster.

SIR HIBBERT TUPPER: Opposite Westminster.

MR WOODWORTH: Q- And that is the box you knew they had taken the chickens out of? A- I see the chickens brought to my door and they carry into my ~~store~~ store.

10 Q- So you didn't understand that? How where were you after you got in Friday night? A- After I came back Friday night I was so tired I didn't go anywhere, I stayed in the store.

Q- You had had a particularly hard day's work? A- Yes, I was working all the time.

Q- Do you know 1800 Barnard street?

SIR H. TUPPER: 1857.A.I don't know, I never was there.

MR. WOODWORTH: Does he know there is a Barnard street?

SIR H. TUPPER: Does he know where Barnard street is?

20 A- I never knew such a street at all.

LUM MAN BOW. SWORN. EXAMINED BY SIR HIBBERT TUPPER:

Q- You were a partner of the last witness I believe?

A- Yes.

Q- I am going to lead up to the Point. You keep the books of the business, do you not? A- Yes.

Q- And which book is this? (Showing book) A- This book to put all I receive from chicken, apple and potato.

30 Q- This book he enters the receipt of all goods, such as chickens, apples and vegetables? A- Yes.

(Book marked Exhibit 2)



- 1
- Q- This other book is the sales book, showing what you sell? A- Yes, that is the order book.
- Q- Order or sales book? A- Yes.
(Sales book marked Exhibit 3)
- Q- On the day that has been mentioned, Friday, Dec. 3rd, what was he doing, what business was he attending to?
- A- I was in my store and selling goods.
- Q- Who was with him during that day? A- That man over there.
- 10
- Q- The other accused? A. Yes.
- Q. His name is -? A. Hong.
- Q. What was Hong doing? He said he was attending to the books, what was Hong doing during Friday, Dec. 3rd? A. He was helping me that day; if any goods come in he haul them in and if any goods sold he deliver the goods.
- Q. He would bring the goods in or deliver the goods that were sold? A. Yes.
- Q. Doing odd jobs? A. Yes.
- 20
- Q. When did he open the store on the 3rd of Dec. What hour did he begin business that day? A. From after 7 to 8.
- Q. From 7 to 8? A. No, from after 7 o'clock or 8 o'clock not sure.
- Q. What time did he leave the shop? A. About half past nine.
- Q. Half past nine at night. and where did he go? A. After I closed up I went to bed.
- Q. Where does he sleep? A. I sleep in the store.
- Q. Who sleeps with him, that is in the room - how many in the room? A. Hong and Gee. Three of them.
- 30
- Q. And that night does he remember what time Hong came into the sleeping room?
- INTERPRETER: Gee



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Q- Hong? A. He says about the time I sleep .
 Q. He came about the same time? A. Yes.
 Q. What time did Gee? A. About the same time.
 Q. What time did they get up to leave that room? A. After 7 in the morning.

10

Q. Does he know where Barnard Street is? A. I only been to Vancouver three months and doesn't know Barnard Street.
 Q. Did he take any chickens from anybody, that is outside of the chickens that were bought in the store? Did he take from any person chickens, without the person's knowledge on Friday or Saturday or any time? A. No.
 Q. Does he remember when Mr Kinnear, this gentleman here, Mr. Kinnear, came in on Saturday? Does he recollect seeing him? A. Saturday I went out and after I came back from being out I saw him in my store - cellar.
 Q. When he came back he found him in his cellar. A. Yes.
 Q. Where the chickens were? A. Yes.

20

Q. Was he upstairs when Mr Kinnear came in and had the conversation as to whether they had chickens for sale? He and the detectives. A. I was not there.
 Q. What was said to him in the cellar. A. When I went down to the cellar I saw him look at a chicken and he asked me detective ask me for a stick to try and pull him out, the chicken and he ask if he belong to you.
 Q. Asked him if they belong to you? A. Yes, and he said he hadn't time, he would ask Hong to come down and get them for him.

30

Q. Did he tell Mr Kinnear or anyone he hadn't any chickens for sale; ~~As~~ soon as I came back I never say anything of the kind to him.



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Q. That was all the conversation he remembers in the cellar?

A. Yes, he doesn't remember anything of the kind.

Q. Ask the witness to turn up on Dec. 3rd in that book showing the receipt of chickens; let's see what occurs on the 3rd of December.

MR WOODWORTH: Let the Interpreter read it.

WITNESS: He said on Friday I received these 2 cases, 2 dozen and one case, 1 dozen and a half.

10

Q. He heard the evidence of Mr. Pattenson and the other shippers of boxes. Are these entries in that book there -

he heard the witnesses here, Mr. Bailey the B. C. Electric man and Pattenson and Gee mention the goods brought in on Friday and Saturday. Ask him if these books show these boxes received. A. Yes, all there.

Q. How many boxes, I will only ask one more on that - how many boxes from Pattenson are shown in that book on Friday? A. Four boxes.

20

Q. Why is - ask the witness to tell why one box is locked in the cellar? Who has the key of that one coop we will call it? A. He said the restaurants to keep their chickens and they get a place from our cellar and store their chickens.

Q. That is, the key is kept by the restaurant man? A. Yes

CROSS EXAMINED BY MR. WOODWORTH:

Q. You were there when the chickens were taken out of the box? A. Yes, I was there.

Q. That box was a box that Lum Gee bought?

INTERPRETER: What is that again?

30

Q- I asked if that box that Kinnear claimed was not a box that Lum Gee had bought? A. That box was assorted;



MA

1 some belonged to what Gee bought and some from other places.

Q- Were you there when Lum Gee told Sergeant McRae - when this gentleman who stands up there - that these chickens were chickens he had bought himself from the country?

A. That time I only arrested.

Q. And if Lum Gee said that, he said what was not true, if he said he bought these chickens & that were in that box?

MR. WOODWORTH: There is a long conversation going on there.

10 INTERPRETER: He understand good Chinese.

COURT: Just put the question Interpreter.

A. These chickens Gee bought on Friday.

Q. Try this without the Interpreter. Were not those chickens in that box where Kinnear was taking chickens out of bought on Friday?

COURT: I don't think I could answer that myself. Put it through the Interpreter.

Q. Ask him? A. Yes, all those bought on Friday.

Q. Lum Gee was the man that bought them? A. Yes.

20 Q. These chickens didn't come from Chilliwack at all? Ask him if that is not true? A. Four boxes from Chilliwack

Q. No, but the chickens out of that particular coop where Kinnear claimed? A. All those chickens we didn't sell the rest of the chickens were put in that box.

SIR HIBBERT TUPPER: My instructor here says, that the Chinese language the way he says, and the Chinese language was different. I want what it was.

Court; Ask the Interpreter to put it again.

30 INTERPRETER: Some come from the country - if a word is similar I can't change from one language to another like



Lum Man Bow
Cross-exam.

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that. When a man speaks in public it is not so easy, but so long as it is similar that is all I can do.

MR. WOODWORTH: Then what Lum Gee says is not true? That he bought all those chickens in that box himself?

A. These chickens are four cases from Chilliwack and Gee bought 5 cases, and all the chickens was not sold and what were left were put in that box.

10

Q. And that was the box Gee had brought in? A. He said that box is not all - some Gee bought and some from Chilliwack;

Q. But they took the chickens out that were bought at Chilliwack and put them in the Gee box, that is the chickens Gee bought, or did they take the chickens Gee bought and put them in the box that came from Chilliwack? Which way?

A. That box - Gee's box and some from Chilliwack, and put some in.

Q. Now, no one was in your shop during Friday night from the time you shut up until you opened up the next morning?

You had no visitors there? A. Just the partners.

20

Q. Just the partners and Quong? A. Yes.

Q. No one else in there at all? A. No.

Q. And if any chickens came in there that night they were brought in there by yourself, Hong or Gee, is that right?

A. All the chickens is brought from people.

Q. But there was no other person came in that night except these three? A. No.

HONG. SWORN. EXAMINED BY SIR HIBBERT TUPPER:

Q. Hong, you heard the last witness in his testimony as to where you and he were on Friday night? A. Yes.

Q. Was that in accordance with his recollection? A. Yes.

30

Q. He heard the witness say where the chickens came from on



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Friday and Saturday, did he not, when they came to Market Alley? A. Yes.

Q. Does he know of any hens or chickens that came to No. 10 Market Alley on Friday or Saturday from town or from anyone in town, from Vancouver? A. No, all from the country.

Q. I should have asked the last witness this question; And perhaps your Honor will let me recall him.

10

Does he know at any time since he has been in that business of getting any chickens in town, either buying them or taking them at all from town? Does he buy or get the chickens from town at all? A. Since I work for this firm I never see any chickens bought from town; bought from up country.

Q. Does he know why they get them from outside business and not in town? A. He buy chickens, but they make more money by buying chickens outside than buying in town.

Q. They are dearer in town? A. Yes.

20

Q. Does he know of any chickens ever coming to that place that were stolen, or that they heard were stolen. A. No.

Q. I would like to ask the last witness that question.

(To Lum Man Bow) The question as to whether he knows since he has been in the business of any transaction of either buying or getting chickens from Vancouver, any part of Vancouver?.

A. We never bought any chickens from the City, all the chickens we bought is from out the country.

Q. What is the reason? Is there a reason for that?

30

A. He said, "I bought from up country, it is cheaper than buy from the town.



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HONG: CROSS EXAMINED BY MR. WOODWORTH:

Q. What about these two boxes of chickens that came to the door while the detectives were there? Where did those two boxes of chickens come from while the detectives were there, and brought in?

A. Two big boxes of chickens and some of them chickens left from Pattenson and some that Gee bought.

Q. Were there not two boxes of chickens came to the door to be delivered to them on Saturday while the Detectives were there? A. Not the store.

10

Q. No, came to the outer door in a box to be sold to these men, while the detectives were there?

SIR H. TUPPER: We have no evidence as to that. It is rather late in the day. Put it, were the boxes brought?

MR. WOODWORTH: Were two boxes brought?

A. He said he never saw these two boxes.

Q. And no boxes ever came to you with chickens in them from town before or since then? A. No.

SIR HIBBERT TUPPER: I want to ask the witness in what package were the goods that came from the Express on Saturday.

20

How were they made up, parcels or boxes or bags?

A. Cases.

R E B U T T A L

JOHN JACKSON: ALREADY SWORN: EXAMINED BY MR. WOODWORTH:

Q. You were present when the chickens were taken out of the box? A. That is when Kinnear was identifying the chickens?

Q. Yes. A. I was, yes.

Q. Where was that? A. Down in the cellar at 10 Market Alley.

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- 1 Q. How did Lum Gee ever tell you anything about where the contents of that box came from? A. That is Lum Gee?
- Q. Yes. The man that claims to be the partner.
- AA. Well, I understood him to say that he had bought -
Objected to by Sir Hibbert Tupper.
- Q. Tell what was said? A. He said he had bought those chickens from Abbotsford and Chilliwack. He talks fairly good English.
- 10 Q. What have you to say as to the statement that all their chickens are bought outside of the town? Did you see anything relative to that while you were there? A. No
- WILLIAM MCRAE: ALREADY SWORN: EXAMINED BY MR WOODWORTH.
- Q. You know the witness Lum Gee? A. I do.
- Q. Did you have any conversation with him how this box of chickens was acquired? A. I did.
- Q. What did he tell you? A. I accompanied him to the basement and he showed me a coop where he had his chickens and he said these are all mine, and he said he went up on Friday to Chilliwack and Abbotsford and brought some down.
- 20 Q. Did he tell you what time -
- SIR H. TUPPER: Don't lead.
- A. I understood Lum Gee was the one away Friday, came back Saturday at 4 o'clock; said he didn't get back again till 4 o'clock Saturday afternoon, that would be the 4th.
- CROSS EXAMINED BY SIR HIBBERT TUPPER:
- 30 Q. What you state now is what you intended to say in the Police Court when you were examined? You were asked as to the whole conversation; (Reading) "I asked him



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where he got the chickens, and he was very frank about it and said he got them around Chilliwack and Abbotsford etc. etc. by and by he goes away again." A. Yes.

Q. You were practically using Chinese language? A. Yes.

Q. Goes away Friday and comes back Saturday afternoon? A. Yes

Q. This conversation you had with him was at 7 o'clock Saturday evening? A. The first one.

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Q. The one you are giving now? A. Yes. He practically repeated the same thing over again at 8.30 between 8 and @ 9 o'clock.

Q. He was the man that told you about the compartment between longing to a restaurant and another one to someone else
A. Yes.

Q. Showing you the arrangement of this one general store?
A. Yes.

DANIEL MCLEOD: ALREADY SWORN: EXAMINED BY MR. WOODWORTH:

Q. You have heard the witness state that no chickens were ever received or bought from town. Did you see any circumstances relative to -

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Objected to by SIR HIBBERT TUPPER:

SIR HIBBERT TUPPER: This gentleman must contradict our witnesses or his evidence - I object to a witness being put in the box to give reasons why some man's statement is not right. Rebuttal is only to contradict him. and then give his reasons.

COURT: That is quite right.

MR. WOODWORTH: You heard the witness swear no chickens came from the town. Do you know, of your own knowledge, whether that is true or not true? A. I know from my own knowledge that there were two boxes of chickens and

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Wm McRae
Rebuttal
Cross exam.

1 one or two small boxes came to that No. 10 Market Alley about the time that we were taking these two men, Lum Bow and Hong to the Police Station.

Q. By Express or freight agent? A. It was from Chinamen that had poultry and vegetables. I don't know what was in the Express wagon, but it was a Chinaman.

CROSS EXAMINED BY SIR HIBBERT TUPPER:

10 Q. And you didn't know whether these goods came from Chilliwack, Abbotsford, or where they came from? A. No, I didn't.

SIR HIBBERT TUPPER ADDRESSES COURT:

MR. WOODWORTH ADDRESSES COURT:

COURT:

20 When the prosecution closed this case last Saturday morning I had reached the conclusion that the chickens in question were the property of Mr. Kinnear; that they had been stolen from Mr. Kinnear, and that they had been found in the possession of the prisoners. Having found these three facts, I took the view that the onus was upon the prisoners to explain that they came by the property honestly; if they could not do that, there would be a charge against them they would have to stand.

30 Now, although the defence has been gone into, and they have had the assistance of very able counsel and have considerable means to help them, I have heard nothing this afternoon that has shaken my conclusion, that is to say, that the chickens are Kinnears, that they were stolen, and that they were found in the possession of the prisoners. Under these circumstances there is nothing for me to do but to find the prisoners guilty. I had hoped they would explain why they came by the chickens, but they have failed.



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There is one thing, Kinnear's chickens didn't come by way of Chilliwack into the possession of the prisoners.

I will find the prisoners guilty on the charge alleged against them.

I will sentence the prisoner Bow to nine month's hard labour. I feel justified in distinguishing between Hong and Bow; and Hong to six months imprisonment.

CONCLUDED.

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I hereby certify that the foregoing is a true and accurate transcript of the continuation of the proceedings herein.

"J. Isabel Ferguson.
Per F."

Deputy Official Stenographer.

109 folios.

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IN THE COUNTY COURT FOR THE DISTRICT OF VANCOUVER.

CANADA	}	BEFORE W. W. B. MCINNES
PROVINCE OF BRITISH COLUMBIA		JUDGE OF THE COUNTY
COUNTY OF VANCOUVER		COURT.

R E X

-VS-

LUM MAN BOW AND HONG.

ON APPLICATION by Sir C. H. Tupper K.C. Mr. Woodworth appearing for the Crown I decline to reserve the following questions submitted to me after the trial on behalf of the prisoners, namely;-

1. Whether or not there was any legal evidence to support the conviction as against Lum Man Bow.
2. Whether there was any legal evidence to support the conviction as against Hong.

I do however on the application of Sir C. H. Tupper K. C. of Counsel for the prisoners reserve the following case for the opinion of the Court of Appeal;- Lum Man Bow and Hong were tried before me on the 18th and 21st of December without a jury upon their election to be so tried upon indictment charging that on the 4th day of December 1909 they did unlawfully retain stolen property in their possession to wit, the property of William Kinnear being over the value of Ten dollars and knowing the same to have been stolen, contrary to the form of the Statute in such case made and provided.

The property consisted of some twenty-six chickens. I found that the chickens belonged to William Kinnear, that they were stolen from him on the night of December 3-4 and were found on the afternoon of December 4th in the pos-



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session of the accused. The accused failed to give a satisfactory account of how they came by the property and I accordingly found them guilty of the offense charged and sentenced them to nine and six months imprisonment respectively. The sentence has been suspended pending a determination of the following question namely:-

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Whether recent possession of stolen property raises a presumption which, when not rebutted, warrants a conviction on the above charge.

As the foregoing statement of facts may not on the argument prove sufficiently exhaustive, I attach hereto a transcript of the proceedings at the trial. Sir C. H. Tupper K.C., of Counsel for the prisoners contended at the trial that the presumption referred to did not apply where the charge was not one of theft but one of receiving only. I acted upon the contrary view in coming to my conclusion upon the evidence.

DATED the 28th day of December, 1909.

"W. W. B. McInnes."

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In the Court of Appeal

115
Rex

v 09

Lum Han Bow and
Hong

5 July 1910
Arguments begun at
12³⁰ P.M. ended at
3 P.M. Sir Charles
Jupp for accused
Wheeler for Crown
Judgt reserved
15th

" 7 July 1910
Judgt gives affirming
Conviction
15th

Atty Gen's Dept.



IN THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA

R E X

VS.

LUM MAN BOW and HONG

NOTICE IS HEREBY GIVEN that the Judge of the County Court for the County of Vancouver has reserved a question for the Court of Appeal in respect to the trial of the prisoners Lum Man Bow and Hong. A copy of the case stated is hereunto annexed.

AND NOTICE IS HEREBY GIVEN that the Court of Appeal will be moved by Sir C. H. Tupper K.C. of counsel for the prisoners for its opinion on the said case at its sittings to be held on Tuesday the 4th day of January, 1910 at Victoria or so soon thereafter as the Court shall be ready to hear the same.

DATED at Vancouver this 28th day of December 1909.

Tupper & Griffin

Solicitors for Lum Man Bow and Hong

TO the Honourable the Attorney General.



IN THE COUNTY COURT FOR THE DISTRICT OF VANCOUVER

CANADA	}	BEFORE W. W. B. McINNES Judge of the County Court.
PROVINCE OF BRITISH COLUMBIA		
COUNTY OF VANCOUVER		

R E X

VS.

LUM MAN BOW and HONG

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DATED the day of December, 1909.

COURT OF APPEAL (B.C.)

R E X

VS.

115
09

LUM MAN BOW and HONG

Rev. formerly 15 Can. C.C. 20
Lumman 325
Miss Candice 75-77
Arch.

NOTICE.

1 Recd 30 Dec. 1909
A. H. M.
S. J.

TUPPER & GRIFFIN

