

START

38

CASE

CASE # 38

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

.....

The People,

vs.

JACOB J. KAISER.

"
"
"
"
"
"

Before,

HON. JAMES FITZGERALD,

and a Jury.

.....

Tried, SEPTEMBER 27, etc. 1893.

Indicted for ARSON, in the THIRD DEGREE.

Indictment filed JUNE 9TH, 1893.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY VERNON M. DAVIS,

For THE PEOPLE.

MESSRS. FRIEND & HOUSE,

For THE DEFENSE.

CASE # 38

2

JAMES MITCHELL, being duly sworn, testified that he was the Fire Marshal of the City of New York. He knew the premises 438 Broadway. Those premises were in the Fourteenth Ward. In the course of his official duty, he went to those premises on the morning of the 23d of April, 1893, about eleven o'clock. At that time he examined the floor occupied by the defendant, which was one floor up. The floor above the defendant's was occupied by Napier Bros. From measurements subsequently taken, he had made a diagram of those two floors.

In cross examination the witness testified that the only difference between the floor occupied by the defendant and the floor occupied by Napier Bros. was that the defendant occupied the whole floor, and Napier Bros. occupied only a portion of their floor. There was a little room, which was divided from Napier Bros. by a partition. There was no entrance from Napier Bros. into this little room. From the information which he received in the course of his investigation, he inferred that the little

CASE # 38

room was occupied, by policy dealers. He understood that the policy dealers were the tenants of the Napier Bros. There was a partition in the defendant's place, running up about seven feet. There were only two windows in the rear of the defendant's apartments. Those two windows looked out upon the roof of an extension. The extension extended entirely across the rear of 436 and 438 Broadway. It was a one story extension. The defendant's water closet was partly under the stairway leading up to the floor above. On the roof of the extension he found a skylight. The skylight was about six feet square and about four feet high. The skylight was directly in front of one of the defendant's windows. There was a very dilapidated water closet on the roof of the extension. To get to that water closet a person had to go half way up the flight of stairs leading from the defendant's floor to the floor above, and then there was a door opening upon a short flight of stairs which led to the extension.

In redirect examination the witness tes-

CASE # 38

4
tified that he did not know, of his own knowledge,
that Napier Bros. leased the whole floor.

GEORGE KOCH, being duly sworn, testified that he was attached to the Tenth Precinct and was in that Precinct on the 22d of April, 1893. He knew the premises 438 Broadway. The building at that number was a three story and attic, brick building. It was an old building. It was on the east side of Broadway near Howard Street. On the 22d of April he went on post at six o'clock at night and was to remain on until twelve o'clock. His post was Broadway, from Broome to Howard, on the east side. The first street north of Howard street was Grand, and the first street south of Howard was Canal. A few minutes before 10 o'clock he, the witness, was standing on the south east corner of Grand and Howard Streets. There was another officer standing on the south west corner of Grand and Howard Streets, talking to a citizen. The officer's name was Lair. His, the witness's, attention was called to the fire by Lair calling out, "Say, Koch, there is a fire on your post." The

CASE # 38

defendant was not the citizen who was talking to
to officer Lair. He then ran down to 438 Broadway
and found the hall door open. When he started to
run down to the premises officer Lair called out,
"I will send out the alarm," and Lair turned back
towards his alarm box, at Grand street. He did not
recollect seeing any person on the street except
officer Lair and the citizen. When he reached the
hallway of the premises he smelled kerosene or
something like that burning. There was no smell in
the hall outside. He ran up to the third floor.
When he got up to Napier Bros. floor, he found a
door about half way open. He did not notice any
lock on that door. He saw the room full of smoke
and flames and it smelled as if some kind of oil---
benzine or something of that kind---was burning. He
did not stay up there very long and when he came
down the engines were coming around from Grand street
He then went around to his station house and report
ed the fire. After reporting the fire he returned
to the premises. About ten minutes after the en-
gines arrived. He saw the defendant in a cigar store next door to

where the fire was. Fire marshal Freel and Chief McGill were also in the cigar store. Freel was talking to the defendant. He had never had any conversation with the defendant about the matter. He did not see the defendant on the night in question before the fire.

In cross-examination the witness testified that he had never served in any other precinct than the 10th. The eight precinct was just on the other side of Broadway; Broadway divided two precincts. He did not know who gave the first alarm of the fire. He could not tell whether officer Lair or the citizen who was with him shouted out, "fire" first. The premises in question were about as near to Canal street as they were to Grand street. There was a fire alarm on the corner of Canal street and Broadway, and one on the corner of Grand street and Broadway. A person could go to the Canal street box in about as short a time, as he could go to the Grand street box; and, as far as giving the alarm of fire was concerned, it would not make any difference

CASE # 38

7

which way he went. There was a padlock on the outside of the door of the premises in question. He could not say, positively, from whom the cry of "fire" came. He did not know whether there were any people on Broadway near Canal street he heard the cry of "fire." It was about fifteen minutes to 10 o'clock when he heard the cry of "fire." The last time that he passed the premises in question, before the fire, he did not notice anything wrong there. The door opening off the street was a single door. When he came down from Napier Bros. floor, he saw that there was a bright light in the defendant's left. He was not in the defendant's premises on the night of the fire, nor had he been there since. The cigar store was 440 Broadway, and he, the witness, thought it was occupied by a man of the name of Hahn. He had not had any conversation with officer Lair in regard to the case.

In redirect examination the witness testified that he had no intimation whatever that there was a fire on his post until officer Lair had told

CASE # 38

him that there was. He had not heard any cry of "fire" that night before officer Lair told him about the fire. He did not know who gave the alarm of the fire from the box; he did not see any one give the alarm from the box.

GEORGE LAIR, being duly sworn, testified that he was attached to the eighth police precinct and was connected with that precinct on the 22d of April, 1893. On that night he went on post at six o'clock. His post was the west side of Broadway from Canal to Broome streets. He knew the premises 438 Broadway. He knew the officer Koch, the preceding witness. He was standing on the south west corner of Broadway and Grand street. A citizen went up to him and spoke to him about the premises in question. The citizen came from the direction of Howard street and was walking quickly. The citizen who spoke to him was about thirty years of age. The citizen was talking to him about half a minute---just long enough to tell him where the fire was. The citizen said there was a fire down Broadway, on the other

side, but the citizen did not tell him what number. The defendant was not the citizen who told him about the fire. Before the citizen spoke to him he had not heard or seen anything about a fire. At that time he did not see anybody else on the west side of Broadway. Before the citizen spoke to him he had been talking to an engineer. He knew the engineer as "Hughey"; he did not know where "Hughey" worked, but he knew he worked somewhere in Mercer street, and he could find him. When the citizen told him there was a fire he called to officer Koch to pull the box. When he called to officer Koch, he saw two men running through the premises in question towards the box at Canal street. (He did not know who the two men were. They made no outcry that he heard. They were about a hundred feet away from him when he saw them. He thought the men were running to pull the fire alarm box at Canal street and he ran back and pulled the box at Grand street. He then went to the station house and reported that the fire was in the 10th precinct. When the citizen called his att

CASE # 38

tention to the premises he looked down and saw smoke coming out of the windows. He did not see the defendant that night at all.

In cross examination the witness testified that he would not swear that the defendant was not one of the men who he saw running towards Canal street. The defendant might have been one of these men. Up to the time that the citizen called his attention to the building he had not seen anything suspicious about it. He thought it was about 10 o'clock when the citizen spoke to him, but he had no any watch and he did not know whether he was correct or not. Koch might be right in saying that it was a quarter to ten. It appeared to him as if the smoke he saw coming out of the building was coming out of the attic. The men who were running towards Canal street may have called "fire" but he did not hear anyone call "fire." He would swear positively that the defendant was not the man who went up to him and told him about the fire.

MICHAEL McEVOY, being duly sworn, testified that he was a foreman of 55 engine and was a foreman on that engine

CASE # 38

on the 22d of April, 1893. The engine house was at 173 Elm Street, between Broome and Grand. At 9:57 on the night of the 22d of April an alarm of fire was received at the engine house. The company went to the fire, at 438 Broadway. It took about two minutes for the company to go from the engine house to the fire, which was three and a half blocks. The alarm was received in the regular way, over the wires, and in no other way whatever. The hall door was open when he arrived there. He saw very little smoke when he reached the premises; he smelled an odor of benzine or turpentine, he could not say which. A fireman of the name of German helped him, the witness, to stretch a line of hose upstairs into the building. When he got up to the first floor his attention was drawn to a light. He could see the light through the glass in the door. They broke the glass out of that door. The flame was coming from the ceiling---it was a regular sheet of flame, dropping down. The paper on the wall was burning. He saw something burning on the floor, underneath th

flame. There was no fire in the hallway at the time. He opened the hosepipe and gave the fire a dash of water and put it out. He and German then went upstairs with the hosepipe and he found the door of the third floor open and the fire coming out and he opened the hosepipe and tried to get into the room but he could not get into the room for the fumes of the stuff that was burning inside. After turning on the water the oil or whatever was burning inside floated out into the hallway, on the water, and Chief McGill told him, the witness, to turn off the water, that the best thing that they could do would be to let the fire burn out. The nosing of the door had been knocked off where the bolt went in out of the lock. Fireman German was overcome with the fumes of the stuff that was burning and had to be carried out on the extension. The firemen knocked down the partition which separated a room on Napier Bres. floor from Napier Bres. place, so that they could play on the fire. The body of the fire in Napier Bres. was on the floor. The fire on the

defendant's floor was almost underneath the fire on Napier's floor. There was a split in the floor in Napiers. He, the witness, then went up to the attic and after coming down from the attic turned a small stream of water on the fire which completely extinguished it. Very little wood was burning on the Napiers floor. The crack in the floor was large enough for him to put his finger in; the wood around that crack was charred. He could not see the ceiling of the floor below through that crack. He did not see any other fire in the Napier floor, except what they scattered with the hose. He did not see any fire in the little separate room on the Napier floor. The casings on the back part of the window on the attic floor were burned. The fire came out of Napiers door, went right up, when they played the hose upon it. Before leaving the building he had a conversation with Chief McGill and in consequence of that he went out on the extension with Chief McGill. Assistant foreman Hern was on the extension when he went there. He saw two different cans on the roof of the extension, just back

of the skylight. The cans smelled like benzine or turpentine. He thought it was the odor that he had smelled in the house. He, the witness, turned the cans over to fireman White of his Company, and told him to take them to the engine house and keep them there until he, the witness, arrived. He subsequently received the cans from White. The two cans shown to him by the District Attorney were the cans which he had seen on the night in question. He saw the defendant on that night in the cigar store.

In cross examination the witness testified that the engine house of his company was about two thousand feet from the premises in question. A person starting from 438 Broadway to give an alarm of fire might just as well go to the box at the corner of Canal street and Broadway as the box at the corner of Grand street and Broadway; there was no practical difference. He had had very little conversation with Chief McGill and fire marshal Mitchell about the case. He did not know how the cans got on the roof of the extension. His Company was the first to get to the fire. Hook and ladder

company No. 20 assisted in putting out the fire. When he first got there all the appearances indicated that the fire was on the third floor. The largest body of fire was on the Napier floor. All the fire that he found there came from the one source, and the fires which were in the defendant's left and in the attic were the results of the fire burning in Napier's premises. He was positive that there was a hole in the ceiling before he threw the water upon it; he knew it was not simply a crack, because he knew that no crack would let such a volume of fire as that through. He did not think that it was the fluid dropping down from Napier's that broke the defendant's ceiling. He was the first fireman to go up to the Napier floor. The fire was all around the Gordon press in Napier's premises. His attention was called to a crack in Napier's floor and it appeared to him "that the beading which went into one another had been broken away." The crack might have been made by people walking on the floor and the beading separating away from the peck

When he, the witness, left the building after the fire, he left the fire patrolman in charge. He did not know the patrolman's name.

JOSEPH F. McGILL, being duly sworn, testified that he was the Chief of the Third Battalion of the Fire Department. The alarm of fire was received on the night of the 22d of April at 9:57 P. M. Within less than a minute afterwards he started to go to the fire. When he arrived at 438 Broadway Capt. McEvey was in command. When he, the witness, got to the fire he ordered a ladder raised to the third floor and a line taken up there on the outside. He went upstairs. When he got to a landing above the defendant's floor, he noticed that the door leading out on to the roof of the extension was closed and fastened with a wooden cross-bar. He, the witness, gave instructions to the firemen, not to touch anything unless they could not help it. The firemen could not get into Napier's place, because the stuff or whatever it was ran out between the men's legs, so that they had to turn the water off to keep it.

from burning them. The stuff that was burning smelled like turpentine or benzine. Fireman German was overcome and had to be carried out. There was a Gordon press in Napier's and the fire seemed to be all around it. He saw the place after the fire was put out, and there was "a lot of stuff on the floor, tape, and what was used in the business." They examined the floor afterwards and found a crack where the tongue and groove goes in between the two boards. There was an opening there; couldn't tell whether it was newly made or not, because we saw dirt that was slightly charred." He could see down in the crack and could see the ceiling below. "In the defendant's premises there was a partition running between the front and back room; on each side of the partition there was a table; there was stuff on the table for making overgaters; tied in small bundles. There was a lot of fire that struck the top of the table on the other side of the partition towards the rear; some of them were slightly burned around the edges. There was a hole in the

ceiling of the defendant's room about nine inches in diameter, broken through the lath and plaster. The lath did not look to him, the witness, as if it had been burning. None of the wood in the hall was charred. He saw the hole in the ceiling. He saw the hole in the ceiling ~~after that~~ and it was larger than when he first saw it. He had given orders not to touch the hole, and he did not know who had enlarged the hole. There were four or five rolls of cloth on a table in defendant's premises, and also paper boxes. The paper boxes were overhauled and lots of them he found to be empty." There were between 100 and 200 boxes there. He, the witness, went out on the extension with Capt. McEvey. He found Assistant Foreman Hern on the extension. He saw a large bundle on the extension. The bundle was wrapped up in a large piece of wrapping paper. The bundle was opened, in his presence, and it contained two five gallon tin cans. He smelled of the cans and one of them smelled of benzine and the other of turpentine. He placed the cans in charge of Captain McEvey. The wrapping paper was also given

in charge to Captain McEvey.

In cross examination the witness testified that to the best of his ability and belief the fire originated in Napier's Bros. premises. What fire was in the premises of the defendant was the result of the fire in Napier Bros. He did not know whether or not any tape in Napier Bros. place had been burned but he knew that some had been scattered about. The woodwork in Napier Bros. was burned around the counters. The floor was burned but not much. The Gordon press which was in Napier's place was not a very large one; it was a foot press. The hole in the floor did not look as though it had been caused by shrinking. It looked as if that piece had been taken out. He did not know, however, how the hole was made. He sent his driver for the Assistant Fire Marshal immediately after his arrival at the building. He saw the defendant on the sidewalk before the fire was entirely extinguished. He saw the defendant after that in the cigar store, talking to the Assistant Fire Marshal Reel. When he left, fire patrolman Barry was put in charge of

the building. He heard the defendant say to Freel that his insurance policies were upstairs, in his left. The policies were in his desk. The defendant went upstairs with him, the witness, and went over to his desk and got the policies.

In redirect examination the witness testified that he heard Freel ask the defendant if his name was Kaiser, and the defendant said it was; Freel said, "You are the party that owns the place upstairs" and the defendant said that he was. Freel asked, "Did you ever have a fire before?" and the defendant answered that he had not. Freel said, "Where did you come from?" and the defendant said "I came from Chicago." He, the witness, then asked the defendant "How long have you been in Chicago?" The defendant said, "I have been there for twelve years, and I have started in business here, on the first of January. I had been in New York previous to that." Freel asked the defendant where he was at the time of the fire, and the defendant said that he was locking his place up, and he saw smoke come upstairs and run up a portion of the stairs and came

down and called "fire." He saw a stranger standing at the door. Freel asked the defendant what time he closed, and he said he closed at 6 o'clock and returned at 8. Freel said, "Where did you go at 6 o'clock?" The defendant said "I went up town to my supper, at 41 E. 59th street." Subsequently, Freel asked the Defendant about the supper again, and the defendant said, "I went to a restaurant." Freel said, "You did go to a restaurant?" The defendant said "Yes." Freel said, "What restaurant?" The defendant said "Well, there is a great many restaurants; I go to one at one time and another at another." Freel said, "Well, which one did you go to to-night?" The defendant said, "I went to my aunt's to-night."

In re-cross examination the witness testified that he asked the defendant if he was insured and the defendant answered that he was, for \$3500, and that that amount would not cover his property.

JOHN HERN, being duly sworn, testified that he was Assistant Foreman of hook and ladder No. 20. He went to the premises 438 Broadway on the 22d of April. He reached the premises in question about 10 o'clock. He went into the building and spoke to the defendant.

CASE # 38

into the building and went up to the defendant's floor, where he remained about 8 or 10 minutes. He then went up stairs, and on his way up he noticed that the door leading to the roof of the extension was open. He was assisting fireman German, who had been overcome by the fumes of whatever was burning. After he had attended to fireman German he noticed a package lying on the roof. The package was done up in brown paper and securely tied, with heavy twine. Before opening the package he sent for Chief McGill. Chief McGill and Captain McEvey went out on the extension and Chief McGill ordered the package opened. The package contained two battered tin cans. The cans in evidence were the cans which he found on the extension. He smelled one of the cans and it smelled of benzine. The Chief put the cans in charge of Captain McEvey, and that was the last he, the witness, saw of them.

In cross examination the witness testified that he did not know where the cans came from or how long they had been on the roof of the extension.

He went up to Napier Bros. floor on that night and found that the body of the fire was there and that the fire that was on the defendant's floor was the result from the stuff that was dropping through from Napier's to the defendant's floor. They could not put the fire out; they had to let it burn out.

JOHN D. WHITE, being duly sworn, testified that he was attached to Engine Co. 55. On the night in question he went with his company to the fire at 438 Broadway. He was called out on the extension at that place by Capt. McEvey. Captain McEvey handed him two cans and told him to take them around to the engine house and stay there until he came around. He took the cans around to the station house and stayed there until Captain McEvey came, and then he gave the cans to Captain McEvey. The cans in evidence were the cans which he received from Captain McEvey.

CHARLES NAPIER. (The testimony of this witness, as taken at the Police Court, was read in evidence, he being at the time of the present trial, in an insane asylum.) He was duly sworn at the police court and testified that

he resided at 44 Clinton street, Brooklyn. He knew the premises 438 Broadway; he occupied the third floor at that address. He occupied these apartments on the 22d of April, 1893. On that night he went to supper at 7 o'clock and returned to the premises about 8 o'clock. When he returned there was a fight in the defendant's floor; he didn't know who was there. He remained in that building until about half past 9 o'clock. When he went out he spoke to the defendant; the defendant was in his own premises. When he, the witness, left his left, he locked the door. There was a door leading from the building to the extension, midway between the second and third floors. That door was closed when he left the building, and was fastened with a wooden bar. When he went out he asked the defendant if he would put the padlock on the door, and the defendant said he would. He, the witness, examined the door when he went out, "and could not fix it closed; you could open it upon the inside and not from the outside." He did not return to the building after that.

When he left the building there were no cans in his premises, except that there might be half a gill of turpentine in a little bottle. He was insured for a thousand dollars, and that was the value of his property.

In cross examination the witness testified that he sold small printing presses. He did not have a printing press in operation in the building. He had lots of type in the place, used and unused. He had, at one time been a printer, and he had paper and cardboard in his place. He had not taken a dollar's worth of orders for regular printing in three years. There was no benzine in the place. He remained in his place that night because he had nothing else to do. He had a furnished room, but he did not consider that a home. He did not do anything there that night but read the paper. The water closet was on the extension. He had gone to the water closet that night. He did not whistle when crossing the roof that night. He was insured for one thousand dollars. His policy was dated March 28

CASE # 38

which was the date he got the policy back. He had been insured before that in January. His insurance had expired in December or January and he was not insured again until the 28th of March. He told the defendant that night that the latch on the door would not work and he asked the defendant if he knew what was the matter with it. The defendant tried his key in the lock, and said that his key got caught the same as his, the witness's, once or twice. His insurance policy was in the hands of the broker. Before, the fire, he was in the habit of keeping the policy in his safe. He had taken the policy out of the safe to have it altered, and had replaced it in the safe when the alterations were made. He had supper that night in a German restaurant, in Canal street opposite Green. He was in the habit of staying in the building until he wanted to go home, to sleep. He did not know how the cans got on the roof; they were not there before dark. The cans could not have been there during the day time without him noticing them.

In re-direct examination the witness testified that he did not set fire to the place himself, nor did he procure anybody else to set fire to the premises in question.

In recross examination the witness testified that he remembered asking the defendant if he was insured. He understood that the men who occupied the separate room on the third floor were policy dealers. 436 Broadway adjoined his premises, and the tenants of 436 had access to the roof of 438, upon which the cans were found.

JOSHUA W. NAPIER, being duly sworn, testified that he resided at 230 Tompkins avenue, Brooklyn. He was formerly in the business of manufacturing toy printing presses, at 438 Broadway. At the time of the trial he was not in any business. His brother, Charles Napier, had been his partner. At the time of the trial his brother was in a private insane asylum, at Woodhaven Long Island. His brother had been in the asylum since the 2nd of July, 1893. He had met the defend-

ant. His place of business was directly over the defendant's. He had been in the building, altogether, about ten years. He was insured, on the 22nd of April, 1893, in the New York Bowery Fire Insurance Company, for \$1,000.00. The defendant moved into the building in January, 1893. In March, 1893, he, the witness, spoke to the defendant about insurance; he told the defendant that he had great difficulty in procuring insurance. He asked the defendant why it was, and the defendant said he thought it was on account of the restaurant there; the party that had kept the restaurant had failed and been sold out by the Sheriff. The next conversation that he had with the defendant, in regard to insurance, was about the 15th of April. At that time he, the witness, had just received his policy of insurance. He told the defendant that they had secured some insurance, and he said, "Don't send your agent up any more, as we don't want to bother with him." In April, the defendant had told him that he had a friend who was an insurance agent and

who had procured his insurance at 2%; he told the defendant that was all he paid, and he said to the defendant, "We only got \$1,000." The defendant said, "Well, that is all I have got, just enough to cover my stock." A man of the name of Hare occupied a small room on the third floor. Hare did not rent the room from him, the witness. Hare rent his room from the land-lord. On the day of the fire, he, the witness, left his place about 5:30, and did not return. His brother was in the office when he left.

In cross-examination the witness testified that he asked the defendant to send his broker up to him. The defendant never suggested that he should insure his property. After the fire, the defendant went up to his, the witness's, loft and examined the hole in the floor. The crack in the floor was not there when he, the witness, left his loft on the night in question.

In re-direct examination the witness testified that he had never seen the cans in evidence in his premises until after the fire.

THOMAS F. DOUGHERTY, being duly sworn, testified that he was an member of Engine Company No. 20. He knew the premises 438 Broadway. He was there on the night of the 22nd of April. He saw the defendant there. He heard the defendant "making the remark as if it was a pretty tough thing to be burned out." He said to the defendant, "What are you kicking about? You are protected; ain't you?" The defendant said, "Beg pardon," and he, the witness, said, "You are insured; aren't you?" The defendant said, "For some; not enough." That was all the conversation he had with the defendant.

In cross-examination the witness testified that he went up stairs with the defendant, Freel and Chief McGill. He went to the defendant's desk and got the policies. The desk that the policies were in was a plain, ordinary desk, and was not locked at the time. He gave the policies to Freel.

THOMAS F. FREEL, being duly sworn, testified that he was an Assistant Foreman, detailed at the Fire Marshal's office,

for the purpose of making an examination of premises where fires occurred, and investigations into the causes that led to the fire. He knew the premises 438 Broadway. He was called there on the night of the 22nd of April, at 10:48. The firemen were still in the building when he got there. He went into the building and found that there had been a fire on the second, third and attic floors. He came down stairs and entered the cigar store, next door, and he there saw the defendant. The witness then testified as follows:

"I asked him what business he was in, and he said he was a manufacturer of over-gaiters. I then asked him his name, and he said then to me, "Excuse me, but may I ask whom I am talking to?" And I said, "Yes; I am one of the assistants to the Fire Marshal," and he said, "Which one?" And I said, "What?" And he said, "What name?" And I said, "My name is Freel," and then I said, "Will you give me your name now?" And he said, "Yes, my name is J. J. Kaiser." I asked him if he was insur-

ed, and he said yes, he was insured for \$3,500.

I asked him if it was in one or more companies, and he said it was in three companies. I asked him where his policies were, and he said they were on the premises, in his desk, I believe. I asked him if he was on the premises at the time of the fire, and he said yes, that he was about to lock the door, his door on the first floor, standing on the landing when he smelled and saw the smoke, and he then ran down stairs, and, when he got down at the foot of the stairs, he found a man standing in the street, he was a stranger to him, in front of the door, and he thereupon gave an alarm by shouting, "Fire!"

I asked him if he had been in his place continuously that day, from the time he opened in the morning, and he said no, that he closed his place at about 6 o'clock in the evening, and went home and had supper, and came back and re-opened his place, about 8 o'clock, and I asked him what caused him to come back and open his place, and he said he had some business to transact, some work to do. And I ask-

ed him if it was his habit to come back, after he closed for the day, and he said yes, it had been his habit. I asked him where he lived, and he told me at 41 East 59th street. I asked him if he had ever had a fire before, and he said no; I then asked him if he had ever had a fire in New York or elsewhere, and he said, no, he never had a fire before. I asked him where he came from, and he said he came from the west, from Chicago. The Chief then asked him how long he had been in the west, and he said about twelve years. I asked him when he started in business, and he said he started in business about the previous January, and I asked him where he started his business, and he said there, at 438 Broadway. I asked him where he had been, and at first he told me that he had gone home to 59th street, and when I asked him if it was his habit to come back every night, he said that he had been in the habit of coming back some nights, but that he didn't always go home, that he patronized a restaurant. 'Well,' I said, 'You went home to night?' And he said, 'No,

I didn't; I went to a restaurant.' And then I said to him, what restaurant have you patronized?' And he said, 'Well, I patronize one sometimes, and another sometimes,' and I said, 'Well, what restaurant did you patronize to-night?' And he said, 'I didn't patronize any to-night; I went home to-night.' No, he didn't say, 'I didn't patronize any to-night,' but he did say, 'I went to my aunt's,' and I said, 'Does your aunt keep a restaurant,' and he said, "No, she lives private." And I said, "Well, a moment ago, you told me that you went to a restaurant," and he said, 'I didn't tell you that I went to a restaurant to-night,' and I said, 'Prior to that, you told me that you had been home, and then you said that you had gone to a restaurant, and then to your aunt's; and now which statement is right?' And he said, 'I didn't tell you that I went home or to a restaurant, but I told you that I went to my aunt's.' I asked him if he owned the business, and he said yes. I asked him if he owned the stock and fixtures, and he said yes. I asked him how much the

stock and fixtures, in his opinion, were worth, and he said, after some hesitation, and thinking, he said that, in his opinion, they were worth from \$2,500. to \$3,000., and that he owned it entire, and that his indebtedness amounted to about \$50.00, I believe, and that his outstandings, all of which were good and collectable, except \$41.00, I think, amounted to less than \$200.00"

He thought that the defendant named him his insurance policies personally; but they might have been handed to him by Fireman Dougherty, in the presence of the defendant. He took a memorandum of the names and of the amounts of the policies, and handed them back to the defendant. He examined the defendant's premises after the fire had been extinguished. "The fire, in actual burning, was in a pile of cut cloth. That was to the rear of a board partition that separated the front of the loft from the rear of the loft; there was a table standing against the partition, and the cloth was on the table, and on the floor, in front of the table.

There was a burning and charring on the partition and on the table, marks of burning, but the body of the fire on that floor was found about the material, that is, the cloth, that was on the table and around the table, and immediately to the front and to the rear of it." The cloth on the table was piled up. The cloth that was burned was cut in pieces about four to six inches one way and perhaps the same number of inches the other way; not in square shapes, but in irregular shapes. The cloth on the table was directly under the hole in the defendant's ceiling. The burning and charring just there was general. There was some charring on the floor. There were a couple of sewing machines in the room, and two or three or perhaps four chairs. He also found between fifty and one hundred boxes there, as nearly as he could recollect. The boxes were piled up five or six feet high. He opened a large number of boxes, and found them empty. The boxes were new. On a table, which looked like a cutting table, he found three or four rolls of cloth.

He also found a desk there and some chairs. He went to the premises the next morning, the 23rd, and saw the defendant there. He had no conversation with the defendant then, except to bid him good-morning and tell him the Fire Marshal had not arrived and he wanted him to wait to see the Fire Marshal. He went to Napier's apartments, on the morning of the 23rd, and saw the crack in the floor. There was some charring on the edges of the crack, "but the crack was not burned so far that you could not see that it had been cut; evidences of its having been cut or chafed existed. The crack was at the juncture of two boards and it formed the flooring, ran lengthwise, and they showed evidences of having been broken with a dull instrument; it was not a clean cut -- a kind of cut, a scrape, a chafe or a break."

In cross-examination the witness testified that subsequent to the fire he had had a conversation with people in Grand street, in the shoe business, but he didn't know that he had ever conversed

with a Mrs. Bernstein. He did not say to any one in the shoe business, in Grand street, "When I go to a small fire, I can tell the cause of it; but when I go to a fire like Napier's, it is very hard to tell the cause of it." He did not know Mrs. Kaiser who was the surety for the defendant; he had never seen her, to his knowledge. He had been attached to the Fire Marshal's office about eighteen months. There was quite an amount of cut cloth on the table, which was under the hole in the ceiling; some of the cloth was undoubtedly cut for overgaiters, but some of it was not. The larger amount of the burning seemed to be on the Napier floor. The press which was in Napier's apartments, was an ordinary sized Gordon press. He examined the crack in the floor with as much care as he considered necessary. The greatest burning on the Napier floor was right around where the press stood. The wood on the floor of Napier Brothers apartments, extending towards the door that led into the hallway, was scorched. He found type on the floor which had been

melted and ran in together, but he did not know how much type had been melted. There was considerably more burning on the Napier floor than on the defendant's floor. The defendant did not hesitate to tell him that he occupied a portion of the burning building, or to tell him the amount of his insurance. Before the defendant went away, on the night of the fire, he told the defendant that the Fire Marshal wanted to see him, and that the Fire Marshal would be there the next morning, about 11 o'clock. He did not follow the defendant that night, nor did he have any watch whatever put upon the defendant. The defendant was there the next morning when the witness arrived. The defendant was standing on the opposite side of Broadway, talking to a man of the name of Meyer, when he, the witness, first saw him that day. When he, the witness, went up into the defendant's loft the next morning, Sunday, Chief McGill went with him. He recollected that Chief McGill made some remark relating to the ceiling that morning. Chief McGill did not say, in his

CASE # 38

hearing, "Who has been tampering with that hole up there in the ceiling?" Chief McGill did say, looking up at the hole in the ceiling, "I told these people not to disturb that thing there." He couldn't say whether or not the hole appeared to be larger the next morning than it was on the night of the fire. He saw a can, on the night of the fire, which was in charge of one of the firemen, which some one told him had been found in Napier's loft. It was a half gallon or gallon can, with a round top; it did not have a spout. He smelled it, and it smelled of turpentine. The can was about six inches high in the straight part, and then it tapered to a point, and that tapering part was about two or three inches. He did not know the name of the fireman who had the can, nor did he know the name of the fireman who said the can was found in Napier's loft. The can was left on the premises.

JAMES MITCHELL, being duly sworn, testified that he first went to the premises in question on the morning of the 23

of April, Sunday, about five minutes past 11. When he got there he found several people there, and he went into the premises. There was a strong lock on the hall door. There was no hallway running alongside the stairs which led to the upper lofts; the stairs occupied the whole space between the wall of the Restaurant and the southern wall of the building. There was no way of getting from the restaurant into the hallway, nor any way of getting from the cellar into the hallway. There were iron bars on the sky-light on the roof of the extension. He examined the sky-light and came to the conclusion that no person could get from the restaurant on to that roof through the sky-light. When he arrived at the building, he found his assistant, Freel, Chief McGill, Fireman Dougherty and the Fire Patrolman there. A few moments afterwards he saw the defendant. He made a partial examination of the defendant's floor before he had a conversation with the defendant. He had a conversation with the defendant, in the rear part of the defendant's floor.

The witness then testified as follows:

"The defendant was brought up to me. I asked him if he was J. J. Kaiser, the occupant of the floor; he said he was. I asked him how long he had been in business there; he said he had been there since January. I asked him the usual questions which I put -- are you insured; he said yes, I am insured for \$3,500., and he handed me the policies which I took possession of. I asked him what his indebtedness was; he said about \$50.00 -- what his outstandings were; something less than \$200.00, he said. I asked him if he was not a cousin of Gustavus and George Meyer. He said he was. I asked him if it was not a fact that the property belonged to Gustavus and George Meyer and not to him, that he was there simply to secure the insurance; he said no, it was his property, and he had put his own money into it. I asked him if he was not the same J. J. Kaiser who had a fire at 235 West 105th street on December 10th last, which fire occurred within ten days of having placed \$2,000. of insurance of in-

CASE # 38

insurance on his property in that flat; he said he was. I asked him where the woman was he was living with at that time whom he represented as his wife; he said she was away. I asked him where she was; whether he sent her to Hartford or where; he said that she was his wife, that he had trouble with her and had got rid of her. I said to him, that the fire in 105th street was almost identical in character with the two fires his cousin George Meyer had in the upper part of the city; it had been a short time previous, and upon which he collected insurance. His explanation of the fire was the same, that he had been in the premises a short time before it occurred, and had gone out with his wife. I asked him if he had been alone there or had gone out to an entertainment with his wife. He said no, he had not been alone, that his wife was with him and they had gone out together. He could not explain the character of that fire. I said to him that I considered that he and his two cousins were a nice set of fellows. I told him I thought them fit sub-

CASE # 38

jects for State Prison, and the sooner they were there the better for the community. He demurred to that -- said something about his not being responsible for any fires, and objected to that. I said to him, "This is the fifth or sixth fire between you three that has been suspicious and unexplained fires. I said that before -- they were fit subjects for the penitentiary. I asked him where he was at the time of the breaking out of this fire; he said he was there on the premises alone, that Mr. Napier had gone out some time before -- fifteen or twenty minutes. That he was locking up; that when he got into the hall he smelled smoke and heard some noise. He came to the conclusion that there was a fire and ran out to give an alarm. I asked him how it was possible that all this could have been done in the premises and he there alone and hear nothing. I asked him if he heard any movement in the building while there alone; he said he had not. I asked him how it was possible it occurred without his knowing it; he said he hadn't heard anything

after Napier had gone out he had occasion to go into his back room, and he then thought he heard somebody on the roof of the extention. I asked him if he looked out, to see who the person was; he said he had not."

He, the witness, did not see the defendant at the fire in 105th street; his assistant, Mr. Frank, examined that fire. He asked the defendant the value of his stock; the defendant said about \$2,500. He asked the defendant if he knew where the Meyer brothers were; the defendant said that he did not know where George Meyer was, but Gustavus Meyer lived on Grand street, and that he did the cutting for the business. On the table under where the hole in the ceiling was, were quantities of cuttings, apparently in preparation for manufacturing over-gaiters. There were two other tables with cuttings on. There were three or four hundred paper boxes in the defendant's room. All the boxes that he examined were empty. There were a few ashes

CASE # 38

in the defendant's loft, but most of the ashes were connected with the gaiters, portions of which were still there; in his opinion, there was little or nothing totally destroyed. He authorized a man named Samuel Borchardt to go to the premises to make an appraisal, while the Fire Patrol was still in charge. Mr. Borchardt sent the result of the appraisal to him. The defendant subsequently called at his office and asked him for the return of certain papers which he had taken possession of at the time of the fire. He did not return the papers to the defendant; he gave the defendant copies of them, and retained the originals.

In cross-examination the witness testified that he examined the Napier floor and found that the fire had started near the Gordon press.

JOSHUA W. NAPIER, being recalled, testified that he was in his place subsequent to the fire. He and the defendant were near the crack in the floor, and talking about it, and the defendant said that there was no crack

in the floor. He, the witness, said that there was, and he showed the defendant where it was. The attic was vacant at the time of the fire. Before he was in business at that place he had been in business at 421 Broadway, for about fifteen years.

In cross-examination the witness testified that his brother had never been confined in an insane asylum before. Previous to the fire, his brother had, apparently, been all right. He and his brother were engaged in the printing business for some time, and that business had been very prosperous. They gave up the printing business because it undermined his brother's health; his brother worked too hard at it. Some of the type which they had in their place on the night of the fire was melted. About \$500. worth of cards in their place were destroyed.

In re-direct examination the witness testified that he first noticed something wrong with his brother's mind some time in the latter part of June. His brother could not sleep for months. His

brother's health was poor. His brother was worried about the fire; he thought they would try to tput it on him. His brother told him that Mr. Friend frightened him, in the Police Court. His brother said to him; "I was there next to the last, and they will try to put it on me; of course, I didn't do it; they will try to make it look so." His sister had died in April, and his brother had felt very badly about that.

MICHAEL ANGELO STEARNS, being duly sworn, testified that he was the general agent of the Insurance Company of North America, and was also the general agent of the Insurance Company of the State of Pennsylvania." The policies in evidence were issued from his office. He had searched the records of his office to ascertain whether a survey was made of the property covered by the policies, before the policies were issued, and he found that no survey had been made.

In cross-examination the witness testified that his company very frequently insured property.

against loss by fire, without making any survey at all.

JAMES MITCHELL, being recalled, for cross-examination, testified that he took away every paper that he found in the defendant's premises that had any relation to his business. He had all the papers in court. He had two express receipt books, a number of bills, statements and memoranda, some of them receipted and some not receipted, and four small books, in one of which was some pencil memoranda, the other three simply being blank. He had figured up the amount of the bills, and he included in his sum total the rent of his machines, gas, and anything that he could find that the defendant had paid out, and the total amount was \$,963.04. The bills for material amounted to \$1,842.31. After the fire there were two distinct holes in the defendant's ceiling; one of the holes led into the other.

DAVID J. BARRY, being duly sworn, testified that he was a member

of the Fire Patrol. He knew the premises 438 Broadway. He went there on the night of the 22nd of April, in the performance of his duty. The fire alarm was received at their house about the same time as it was received at the engine house. He went to the fire with the company. It took them about five or six minutes to get to the fire. When the fire was put out, and the fire companies left, he was left there to watch the place. He stayed there until 1:45 the next morning. During the time that he was there nobody entered the building. None of the property was removed or interfered with while he was there. He was relieved by Patrolman Hasselberger. He did not return to the premises again.

WILLIAM HASSELBERGER, being duly sworn, testified that he belonged to the Fire Patrol. The alarm of the fire in question was received at their house in Murray street at 9:57 P. M. He went to the fire with the company. He left the premises in question about 12 o'clock that night, Patrolman Barry being left in charge of

CASE # 38

the building. He, the witness, returned to the premises at 1:45 the next morning and relieved Barry. He remained in charge of the premises until 10 o'clock on the morning of the 23. He was then relieved by Patrolman Robinson. During the time that he had charge of the premises, nothing was taken out of the building. The property was in the same condition when he left it as it was when he first went there. He returned to the building again on the morning of the 28, about 10 o'clock, and relieved Robinson. He then remained there until 10 o'clock on the morning of the 29th. The only property that was disturbed while he was there was two boards and a small package of rags, which were taken away by Assistant Fire Marshal Frank. Frank cut two pieces of burned board, in the rear part of the house, and wrapped them up and took them away. When he, the witness, left there on the morning of the 29th, the property was in the same condition that it was when he first went there, on the 23rd. He was relieved by Patrolman Cashman.

CASE # 38

He, the witness, returned to the premises on the morning of May 3rd, at 10 o'clock, relieving Cashman. He stayed there twenty-four hours, and was relieved by Robinson. The only things that had been taken away while he was there were the boards and the rags which Frank took.

JAMES ROBINSON, being duly sworn, testified that he belonged to the Fire Patrol. He was at the fire in question with the company on the night of the 22nd of April. He returned to the premises on the 23rd of April, relieving Hasselberger. He stayed there twenty-four hours. During those twenty-four hours none of the property was taken away or disturbed in any way. He was relieved by Cashman. He went there again on the morning of the 25th of April, relieving Cashman, and stayed there twenty-four hours. During that time none of the property was taken away or disturbed. He went there again on the morning of April 27th, relieving cashman, and stayed there twenty-four hours. During that time none of the

property was taken away or disturbed. Hewent there again on the morning of the 30th of April, relieving Cashman, and stayed twenty-four hours. Nothing was disturbed or taken away during that time. He next went there on May 2nd, and stayed twenty-four hours. Nothing was taken away, or disturbed then. He was relieved by Hasselberger. He last went there on May 4th and stayed twenty-four hours. The property, when he saw it last, was just the same as it was when he first saw it.

JOHN J. CASHMAN, being duly sworn, testified that he was a member of the Fire Patrol. He first went to the premises in question on the morning of the 24th of April. He was there again on the 26th, 29th of April, May 1st and 5th. When he left the premises on May 5th he nailed up the street door and the doors up stairs and he left no one there. The property was in the same condition when he left it there on the 5th of May as it was when he saw it first, in amount.

CHARLES AUGUSTUS FERCHLAND, being duly sworn, testified that he was in the over-gaiter business, being in the employ of S. Borchardt & Co., corner of Carmine and Macdougall street. He had been in the premises 438 Broadway. He went there, under the direction of Mr. Borchardt, on the 27th of April, 1893, accompanied by a Mr. Murphy, who was employed in the same place. They arrived at the place about 8 o'clock and went up to the first loft. One of the Fire Patrolmen was in charge at the time. He and Mr. Murphy assorted the finished and unfinished gaiters as nearly as possible into dozens, so that they might be appraised. They did not remove any property from that building. They did not disturb the ashes. Murphy left the building with him, and he was there all the time that Murphy was.

In cross-examination the witness testified that he found the over-gaiters which he assorted in both rooms of the defendant's loft; some of them were on tables, and some were on the floor.

CASE # 38

SAMUEL BORCHARDT, being duly sworn, testified that he lived at 147 West 118th street. His business was the manufacturing of over-gaiters and leggins. He had heard what the defendant's business was; the defendant's business was the same as his. He had been in that business nearly six years. He attended to both the outside and the inside business; in the mornings he would see a few customers, and during the day he attended to the buying, and in the afternoon he was around the factory. He employed from one hundred to two hundred and twenty-five persons in his business. He knew Fire Marshal Mitchell. Under the direction of the Fire Marshal, he went to 438 Broadway, for the purpose of appraising the contents of the loft occupied by the defendant. He sent Ferchland and Murphy in advance to arrange the goods. He went there on the 28th of April. He examined all the property on the defendant's floor, omitting nothing that he could see. In a general way, he found pieces of goods cut up in the shape of over-gaiters, and cloth that had not been cut

into over-gaiters, tables, sewing machines, and about four hundred boxes. All the boxes but about twenty-five were empty. Those twenty-five contained damaged, burned and wet overgaiters. He found very little ashes on the premises; he did not think any of the goods were totally burned up. His figures represented the sound, market value of the goods, undamaged. The total of the property which he found there was \$1,558.63. The goods that had been cut into shape seemed to have been cut "with a long knife that clothing people use in their business, entirely unlike what we use in our business. We used a small shoe-knife; they seemed to have been laid in several layers and chopped through with that heavy knife. The shape is entirely lost in that way; if we had made up goods that way ourselves, they would have lost all value."

In cross-examination the witness testified that they manufactured over gaiters all the year round; their sales began about the 1st of September,

CASE # 38

and continued up until May. There was a decrease in business, however, from January to May. A person engaged in the manufacture of over-gaiters, who hadn't much money to invest, would naturally decrease their stock from January to May.

AGNES WHITE, being duly sworn, testified that she lived at 279 Union street, Brooklyn. She knew the defendant. She went to work for the defendant during the month of January, 1935, and worked for him until two days before the fire. The defendant said, in January, that he was just starting in business, and the place looked as if it were new. She sewed over-gaiters. At one time, the defendant had four women in his employ; at one time the defendant had six sewing machines in his loft. A man of the name of Gus Meyer did the cutting for the defendant; Meyer was employed, she understood, during the day-time, and only went there at night to do the defendant's cutting. A man of the name of George Meyer "drummed for the store orders." Gus Meyer did not exercise any control

CASE # 38

over her, nor did he give any orders about the place.

JACOB FRANK, being duly sworn, testified that he was assistant to the Fire Marshal. He knew the premises 438 Broadway. He went to those premises on the 27th of April, 1893. He went to the defendant's floor. He removed some pieces of wood from the floor and baseboard of the defendant's rear room. The wood shown to him by the District Attorney was the wood which he had taken from the defendant's place.

FOR THE DEFENCE, JACOB LEVY, being duly sworn, testified that he was in the shoe business, in Grand street. He had been in business in New York city for about seventeen years. He dealt in over-gaiters, in his shoe store, and he knew the value of over-gaiters when he saw them. He had handled over-gaiters for about twenty-one months, but he had handled the cloth from which over-gaiters are made, about seventeen years, in the manufacture of slippers. He did not know the defendant. He had only been in the premi-

ses 438 Broadway once, on the 27th of June, 1893, upon which date he made an appraisement of the property in the defendant's loft. The defendant was present with him when he made the appraisement. The goods in the defendant's place, at that time, were in very bad condition. He looked at the goods there very carefully.

JACOB J. KAISER, THE DEFENDANT, being duly sworn, testified, in his own behalf, that he was thirty years of age. At the time of the trial he resided at 16 Ridge street, with an aunt of his, Mrs. Meyer. In January, 1893, he was engaged in business at 438 Broadway, as a manufacturer of over-gaiters. He occupied the first loft. On the 22nd of April, 1893, he resided at 429 Grand street, with his aunt. At that time he had a brother living at 44 East 59th street; his brother still resided there. He, the defendant, arrived at his place of business about 7:30 on the morning of the 22nd of April, 1893, and remained there, off and on, the entire day. About 6 o'clock

that night he left his place, locking the door after him, and also locking the door opening upon the street. When it left his loft it was in its usual condition; there was no hole in the ceiling at that time and there was nothing in the nature of a fluid or a liquid coming through a hole in the ceiling. There wasn't any one in his premises when he went out. He heard some one walking around up in Napier's apartments before he went out. He went to supper at his aunt's, who was then living at 429 Grand street. After getting his supper he returned to his office, and found the hall door, apparently, as he had left it when he went out. He went up stairs into his loft, lit the gas, and arranged some work for Monday. It was about quarter or half-past 7 when he reached his place. He heard somebody walking around in the Napier loft when he returned from his supper. About quarter of 8 he heard somebody go down stairs from the Napier loft and go out of the building. About three-quarters of an hour after that he heard somebody come into the building and go up to the Napier loft. Later on in the evening

CASE # 38

he went back to the sink, in the rear of his loft, to wash his hands, and he heard some one walking across the roof of the extension, whistling. He did not see who the person was. He heard the person enter the building and walk upstairs, and then he heard some one walking around Napier's loft. He got through arranging the work, and he sat down at his desk to write. While he was writing, Charles Napier came down stairs, and said, "Good-night; I am off." Napier then went down stairs, and, he supposed, went out of the building. Charles Napier left about twenty-five minutes to 10. About fifteen minutes later, he, the defendant, started to go home. He had a padlock on his door, which he usually kept in his desk. He took the pad-lock in his hand, put out the gas, locked the door and put the key in, and, as he did so, he thought he smelled smoke. He ran part of the way up the stairs leading to Napier's, and saw smoke coming down, and then he ran down into the street. The front door, opening on Broadway, was open, which was an unusual occurrence. As

he got to the street, there was a stout gentleman, (he didn't know as he had ever seen the man before), standing in the doorway. He, the defendant, shouted, "Fire!" and ran diagonally across the street, and ran down to the corner of Canal street and Broadway, all the time shouting fire. When he got to the alarm box at the corner of Canal street and Broadway, there was a man just turning the knob of the box, and the man said, "Where is the fire?" He said, "At my place, 43rd Broadway." The man said, "Let me pull it, come; I will pull it." He, the defendant, then turned around and walked back to his place. There were quite a number of people around there, and several policemen. He attempted to get into his place, but was prevented by the police. Finally he saw two or three firemen enter the cigar store, which was next door to his place. He, the defendant, entered the cigar store, and the proprietor said, "This is Kaiser." Assistant Fire Marshal Freel turned to him, and said, "Are you Kaiser?" He said, "Yes." Freel said, "J. J. Kaiser?" He

said, "Yes." Freel said, "Did you occupy the loft up stairs?" He said, "Yes." Freel said, "Do you own the stock up there?" He said, "Yes," and he turned to Freel, and he said, "Who may have the pleasure of addressing?" Freel said, "I am the Chief Assistant Deputy Fire Marshal Freel." He said, "Thank you." Freel then asked him how long he had been in business, and he told him since the 1st of January. Freel asked him whether or not he carried any insurance; he said he did. Freel wanted to know if he had the policies, and he told Freel that they were up stairs, in his loft. Freel asked him the amount, and he said, \$3,500. Freel asked him where he lived, and he said 429 Grand street, with an aunt of his. He did not tell Freel that he lived at 41 East 59th street. Freel asked him something about had he always lived there, and he told Freel no, occasionally he went up-town to his brother, 41 East 59th street. Freel asked him how long he had been in the city, and he told Freel his people all lived in the East. He had been here, this time,

since the summer of 1892. Freel asked him where he came from; he told Freel he had been in New Haven a short time, with an uncle of his, in business, that his uncle had been very sick and he had attended to the business, and, before that, in Chicago. Freel asked, "Did you ever have any fire in Chicago?" He said, "No." Freel said, "Did you ever have any here?" He said, "Yes," that he was unfortunate enough to have one up-town, when he was house-keeping in this city. Freel said, "Come up stairs." He went up stairs with Freel, Chief McGill, and Fireman Dougherty. Freel asked him where his policies were and he said they were in his desk. Dougherty went over and got the policies out of the desk, and Freel took the numbers and amounts of the policies. Freel told him that Fire Marshal Mitchell would like to see him, the defendant, the next morning. He, the defendant, then went to his home, 429 Grand street. He went around to the premises the next morning, and he went up stairs with Fire Marshal Mitchell, Freel, Chief McGill and Dougherty.

CASE # 38

The first thing Chief McGill said, when he went into the loft, was, "Who tampered with the holes in the ceiling?" He, the defendant, had not touched the holes. When he went up stairs on the night of the fire, he found over-gaiter cuttings scattered all over the floor. The tenants of 438, 436 and 434 Broadway, had access to the roof of the extension. The goods were in the same condition when he saw them on Sunday morning as they were when he saw them on Saturday night. Fire Marshal Mitchell asked him for his policies, and he gave them to him? Mitchell said that he would fix him, the defendant. Mitchell asked him whether he was related to Meyer; he told Mitchell that Meyer was a cousin of his. He, the defendant, did not know anything about the origin of the fire. He did not have anything to do with causing the fire, and he did not know the fire was going to be caused. He was arrested on the 23rd of April. He was subsequently taken before a Police Magistrate and held to await the action of the Grand Jury. He rented his loft in January, 1993, and sub-

CASE # 38

sequently he got a renewal of the lease. He had in his place five tables, nine or ten chairs, sewing machines, and the necessary tools with which to carry on the business. That business belonged to him, and no other person had any interest in it. At the time he got his insurance he had between \$4,000. and \$4,500. worth of stock in his place. He did not know Mr. Goldstein personally; he knew that Mr. Goldstein made an appraisement of his stock. Mr. Levy also made an appraisement of his stock. The stock in his place was in exactly the same condition at the time Goldstein and Levy made their appraisement as it was on the day after the fire. The empty boxes which were in place, were the boxes which he used for shipping goods. On the night of the fire he had two sewing machines in his loft. He only owned two sewing machines, although he had hired four others, at times. Business in his line commenced about September 1st, and ended in March or April. It was not unusual for a man in his line of business to have a stock of \$4,000. in January

and have it reduced to \$1,500. in April. The bills produced by Mr. Mitchell were the bills he had received for goods which he had purchased; but they were not all produced; he had received more bills than Mr. Mitchell had produced. He had gone around to the firms from which he purchased the goods, and gotten duplicate bills, which, added to the amount of the bills produced by Mr. Mitchell, would bring the total amount of goods purchased by him up to \$3,520.17. He knew Mr. Rosenthal. He went to Mr. Rosenthal's place, on the day of the fire, for the purpose of purchasing some goods. He, the defendant, was a married man. At the time of the trial, his wife was in Chicago. On the night of the fire, he did not tell Freel that he had been to supper at 46 East 59th street, nor did he tell Freel that he had taken his supper that night at a restaurant. About two weeks after the fire he saw Charles Napier on the premises. He had also seen Joshua W. Napier there previous to the fire. He had conversations with the Napiers on the subject of insurance, but

he never started the conversations. The Napiers had always spoken about insurance before he did. Napier had requested him to send his broker up to him. Some time after the fire he had gone up to the Napier, left and looked at the floor. The reason he went was that it had been testified in the Police Court that there was a hole in the ceiling, and he wanted to see if there was a hole through the floor or not. There was no hole in the floor; the building was an old one, and the beading frame board had shrunk in over a quarter of an inch from the groove in the other board. He was present when Mr. Levy made his appraisal. Mr. Levy fixed the sound value of the goods that he found there at \$2,000.54, and the damage value at \$1,872.41. Goldstein fixed the sound value of the goods at \$2,000.54, and the loss at \$1,864.85. In his opinion, the goods on the premises on the 27th of June, at which date the appraisal was made, if they had been in sound condition, would have been worth \$2,000. and the loss would amount to \$1,900.

JOSEPH ROSENTHAL, being duly sworn, testified that he was in business at 326 Church street, in this city. He was a woollen merchant. He had seen the defendant twice. He recollected that on the day of the fire the defendant was in his place, to buy some goods, but the defendant did not buy any goods.

JACOB LEVY, being recalled for further direct-examination, testified that he fixed the sound value of the goods which he found in the defendant's premises at \$2,000. He fixed the loss at \$,872.41.

In cross-examination, the witness testified that he had sold between thirty and forty dozen over-gaiters during the time he had been in that business. He never made over-gaiters. The defendant asked him to make the appraisement. The defendant said to him, "Mr. Levy, will you appraise my stock?" He said, "What business is it?" The defendant said, "Over-gaiters." He said, "Yes, I will." He had never appraised any stock of goods before. Before going into the shoe business he had been engaged in the manufacture of slippers.

In redirect examination the witness testified that he had bought and sold woolen cloths of the character that he found in the defendant's place, from 1876 to 1891. When he saw a piece of woolen goods, he knew the value of it.

In recross examination the witness testified that he reached the conclusion that the goods would have been worth \$2,000., if in good condition, by his own judgment. He did not make up the copy of the appraisal which was in evidence; that was handed to him by the defendant, and his judgment agreed with the figures which were on the paper. The goods, in the condition in which they were, were only worth \$128.13. It did not take him over an hour to make the appraisal.

JACOB J. KAISER, THE DEFENDANT, being recalled for cross-examination, testified that he fixed the sound value and the damage value of the goods that were in the premises himself, and furnished a proof of loss to the insurance companies. He fixed the values on the

CASE # 38

6th of May. Levy and Goldstein fixed their values on June 27th. He was not related to either Levy or Goldstein. The damage values fixed by him on May 6th agreed exactly with the damage values fixed by Levy and Goldstein on the 27th of June. Levy and Goldstein acted independently of him in making up their estimates of loss. Before going into the over-gaiter business, he had been engaged in buying and selling diamonds, watches and jewelry. He was in business in New Haven, Connecticut, in 1883. At that time he had a grocery and meat market, on his own account. He was in business there something less than a year. Those were the only businesses he had been in, for himself. He had worked for his uncle, a merchant tailor, on Chapel street, New Haven, off and on, since he was a boy. The last time he had worked for his uncle was in the spring of 1892. He left his uncle on Thanksgiving, 1892. Between 1890 and 1892 he had been in Chicago. Before going to Chicago, he was in New Haven. Just before he went to Chicago, he was in the employ of

his uncle. He did not have any difficulty with his uncle; his uncle did not turn him out and tell him he would not have anything more to do with him, because of his reputation. He had worked for the firm of Neeley & Co., New Haven. He had been arrested once, in New Haven, for drunkenness, and by the advice of his counsel he had pleaded guilty. He had been arrested for obtaining a horse on false pretenses and had been convicted, and fined \$5.00 and the costs of the court. He had been arrested on a charge of theft, and had pleaded guilty and been sentenced to thirty days in jail. He was accused of stealing \$6. or \$7.00. He had never been convicted of crime in New York City. It was not because of the trouble that he had gotten into in New Haven that his uncle discharged him. He did not keep a ledger, day-book or journal in his business at 438 Broadway. He did not keep any books. He had no memorandum of his sales. He had a book in which he kept orders for goods. He had a separate book for order which he had to manufacture the goods

to fill, but he had some of those orders in another book also. He had only two books for sales and orders. He did not keep a bank account. His sales in January amounted to \$600. or \$700.; in February, between \$1,000. and \$1,500.; in March, about \$1,500.; in April, down to the time of the fire, about \$400.00. The largest amount of stock that he ever had in his place, at one time, was \$4,000. He did not doubt that he had bought, during the time that he had been in business there, goods of the value of \$5,600.00. He paid his bills in cash, unless he received a check from some of his customers and then endorsed to somebody else. He had never kept a bank account. When he had saved up money, he had been in the habit of keeping it in his trunk. When he was working for his uncle he had \$4,000. in his trunk, in gold, silver and bills. He filed his claim for damages with the insurance companies after his arrest. He remembered Mitchell asking him if it were not a fact that the property in his loft belonged to Gustavus

Meyer, and he remembered telling Mr. Mitchell that the property belonged to him, and to nobody else. He remembered Mr. Mitchell speaking about the fire in 105th street. He had had a fire in his house in 105th street. That house was a five story brick flat, and he lived on the top floor. He did not know what time that fire started nor how it started, because he was not there at the time. He had \$2,500. worth of insurance on the property owned by him in the 105th street house, and he had collected \$800.00 from the insurance company as damages. He did not remember Mr. Mitchell saying to him that the fire was almost identical with fires which the Meyer brothers had had in the upper part of the city. He remember Mr. Mitchell asking him whether his cousins had had fires, and he told Mr. Mitchell that he didn't know, and that was the fact. He had never heard of the numerous fires which George and Gustavus Meyer had had, in various part of the city and Williamsburg. After Napier left the building on the night in question he didn't

CASE # 38

5093
2000

75

hear any noise from the Napier floor. He had worked in the Eden Musee, in Chicago, where he received \$15. a week He had also been the manager of the Hungarian band in Chicago, and had worked for the Pullman company. All the money he had saved he kept in his trunk. He had sent \$4,000. in cash in his trunk from New York to Chicago, as baggage.

IN REBUTTAL, EDWARD F. CROKER, being duly sworn, testified that he was Chief of the Second Battalion of the Fire Department. He knew the fire alarm box at the corner of Canal street and Broadway. There was no alarm given from that box at any time during the night of the 22nd of April; if there had been, it would have gone to his office, as it was in his district.

JAMES MITCHELL, being recalled, testified that when he arrived at the premises in question on the morning of the 23rd of April, he had looked through the defendant's desk, and taken away every paper he found there.

CASE # 38