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-: I N D E X :-

	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-D.</u>	<u>RE-C.</u>
William J. Schepherd	2	32	66	67
Alfred E. Hassall	68			
Adolph I. Rudolph	68	81		
Charles B. Thompson	75	87	133	135
Leo Soroeh	135	142	145	146
William J. Schepherd (Rcld)	147	149	158	
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Philip B. McCaffrey	160	161		

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COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York, Part V.

----- x  
THE PEOPLE  
against  
CHARLES B. THOMPSON.  
----- x

: Before:  
: HON. JAMES T. MALONE, J.,  
: and a Jury.

Tried, New York, January 11, etc., 1910.

Indicted for grand larceny in the first degree.

Indictment filed October 30, 1907.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEYS WILLIAM A. DeFORD and OSWALD  
N. JACOBY, for the People.  
THOMAS P. McKENNA, ESQ., for the Defence.

Frank S. Beard,  
Official Stenographer.

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## THE PEOPLE'S TESTIMONY.

W I L L I A M    J .    S C H E P H E R D ,    of 234 McDonough  
street, Brooklyn, a witness called on behalf of the People,  
being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. DeFORD:

Q    Where do you reside, Mr Schepherd?    A    234 McDonough  
street, Brooklyn.

Q    What is your business?    A    Real estate.

Q    How long have you been engaged im that business?

A    About six and a half years.    I have been at 14 East 23d  
street, and now I am at 949 Broadway.

BY THE COURT:

Q    In this county?    In the county of New York?    A    Yes,  
sir.

BY MR. DeFORD:

Q    Where were you in business, on or about the 10th day  
of January, 1907?    A    14 East 23d street.

Q    In this county?    A    Yes, sir.

Q    Are you acquainted with the defendant, Charles B. Thomp-  
son?    A    Yes, sir.

Q    How long had you known him prior to the 10th day day  
of January, 1907?    A    About five or six weeks.

Q    Had you had any business relations with him, prior to  
that time, and if so, what?    A    Prior to that he would call  
into my office, to submit proposals of property that he had on

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his books, and asked me if I would be interested in the endeavor to sell them for him.

Q And how many times did he call at your office for that purpose? Repeatedly? A Probably half a dozen times.

Q And can you tell me approximately how many times you saw him, when he came to you or you went to him, on a business matter, prior to that date? A Well, on or about January 3d, 1907, he called at my office with a parcel of 335 lots, and, between the 3d and the 10th, he called repeatedly.

MR. MCKENNA: Now, I move that that answer be stricken out, as irresponsible to the question.

THE COURT: Strike it out, as not responsive.

BY MR. DeFORD:

Q How many times did the defendant call to see you, on business, prior to January 10th, 1907? A About a dozen times.

Q Where did he see you for those purposes? A At my office.

Q At your office? A Yes, sir.

Q Did you ever call on him on any business matter, prior to January 10th, at his office? A Yes, sir.

Q How many times did you go there? A About half a dozen times.

Q About half a dozen times? A Yes, sir.

Q Now, did you enter into any business relations with him, prior to January 10th, 1907, and, if so, what business

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relations did you enter into with him; that is to say, did you embark upon any enterprise with him, or make any agreements with him, prior to January 10th, 1907? A No, sir, I did not.

BY THE COURT:

Q He had been coming into your office, and you had been going into his office? A Yes, sir.

Q With property on the books of each of the offices?

A Yes, sir.

Q To see if either one were interested in the parcels that he submitted? A Yes, sir.

Q And did you submit any properties to him? A No, sir.

Q He submitted them to you, from time to time? A Yes, sir.

Q But, on the 10th of January, 1907, then something was done? A Yes, sir.

BY MR. DeFORD:

Q When did you say your acquaintance with the defendant began? A About five or six weeks prior to January 10th, 1907.

Q Did you see the defendant on the 10th day of January, 1907, or about that day? A Yes, sir, at my office.

Q In this county and State? A Yes, sir.

Q Now, will you state to the jury just what was said and done at that time; what he said to you and what you said to

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him; and what he did and what you did? A On January 10th, he called in to see me at the office, and asked me if I had decided on helping him out on the second payment on the parcel of lots in East New York.

Q Just a moment. He asked you if you would help him out. Had there been any previous negotiation concerning that transaction? A Yes, sir.

Q Now, then, go back to that previous negotiation?

A On January 2d or 3d, he called at the office, and submitted a parcel of 335 lots, located in East New York, and told me that he had some people that he was trying to interest in the sale of the property, and stated that it was a mighty good proposition, and asked me to go out and look at it.

BY THE COURT:

Q How many lots were there? A 335 lots.

Q Go ahead? A And he said that he had secured a contract on these 335 lots in East New York, and set the price at \$335 a lot; and he said, if I would go out and look at them, probably I could submit them to some of my parties that would be interested in East New York property, and so I said I would. And, between the 2d or 3d and 10th of January, I went out, and looked at the property. I had a diagram. He handed me a diagram on January 2d or 3d.

BY MR. DeFORD:

Q Just a moment. Did he present to you a diagram?

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A Yes; on January 2d or 3d.

Q I produce and show to you a paper, and ask you if you can identify it? A Yes, sir.

Q State what that paper is? A It is a diagram of the parcel that Mr Thompson exhibited or presented to me of 335 lots, at \$335 a lot, or an approximate value of \$112,225.

Q When did you first see that diagram? A About January 2d or 3d, 1907.

Q By whom was it shown to you? A C. B. Thompson.

MR. DeFORD: I offer it in evidence.

THE COURT: Any objection?

MR. McKENNA: No, sir.

THE COURT: Then mark it in evidence.

(It is marked People's Exhibit 1.)

BY MR. DeFORD:

Q Now, will you go on and state what occurred at the interview of January 2d, what occurred as to the lots and the diagram, between you and the defendant? A I obtained the diagram, and, between January 2d or 3d and January 10th, I went out to East New York, and looked over the property, and I considered it a good--

THE COURT: No, we do not care what you considered, Mr Witness, but we want to know what happened between you and the defendant.

THE WITNESS: Well, I looked over the property, and

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returned to my office.

BY MR. DeFORD:

Q Now, did you again see Mr Thompson? A Yes, sir, he called in between the 3d and the 10th, almost every day, and he asked me if I had made up my mind to help him out on this proposition.

Q Now, just wait a minute. What statement did he make to you on the 2d of January, concerning his interest in the lots referred to in this diagram, People's Exhibit 1? A On January 2d or 3d, he stated to me that he had a contract on the 335 lots, as set out with the shaded lines on that diagram.

Q Now, did he at that interview--was anything produced or shown to you on that interview on the 2d or 3d of January?

A That diagram.

Q Anything else? A No, sir.

Q Did he make any statement at that time as to who he had the contract with, or anything of the sort? A No, sir; he simply stated that he had the contract on those 335 lots.

BY THE COURT:

Q At \$335 a lot? A Yes, sir, at \$335.

BY MR. DeFORD:

Q Then you saw him after that date; did you not?

A Yes.

Q And what occurred at those interviews? A At one

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interview--

THE COURT: Will you let me ask a question, Mr DeFord, at this point?

MR. DeFORD: Certainly, sir.

BY THE COURT:

Q Was anything said as to the lots, the potentialities of the lots, or was it simply the statement that he had over at East New York 335 lots? Was anything said about the character of the lots, what could be made out of them, in order to arouse any interest? A Yes, sir; he stated that he had some people from Pittsburg that he was endeavoring to interest in the purchase of the lots, at \$335 a lot, or a profit of \$15 a lot, which was a little above the regular commission or percentage; and he said that he had paid \$5,000 on the lots, and another payment was coming due of \$5,000, on the 10th or 11th of January.

BY MR. DeFORD:

Q Just a moment. Did he make this statement at the interview of January 2d? A No, sir; the following one or two visits, after January 2d or 3d, that he called at the office.

MR. McKENNA: Just one minute, if your Honor please.

BY MR. McKENNA:

Q This was on January 2d or 3d, you say? A Yes, sir, the 2d or 3d. It was after January 2d or 3d, or between Janu-

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ary 2d or 3d and the 10th, he said this, that he had these people interested.

Q Well, I don't mean now when he said that he had the people interested, but the main gist of your testimony, in reply to Mr DeFord, and in answer to his Honor's questions. When did he say that there was a profit of \$15 on each of these lots?

A That was after January 3d.

MR. DeFORD: Just one moment, your Honor. I don't think that he should be allowed to cross-examine the witness now.

THE COURT: No, the witness is with the People now, counsel.

BY THE COURT:

Q Can you fix the date. Was it January 3d? A No, sir, between January 3d and 10th; the exact date I don't know.

BY MR. DeFORD:

Q Well, did he, in these conversations prior to January 10th, tell you the names of the parties with whom he had entered into this contract? A No, sir, he didn't.

Q Well, did he ever tell you? A Yes; On January 10th.

Q Now, tell the jury what occurred on January 10th?

A He came into the office, and he had the contract, describing the 335 lots, the character of them, describing them and so on, imbed-

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ded right in the contract, and it was signed by Mr Rudolph, Mr Waxman and another gentleman.

Q Now, do you know the full name of Rudolph, the full signature? A No, sir, I do not. Yes, Adolph I. Rudolph.

Q Do you remember the name of-- A No, sir, I don't remember Mr Waxman's full name.

Q And who was the other man? A The other man I don't recall him now. And he stated in the contract that he had paid \$5,000 on the 335 lots.

BY THE COURT:

Q That is, it was stated in the contract? A Yes, sir.

Q The contract is in writing? Where is it?

MR. DeFORD: The contract is not in existence, so far as we know, your Honor.

A This contract was on the regular form of contracts for the purchase and sale of real estate, and it was acknowledged and sworn to by a notary public.

BY MR. DeFORD:

Q Now, just a moment. Have you that contract in your possession?

MR. MCKENNA: We object now to the testimony of the witness in reference to the contract, and ask that the same may be stricken out, as the contract is the best evidence and should speak for itself, and a man in his business, making a loan on the contract, should not come here,

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and say that he hasn't got the contract, or call upon us to produce it.

THE COURT: It is rather late to make that objection, counsel. However, inasmuch as it is made at any time, I will sustain it, and grant the motion.

BY MR. DeFORD:

Q Did he produce to you a paper that purported to be a written contract? A Yes, sir.

Q Have you that paper in your possession, or under your control? A No, sir.

Q Have you ever had since it was shown to you by the defendant? A No, sir.

Q Did you look at it at that time? A Yes, sir, on January 10th.

Q To whom did you return it, if anybody?

MR. DeFORD: Now, have you that paper in your possession, counsel?

MR. McKENNA: No, sir, I have not.

MR. DeFORD: Have you such a paper in your possession?

MR. McKENNA: I have not.

MR. DeFORD: Now, I offer to establish the substance of that paper, which was produced there.

THE COURT: Can you produce it, counsel?

MR. DeFORD: I cannot. We haven't it.

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THE COURT: Can the other side produce it, if they have reasonable opportunity to?

MR. McKENNA: No, sir. There is no such contract, and I ask that the testimony of the witness as to there being such a contract, without producing it, be stricken out.

THE COURT: No, no. He said that a paper, in the form of a contract, was produced, and he read it, at the time.

BY THE COURT:

Q And do I understand you to say that it went back into the possession of the defendant? A Yes, sir.

Q And after that you never saw it again? A No, sir.

Q And you did read it at that time? A Yes, sir.

Q And you are accustomed to read contracts for the purchase of real estate? A Yes, sir.

Q And you examined this paper? A Yes, sir.

Q And then you returned it to the defendant? A Yes, sir.

Q And have never seen it since? A No, sir.

BY MR. DeFORD:

Q Well, now will you state to the jury the substance of that writing which he produced to you, and showed to you, the substance of its provisions?

MR. McKENNA: I object to that, if your Honor please.

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MR. DeFORD: I think your Honor understands the situation.

THE COURT: In view of the statement made by the counsel that there is no such paper in existence, or in his possession, and that he will not be prejudiced because of the fact that he has not had an opportunity to search for it, I think I will take it. If counsel believes that, on searching, he can secure the paper called for by the counsel for the People, I will not permit secondary evidence of it, at this time, but I understood counsel to say that he disclaimed the existence of any such paper. Is that the fact?

MR. McKENNA: Yes, sir. We disclaim any knowledge of any such paper, except such as comes out of Mr Schepherd's mouth, and we think that, under the circumstances, without any effort being made to produce the paper, without any subpoena duces tecum to produce the paper, the objection should be sustained.

THE COURT: But counsel says that, if time were given, it would be fruitless and idle, because it is not in existence. Under the statement of counsel, I will permit such secondary evidence of the contents.

MR. DeFORD: He can't be prejudiced, because he contends that no such writing ever existed, if your Honor

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please.

THE COURT: That is what he says. Otherwise he should have more notice.

MR. McKENNA: Your Honor, I don't wish you to misunderstand my position. I don't put my objection on the ground that I can hunt up or find any such paper, but I put my objection on the ground that the burden is upon the District Attorney, upon Mr Shepherd's testimony, to establish such a contract.

THE COURT: How can he account for it, if, after the paper was examined and read by him, it was returned into your possession, and he has not seen it since; how can he produce it?

MR. McKENNA: I ask for an exception, if your Honor please.

THE COURT: Yes, take it.

BY MR. DeFORD:

Q Now, did you examine that paper, that writing? A Yes, sir.

Q Do you know by whom it was signed? A Yes, sir.

Q By whom, by whom it was purported to be signed? A By Mr Rudolph, Mr Waxman and another gentleman.

Q Well, I will refresh your recollection, was it a Mr Leon I. Kaplan? A Yes, I believe that was the name.

MR. McKENNA: If your Honor please, I object to the

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leading of the witness.

THE COURT: Yes, that is objectionable, it is leading. Objection sustained.

BY MR.DeFORD:

Q Well, how many signatures did it contain? A Three, and Mr Thompson's made the fourth.

Q Did Mr Thompson make any statement to you about those signatures? A No, sir.

Q Any statement at all? A No, sir, he didn't.

Q Well, did he say anything about the contract, about the instrument in writing, when he showed it to you? Did he describe it? A The description was right in the contract itself.

Q Did he make any statement about what it was? A Yes; he said it was the contract on the 335 lots that he gave me the diagram of, that is on your desk there (indicating People's Exhibit 1).

Q People's Exhibit 1? A Yes, People's Exhibit 1.

Q Now, did he make any statements to you as to his interest under that contract? A He stated that he had paid \$5,000 on the contract, and that there was \$5,000 more due, about January 10th or 11th, and that he had to have that either that day, which was January 10th, or the following day, I've forgotten which, and he asked me if I had made up my mind to go in and help him out on the payment.

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Q Well, now, just a moment. You examined the contract; didn't you? A Yes, sir.

Q Now, will you go on and state to the jury the provisions of that instrument in writing as well as you remember them, from the beginning to the end, the substance of its provisions? A That this agreement--it was on the regular form of contract used by real estate men for the purchase and sale of real estate. In the first part of it, it contains the names, Rudolph, Waxman and the other name. Then it said, Agreement entered into between Messrs. Rudolph, Waxman and the other gentleman and Charles B. Thompson. They agreed--the party of the second part, which was Charles B. Thompson--agreed to purchase all the lots described below, or something similar to that, and from that contract, or from that description--there is another paper there that I made out at the time (indicating).

Q Well, now, go ahead and describe the contents of the paper? A And described the locality of the lots and the purchase price, \$335 a lot, and 335 lots.

Q Was there anything in the paper which related to the terms of payment, or anything like that? A On the signing of this contract, the sum of \$5,000 was paid, the payment of which is hereby acknowledged, and \$5,000 to be paid on January 10th or 11th. And the further payments, I don't recollect.

Q And the second payment was to be made on January 10th

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or 11th of what year? A 1907. And it was signed by Mr Rudolph, two other gentlemen and Charles B. Thompson.

Q How did that last signature read? A Charles B. Thompson.

Q Now, in addition to presenting you this paper, which you read, did he make any representations or statements as to his rights under that paper? A That he had purchased the property, purchased the 335 lots, at the given price, \$335 a lot.

Q Well, now, did he make you any offer? A No; he asked me if I had decided to help him out on this next payment.

BY THE COURT:

Q Did you observe when the contract was executed, the date of it? A No, sir, I didn't.

Q Did you compare the description of the property with the description of the diagram? A I did; yes, sir.

BY MR. DeFORD:

Q Now, what reason, if any, did the defendant give for showing to you this paper, this writing which he produced, this instrument in writing; what reason did he give for showing it to you? A He stated that he was short of a thousand dollars on the second payment, which was due on January 10th or 11th, and he said that he would lose the contract, or the contract would become null and void, if he didn't make this second payment, and he would lose his \$5,000 which he had paid on it.

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Q Well, now, did he make any offer to you with respect to it; did he ask you to do anything? A He asked me if I would let him have the thousand dollars.

Q Did you let him have the thousand dollars? A Yes, I did.

Q By what means? A A check on the Metropolitan Bank for the thousand dollars, and I had it certified.

BY THE COURT:

Q The Metropolitan Bank, do you say? A Yes, sir, Fourth avenue and 23d street.

BY MR. DeFORD:

Q I produce to you an instrument in writing, and ask you if you can identify it? A Yes, sir; this is the certified check for the thousand dollars.

Q Is that the check that you gave the defendant?  
A Yes, sir.

MR. DeFORD: I offer it in evidence.

MR. McKENNA: No objection.

THE COURT: There is no objection. It may be marked.

(It is marked People's Exhibit 2.)

(Mr DeFord reads the exhibit to the jury.)

BY MR. DeFORD:

Q Now, why did you give him that check? What induced you to give him that check? I withdraw that question. Would you have let the defendant have the \$1,000 which you paid to him

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by certified check, as you have stated, if he had not made the representations to you with respect to the property, and the written instrument, which you have described?

MR. McKENNA: I object to the question.

THE COURT: On what ground, counsel?

MR. McKENNA: On the ground that it is leading, and asking for a conclusion.

MR. DeFORD: It is perfectly competent to show the reliance that he placed on the statements of the defendant.

THE COURT: I will sustain the objection to the form of the question.

BY MR. DeFORD:

Q Will you state then what induced you to make the payment of the \$1,000 to the defendant, as you have stated that you have made to him?

MR. McKENNA: I object, if your Honor please. That is the province of the jury.

BY THE COURT:

Q Was there other than what you have told the jury said between the defendant and yourself, before you turned over to him that check; any other business, or anything else stated?

A Yes.

Q Well, now state everything? A Prior to going to the bank, and in my office, I told Mr Thompson that I could let him have the check for a thousand dollars, and he said, "Very

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well," and I said--he asked me for the cash, and I said, "No, I'll have the check certified."

And so I drew the check, and had it certified to my own order, and went over to the bank, and had it certified.

Prior to going to the bank, I made out a receipt on my letter head, between Mr Thompson and myself, acknowledging the receipt of the thousand dollars, which he signed C. B. Thompson.

The extract, or description of the property, was imbedded in that receipt, and, on looking at the contract, I found that the contract was signed Charles B. Thompson, and I returned it to him, and I said, "You had better sign that Charles B. Thompson, instead of C. B. Thompson," which he had previously done.

BY MR. DeFORD:

Q Now, will you state whether or not you would have let the defendant have the certified check for \$1,000, which you handed him, but for the--but for his representations as to the paper writing, which he presented to you, and his representations in regard to his interest in these lots about which you have testified?

MR. McKENNA: I object to that. Your Honor has already ruled upon the same form of question.

THE COURT: I will sustain the objection to the form of the question.

BY MR. DeFORD:

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Q Now, will you state why, what induced you to--what, if anything, induced you to give the check for \$1,000 to the defendant, which you did give him, as you have described?

MR. McKENNA: I object, if your Honor please.

THE COURT: I will take that.

BY MR. DeFORD:

Q Why did you give him that check, why did you do it?

MR. McKENNA: Exception.

A Because he presented in my office the contract for 335 lots, on which he acknowledged that he had paid \$5,000, and \$5,000 was coming due on the 10th or 11th, and on the strength of that contract alone, it having been signed both by the purchaser, Mr Thompson, and the gentlemen who sold it to him, and acknowledged by a notary public, on the strength of that alone, I let him have the thousand dollars.

MR. McKENNA: Your Honor has allowed me an exception?

THE COURT: Yes. And I have allowed the exception to any objection which you have taken that I have not sustained, I take it?

MR. McKENNA: Yes, sir, I so understand.

BY MR. DeFORD:

Q Now, after you paid him, this check for \$1,000, did he give you back any--was anything else done? A Before leaving my office to go to the bank, I drew up a receipt, which described the property--

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Q Just a moment. I produce an instrument in writing, and ask you if you recognize it? A Yes, sir.

Q Was that signed by the defendant in your presence? A Yes, sir.

Q Let me have it. A This is the agreement.

Q Was it given to you, was this instrument given to you, after you passed him the check for \$1,000? A Yes, sir.

Q And at the same time? A At the same time; yes.

Q Before or after you delivered the check? A No. I handed him the check--I went--in the office, prior to going to the bank, I drew up that receipt, or that agreement, which Mr McKenna has in his hand now, and from the original contract that he had I extracted the description of the lots, which I imbedded in that receipt; that he had purchased so and so many lots, and--

Q Well, did he give you a receipt, after you gave him the check? A Yes, sir, after I gave him the check.

Q And did he give it to you signed? A Yes, sir.

MR. DeFORD: Now, I offer it in evidence.

THE COURT: Any objection?

MR. McKENNA: Let me see it, please. No, sir, no objection.

(It is admitted and marked People's Exhibit 3.)

(Mr DeFord reads the exhibit to the jury.)

BY MR. DeFORD:

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Q Now, will you explain to the jury--now, what occurred after you received this receipt from Mr Thompson, if anything? Did you receive anything else from him, that day? A Yes, sir. At the time I received the receipt, he gave me a note for \$1,000, payable at a certain bank--I don't recall the name of the bank-- at Red Bank, New Jersey, near his home; and he said that, if the sale of the lots didn't go through to these Pittsburg people, that he would pay it on this note, he would give me as further security the note for \$1,000.

Q Had you, prior to that time, asked him for a note?

A No, sir, I had not.

Q Or make any suggestion about a note? A No, sir, I did not.

BY THE COURT:

Q Do I understand, Mr Witness, that you gave the money, you gave the check? A Yes, sir.

Q And received the receipt? A Yes, sir.

Q And that, up to that time, nothing had been said by you or by him that you needed anything further than what you then had? A No, sir; at the time--

Q Is that the fact? A Yes, sir. Something had been said prior to giving me this receipt, at the bank, after the check was certified, at the time that I drew that receipt from the extract of the contract that he had.

MR. MCKENNA: If your Honor please, we would like to

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have direct answers to your questions, too. We think that the witness should be required to answer your Honor directly.

MR. DeFORD: Just wait a minute. Was the answer to your Honor's question satisfactory?

THE COURT: It was, because I simply wanted, at this point, to touch upon something that occurred to me, that had not been taken upon, and which I was not clear about. I will now allow the People's counsel, or the defendant's counsel, to go into the subject or not, as they see fit. I just wanted to clear up what was not clear in my own mind.

BY MR. DeFORD:

Q Was there anything said by the defendant or by you, with respect to your advancing this thousand dollars, about the giving of a note? A Yes, sir.

Q Prior to the time you gave him the check? A Yes, sir.

Q What was it? Tell us what was said? A At the time I drew up the receipt in my office, before leaving for the bank, he said that he would give me a note for a thousand dollars, as further security for the return of this money, and he made out a note, and signed it, and gave it to me, which I would receipt for at the bank, after I had certified the check.

Q Yes. Now, was anything said by him to you about giv-

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ing you a note, prior to the time that you gave him the check?

A Only at the time of drawing up--

Q The receipt? A The receipt.

Q But not prior to that time? A No, sir.

Q Now, I will produce this instrument in writing, and ask you if you recognize it? A Yes, sir, that's the note.

Q Is that the note? A Yes, sir.

MR. DeFORD: I will show it to counsel for the defendant. I will offer it in evidence.

MR. McKENNA: No objection.

THE COURT: Mark it People's Exhibit 4.

BY THE COURT:

Q Now, let me see if I understand your testimony clearly. The defendant told you that he had this contract, and that he had to have a thousand dollars by the 10th or 11th of January to make an additional payment of \$5,000, having already made a payment of \$5,000? A Yes, sir.

Q And that he showed you the contract? A Yes, sir.

Q And then you took up the general subject, and you said that you would advance him the thousand dollars? A Yes, sir.

Q And did you then take out your check book? A Yes, sir.

Q And you made the check? A Yes, sir.

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Q And then, while it was in process of certification, you had prepared in your office a receipt, which you desired him to sign? A Yes, sir.

Q And, while that was going on, the defendant said to you that he would also give you a note for \$1,000? A Yes, sir.

Q And that that was the first time that anything was said about the note, and was then said by the defendant?

A Yes, sir.

Q And not by you to the defendant? A No, sir, not by me; by the defendant.

BY MR. DeFORD:

Q Now, when did you next see Mr Thompson, after this transaction which you have narrated? A After January 10th, and between February 1st, I saw him repeatedly. Either he would come into my office, or I would go into his office.

And he stated that he had submitted it to these people in Pittsburg, and had taken them out in a machine to see the property, and they liked it, and expected to close any day.

And, about the latter part of February, while in my office, another broker came in, and submitted the same piece of property that Mr Thompson had purchased.

Q Now, just a moment. However, go ahead.

MR. McKENNA: I object, if your Honor please. I think that the transaction referred to in the indictment

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is closed, and anything further is immaterial, irrelevant and incompetent.

MR. DeFORD: Well, I was stopping the witness. He was narrating a transaction with another broker, and it was not competent, and I don't want him to do it. I don't want it, and I ask your Honor to strike it out.

THE COURT: Yes. Objection sustained. Strike that out.

BY MR. DeFORD:

Q Now, when did you next see the defendant after this transaction of January 10th? A Two or three days afterwards.

Q Where? A I saw him in my office.

Q Now tell the jury what occurred at that time, and what you said to him and he said to you? A He simply said that he had--

MR. McKENNA: One moment. I object to that. It was after the occurrence charged in the indictment, if your Honor please, and therefore, immaterial, irrelevant and incompetent.

THE COURT: Between the defendant and the witness?

MR. McKENNA: Yes, sir; but I object to it as irrelevant, immaterial and incompetent.

THE COURT: I will allow it.

MR. McKENNA: Exception.

A He said that he had submitted the property to the

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Pittsburg people, and he expected to have them purchase it, and was to take them out on a machine, shortly after that.

BY THE COURT:

Q He told you that? A Yes, sir. And, two or three days after that, or, say the 15th--

MR. McKENNA: I object, if your Honor please, to any conversations after the date fixed in the indictment for the offence charged. I don't see that it has any bearing, and only tends to influence the jury.

THE COURT: Objection overruled.

MR. McKENNA: Exception.

BY MR. DeFORD:

Q Go ahead? A About the 12th or 15th of January, 1907, he came into the office again, and repeated the same thing, that he was working with these people from Pittsburg and other people, and he particularly mentioned the people from Pittsburg; that he put it in for \$350 a lot, or \$15 a lot profit, or about \$5,000 profit, or a little above the regular two per cent commission on the sale of this parcel.

BY THE COURT:

Q That is what he said to you? A Yes, sir.

BY MR. DeFORD:

Q Now, Mr Schepherd--I don't want to lead you--did Mr Thompson ever call to see you, later, about the receipt?

A Yes, sir.

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Q That he had given you? A Yes, sir, he did.

Q When did he call on you? A On or about February 1st.

Q Where? A At my office, 14 East 23d.

Q He called to see you in respect to People's Exhibit 3?

A Yes, sir.

Q Now tell what he said to you, and what you said to him, and what was done at that time? A About February 1st, he called into my office, and said that he expected to have this deal closed with the Pittsburg people, in a day or two, and he said, "I can give you a check for a thousand dollars, and you can give me back the receipt and the note," and I said, "No, I shall not give you back the receipt or the note, but I will deposit your check in my bank, and, if it clears, I will return you the receipt and the note," and so he gave me a check for \$1,000, about February--

Q Now, I show you an instrument in writing, and ask you if you recognize it? A Yes, sir, that's the check that he gave me, that Mr Thompson gave me, a check for \$1,000, on February 1st, and I deposited--

MR. DeFORD: Wait just a minute, until counsel sees it. Now, I offer it in evidence.

MR. MCKENNA: No, objection.

(It is admitted and marked People's Exhibit 5.)

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BY THE COURT:

Q You kept the receipt? A Yes, sir, I kept the receipt and the note.

MR. JACOBY: He said, if your Honor please, he told the defendant, if the check went through, he would surrender them.

THE COURT: Yes, I understand.

(Mr DeFord reads the exhibit to the jury.)

BY MR. DeFORD:

Q Now, Mr. Schepherd, was the promissory note for \$1,000, which Mr Thompson gave you, ever paid?

MR. McKENNA: I object to that, if your Honor please.

THE COURT: Well, what were the terms of it? When was it to be paid?

MR. DeFORD: Payable at the First National Bank of Red Bank, New Jersey. I have the notice of protest, and everything, your Honor. Shall I offer it in evidence?

MR. McKENNA: You can just show me the paper first, and I will facilitate the case as much as possible.

MR. DeFORD: You will concede that the note was <sup>not</sup> paid? The defendant concedes that the promissory note, People's Exhibit 4, was not paid.

THE COURT: Was duly presented and not paid?

MR. McKENNA: Yes, sir.

MR. DeFORD: And the defendant concedes that the defendant's check, People's Exhibit 5, for \$1,000, was not paid.

BY THE COURT:

Q You deposited it in bank, you deposited the check given to you by the defendant in your own bank? A Yes, sir, in my bank.

Q And what did you next hear from it? A I heard from the bank that the check had been returned; insufficient funds, or something similar. The notice was pinned to the check.

BY MR. DeFORD:

Q State whether or not you received anything from the First National Bank of Red Bank, New Jersey, with respect to the note, on its presentation at the bank?

MR. McKENNA: Oh, there is no use taking up any time in that matter. We have conceded that it wasn't paid.

MR. DeFORD: Very well, then.

BY MR. DeFORD:

Q Now, did you see the defendant subsequent to these transactions that you have narrated, and subsequent to the return of the check to you? A I did; yes.

Q When? A About January 10th--no, about January 18th or 20th, I saw the defendant in my office, one day.

Q No. I mean, did you see the defendant after the check that he gave you came back to you, unpaid? A Yes; the day

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I received the notice from the bank that the check was returned.

Q What date was that; do you know? A About February 2d or 3d.

Q Where was the defendant when you saw him then? A At his office.

Q Did you go to him? A Yes, sir.

Q And did you have a conversation with him? A Yes, sir.

Q And what did you say to him? A I told him that the check he gave me, dated February 1st, had been returned from his bank at Red Bank, New Jersey.

Q Go ahead, and narrate the conversation? A And that there wasn't sufficient funds. And he said, "Oh, I'll make good that check, and make good the thousand dollars. These people from Pittsburg will put up money shortly, and I'll give you your money." And so I left him, and went back in my own office.

BY THE COURT:

Q He did not give you anything? A No, sir, he did not.

Q Did he promise that he would subsequently give you something? A Yes, sir.

BY MR. DeFORD:

Q Did you ever receive from the defendant--have you ever received from the defendant that \$1,000, or any part thereof?

A No, sir, I haven't.

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CROSS-EXAMINATION BY MR. MCKENNA:

Q Mr Schepherd, are you engaged in the real estate business at the present time? A Yes, sir.

Q As I understood your direct testimony, previous to your acquaintance with Mr Thompson, in January, 1907, you had been engaged in the real estate business for about six and a half years? A No, sir, I hadn't been engaged then.

Q Well, what is the fact? A About three years prior to January 10th, 1907.

BY THE COURT:

Q You mean that six and a half years covers up to the present time? A Yes, sir.

BY MR. MCKENNA:

Q What was the nature of your real estate business?

A General brokerage in real estate.

Q Buying and selling properties? A Yes, sir.

Q And have you had considerable experience in that line of business? A Fair.

Q How much experience would you say you have had? Have you been actively engaged as a real estate broker? A No, not actively, not continuously.

Q But you have had a broad experience in that line of work? A Yes, I have had some experience.

Q And you did have, prior to January, 1907, did you not? A Yes, sir.

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Q How are transactions for the purchase of property usually consummated, how does the agreement formulate? A On the purchase and sale of real estate?

Q Yes. A Why, the buyers and sellers of a parcel of property, no matter where it is located, usually come together, and agree upon a stipulated sum for the purchase of the property.

Q Yes. A A contract is drawn up, describing the property from the sellers, from their deeds usually, and an extent of title, as it is called, is imbedded in the contract, describing the property in full, for a certain price.

Q Yes. A And certain payments are to be made on the signing of the contract.

Q Yes. A And subsequent payments, thirty, sixty or ninety days thereafter, when the title is to be taken.

Q Now, how do they express their ideas or agreement?

A They express their ideas--the agreement is usually on the form of contract used in the purchase and sale of real estate.

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Q Yes. Now, have you been a participant in the purchase and sale of property upon your own account? A I have, yes.

THE COURT: Are you directing it now to the present time, or a time antecedent to January 10th, 1907?

MR. McKENNA: Oh, yes, sir; to the time prior to January 10th, 1907.

THE WITNESS: I don't think that, prior to January 10th, 1907, I had purchased myself any property.

BY MR. McKENNA:

Q Well, had you sold any property? A I believe I did.

Q Did you participate in an interest in any property, or in a share in any property? A I have, yes, with my wife.

Q You do business with your wife usually? A No, sir.

Q Do you do business in your wife's name? A No, sir.

Q How are those agreements expressed? A They are expressed, as I stated before, on the regular form of contract, and, after a stipulated time, thirty, or sixty or ninety days, title is taken to the property.

Q Now, isn't the fact usually expressed in writing in a form of agreement? A Yes, sir.

Q Now, how is that agreement prepared? A It is prepared usually at the attorney's office of the purchaser.

Q Yes. And is it prepared in copies? A It is prepared

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in copies; yes.

Q And all the parties who participate, as a rule, take a copy; do they not? A The two parties, the buyer and the seller, there are usually two copies, and one is held by the purchaser, and the other by the seller.

Q Well, there are three copies usually, the third for the attorney to prepare the title on; are there not?

A If the attorney for the seller is the attorney for the purchaser, or acts as the attorney for the purchaser, he usually retains the seller's copy.

Q Well, in the transactions that you have had, your experience has been that these contracts are in duplicate; was it not? A Yes.

Q And the parties usually take one? A Yes, sir.

Q Now, in answer to his Honor's question, he asked you when this conversation with Mr. Thompson, relative to the passing of the check and note, and the giving of this receipt, took place, and you answered the 10th or 11th, but you were not sure which one. A The 10th, I said.

Q The 10th? A Yes, sir.

Q Are you sure about it? A Yes, sir.

Q The diagram that Mr. Thompson gave you was given to you before that; wasn't it? A Yes, sir.

Q How long before the 10th? A About January 2nd or 3rd.

Q You are quite sure it was on either of those dates?

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A I am, yes.

Q Now, where was the diagram given to you? A In my office.

Q Did you retain the diagram after that continuously in your possession? A Yes, sir.

Q The statements upon this diagram were statements by Mr. Thompson, were they not, 335 lots? A If you will allow me to see the diagram, I can tell you, sir.

Q Look at it. A No, sir, they are not by Mr. Thompson; they are by myself. 335 lots at \$335, and the total. Those are my figures.

Q And whose writing is that (indicating), "January 10th, C. B. Thompson?" A That's in my handwriting.

Q Why did you put "January 10th," on that diagram?  
A It was to be closed -- the payment was to be made by Mr. Thompson on January 10th.

Q Isn't that the date that Mr. Thompson gave you that diagram? A No, sir, it isn't.

Q Are you positive of that? A Yes, sir, I am positive.

Q What refreshes your memory that that signifies the date when the payment is to be made? A Why, the time that Mr. Thompson handed me this diagram, January 2nd or 3rd, I put the date of the payment, after a conversation with Mr. Thompson, put the date, "January 10th" on there.

Q Yes. As I understand you, Mr. Schepherd, this diagram

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was handed to you either on January 2nd or January 3rd?

A Yes, sir.

Q And on either of those days, at the time when this paper was given to you, you wrote these memorandums on it?

A Yes, I did.

Q And at that time you knew that this payment of a thousand dollars was to be required? A Payment of \$5,000 was to be required.

Q Payment of \$5,000 was to be required? A Yes, sir.

Q What interest had you in the \$5,000? A I had no interest in the \$5,000.

Q Then why should you make a memorandum that that \$5,000 was to be paid on January 10th? A The \$5,000 was to be paid on January 10th, and I put the date on the diagram, and a memorandum as to when the second \$5,000 payment was to be made on his contract.

Q But you were not interested then, were you? A No, I wasn't interested.

Q Where was this supposed contract from the 2nd or 3rd of January until January 10th or 11th? A I don't know.

Q Did you have possession of it? A No, sir.

Q When did you first see that contract? A On January 10th.

Q Where? A At my office.

Q At the time of giving the note or passing the check?

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A At the time of the giving of the note, and the making out of the receipt.

Q That was the first time you saw the contract?

A Yes, sir.

Q How long did you have the contract in your possession at that time? A On January 10th?

Q Yes. A Just a few moments, while Mr. Thompson was present.

Q Was that contract acknowledged? A It was; yes.

Q You have a pretty clear and distinct recollection of the contract; have you not? A Yes, I have.

Q And the names in the contract are clearly impressed upon your mind? A With the exception of one.

Q Which one is that? A The last. Mr. Kaplan, I believe. Rudolph, Waxman and some other name, and Mr. Thompson, of course.

Q Why is it that you don't recall that name?

A Which name?

Q This third person? A I don't recall it, no; I didn't recall it. There is no reason why. It simply passed my memory.

Q Do you recall Mr. Kaplan's first name? A No, sir, I don't.

Q Do you recall whether the contract was signed by him with his full name, the first full name and the second full

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name, or the initials? A I don't recall his name at all on the contract, at all.

Q But you recall Mr. Waxman's name? A I recollect the name of Waxman only.

Q Do you recall how it was signed? A No, sir.

Q Do you recall how Mr. Thompson signed his name?

A Yes, sir, I do.

Q How did he sign it? A He signed it Charles B. Thompson.

Q Do you recall the consideration stated in the contract? A I do; yes.

Q How much was it? A About \$112,000, the total.

Q Not about. Now, what was the exact amount stated in the contract? A I can't recall it. If you will let me see the diagram.

BY THE COURT:

Q Well, can you now state, without refreshing your recollection by anything that is now in existence, independent of any memorandum, can you tell what the consideration was? A No, sir, not in exact figures.

BY MR. McKENNA:

Q Do you recall the date of the contract? A No, sir; I don't.

Q Do you recall how the payments were to be made? You recall that, don't you? A Yes, some of them.

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Q Didn't you recite to his Honor exactly how these payments were to be made? A No, sir, I didn't, not exactly.

Q Why, the first payment was to be made how? A The first payment was to be made on the signing of the contract.

Q \$5,000? A Yes, sir.

Q And the second payment, when was that to be made?

A On or about January 10th, 1907.

Q And why do you say on or about? Was that the language of the contract? A No; it is either the 10th or 11th.

BY THE COURT:

Q Was that something that the defendant said to you?

A No, sir, it was in the contract.

Q Well did the defendant say anything to you on the subject? A Yes, sir; he told me, too, that he had to make the payment on the 10th or 11th.

BY MR. McKENNA:

Q Yes. And was this contract typewritten or in penmanship? A It was on the regular printed form, and was written.

Q Then the blanks on the contract, you mean, were filled in in handwriting? A Yes.

Q And upon what blank was the contract written?

A It was the regular blank form.

Q A Title Company blank, or a private office blank?

A No, sir; a printer's blank, such as Gould, the form print-

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er, uses or has, adopted by the Title Guarantee and Trust, or any of the Title Companies.

Q Now, you examined that contract very carefully, did you not? A I read it over, yes.

Q And you are sure that it was acknowledged? A Yes.

Q All right. And now before what notary was it acknowledged? A I don't recall.

Q On what date was it acknowledged? A I don't recall that, sir.

Q You recall everything else about it? A I do, with the exception of Mr. Kaplan's name, the third signature.

Q Now, you know, as a real estate expert, and a man versed in real estate matters, that Mr. Thompson's only way of refuting your statement that such a contract was presented to you was to be by producing the notary; do you not? You say that the contract was acknowledged? A Yes, sir.

Q Was it acknowledged before a notary of this county or any other county of this State? A It was before a notary, but what county I don't recall.

Q Do you recall his name? A No, sir.

Q Or any part of his name? A No, sir.

Q Or any part of the acknowledgment? A No, sir, not exactly.

Q Do you recall whether the acknowledgment was in type-writing or in penmanship? A It was in print, and written

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out the names of Mr. Waxman, Rudolph and this Mr. Kaplan. The names were simply imbedded with pen and ink right in the form that is usually on the end of a contract.

Q Can you tell whether the notary's office was signified by a stamp, or in penmanship? A No, sir.

Q Can you tell whether the contract was witnessed by the notary public? A No, sir, I can't.

Q Can you tell us whether it was witnessed at all? A Yes, I believe it was.

Q What is the name of the witness to it? A I don't recall that.

Q But you recall all the names, but the witness's name, don't you, and the notary's? A Except Mr. Kaplan's, and the notary's.

Q And now this paper, purporting to be a receipt, Mr. Schepherd, does not in any wise refer to such a contract; does it?

MR. DeFORD: I object to that, as calling for a conclusion.

THE COURT: Does it not speak for itself? It is in evidence.

BY MR. McKENNA:

Q Does it, Mr. Schepherd?

MR. DeFORD: I object to the question, as calling for a conclusion.

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THE COURT: Yes, objection sustained. That is in evidence, and you can read it to the jury, if you desire, and argue from it.

BY MR. McKENNA:

Q What would have been your half share of the profits in this contract? A About \$2500.

THE COURT: Allow me to ask a question here, counsel.

BY THE COURT:

Q Was this subject, the subject of your portion of the profit from the enterprise, taken up on the 10th? A Yes, sir.

Q He said that he had a contract for the purchase of these lots? A Yes, sir.

Q And he wanted something from you? A Yes, sir.

Q And didn't he hold out something to you as being to your advantage to join him in the matter? A Yes, sir.

Q Well then why haven't you told the jury about it? Go ahead, if you have not. A Mr. Thompson said to me, as I have said before, that he had some people interested from Pittsburg, at \$350 a lot, or \$15 advance over the price that was mentioned in the contract, and which was equal to about \$5,000, or a little above the regular two per cent commission due on parcels in Brooklyn or East New York property, and that was the only inducement really that he offered me.

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Q Well, now, you do not wish to have the jury understand that there was not some attraction held out to you to have anything to do with it; do you? A That was the attraction.

MR. McKENNA: That's what he says, that that was the only inducement to him, that profit.

THE WITNESS: That was the inducement, in dividing the \$15 difference on each lot.

BY THE COURT:

Q Well, was that said? That is what I want to find out? A Yes, sir; on January 10th.

Q And he said nothing about it on January 2nd or 3rd? A No, sir.

Q He simply came into your office, with this diagram, showing some lots out in East New York? A Yes, sir.

Q And saying what you said, and nothing else? A Yes, sir; and nothing else.

Q And subsequently you went out and located these lots? A Yes, sir.

Q As shown on the diagram? A Yes, sir.

BY MR. McKENNA:

Q Now, let's make that perfectly clear. That idea or inducement of one-half of the profit was presented to you either on January 10th or 11th? A No, sir; it was January 10th.

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Q January 10th? A Yes, sir. He told me that he had these people interested from Pittsburg, at an advance of \$15 a lot, or equal to a profit of about \$5,000, which is a little above the ordinary commission of two per cent on the \$112,000.

Q Well you are now side-tracking my idea and his Honor's.

A Well, I am not endeavoring to side-track his Honor's idea.

MR. DeFORD: I object to that remark of counsel.

THE COURT: Objection sustained.

BY MR. McKENNA:

Q Well, this inducement of one half of the profit was presented to you on that day, January 10th? A Yes, sir.

Q Was there any other idea of profit in this transaction between you and Mr. Thompson, except that one idea?

A No, sir.

BY THE COURT:

Q And taken up for the first time on January 10th?

A Yes, sir.

BY MR. McKENNA:

Q Now why didn't you attach to this receipt a copy of that contract in which you were to share one-half of the profit? A Why, the only reason why I didn't, or didn't take a copy of the contract, was that that receipt emphatically stipulates that Mr. Thompson had purchased the 335 lots, and from the contract I took the extract of title, and imbedded

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it in the receipt, describing the location of it.

Q Now, point out anywhere in that receipt where the statement is made that Mr. Thompson has purchased those lots? A In this receipt?

Q Yes, point out any place where the word purchased appears. A Purchased don't appear. But this receipt reads, from the beginning to the end, this way (the witness reads Exhibit 3). It says that he owned them, don't it?

Q You say you saw the contract; do you? A Yes.

Q And you said, a moment ago, that Mr. Thompson had purchased these lots, and that this paper referred to it?

A Yes, referred to it.

Q And now you want to demonstrate to us that the idea of purchase is covered by the language "owned"; do you?

A Exactly; yes.

Q Now, Mr. Thompson showed you this contract?

A Yes, sir.

Q And it was a contract to purchase land? A Yes, sir.

Q Now, will you make it clear to the jury that your idea of a contract to purchase land is in the nature of an option; isn't it? A No, sir, it isn't in the nature of an option.

Q Well, it is a contract to call for the property, or take up the title to the property, at some future day?

A Yes, to take up the title at some future day.

Q And you drew this paper that you have just read?

A Yes, sir.

Q If that is so, you knew when you used the words that he "owned" the lots, that he didn't own them at the time, didn't you, but only had an option on them from the contract?

A No, sir, I didn't.

Q How long had you known Mr. Thompson at this time?

A About six weeks.

Q Had you had any business dealings with him before then? A No, sir, not that I know of.

Q How did you form an acquaintance with Mr. Thompson?

A Mr. Thompson was located at 36 East 23rd, right below my office, which was located at 14 East 23rd street, and, prior to January 10th, Mr. Thompson came into the office, and stated that he was down the street, in the same business, the real estate business, and that he handled properties on Long Island, and so on, and he would like to present some of his properties to me, which he did.

Q And how far was your office from his? A Mine was located at 14 East 23rd, and his was at 36, about 400 feet away.

Q About 400 feet? A Yes, sir.

Q Were you in his office frequently? A Yes, I was.

Q Well, up to this time, you had had no business dealings whatever? A Not that I recall; no, sir.

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Q Now, do you mean the Court and jury to understand that, with your statement of your experience in the real estate business, and your statement of the usual custom of each of the parties to have a copy of the contract, you mean this Court and jury and ourselves to understand that you took from a man, with whom you had never had any business dealings before, never had closed any transaction with, you took from him this receipt, without taking a copy of such a contract, if one existed, and fastening it to this paper; you want us to understand that? Is that your theory?

MR. DeFORD: I object to that. He is not theorizing now, but testifying; and I don't think he has a right to argue the case now. He can ask him for the fact now.

BY THE COURT:

Q Is that the fact, that you did not take a copy of the contract? A No, sir, I did not.

BY MR. McKENNA:

Q And I understood you to say in your direct examination that the description in this contract -- in this receipt -- was copied from the contract? A Yes, it was copied from the contract.

THE COURT: Counsel, you will take some further time with the witness?

MR. McKENNA: Yes, sir.

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THE COURT: Then we will take the usual adjournment now.

Gentlemen of the jury, you must not discuss the case among yourselves, or with any one, and you must not form or express any opinion concerning it, but must keep your minds open and free in regard to it, until it is finally submitted to you.

The Court will take a recess until 2 o'clock.

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After recess.

WILLIAM J. SCHEPHERD, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. McKENNA:

Q Mr. Schepherd, I also understood you to say that, at this time, you had had no other business dealings with Mr. Thompson? A On January 10th?

Q Yes. A I had no business; no, sir.

Q Did you ever hear of another tract of property, known as the Bayside property? A Yes; several.

Q And when was it that you heard of that property?

A Oh, probably six months or so prior to that.

Q Prior to that? A Yes, sir.

Q Well now, how do you justify your statement to the Court and jury that you had known this man for only six weeks before? A I didn't say that I heard of the Bayside transaction through Mr. Thompson. I heard of it prior to that, prior to January 10th, but not from Mr. Thompson.

Q I didn't ask you that question. I asked you about your transactions with Mr. Thompson. A My transactions --

Q Now, we have been fighting this case for the --

THE COURT: Now, counsel, just put a question.

BY MR. McKENNA:

Q Did you hear of the Bayside property through Mr. Thompson, previous to January 10th? A Which Bayside property?

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Q Any Bayside property? A No, sir, I don't think that I did.

Q Did you hear of the Bayside property, of 395 lots?

A Yes, I heard of it.

Q And did you hear of it before January 10th?

A I believe I did; yes.

Q Then that is Bayside property? A Yes, that is a Bayside property; isn't it?

Q Then you did hear of it from him before January 10th?

A No, sir; I don't recall that I heard it from him.

Q Or through him? A Or through him either.

Q Were you interested with him in any Bayside property?

A No, sir.

Q Or in any property of 395 lots, at Bayside, Long Island? A No, sir, I wasn't.

Q Did you ever speak to Mr. Thompson about a Mr. Butler? A Yes.

Q Did you ever speak to Mr. Thompson about a Mr. Durham, of Philadelphia? A Who?

Q (Question repeated)? A No, sir, not that I know of.

Q Do you know a Mr. Durham of Philadelphia? A No, sir, I don't think I do.

Q Did you ever tell Mr. Thompson that you could negotiate the sale of the 335 lots, which are in question, to-day, with

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a Mr. Butler, or a Mr. Durham? A No, sir.

Q Did you ever have any negotiations pending with them?

A No.

BY THE COURT:

Q Are these new names to you, now that you hear them?

A One is. Mr. Butler is not.

BY MR. McKENNA:

Q Did you ever visit any lots at Bayside, with Mr. Thompson? A No, sir.

Q Did you ever go in an automobile with Mr. Thompson to Bayside? A No, sir.

Q But you did purchase a half interest in this contract, this contract that you referred to, this morning? A No, sir, I did not.

MR. DeFORD: Just a moment. I think that that question invites the conclusion of the witness. I object to the question.

BY MR. McKENNA:

Q I understood that you undertook to procure an interest in the contract between Mr. Thompson and Mr. Waxman and others? A That I undertook to procure?

Q No. Or to purchase or take? A No, sir, I did not.

Q Weren't you intending to get one half of the profits from the sale of those lots referred to here in this receipt?

A One half of the profits, or \$15 advance on the price of

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the lots, originally stipulated in the contract that Mr. Thompson showed me, or \$5,000.

Q You didn't undertake to get the \$15 per lot, did you?

A No, sir.

Q Well, now, be exact. What did you expect to get?

A One half.

Q Then you undertook to get one half the benefit of that contract; did you not? A Yes, exactly; at the advance of \$15 a lot, or about \$5,000 profit.

Q And that's what you were purchasing with your \$1,000?

A No, sir, it wasn't what I was purchasing. My intention was to save Mr. Thompson's prior payment of \$5,000, and hold the property, so that he could sell it to these Pittsburg people, at the advance.

Q Oh, what right then had you to an interest in the profits on those lots? A On a commission --

MR. DeFORD: One moment. It doesn't seem to me that this inquiry is along the line of the ascertainment of facts, but in the way of drawing conclusions from the witness.

THE COURT: Is it your purpose to test the credibility of the witness?

MR. McKENNA: Yes, sir.

THE COURT: Then you may have it.

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BY MR. McKENNA:

Q Now, what did you intend to buy with your \$1,000?

A Nothing.

Q Then what did you give it to him for? A On the representation that he had purchased these 335 lots, had made a previous payment of \$5,000, and he was to meet the second payment of \$5,000, on the 10th, which he was short of, and --

Q All right --

MR. DeFORD: I ask that he be allowed to finish his answer.

THE COURT: Now, counsel, if you ask a question, you should take the entire answer.

BY THE COURT:

Q Then have you anything further to add? A And the further statement by him that he had an intended purchaser, from Pittsburg, at an advance of \$15 a lot, which is an advance of about \$3,000 above the ordinary commission of two per cent on the \$112,000.

BY MR. McKENNA:

Q Oh, we understand the mathematical calculation. But now, what did you intend to purchase with that \$1,000?

A I intended to purchase nothing.

Q Were you making a present of it to Mr. Thompson?

A No, sir.

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Q Were you making a gift of it to him? A No, sir.

Q Well, what were you doing with it? A I gave him the \$1,000.

Q You gave it to him? A With the intention of saving his second payment, on the representation that he had the contract on the property, on the representation that he had the contract on this property.

Q Then, if you gave it to him, why did you have this receipt, People's Exhibit 3, executed; what was the purpose of the receipt? A The purpose of the receipt was the acknowledgment of the \$1,000 that I gave him, and the further representation that he had buyers waiting to buy this property at \$350 a lot; and, if he sold at the advance, instead of two per cent commission on the entire parcel, he was to divide the profit of \$15 a lot between he and I, on the strength of my saving his preceding payment of \$5,000.

BY THE COURT:

Q Now, what was said about that? Just tell us.

A He said that he had a purchaser ready to take this property over, at an advance of \$15 a lot; and, if he didn't make the second payment, he would lose his contract on the property, and he had the buyers awaiting, he represented to me that he had the people from Pittsburg waiting, to take over the property at an advance of \$15 a lot.

Q And then did he say that he would do anything for you,

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if you helped him out, by relieving him from that situation that was impending? A He said that he would divide the difference of \$15 between he and I, as a commission, and, if I sold it to anybody that I represented, or showed the property to, we were to divide the difference in the same way.

Q And that is the reason why you drew up the receipt in that fashion? A Yes, sir.

Q Anything further said on that subject? A No, sir.

THE COURT: Then go ahead.

BY MR. McKENNA:

Q Then the consideration for \$1,000 was not that you gave it to him, but that you were to have a half interest in the profits of the sale of the lots, over and above their purchase price? A Yes, sir.

Q Then you bought that interest in that contract?

A No, sir; I didn't buy the interest in the contract.

Q Well, what consideration were you to receive for your \$1,000? A On his representation that he was to sell it at an advance of \$15 --

Q No, I don't want a long preamble. I want a statement.

BY THE COURT:

Q Have you anything further to add to the answer?

A No, sir.

BY MR. McKENNA:

Q What were you to receive for the advance of the \$1,000?

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A Half of the profits on the sale.

Q Then you were to receive half of the profits, over and above \$335 a lot? A Yes, sir.

Q Then that is what you purchased? A I didn't purchase it. Nothing was made out, or any papers, or agreement, drawn as to what he would sell it for. Simply he represented to me at the time that he had the people ready to purchase, at \$350 a lot.

Q Then what right had you to a call for one half of those profits; what consideration had you parted with for such a call as that? A I gave him the \$1,000 to protect his previous interest, as well as the interest that was due on that day, another \$5,000 payment.

Q Then you didn't give it to him as a matter of charity to protect that payment; did you? A No, sir.

Q Then, as a business man, what did you give it to him for? A To protect his prior payment and his interest in the contract, the \$5,000 paid previously, and the \$5,000 due, that day.

Q Well, it would be a matter of philanthropy then? Did you do it as a matter of philanthropy? A No, sir, I didn't.

Q Well, what consideration did you expect for your \$1,000? Expecting that everything was all right, and rosy and bright and prosperous, what did you expect to get for

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your \$1,000? A Just as he stated, that he would give me one half of the difference between \$335 and \$350 per lot, or half of about \$5,000.

Q In other words, you bought an interest in one half of the profits in those lots, over and above \$335?

A Well, if you care to put it that way, but it isn't my way.

Q Well then, what is your way? A Well, simply that, on the deal that he had with the Pittsburg people, he was to turn it over at once, and he couldn't turn it over at once, or turn the 335 lots over to them, at \$350 a lot, if his second payment was not paid, and his contract would be nullified; and he represented to me that he had the people ready to take the property, at that rate, right away.

MR. McKENNA: Now, there isn't a word of that responsive to my question. And I move to strike it out, if your Honor please.

THE COURT: No. Let us have the complete answer.

BY THE COURT:

Q Is there anything further? A No, sir.

BY MR. McKENNA:

Q Now, Mr. Schepherd, I ask for an answer to that question. That's no way at all, your way.

THE COURT: Well, he has given you his version of his way, in answer to your request for it. Now, put another question. You asked him what was his way, and he

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has given it to you, and, if it is not satisfactory, you can argue about it to the jury, if you should go to the jury.

BY MR. McKENNA:

Q Now, Mr. Schepherd, what did you expect to get for your \$1,000? A One half of about \$5,000, the profit on the lots, at \$15 a piece.

Q Is that now your final statement of what you expected to get? A Yes, that's what I expected to get.

Q You expected to get one half of the profits on these lots, when sold at a price over \$335 a lot? A Yes, sir.

Q And that would be approximately \$5,000? A One half of that profit; one half of the profit on the lots sold at \$350, which would be equivalent to about \$2,500.

Q Now, you expected to get a prospective profit of \$2500 in this deal, in the event that the sale was made, for your \$1,000; is that right? A Yes, sir.

Q Now, why did you take a note then? A Mr. Thompson assured me at the time that, if this transaction with the Pittsburg people wouldn't go through, he would return the money, and gave me a note as further security that, if it didn't go through in 30 days, he would meet the note, at his bank, in 30 days, and the money would be returned.

Q You knew then, Mr. Schepherd, that there was no such contract as this, and you know that now, don't you, such a

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contract as you have stated? A No, I didn't know that.

There was a contract. There was a contract on January 10th.

Q When did Mr. Thompson give you this note, as compared with the time of drawing the receipt? A At the same time that the receipt was drawn, the note was drawn.

Q And when was the check given? A At the bank, after the check was certified. Instead of being drawn to the order of C. B. Thompson, it was drawn to myself, as he requested cash.

Q When was the check for \$1,000 given to you? A Given to Mr. Thompson?

Q Given to you? A Mr. Thompson gave me no check for \$1,000 at that time. On February 1st, there was a check given to me by Mr. Thompson.

Q When was it given to you, I say? Can you tell us the exact date? A February 1st.

Q Then why do you say about February 1st? Was it on February 1st? A Yes, February 1st, 1907.

Q Then what you made to Mr. Thompson was a double transaction; you made a loan; is that the idea? A No, sir; I didn't make him a loan. He further secured me with his note, payable in 30 days; if he didn't turn the property over to the Pittsburg people.

Q Then, if he didn't close this transaction with the Pittsburg people, your security was a note; wasn't it?

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A It was; which was to be paid in 30 days.

Q And that's exactly where you are to-day; isn't it?  
The transaction with the Pittsburg people isn't closed?

A No, sir.

Q You've got the note? A No, sir; I haven't got the  
note. The note is here with the District Attorney.

Q Well, it is in your possession here, in this court?

A Yes.

Q And you gave it to the District Attorney? A Yes.

Q And then you have got everything that you asked for?

A No, I haven't.

Q Why? A Because I haven't got my money back.

Q Now, what you are trying to do, Mr. Schepherd, is to  
collect that note; isn't it? A Yes, to collect the note, as  
well as the amount of money I gave Mr. Thompson.

Q And you have been hounding him privately ever since  
to collect that note? A No, I don't know that I have been  
hounding Mr. Thompson.

Q Haven't you made overtures to him continuously since  
this case has been pending to settle with you for this note,  
and the prosecution would be withdrawn? A No, sir. But he  
has been doing everything that he could to try to induce me  
to withdraw, and giving me orders on yourself for money.

Q Now you said that you went to Mr. Thompson's office  
between January 7th and 10th? A Yes, sir.

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Q Why did you go into his office? A Why, naturally, I went into his office in reference to this parcel, as well as other parcels, looking for business.

Q I didn't understand that you had had any business transactions with him until January 10th? A I didn't say so. I said that Mr. Thompson came in, and presented this one parcel to me.

Q And what was your arrangement as to a division of profits? A We were to divide commissions on any parcel that he gave me, to divide the profits.

Q Did you make any arrangement with Mr. Thompson for a union or consolidation of your offices? A No, sir.

Q Did you ever offer to Mr. Thompson to come into your office? A No, sir.

Q Have you ever offered since January 10th to have Mr. Thompson in your office? A No, sir.

Q Have you ever made any inducements to him to go in business with you? A No, sir.

Q Have you made any inducements to his son? A No, sir.

Q Have you ever visited his family? A Since January 10th?

Q Yes, 1907? A Yes.

Q How many times? A After February 1st, when his check came back, I visited him, and dined with him, two or three times, for two or three weeks, on his invitation, when

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he and his family were located in this city.

Q And then all that dining and receipt of hospitality were in the month of February, 1907? A Yes, sir.

Q And that's the only time that you have dined at his house? A That I recall, yes.

Q Are you pretty positive about your recollection.  
A I am, yes.

Q Do you know Mr. Soroch? A Yes.

Q And you say that you have never gone to Bayside with Mr. Thompson? A Yes, sir.

Q And do you recall going in an automobile with Mr. Soroch and Mr. Thompson to Bayside? A No, sir, I don't.

Q You have told us about this contract, and want us to understand that a contract that you have undertaken to narrate was submitted to you by Mr. Thompson, and that that contract was a fake contract, as characterized by the District Attorney in his opening. Did you tell the District Attorney that it was a fake contract? A You have asked me two questions in the one there.

Q Well, may be you can answer both of them? A If you will repeat the first part of the question.

MR. McKENNA: The stenographer will repeat it.

(The question is repeated by the stenographer)

A Yes, I told him I thought it was.

Q When did you first learn that it was a fake

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contract? A About two or three weeks after January 10th.

Q When did you learn that that contract was a fake contract?

THE COURT: He said, two or three weeks after January 10th.  
BY MR. McKENNA:

Q Oh, give us a little closer, if you can. A Between two and three weeks after January 10th.

Q Then you heard of it previous to January 25th, then?  
A Previous to January 28th?

Q (Question repeated) A Yes.

BY THE COURT:

Q That is, prior to getting the check that you put through in your bank, which came back? A Yes, sir.

Q You learned that it was not a good contract; is that it? A Yes, sir.

BY MR. McKENNA:

Q Then, Mr. Schepherd, before the receipt of this check, dated February 1st, you knew that such a contract as you have referred to was a fake contract? A I did.

Q And you put this note in the bank, did you not, the note in evidence, People's Exhibit 4? A I believe I did; for collection.

Q After you knew this was a fake contract? A It was in the bank at the time I heard of it.

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Q Did you discount this note? A No, sir; I didn't; I put it in bank for collection only. The note has never been discounted.

Q Then the note wasn't really in the bank, was it?

A Yes, it was in the hands of the bank, in the collection department. It wasn't discounted.

BY THE COURT:

Q Was it a 30 day note? A Yes, sir.

BY MR. McKENNA:

Q A 30 day note, due February 11th? A Yes, sir.

Q Now, I understood you to say, this morning, that, as a real estate agent and broker, you know that a prospective purchaser, holding a contract for the purchase of property, is not the owner of the property? A He is the owner under the contract.

Q He is the owner under the contract? A Yes.

Q He isn't the owner of the property; is he?

A No, sir, not until he takes title.

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Q And I show you this affidavit in this case, and ask you if that is your signature ? A Yes; that is my signature.

Q And you swore to this statement, did you not ?

A Yes, sir.

Q Now I read that affidavit to you (reads the affidavit). You say there that he stated to you that he was the owner of three hundred and thirty-five lots, and you swore to that; didn't you ? A Yes.

Q And you knew that that couldn't be the fact or the case, from the real estate broker's standpoint, or as a matter of law; didn't you ? A He was the owner of the property under the contract, which stipulated in the contract that he would purchase, at a certain time, the property.

RE-DIRECT EXAMINATION BY MR. DE FORD:

Q You have stated, Mr. Schepherd, that you dined with the defendant at his home in February ? A Yes, sir.

Q And that was before you -- as his Honor suggested -- before the check which he gave you was turned down ?

A After that.

Q Well, why did you go over there ? A As soon as the check was returned, I went in to Mr. Thompson, and notified him that the check had come back, and he stated to me, "IT's only a question of a day or two that you will get your money, that these people in Pittsburg will be ready to make the contract."

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2 And he kept inviting me into his office, and, one evening, invited me to dinner; and I went over to his house to dinner, and even at dinner he stated that it would be only a question of a few days when he would return the money, and close the contract with the Pittsburg people; and after that, after February 1st, after the first invitation to dinner, he called at my office, and I at his, and the same conversation occurred, that he was trying to close it, and would close it, and return the money.

Q A gentleman by the name of Butler has been named. Did you ever have any business dealings with Mr. Butler ?

A Well, I know of two Mr. Butlers. One is a relative of mine, in Philadelphia, and the other is a gentleman here in New York.

Q Had you ever had any dealings with Mr. Butler, either through or in conjunction with the defendant? A No, sir.

Q With any Mr. Butler? A No, sir.

Q Or with Mr. Durham? A No, sir; I never heard of Durham.

RE-CROSS EXAMINATION BY MR. MC KENNA:

Q Who is this lady sitting here, Mr. Schepherd (indicating a lady in the audience)? A I can't see that far.

MR. MC KENNA: Will the lady come forward?

BY MR. MC KENNA:

Q Look at this lady; do you know who she is (indicating)?

A I believe it is Mrs. Thompson.

Q Now, do you know whether it is Mrs. Thompson or not ?

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A No, I don't know whether it is Mrs. Thompson or not.

Q Well, is she the lady who has entertained you as Mrs. Thompson? A Yes, sir.

A L F R E D E. H A S S A L L, of 378 West 115th street, a witness called on behalf of the People, being duly sworn:

MR. DeFORD: I think I will ask you to step aside for just a few minutes, Mr. Hassall.

A D O L P H I. R U D O L P H, of Howard and Blake avenues, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DE FORD:

Q What is your business, Mr. Rudolph? A At the present time, poultry.

Q Poultry? A Yes, sir.

Q Are you acquainted with the defendant in this action, Mr. Thompson, sitting here (indicating)? A Yes, sir.

Q Are you acquainted with Mr. Schepherd, who has just left the stand? A Yes, sir.

Q Mr. Rudolph, did you -- were you ever a party to a contract providing for the sale to you, upon certain conditions, to yourself and other persons, named in the contract, of the lots shaded as shown on the diagram, marked People's Exhibit 1, situated in the County of Kings, indicated by the shading on

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People's Exhibit 1 ?

MR. MC KENNA: I object.

BY THE COURT:

Q What business were you in in 1907 ? A Real estate.

Q Were you in a firm, some firm? A No.

Q Conducting a real estate business ? A Yes, sir; conducting a real estate business of my own.

Q As a speculator ? A Yes, sir.

Q Not as a broker? A No, sir.

Q Did you know Mr. Harry Waxman or Mr. Leon I. Kaplan ?

A Yes, sir; they were partners with me in certain special transactions.

Q In this transaction? A Yes, sir; in this parcel referred to here.

BY MR. DE FORD:

Q Now, I was going to ask you whether you, together with Harry Waxman and Leon I. Kaplan, ever entered into a contract or agreement in writing with Charles B. Thompson, the defendant here, for the sale of the lots described in People's Exhibit 1, as indicated by shading ?

MR. MC KENNA: I object to that, if your Honor please.

THE COURT: I sustain it, at this time.

BY THE COURT:

Q Did you ever, in connection with Waxman and Kaplan, own some lots in East New York? A Under a contract, we had.

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Q You did have some lots ? A Yes, sir.

Q Where were they ? A They were those lots indicated here on the diagram.

Q Where were they ? A They were in East New York, between Hegeman, Vienna and Stanley avenues, in East New York, and other cross streets.

Q How many lots ? A There were over three hundred. I don't remember the exact number.

Q Well, look at People's Exhibit 1, a diagram. On you state whether those are the lots that you had under your control in 1907, in January 1907? A Yes, sir.

THE COURT: Go ahead.

BY MR. DE FORD:

Q Well, did you at any time ever enter into an agreement with yourself, and Waxman and Kaplan for the sale of those lots, or any of those lots, with the defendant Charles B. Thompson ?

MR. MC KENNA: I object. It is the same question again, which your Honor has ruled upon.

THE COURT: Objection overruled. I will take it.

MR. MC KENNA: Exception.

A No, sir.

MR. MC KENNA: If your Honor please, we have stated, in the opening of this case, that we conceded there never was any such contract, and we concede it now.

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THE COURT: Now, wait a moment, counsel. The District Attorney is examining the witness.

BY MR. DE FORD:

Q Did you at any time, either alone or with any other persons, ever enter into a contract, an agreement in writing, whereby you agreed to sell real estate to the defendant, Charles B. Thompson ? A No, sir.

MR. MC KENNA: I object to that. It is the same question over again.

THE COURT: Overruled.

MR. MC KENNA: Exception.

CROSS EXAMINATION BY MR. MC KENNA:

Q Mr. Rudolph, you are acquainted with Mr. Thompson; are you not ? A Yes, sir.

Q Did Mr. Thompson open up any negotiations with you for the purchase of these lots ? A As a broker, he did.

Q And you had some talks; did you not ? A Yes.

Q And there were some oral negotiations between you ? A Yes, sir.

THE COURT: Fix the time.

MR. MC KENNA: I will, sir, in a minute.

BY MR. MC KENNA:

Q (Question repeated) A Yes, for the sale of this property.

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Q When was that ? A It was 1906, I think -- 1907, I mean -- in January.

Q Did you meet Mr. Thompson a number of times ?

A Yes, sir, several times.

Q And did he ever have any one with him at any of these interviews ? Do you remember a Mr. Soroeh? A No, sir.

Q Or do you remember a Mr. Schepherd ? A Not at that time, no.

Q At any time ? A I remember Mr. Schepherd since I was dragged in here into this case.

Q Yes, in the former trial? A Yes; in the other trial. I never saw Mr. Schepherd before.

Q Well, but you met Mr. Thompson ? A Yes, sir.

Q And you had negotiations with him ? A Yes, for the sale of this property.

Q And what was there about the terms of those negotiations ? A That Mr. Thompson was selling this property for a firm by the name of Anderson T. Hurd & Co., the amount of about \$113,000., approximately.

Q In other words, was he buying them from you at \$335. a lot ? A Approximately that.

Q Approximately that? A Yes, sir.

Q And was there to be a mortgage given back, and negotiations of that kind were between you ? A Yes.

Q That's all. One minute. Is Mr. Waxman in court?

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A Not that I know of.

MR. MC KENNA: Have you subpoenaed Mr. Waxman, Mr. District Attorney ?

THE COURT: Call your next witness.

MR. MC KENNA: I simply wanted to ask that question, whether he was subpoenaed or not ?

THE COURT: Well, it is not necessary; if he is not, you can subpoena him.

MR. DE FORD: I am informed, your Honor, that we sent a subpoena server to where he last was known to live, and he couldn't be found, and I have an affidavit from the process server to that effect. Do you want me to make proof of the fact I have just stated ?

MR. MC KENNA: No, not at all. I want to see the witnesses here.

MR. DE FORD: Will you concede that the process server did endeavor to secure the attendance of Waxman and Kaplan?

MR. MC KENNA: No, sir, I will not, because I don't think it is in the case.

THE COURT: Well, you asked the question.

MR. MC KENNA: He is one of the parties to your contract. I asked only about Waxman.

MR. DE FORD: If your Honor please, we rest, if your Honor will reserve to us the right to produce the process server, to re-but the inference that we did not do our

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best to secure the attendance of those men, to show that we were not afraid to produce them? With that exception, we rest.

THE COURT: Yes. Then you rest with that reservation, to produce the subpoena server, if you desire to do so?

MR. DeFORD: Yes, sir.

MR. McKENNA: If your Honor please, I wish to move for a dismissal of this indictment, and the discharge of this defendant. I don't think a case within the purview of the complaint or the indictment has been made out, and certainly not a case within the spirit of the Code. This man is not guilty of the charge complained against him. It is simply a commercial transaction, in which this man Schepherd accepted his note, and he undertakes to collect it by a check, by collecting a check by means of this criminal court, and now he says he discovered that the transaction was a fraud. And this whole transaction, it seems to me, is one that doesn't appeal to your Honor.

THE COURT: Motion denied. Take an exception.

MR. McKENNA: We take an exception.

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## THE DEFENSE.

CHARLES B. THOMPSON, the defendant, of 998  
Amsterdam Avenue, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR: MC KENNA:

Q Mr. Thompson, on the 6th of January, 1907, what was  
your business ? A Real estate.

Q How long had you been engaged in the real estate busi-  
ness prior to that time ? A About ten years.

Q In what places ? A In New York, at 74 Broadway,  
and at 299 Broadway, and latterly in 23rd street, thirty-six.

Q 36 East 23rd street ? A Yes, sir.

Q Do you know Mr. Schepherd ? A Yes, sir.

Q How long have you known him ? A I met him in December  
of 1906.

BY THE COURT:

Q In December ? A Yes, sir; December 1906.

BY MR. MC KENNA:

Q Where did you meet him? A He came into my office to  
inquire whether I had any Long Island property.

Q He came into your office ? A Yes, sir.

Q And is that the first time that you met him? A Yes, sir.

Q Did you have negotiations together thereafter ?

A Yes, sir.

Q Tell us now briefly what negotiations you had with Mr.

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Schepherd, previous to January 2nd, 1907 ? A Mr. Schepherd came into my office, on two or three occasions, asking if I had any bargains in Long Island property, as he had some Philadelphia friends who would buy anything that he recommended, if it was right.

I showed him a large piece of property in Bayside, consisting of 395 lots, and also a piece of property in East New York, the property in question; and took him out to see both properties, in an automobile, several times; and also paid the expenses of his friends to go out and see these properties. The meetings took place between us four and five times a day. I was in Mr. Schepherd's office probably half a dozen times. Nearly all the negotiations took place in my office. Around about the beginning of January, the Bayside property was visited by Mr. Schepherd to the three friends.

BY THE COURT:

Q With you ? A Yes, your Honor; in an automobile. They presumably came from Philadelphia . Of that I am not certain.

After they came back, we all went to the Cadillac Hotel, and from there Mr. Schepherd came back to my office and he said that the negotiations probably would take a few days, but I could consider that it was a deal, and he said, "By the bye, how about the East New York property?"

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BY MR. MC KENNA:

Q And that is the property referred to in this diagram?

A Yes, sir; that was the second transaction, and the sale of the Bayside property was pending when that matter came up.

Q Now, had you reached any agreement between yourself and Mr. Schepherd as to how you should handle these properties and divide the profits? A Yes. He was to receive one third of the commissions or profits of anything that came out of my office, and my associate and myself were to receive the other two-thirds.

He said that he was unable to get hold of these tracts of property, being more accustomed to handling city property, improved, and he wanted to get this acreage property, which was the specialty of our office -- we handled practically no other property at all -- and we were to handle our business in that way, and all the expenses were to be borne by myself.

Q Now, come down to the transaction in question.

A As near as I can recollect, it was between the Christmas of 1907 and New Year's Day, that the transaction regarding the East New York lots was brought up.

I told Mr. Schepherd that I was negotiating for the purchase of that property, and that I had it sold to some people represented by Anderson T. Hurd, a real estate operator, who was then, and I presume he is now, in the Times Building; and that those negotiations were progressing in the office of Mr.

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Hurd's attorney, who was my attorney at that time as well.

Then I finally agreed on a price, not with this gentleman, Mr. Rudolph, who was here just now, but with Mr. Waxman.

And he visited my place of business several times, and I did visit his as well, and finally a price was agreed upon, if I recollect aright, of \$93,000. or \$94,000.; and not the amount mentioned in that contract at all.

BY THE COURT:

Q Mentioned in what contract ? A This receipt that has been called a contract, your Honor; that's what I mean.

BY MR. MC KENNA:

Q People's Exhibit 3 ? A Yes, sir.

Q Go on, Mr. Thompson. A Finally, as I say, we agreed upon the price of \$93,000. or \$94,000., and I notified Waxman that I should be ready to close the transaction on a certain day. The place of closing the transaction was 699 Broadway, at the office of Mr. Young, who was then my lawyer.

The second -- no, the first time we were there, Mr. Waxman and this other gentleman who was on the stand here, and also Mr. Kaplan, were all there.

Mr. Young informed me, in their presence, that Mr. Hurd was in Ohio, and, therefore, the transaction would have to wait over for a couple of days.

Q Was this previous to procuring the money from Mr. Schepherd ? A Yes, sir. In the meanwhile Waxman, and Rudolph,

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and their associates were insisting upon a payment to be made, to tie up the contract for the sale of that property.

I then spoke to Schepherd about it. That was, I should say, about probably the 4th or 5th. It might have been the 2nd or 3rd of January.

Q Well, the early part of January? A Yes, sir. I told him that, unless I was able to make a deposit on this property, I should probably lose it, and should lose my sale, and he asked me how much I needed, and I told him that I thought I could fix it with a thousand dollars.

The following day, I was down at Mr. Young's office, to see whether Mr. Hurd was in town, and he wasn't, and I was down there, I presume, every day until about the 10th.

Two or three days after the date that Mr. Waxman and his associates had been to Mr. Young's office, they came down there again, and asked for a deposit from me, if I wished still to hold the property. I told them that I thought I could arrange it. I then took this matter up, point blank, with Mr. Schepherd and he agreed to put up the money.

On the day of the 10th, he gave me this check for \$1,000., for the purpose of my going down and closing up that deal. There has never been any contract, in any way, shape or form, drawn up, and I told him, in addition to the note that I gave him, that, if I couldn't get the deal through, I would either return the money to him, then and there, and, if not, he could

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take it out of the Bayside deal.

Q And you and he were having negotiations about the Bayside deal at that time ? A Yes, sir.

Q And previous thereto ? A Yes, sir.

Q Now, what were the negotiations as to the Bayside property ? A The negotiations for the Bayside property -- which consisted of 395 lots -- were that a commission was offered by the owner of \$10. a lot, and I also had a contract drawn up in regard to the purchase of that property, which would net me about \$10,000., and that contract Mr. Schepherd saw in my lawyer's office, and took a copy, for the purpose of drawing up a contract between himself and myself in regard to the other property.

BY THE COURT:

Q Where was the Bayside property ? A I can't tell you exactly where it was.

Q Well, who owned it ? A Dr. Kahn.

Q Dr. Kahn? A Yes, sir.

BY MR. MC KENNA:

Q How do you spell it ? K-a-h-n ? A Yes, I think that's it.

BY THE COURT:

Q Can you give us some location in Bayside as to where the property was ? A I don't know Bayside very well. They came into my office through a clerk in my office, Mr. Soroch.

He handled the transaction for me.

Q How did you get to this property in Bayside ? A Each time by automobile .

Q You went down Broadway in Flushing, and then where, after you reached Bayside ? A I am not in a position to tell your Honor. I never was out there except in an automobile.

BY MR. MC KENNA:

Q And on those visits was Mr. Schepherd with you ?

A Yes, sir.

Q And they were previous to January 10th ? A Yes.

Q Now go on. What was the agreement, by the way, between you and Mr. Schepherd as to handling the property ? A That he was to receive one third, and I was to receive two thirds.

Q And did you draw up a memorandum to that effect? A Yes.

Q And he took a copy of that original contract between the owner and the purchaser ? A Yes.

Q Go ahead now. Now tell us what took place, after January 2nd, between you and Mr. Schepherd in reference to this property ? A In regard to which piece ?

Q The East New York piece. After finding out that I couldn't retain the option on the property, unless a payment was made, I discussed the matter with Mr. Schepherd; and, after being down to Mr. Young's office, to meet the people who then held the contract, for the third time, I came back, and told Mr. Schepherd that, unless I could get the money, that I would lose

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the deal, as they wouldn't wait until Hurd came back.

The next day, Mr. Schepherd gave me this check. I went down and met these people, at Young's office, and I tendered them a thousand dollars, a certified check, on an option contract. They wouldn't accept it. They stated that they didn't think that I was sufficiently financially responsible for them to tie up their property on such a small payment.

After I left that office, I returned to my own office, and called up Mr. Schepherd's office, to see whether he was there or not, and found out that he was, and I went over there, and I told him that I couldn't put the deal through on such a small payment as a thousand dollars, and tendered it back to him; and he said, "Oh, you have got money coming to you in the Bayside and in other transactions, and you have got to spend money in those transactions; haven't you?" and I said, "Yes", and then he said, "Well, you can use that in those other matters. You have given me your note in this transaction, and you can pay the note out of this Bayside matter, if necessary." He subsequently sold the Bayside property, and he got a very large commission, and I got nothing.

Q Then did you ever show to Mr. Schepherd any contract between Waxman and others and yourself at any time? A No, sir.

Q And those statements of Mr. Schepherd's are absolutely false, then? A Yes.

Q Did you ever tell Mr. Schepherd that you were the owner

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of those 335 lots ? A I didn't tell him so.

Q Did you see Mr. Schepherd after January 10th ?

A Every day.

Q For how long ? A I should say up until about the middle of March.

Q Of 1907 ? A Yes, sir.

Q Did you ever have any business negotiations with him after that ? A I have been in his office frequently.

Q In regard to other real estate matters ? A Yes, sir.

Q And did he make overtures to you to go into his office?

A Yes; and even when I was away out of town, wrote to me to that effect.

Q And did he make overtures to your son, or stepson, to your knowledge ? A Yes, sir.

Q Has Mr. Schepherd ever visited your house ? A Yes, sir.

Q How often? A Our house ? I think he has only visited us once. He used to come to our hotel frequently.

Q Well, I mean your home for the time being, your hotel?

A Yes, sir.

Q Did he take meals with you? A Yes.

Q How often? A Oh, I suppose a dozen times.

Q When did Mr. Schepherd make these overtures to you to go into other business negotiations, after January 10th ?

A Almost every month.

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BY THE COURT:

Q After what time ? A During the past two years, up to the present time, with possibly the exception, it may be, of three or four months.

BY MR. MC KENNA:

Q Now, tell the Court and jury of those overtures, up to the present time even ? A Not longer than last October, Mr. Schepherd came down repeatedly to the office where I was working and made me a proposition then to come to his office, and share in selling lots with him; and he also told me that he was going to move from 23rd street, and coming to 111 Broadway, and wanted me to join him there.

Q And previous to that ? A Too often for me to mention, Mr. McKenna. I met him about every week or ten days.

Q Did he make suggestions to you about joining your offices together ? A Yes.

Q And did he lay out a plan how the entire office should be laid out, and where your office should be, and his office should be ? A Absolutely so.

BY THE COURT:

Q When did these matters drop off, discontinue ?

A Which matters, your Honor ?

Q These matters, these friendly relations between the prosecuting witness and yourself ? A I saw Mr. Schepherd not longer than four weeks ago, and he was very friendly, and he was

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asking me how soon I expected to have a sale in Red Bank closed up, out of which I was making some money. And he had, previous to that, received an order from me, authorizing a certain man to pay him \$750. on this note.

Q On this note ? A Yes, sir. Mr. Schepherd having claimed all the time that he had never received any money on this Bayside transaction. It only came to my knowledge, and I was only handed the proof of that, about six weeks ago.

BY MR. MC KENNA:

Q And hadn't Mr. Schepherd been demanding payment of this note by you ? A Repeatedly.

MR. DE FORD: I object to the form of the question. It is rather leading; however, I withdraw the objection. At least, I hate to move to strike out anything.

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BY MR. McKENNA:

Q And is it a fact that you have been interested in some gravel property in New Jersey? A Yes, sir.

Q And hasn't Mr Schepherd heard of that transaction?

A Yes.

Q Now, what was said between you and Mr Schepherd as to that matter? A The gravel matter?

BY THE COURT:

Q When was it, first? A It first came up a year ago, and continued until four months ago, when I received a letter from him stating that he would sell a large quantity of gravel for me here in the city.

BY MR. McKENNA:

Q And what did you say to him about that matter of the gravel and the note? A Without a transaction between us as to the gravel, that note should be paid. He was to get me a contract for 93,000 cubic yards of gravel. The first time these gravel negotiations took place was about a year ago.

Q And when was this conversation in which he offered to sell 93,000 cubic yards of gravel to you? A Some time last June, he wrote me a letter, to my house, asking me to come in.

BY THE COURT:

Q Have you that letter? A No, sir, I haven't that letter with me.

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BY MR. MCKENNA:

Q Have you any letters with you?

MR. MCKENNA: We didn't expect this case to be reached this morning, your Honor.

A No, I have no letters with me.

Q In these transactions with reference to other property, the Bayside property and others, which you have spoken of as pending between you and Mr Schepherd, was there an expense account between you? A No, sir.

Q Who was to advance him the money? A I put the money up myself.

Q And did you pay it all? A Yes; Mr Schepherd never paid a cent.

Q Was there any arrangement between you as to who should advance that money? A We were supposed to share it.

Q Did he ever share it with you? A No, sir.

CROSS-EXAMINATION BY MR. DEFORD:

Q Mr Thompson, I believe you said that you met Mr Schepherd in December, 1906, the December prior to this transaction in January? A Yes, sir.

Q And then you had only known him for about six weeks, roughly speaking, prior to the time that you entered into this negotiation of January 10th; is that correct? A That's about right; six weeks or two months.

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Q And you say after you met him you entered into some sort of Bayside transaction with him? A Yes.

Q Now, what was your Bayside proposition? State what the proposition itself was, first, without regard to Mr Schep-herd's connection? A The sale of 395 lots.

Q You had the sale of it? A Yes, sir.

Q Given to you by whom? A By the owner, <sup>through</sup> a man named Sorech, who was working in my office, he got it. He was my outside man.

Q And was <sup>the</sup> a contract given you for the sale of the lots oral or written? A There was a contract drawn up, and--

Q Well, who was-- A Well, pardon me.

Q I beg your pardon. I don't want to interrupt you.

A And there was a contract of absolute purchase drawn up between him and myself.

Q Between yourself and whom? A Dr Kahn.

Q Are you sure of that name? A I am almost positive of the name, but I can find out positively by to-morrow morning.

Q Is that contract in existence? A I presume it is.

Q Well, you don't know where it is? A No, sir. But, if the Court will allow me, I will explain.

Q Where did you last see it? A 299 Broadway.

Q 299 Broadway? A Yes, sir.

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Q In whose possession? A It was in the possession of my attorney, and was in his possession for quite a while.

Q Does your attorney have his office there now? A Unfortunately for me, he doesn't have his office there.

Q Do you know where he has his office now? A No, sir, I don't.

Q Now who made that contract <sup>with you?</sup> A Dr Kahn.

Q Wasn't it Soroeh? A No, sir. He was my man.

Q What was Kahn's first name? A I can't tell you.

Q Where did he live? A In Brooklyn.

Q Whereabouts in Brooklyn? A In Lee avenue, I think.

Q Have you got the number? A No, I can't give you the number.

Q Where did you see him when you discussed this contract with him? A At his house, and was introduced to him by Mr Soroeh.

Q What sort of a house was it? A Brick and frame.

Q Where? A On Lee avenue, if I remember aright.

Q Near what place, what other street? A I couldn't tell you the name of the other street.

Q What kind of a looking man was he? A A short man, with dark hair, and, if I recollect aright, he had a black mustache and hair.

Q And Mr Soroeh of your office was with you when you met him, as you say? A Yes; and introduced me to him. He

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is a doctor.

Q Have you seen Mr Kahn since? A No, sir, I haven't.

Q And how long is it then since you saw him? A Nearly two years.

Q Could you go to his house now directly? A No, sir, I couldn't.

Q Now, what was the substance of Mr Kahn's contract? What did Mr Kahn sell to you, or, rather, agree to sell to you in that contract? A 395 lots at Bayside, at a certain price.

Q And within what period of time were you to purchase the lots, if you purchased them under that option? A I think the option was for ninety days.

Q Did you make any preliminary payments to Mr Kahn under that option? A No, I didn't.

Q You simply had an agreement with him that, in ninety days from the date of the agreement, he would agree to sell you certain lots there, at a certain price? A Yes, sir.

BY THE COURT:

Q What was the price? A I can't remember the price, your Honor, at the present time. I was getting \$10 a lot commission.

Q And there were 395 lots, you say? A Yes, sir.

Q That was a considerable piece of business; was it not? About how much was it a lot? A I think they were about \$200 or \$250 a lot, something of that kind.

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BY MR. MCKENNA:

Q Your interest in them, Mr Thompson, was the \$10 commission on the selling of it? A Yes, sir.

BY MR. DEFORD:

Q Now, you spoke to Mr Schepherd about that proposition; didn't you? A Yes, sir.

Q What offer did you make to Mr Schepherd? A To give him one-third, if he could negotiate the sale.

Q The sale of any of the lots? A The whole tract. It had to be sold as a whole. One-third of the commission, and one-third of the profits of any advance price that it was sold at.

Q Did you have any memorandum or written agreement between Schepherd and yourself as to that matter? A No, sir.

Q Did you make the agreement with Schepherd himself?

A Yes.

Q Who was present? A I guess my stepson was present.

Q What is his name? A Arthur Marvin.

Q Is he here in court? A I don't think he is.

Q Is he in town? A Yes, he is in town.

Q Where was this arrangement with Schepherd made? A In my office.

Q But no memorandum of it passed between you? A No, sir.

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Q Did he ever make any sales of lots? A He sold those lots.

Q Did he sell those lots for you? A Yes, sir.

Q Did you pay him half of the commission? A No, sir. He went behind my back, and sold the property, and one of the purchasers was a man named Butler; and this man here, Schepherd, received a commission, as I think I shall be able to prove, of \$10 a lot, and the difference in the price at which I had given it to him, or, rather, he had taken it from my office, and the difference in price was \$1150. His contracts were drawn up, I am informed, two or three months afterwards.

Q Now, when did Kahn give you the contract for these lots? A My negotiations with Kahn were before that, and I introduced this man Schepherd, in Mr Young's office, to him there.

Q Mr Kahn? A Yes, sir; the whole bunch.

Q And on what date did you enter into a contract with Kahn, to sign a contract? A I never signed a contract with Kahn.

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Q I mean about date did Kahn give you the written agreement that he agreed to sell you the lots in ninety days? He did give you a written contract; didn't he? A He signed an agreement, which was left in my attorney's office, and which was left there until--

Q Now, on what date did he sign that agreement? A As

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near as I can recollect, I should say about the 15th, or 16th or 17th of January.

Q After this transaction in question? A Certainly; but the negotiations had been going on long before that.

Q Then, at the time--on January 10--you had not received this contract from Kahn at all? A No, sir; I was negotiating for the very property at the time.

Q But you had no contract for an interest in those lots, or empowering you to sell them, prior to January 10th? A Yes; I had a price made on them by Kahn.

Q But had you an agreement with Kahn putting them in your hands, or authorizing you to sell them, at a definite price, within a definite time? A If you will allow me to explain.

Q Yes, you may explain. A Now, the agreement came from Dr Kahn through Soroch, as he knew a great many property owners in Brooklyn, and this man Kahn was a personal friend of his, and Soroch conducted the transactions almost entirely.

Q Now, I don't want to interrupt you, but I want you to answer my questions. Just wait a minute. I want answers to my questions. I want to be perfectly fair, but I want to pursue my own line of cross-examination. What was the date of the written agreement with Kahn, whereby he agreed to sell you certain lots at a certain price? A The date of that?

Q Yes. A As I say, it was at the end of January or the beginning of February.

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Q Either the end of January or the beginning of February? A Yes, sir.

Q Now, on what day did you have this conversation with Mr. Schepherd? A I had numerous conversations with him.

Q But the conversation in which you agreed to give him a commission if he sold this property? A Oh, that conversation took place in December previous.

Q The December previous? A Yes; when he first came up to our office.

Q And how soon after that conversation did Mr Schepherd sell the property? You said he sold it. A Yes. It wasn't sold for about four or five months afterwards, I think.

Q Yet your option on the property expired when it was sold? A Yes, it had.

Q It had? A Yes. And I would like to explain that, if the Court would allow me.

THE COURT: Just answer the questions.

MR. DeFORD: Just answer my questions, your counsel will make note of your desire to explain, and you may explain when he examines you.

BY MR. DeFORD:

Q Now, your option had expired? A Yes, sir.

Q Now, it seems that you were in negotiation, weren't you, with Messrs Adolph Rudolph, Harris Waxman and Leon Kaplan, of the Borough of Brooklyn, trying to negotiate the sale of the

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property which was the subject of your January 10th negotiation with Mr Schepherd-- A Yes.

Q To one Anderson T. Hurd; is that correct? A Yes, sir.

Q And these gentlemen agreed, at that time, to sell the property, to make a contract whereby they should agree to sell the property to Mr Hurd, upon certain conditions; is that right? A Yes, sir.

Q What were those conditions? What was the first and important condition? A I think that the first payment was to be \$5,000 down.

Q What was the second payment to be; do you know? A Fifteen I think.

Q Fifteen? A Yes. I can't absolutely state what it was. I have had too many contracts since.

Q Now, you were simply acting as a go between, between Mr Hurd and Mr Rudolph and his associates? A No, sir, that wasn't the only man I figured on selling the property to. I would go to see a piece of property, and if I could get the satisfactory figure, I would try to get not only my commission, but sell it at an advanced price, and I was often able to get a contract in that way, without putting up any money.

Q Well, as to those parties, you were only acting as a go between, between Hurd and Rudolph and his associates, trying to get them to enter into the contract or agreement to purchase

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and sell the property? A Yes.

Q And you hadn't succeeded in doing that? A No, sir.

Q And Hurd never put up any money; did he? A No, sir.

Q Did anybody, for him, ever make an agreement to enter into such a contract? A Yes, his attorney did, for him.

Q Did he give you any money? A No, sir.

Q Then Hurd never made any payment to Rudolph, Waxman and Kaplan in payment of any contract that he had entered into with them? A No, sir. I don't know that he ever entered into any contract with them.

Q Then why did you want to get this thousand dollars from Mr Schepherd in this transaction? A I have already explained that I brought the money back to him.

Q Now, just a moment. Why did you want to get a thousand dollars from Mr Schepherd, to use in this particular transaction? A Because, if I didn't get something, and pay it down to them, I would have lost the option in that property.

Q Well, who did the option run to? Yourself or Hurd?  
A I had a verbal option from them, and they wouldn't sign up the original contract, unless I was able to pay them down the \$5,000, and they gave me a fifteen days further option on it, without paying any money down.

Q And the fifteen days expired; didn't it? A Yes.

Q And did you ever pay them a dollar at any time?

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A No, sir.

Q Or either one of them? A No, sir.

Q Did you ever apply a single dollar of anybody's money to any payment on those lots in the exercise of that option, on those lots as shown on the diagram? A No, sir, I did not.

Q Now, you got a thousand dollars from Mr Schepherd on January 10th? A Yes, sir.

Q You gave him a receipt; didn't you? A Yes.

Q Did you give him that receipt (indicating)? A Yes.

Q Is that your signature? A Yes.

Q Do you read receipts of that sort before you sign them? A Yes, sir.

Q Did you read that before you signed it? A I won't be positive. It was done in a hurry.

Q But you usually do? A Yes. And, as matter of fact, I know I did.

Q Did you, on January 10, 1907, own 335 lots, situated on Hegeman, Vienna and Faubel avenues--I will read this paper to you--(reads the receipt)--borough of Brooklyn and city of New York? A No, sir, I didn't.

Q Did you have them under option? A Yes.

Q Where is the option? A I had only a verbal option.

Q Only a verbal option? A Yes, sir.

Q Did you own those lots or that property? A No, sir; nor did I claim to.

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Q Did you have any written contract for the purchase of those lots, or any option running to you upon those lots?

A No, sir, I had no written contract.

Q Did you have any interest then in those lots? A Yes; an option on them.

Q You had a verbal option? A Yes, sir.

Q And who did you get that verbal option from? A Mr Waxman.

Q Waxman? A Yes; he was the man that I had most of the negotiation with. I went with him to the property, time and time again, and he came to my office a good many times.

Q Did you talk that arrangement over with Mr Rudolph?

A On one occasion, he was down at my attorney's office, as well.

Q Did you ever discuss with Mr Rudolph your having a verbal option? A Certainly.

Q Did you have such a verbal option from Mr Rudolph?

A I had it from Waxman.

Q Did he give it to you in the presence of Mr Rudolph?

A Yes, in their presence, in both their presences.

Q Where? A 299 Broadway.

Q And how long was it to run? A For fifteen days, at that time.

Q From what time? A That was on the 9th, 10th, 11th or 12th-- I won't be certain which.

Q And what did the option amount to? That they would sell the land for a certain price, if you sold it within a certain time? A Yes; but I had it at a much cheaper price that it was to be turned over at; \$93,000 or \$94,000 I had it at.

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Q What was the option exactly? A It was like this. They knew that I had been negotiating with certain parties for the sale of that property, and, hearing that my deal with Hurd would fall down, I was negotiating with the defendant also; and, when I couldn't come to time with the payment on the option, they wouldn't sign up a contract with me, though they would with Hurd, because he was more responsible financially, and they further it, without any payment, the option.

Q And all the interest that you had in this property was the verbal option that you have described? A Yes, sir.

Q And you had no other ownership whatever? A No, none whatever.

Q Now you gave Mr. --- now, after you got this thousand dollars from Mr. Schepherd, Mr. Thompson, did you apply it to any other transaction that you were engaged with him in? A Certainly. I used a certain portion of that money for expenses.

Q As to what? A As to the sale of property which we had.

Q In what manner? A Showing people those properties.

Q Did you apply any portion of it to a payment on this option on these lots in question? A No, sir, I didn't.

Q Did you apply that thousand dollars to any payment to Mr. Kahn or his representatives on the Bayside Tract?

A No, sir.

Q Did you apply it to any payment to anybody on these

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lots that are described in this receipt? A No, sir. That money was used for expenses.

Q In other transactions? A In those transactions and especially in the Bayside transaction.

Q Now, going back to the Bayside transaction, you say that you took Mr. Schepherd and his friends down to the Bayside property in an automobile? A Yes.

Q Whose automobile was it? A I hired it at the Times Building, and paid \$25 for it. We met at the Cadillac Hotel, and Mr. Schepherd had his friends there, and Mr. Soroch was along with me.

Q Do you recollect the names of Mr. Schepherd's friends? A No, sir, I can't recollect them now.

Q Can you describe them? A One man was -- let me see -- one fellow --

Q Never mind now, if you can't recollect. A Let me reflect, please, let me think.

Q All right. A One man was, I should say, about five feet eight or nine, broad shouldered, smooth faced man, with brown hair, a fellow about thirty-five years old. The other man I can't recollect so well. I think he was a taller man, and thin. And the understanding was that they were Philadelphia advertising men.

Q You haven't seen them since? A Yes, I have seen them more than once since.

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Q Do you know where they live? A No, sir.

Q Do you know their names? A No, that I can't remember. Those weren't the persons that bought that property.

Q I understand that. Those were persons that you took over with Mr. Schepherd to show it to? A Yes; and not only those people, but other people as well.

Q Now, why did you give Me. Schepherd this note? A To pay back the thousand dollars that he lent me.

Q Why did he lend it to you? A To help me in my business. He knew I was hard up at the time. It came about exactly in this way.

Q Now just wait a minute. Did he loan this money to you to help you in your business? A Yes.

Q Now, I don't want to interrupt you, Mr. Thompson, but I want an answer to my questions, and then I will not interrupt you? A All right, sir.

Q I want to be perfectly fair to you, but I want to conduct my line of examination. Now did you give him any security? You say that this was a loan, and you gave him this note? A Yes, sir.

Q Did you give him any other security? A No, sir.

Q Did you have any real property in this county at the time? A No, sir.

Q Or in this State? A No, sir.

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Q Or in any other state? A Yes; out in Monmouth;  
New Jersey.

Q Is it in your name? A No, sir; at the present  
time it's in the name of a gentleman sitting out there.

Q Mr. Schubert? A Yes; but there is a contract  
back on this property.

Q Did you have any money on deposit at the time you gave  
him this note? A Yes; I had money at Bergstrom's bank,  
and in the Bankers Trust Company.

Q How much money? A Four or five thousand dollars.

MR. MCKENNA: I will offer his bank book, showing  
\$4,500 there.

BY MR. DeFORD:

Q Now, you say that for three months preceding January  
10th, 1907, you had moneys in banks in New York? A Yes.

Q In what banks? A In Bergstrom & Company. I have my  
pass-book here.

Q And what other bank? A And, I think the Bankers Trust  
Company.

Q Now, how much money did you have? A I had an account  
at the Bankers Trust Company prior to that.

Q And how much money did you have in these banks from  
January 10th, up to March or April of the next year, or of that  
year, I mean? A Of that year?

BY THE COURT:

Q Yes, of 1907. A I made small deposits.

Q How much did you have? That was the inquiry? A Well,  
may I ask a question?

Q Well, give it in round numbers?

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MR. McKENNA: Well, if your Honor please, I will show his pass-book, which I have here. That's the best way to tell.

THE COURT: Do you want it exactly?

MR. DeFORD: No, just roughly.

BY MR. DeFORD:

Q Did you have any money in the bank when this note became due? A Only a small amount.

Q Hadn't you enough to take it up in any of the banks? A No, sir.

Q How much did you have at that time on deposit? A Probably in the neighborhood of two or three hundred dollars; something of that kind.

Q And then, at the time you gave the note, you had four or five thousand dollars in bank, you say? A No, sir, I don't claim so. I understood you to ask how much I had during the following three or four or five months.

Q No. I asked you how much money you had in bank on January 10, 1907, or a month before that?

MR. McKENNA: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Allowed. It is to test his credibility, I presume.

MR. DeFORD: Yes, and I am questioning his good faith. He gave this note.

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THE COURT: Allowed.

MR. McKENNA: Exception.

BY MR. DeFORD:

Q Well, to make a long story short, when you gave this note, did you have any money in the bank to enable you to meet it at that time? A I didn't have the full thousand dollars in the bank at the time, no.

Q Did you have any part of it in bank on January 10th?

A I couldn't tell you how much.

MR. DeFORD: Now, give him the bank book, if you want to.

MR. McKENNA: Here it is. On April 6th he had quite a large deposit.

BY MR. DeFORD:

Q Now look at the bank book and say how much you had on January 4th? A January 4th, \$62.

Q Now go on. How much money did you have in that bank during the rest of that month? A There was \$1000 that I received from Mr. Schepherd, and, on January 21st I deposited \$150, and, on February 2 \$144.50.

Q Can you tell me what your balance was --

MR. McKENNA: Now, if your Honor please, I submit that he should be allowed to give the figures.

MR. DeFORD: Well, I don't want all that.

MR. McKENNA: I don't care whether you do or not.

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He is just in the middle of his answer.

BY MR. DeFORD:

Q All right, go ahead. A On February 4th \$24, and another deposit of \$20; on February 25th forty-five.

Q Now, I don't want all that.

MR. McKENNA: Well, it don't make any difference whether you do or not . You asked him a question.

BY MR. McKENNA:

Q How much did you have on April 6th?

BY THE COURT:

Q Have you covered January? A Yes, sir; and February too.

BY MR. DeFORD:

Q Now how much money did you have in any bank on February 10, 1907, the date when the note was payable?

MR. McKENNA: I object to that.

THE COURT: I sustain the objection.

BY MR. DeFORD:

Q Well, you never paid this note, or any part of it?

A No, sir, I did not.

Q You have never paid any ~~more~~ part of it? A I have paid him \$200, one day, on account of it.

Q Did you get any receipt for it? A No, sir; that was before the note was due. I went down to my bank, one afternoon and got currency for it, for my check, before the

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note was due.

Q Did you get any receipt for it? A No, sir; but I have got the check. The District Attorney's office has got it.

Q The District Attorney's office has got nothing of the kind. A Well, it was here at the last trial.

MR. McKENNA: Yes, it was here at the last trial.

BY MR. DeFORD:

Q Well, passing that, you went, didn't you Mr. Thompson, after that --- didn't you afterwards go and give your check for \$1000 to Mr. Schepherd here? A Yes, sir.

Q And at that time he had your receipt for a thousand dollars? A Yes, sir.

Q And your note for a thousand dollars? A Yes, sir.

Q And yet you gave him your check for \$1000? A Yes, sir.

Q Why did you give him that check? A I gave him that check dated ahead, as I expected to have the money ---

BY THE COURT:

Q When did you give it to him? A I should say about the 20th or 22nd of the month, one day before I was going to Philadelphia.

Q What month? A In January.

BY MR. DeFORD:

Q Now, my question is, what you gave him that check for.

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Q Why did you give it to him? A Because we had these other deals pending there, and there should have been more than that money coming to me, and it was dated ahead, because I was going away. There should have been more money than that one thousand dollars coming ~~out~~ of those deals, and that check was not to be used until a certain deal was put through.

Q Now, you claim that you had some deal on with him, whereby you both expected to realize certain profits? A Yes.

Q And you gave him this check in anticipation that his share would amount to a thousand dollars, and that, if it did, he could cash that check? A No, not at all.

Q Well, then, will you state it again. A For instance, on the sale of the Bayside property, Mr. Schepherd knew that there was a commission of \$3950 to be paid on that.

Q And you sold the Bayside property? A He got it from my office, and sold it afterwards.

Q Then why did you give him a check for \$1000?

MR. McKENNA: One minute. I want the witness to finish his answer.

THE COURT: Yes, take plenty of time, witness, and answer the question as fully as you desire to.

BY MR. DeFORD:

Q Why should you then give him a check, to pay him anticipated profits, when you say that he had sold the property,

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and realized a profit of it? A Well, that's just exactly the understanding we had. Anything that he got out of our office, and sold to his people, he should be entitled to one-third of the commission, and we should be entitled to two-thirds. We were standing all the ~~ix~~ expenses of the transactions, and he wasn't. For instance, the \$3950 commission, which was paid to him on the sale of those Bayside lots, suppose that he had given me my share of that, and my clerk had deposited it in the bank, wouldn't my check have been good? I was away at the time.

Q Now then your proposition is that, when you gave him this check for one thousand dollars, you expected that he would realize profits from the Bayside property, and he would turn over those profits to you, and the check would be paid out of your profits? A Well, that isn't what I mean. If you will allow me to explain myself, one minute.

Q All right then. I'll sit down. Go on. A I mean this, that, as I believe is customary in broker's fees, I had this understanding not only with Schepherd, but other people, but he was a kind of neighbor, next door to me almost --

THE COURT: Well, confine yourself to Mr. Schepherd now.

A (Answer continued) That he should receive one-third and we should receive two-thirds, on any stuff, or property, that came out of our office.

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BY MR. DeFORD:

Q Now, then, let us say that he made \$2000 out of the Bayside property. A I should say more than that.

Q Well, without conceding it for one moment, but only for the sake of argument, why did you give him the check, do you say? A Because I expected him to turn over my share of the profits on the Bayside property, and then the check would be paid.

Q Now then your idea was that, if he made any money in the way of commissions out of the Bayside transaction, and you thought they would amount to at least \$5000, that he would deposit two-thirds of that amount to your credit? A Yes.

Q And then you thought that he would deposit \$2000 to your credit, under the agreement as to the Bayside property?

A Yes; about that.

Q And then you drew that check to be paid out of the \$2000 you expected him to deposit to your credit? A Yes, sir.

(The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure and adjourned the further trial of the case to January 12, 1910, at 10:30 A. M.)

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## Trial Resumed.

New York, January 12, 1910.

CHARLES B. THOMPSON, the defendant, his  
cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. DeFORD:

Q. Mr. Thompson, you stated that you gave Mr. Schepherd check  
on the Red Bank, New Jersey, bank, on the First National Bank of  
Red Bank of New Jersey, did you not? A. No, sir.

Q. I asked you whether or not you didn't give Mr. Schepherd  
a check on the First National Bank of Red Bank, New Jersey,  
for the sum of one thousand dollars. That's a fact; is it  
not? A. I think the check was on Bergstrom's Bank.

Q. Well, I will offer you the check, so that it will help  
you to recollect. A. It was on Bergstrom & Company's bank.

Q. That's right. I was wrong. The note was made payable  
at the First National Bank of Red Bank, New Jersey? A. Yes.

Q. Now, Mr. Schepherd -- you never gave anybody any checks  
that were worthless, that is to say, when you didn't have the  
moneys to meet them in the bank on which they were drawn?

MR. McKENNA: I object, if your Honor please.

There is no relevancy in that to this day, whether he did  
or not.

MR. DeFORD: It is relevant for two reasons, first,  
to test the credibility of the witness, and for the second  
reason, he says that he gave a check for \$1000 which was

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not paid in this particular case, and they did it in good faith, excepting that Mr. Schepherd would deposit money to meet it, which he thought that Mr. Schepherd would owe him, at that time.

THE COURT: I suppose, gentlemen, that the questions involved here or whether this representation was made, and whether it was a false representation, and when the prosecuting witness believed it to be, and lost a thousand dollars because of it, property that left his possession on that representation. Now, I purpose allowing a latitude in order to establish whether false representations were made, and what the intent and the understanding of the parties were in connection with it. This, it is true, is a collateral matter. At the same time, collateral matters are sometimes serviceable in testing the credibility, and getting at the intent of the parties. I think I will take it, and limit the proof to that, counsel.

MR. MCKENNA: And am I to understand that the proof is limited strictly to that, to Mr. Schepherd. As your Honor has outlined the proposition, it is one of misrepresentation to Mr. Schepherd. Was he defrauded by false representations, and did he rely upon them? Now, transactions with others, that he had with others, are too far afield from this transaction, I submit.

THE COURT: No, it is limited to this defendant, and

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is for the purpose of reaching his intent as to Mr. Schepherd.

MR. DeFORD: Perhaps I didn't get your Honor's full statement. I am going to ask Mr. Thompson --- now, I do not care about making an offer of proof.

THE COURT: Just ask a question.

BY MR. DeFORD:

Q You stated, Mr. Thompson, that, when you gave this check to Mr. Schepherd for \$1000, you expected that moneys would be deposited there by him to meet it? A Out of the Bayside deal, yes.

Q Out of the Bayside deal, yes.

Q Out of the Bayside deal? A Yes, sir.

Q And you never gave a check to anybody in your life that you knew to be worthless, at the time that you gave it; did you?

MR. McKENNA: Objected to.

THE COURT: Overruled. I will limit it to that purpose, to reach his intent in this transaction.

MR. McKENNA: With Mr. Schepherd?

THE COURT: Yes.

MR. McKENNA: But the proponent of the question doesn't limit his question to that. The question must be limited, according to your Honor's ruling, in order to be perfectly

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fair to the defendant, and to Mr. Schepherd. I object.

THE COURT: I will overrule the objection.

MR. McKENNA: I take an exception.

(Question is repeated by the stenographer.)

A I did not.

BY MR. DeFORD:

Q Now then, I will ask you if you ever gave a check to Mr. Harry Wilkes, for the sum -- dated July 15, 1907 -- for the sum sum of \$56.50, which was worthless at the time you gave it, and which you knew to be worthless, and which was not paid upon presentation?

MR. McKENNA: Now, I object to that question, which was six months after this transaction, if it ever occurred, and it could have no proper reference to this transaction, in question here.

THE COURT: What was that? Some real estate transaction?

MR. DeFORD: I am only asking him as to this transaction to test his credibility, under the rule that you may ask a witness any question that you might ask any other witness to test his credibility, and may press your inquiry as to any bad or vicious acts that you may seek to inquire about, and, if they are bad and vicious acts, they tend to affect his credibility.

THE COURT: Of course, you are bound by his testimony

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if you go into collateral matters.

MR. DeFORD: I understand that.

MR. McKENNA: But his credibility has not yet had a premise established to make a contradiction.

THE COURT: Well, that is one of the purposes of cross examination, to show the jury the credibility of a witness.

MR. McKENNA: But your Honor cannot permit them to prejudice this man's character by transactions which have no bearing upon it. We are not trying those issues now.

THE COURT: Anything that will be relevant to the issue, and the intent of the defendant, is one of the material ingredients of the accusation.

MR. McKENNA: But how could intent, six months afterwards, have any bearing upon a transaction in January?

MR. DeFORD: I am offering it for two purposes, as I stated. I don't need to repeat, I suppose. Moreover I hadn't finished my question.

BY MR. DeFORD:

Q (Continuing the question) -- and which was drawn upon Bergstrom & Company's bank.

MR. McKENNA: Objected to.

THE COURT: Sustained. You have too many questions in that one question.

BY MR. DeFORD:

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Q Well, I will ask you if, on July 15, 1907, you gave a check to Mr. Harry Wilkes, for the sum of \$56.50, drawn upon the banking firm of Bergstrom & Company, in this City?

MR. McKENNA: Objected to.

A If you will show me the check.

MR. McKENNA: I object.

THE COURT: I will sustain the objection. If you can show any representations, false representations that were made close to this time by this defendant, I will permit you to do it, in order to meet the obligation which you assume of establishing that his intent was to deceive and defraud the prosecuting witness. I will exclude that question, though, and strike it out.

MR. DeFORD: Well, I have some other questions to ask about other checks. And then your Honor will not permit any evidence of that character?

THE COURT: No, I will not permit any evidence of that character. Any false representations that are falsely connected in point of character and in point of time, that might indicate that they were part of an indivisible criminal transaction, I will allow you to go into and allow you great latitude in your examination.

MR. DeFORD: Then I will not ask any further questions concerning checks, as I understand your Honor holds that that is not admissible.

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THE COURT: Yes. That covers the objection that you make, counsel?

MR. McKENNA: Yes, sir, it covers the objection, and I appreciate it very much. But I don't think that the District Attorney, in endeavoring to get a question of that kind before the Court, treats the defendant fairly, when he reads the check into the record.

THE COURT: And I ask you, gentlemen of the jury, individually and collectively, to entirely eliminate this matter from your minds, and I advise and direct you to do so. Does that cover it, counselor?

MR. McKENNA: Yes, sir.

MR. DeFORD: And I want to say, if your Honor please, that the questions are asked in perfect good faith, and in line with a certain line of thought that I had in mind in regard to the cross examination.

BY MR. DeFORD:

Q Are you acquainted with one Alfred E. Hassall? A I am.

Q I will ask you whether or not it is true that you met Mr. Hassall in this City, on or about the 16th of February, 1907? A No; earlier than that.

Q Earlier than that? A Yes.

Q And did you have a transaction with him in July, 1907, relative to certain land in the village of Massapequa, in the county of Suffolk, New York State? A In May or June I had a

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transactions with him, yes.

Q Did you meet him in this county? A Yes.

Q Did you discuss such a transaction with him at that time? A I did.

Q Did you at that time represent to him that one Alfred Ruhman had theretofore agreed with you, contracted with you, to sell you a one-third interest in lands in Massapequa village, in the county of Suffolk, and then it was necessary for you to obtain the sum of \$250 in order to procure the performance of that contract on the part of Alfred Ruhman; did you make that representation to Mr. Hassall in this county and state at that time?

MR. McKENNA: I object to that. It comes within your Honor's previous ruling, I think.

THE COURT: Anything that will disclose his intent, I will take, if it is in any way connected to show that the purpose of the witness was to ~~xxx~~ deceive and defraud either an individual or the community at large.

MR. McKENNA: If your Honor please this question ought to be directed, it seems to me, primarily as to whether or not it had any connection with Mr. Scheperd; whether it could have possibly been deceived by misrepresentation. Mr. Scheperd, the complaining witness.

THE COURT: We must get at the intent of the defendant, not Mr. Scheperd's intent.

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MR. McKENNA: Yes, but his intent as to this man, not to Jonesor Smith.

THE COURT: We can get at his intent by any evidence that is closely in point of time and character. I will take an answer to the question, and limit the proof as I have indicated to the jury.

MR. McKENNA: I take an exception.

(Question is repeated by the stenographer.)

A I told him that I had a certain transaction.

BY THE COURT:

Q Did you or not?

BY MR. DeFORD:

Q Did you or not? Just answer the question, if you can understand it: A Well, I would like to have it asked again, please.

(The question is repeated by the stenographer.)

A I did.

Q So that --- did Mr. Massall give you the \$250 to use in that transaction? A \$250, or thereabouts. There were two different checks, if I remember aright.

Q He gave you a sum total of \$250? A Yes.

Q Was that representation to him, that you had such a contract with Mr. Ruhman true or false, at the time it was made?

A I was making a contract with him at that time, and, furthermore than that --

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Q No, answer the question (Question repeated).

A I had such a contract.

Q And was it in writing? A Yes.

Q Have you that contract now? A No, sir.

Q Where is it? A If the Court will allow me to explain --

THE COURT: Now just answer the question.

A I know where it should be, yes. It should be with the effects of Alexander Young, my attorney, who was dispossessed from his offices; and I have been trying for the last year, to get those effects. I had desk room in his office, and, when his furniture was put out, both at 299 Broadway and 20 Broad street, it was all seized by the Sheriff, and I have tried repeatedly, even within the last two weeks, to get at those papers, but couldn't; and I don't know of the whereabouts of Mr. Young, and he owes me a lot of money, too.

BY MR. DeFORD:

Q And you surmise that that contract has been taken away with Mr. Young's effects? A Yes.

Q That is a correct interpretation of your statement?

A Yes, absolutely.

Q Now did you apply that \$250 that Mr. Passall gave you to the purchase of any lands whatever in the village of Massapequa, in the county of Suffolk, New York State?

MR. McKENNA: I object to that.

THE COURT: What was the representation, as you

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claim?

MR. DeFORD: That he got this money to carry out this previous contract of sale that he had with this man Ruhman, if your Honor please, and he stated to Mr. Hassall, as he has testified that he wanted the money for the purpose of enabling him to comply with that contract, and he stated that he got the money, and I asked him if he so applied it.

MR. McKENNA: I object to it.

THE COURT: Overruled.

MR. McKENNA: Exception.

Q (The question is repeated by the stenographer.)

A Not only a portion of that money, but more money.

BY MR. DeFORD:

Q What lands did you buy? A Lands at Massapequa.

Q Who from? A John Camden.

Q Have you got the deeds for those lands? A No, sir;

it was on contract.

Q Have you the contract? A No, sir.

Q Where is it? A I can produce it, if given a short time. I can produce my two checks, amounting to more than \$3000 .

Q Did you apply it to the purchase of lands owned by one Ruhman? A He didn't own the land at that time. He had a contract for somebody else.

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Q (Question repeated). Did you apply it to the purchase of lands there, at this village and place, for which he had a contract? A Yes; and I paid more than that.

Q To Ruhman? A Yes, sir.

Q More than that? A Yes.

Q Have you got any receipt for it? A No, I haven't.

It was made in different payments.

Q Well, did you make other payments on the same property, so that you were entitled to take title to that property?

A All told, at Massapequa, I paid out on contracts over \$3000.

Q No, that is not the question, how much money did you pay to Mr. Ruhman on this land you referred to when you made this representation to Mr. Hassall? A At this present time I can't remember exactly.

Q If you paid moneys to Mr. Ruhman, did you take any receipts for that money? A No, I didn't.

Q Did you receive any title to any land from Mr. Ruhman, or any man for whom Mr. Ruhman acted? A I had a contract from Mr. Ruhman.

Q Did you ever receive a title to any land from Mr. Ruhman or any man for whom he acted? A Did I take title?

Q Yes? A No, I didn't.

Q Did you, for yourself or another? A I did not.

Q Now, you say you had a contract --

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MR. McKENNA: Now, I ask that that portion of the examination be stricken out, because the representation that he made was payments on a contract, and everybody knows that payments on a contract don't mean necessarily taking title. He has testified that he made payments on the contract. A man might not get the title.

THE COURT: Overruled.

MR. McKENNA: Exception.

BY MR. DeFORD:

Q Now you stated that when you drew this check on Bergstrom & Company, for a thousand dollars, payable to Mr. Schepherd, which was not paid, that you thought that Mr. Schepherd would deposit money, profits from the Bayside transactions, which belonged to you, in that bank to your credit, so that check would be met with that deposit? A I said further than that.

Q Well, did you say that? A Yes, I did.

Q Now, then, you believed that Mr. Schepherd either then owed you, or would owe you, \$2000, or something like that; is that right?

MR. McKENNA: Objected to, as a conclusion of the examiner.

THE COURT: Overruled.

MR. McKENNA: Exception.

A Yes, and more than that.

Q And you take the position that he owes you money now for

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profits that he derived from the Bayside transaction?

A Certainly I do.

Q Now haven't you been offering to pay him this thousand dollars since you have been indicted in this case? A I have, on two occasions offered to pay him my note, in installments.

Q You have offered to make him payments of a thousand dollars on this check or note, in different amounts? A Yes.

Q And yet you claim that he owes you money out of the profits of the Bayside transaction? A Yes, because I didn't know of it until a few weeks ago.

Q You, as matter of fact gave Mr. Schepherd orders on your counsel, did you not, for money? A I did, pending the closing of a certain transaction; I gave him two orders.

THE COURT: Mr. Witness, will you please take the question and then answer, and nothing else.

THE WITNESS: Yes, your Honor.

BY MR. DeFORD:

Q I will ask you if you recognize that writing (indicating) Is that a letter or order written by you? A It is.

Q It is your handwriting and your signature? A Yes.

MR. DeFORD: I offer it in evidence as part of the cross examination.

MR. McKENNA: No objection.

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THE COURT: I will receive it.

(It is marked People's Exhibit 6.)

BY MR. DeFORD:

Q Now I will produce to you another writing or paper, and ask you if that is in your handwriting, and whether it is signed with your signature?

MR. DeFORD: However, I will withdraw that. I didn't look at the signature. Yes, I will ask you if you recognize that letter.

A Yes, I do.

Q Did you write that, the body of it? A No, sir.

Q Is it in your handwriting? A No, sir.

Q Did you authorize it? A Yes.

Q Whose writing is it in? A My wife's.

MR. DeFORD: I offer that in evidence.

MR. McKENNA: No objection.

( It is admitted and marked People's Exhibit 7.)

BY THE COURT:

Q It was authorized by you, and written by your wife?

A Yes, sir.

Q And known by you to have been sent out to the person to whom it is addressed? A Yes, sir.

THE COURT: It may be marked.

(Mr. DeFord read the exhibits to the jury.)

THE COURT: What is that date, Mr. DeFord?

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MR. DeFORD: October 21, 1908, your Honor.

BY MR. DeFORD:

Q Now you started to say -- to make some explanation about that. You may make the explanation now.

A I had told Mr. Schepherd, at the start, that, if the Bayside deal and the other deals that we had on hand didn't go through, that I would pay him that money.

During that time I was unable to find out whether it had or not. The note came due, and I was unable to pay it. Shortly after that, I went to Pittsburg. When I was in Pittsburg, I heard from Mr. Schepherd, in a letter addressed to me at the Fort Pitt Hotel; and whenever I met him after that, I would inquire whether the Bayside transaction or the Bronx transaction or one of the numerous others, had gone through, and he repeatedly told me no; and, therefore, I believed that I owed him the thousand dollars which I had borrowed, and I did my best to pay it. On more than one occasion I have offered Mr. ~~Mr~~ Schepherd a portion, which he wouldn't take; and, furthermore he wouldn't ever agree with me as to the amount due him.

Q Now is that all?

MR. McKENNA: Let him finish.

BY MR. DeFORD:

Q Go ahead. A It was only about six weeks ago that I happened to meet the gentleman who was in my office at the time.

MR. DeFORD: This isn't responsive to my question,

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if your Honor please, and isn't an explanation of anything.

MR. McKENNA: Addressing myself to your Honor, I think that the answer ought to be permitted to be finished. If the District Attorney starts him on a question he ought to be allowed to answer it.

MR. DeFORD: It isn't germane to the question that I inquired about.

THE COURT: You have asked him for any explanation that he would like to give, and I think that is pretty broad.

MR. DeFORD: Very well. Then I will withdraw my objection.

BY MR. DeFORD:

Q Go ahead. A It was just about seven weeks ago, approximately, when I met Mr. Soroch, who handled this Bayside proposition, and he stopped me on the street, and said, "How do you do?" And I hadn't seen him since he had been in my office, and I asked him if he knew anything about the Bayside transaction, and he said he did.

And he said, "Didn't you ever get your money?" And I said, "No." And he told me what had been made out of it, and I made up my mind that I wasn't entitled to pay that thousand dollars. And I tried to get in touch with Mr. Schep-

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herd to inquire about it, and even consulted my attorneys in regard to suing him for the money due me.

Q Now, when you gave him that check for \$1000, you believed that you were entitled to certain profits that Mr. Schepherd had earned in the Bayside deal? A I certainly did. That check was dated ahead, and it was his belief and mine that the deal would have gone through before that was due.

Q You believed when you drew this check that you had earned profits, a portion of which would belong to you?

A Yes.

Q And would be deposited to your credit in Bergstrom's & Company's bank? A yes. And that check was given to him one day before I went to Philadelphia, so that, if the transaction was closed before I came back, he could have had his money.

Q Did you tell him to deposit that check in Bergstrom's bank? A Yes.

Q You were so sure that this money would be earned, and ready to meet it, that you gave him the check? A Yes.

Q And yet, when you wrote these two letters that I have just introduced in evidence, you had no knowledge of the closing of the Bayside matter? A No, sir, only his word. And I have always stated, until I knew that, that I would pay that \$1000 as soon as possible, and I made him many propositions in regard to paying it.

Q But you sent these two orders that I have introduced

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to him, you had been told by Mr. Schepherd that the Bayside transaction had not gone through? A Pardon me, what is that question?

Q I say, at the time you wrote these requisitions on your counsel, Mr. Schepherd had told you that the Bayside transaction hadn't gone through? A No, sir.

Q And you accepted his word for it? A Yes.

Q And you still believed you owed him the thousand dollars?

A Yes, sir.

Q Now, have you ever made any written demand on Mr. Schepherd, either personally or through any attorney, for the payment of any money on account of the Bayside transaction?

MR. McKENNA: I object to that.

THE COURT: Overruled.

MR. McKENNA: Exception.

A I applied to Mr. Schepherd personally in regard to it, a good many times.

Q Have you ever written to him? A Yes, I wrote to him from Pittsburg and from Philadelphia, at the time I was away.

Q Have you got a copy of either letter? A No, sir.

Q Did you have an attorney write to him? A No, sir.

Q Did you ever commence an action against him? A No, sir.

Q Have you a copy of any letter written to Mr. Schepherd, or anybody else, in which you setup a claim for money due you on account of the Bayside transaction?

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MR. McKENNA: I object to this line of examination, as entirely immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. McKENNA: Exception.

A I did write to him twice.

Q Have you a copy of either letter? A No, sir.

Q Have you an acknowledgment in writing from him that he owed you any money, or was under any obligation whatever as to the Bayside transaction? A Not in my possession.

Q Well, have you any such letter, or any letter whatever in your possession, or under your control from Mr. Schepherd in reference to any Bayside transaction? A No, sir, I haven't; not under my personal control or possession.

Q Now have you got your passbook here in the Bergstrom bank; have you got the passbook that you had here, yesterday?

A My counsel has it.

MR. McKENNA: Here it is.

BY MR. DeFORD:

Q Did I understand you correctly -- did you state, yesterday, that, in February, 1907, you had moneys on deposit in the Bergstrom bank? A I did.

Q During the entire month of February, 1907? A Yes.

Q Moneys in excess of \$50 or \$100, did you so state?

MR. McKENNA: I object to that, if your Honor please. What he has got on deposit in any bank certainly can't

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be considered a part of this issue.

MR. DeFORD: I contend that it is, for this reason; he tried to say, yesterday, when he gave the check on that bank, inferentially at least, that he had money there on deposit, though perhaps not quite enough to meet the check.

THE COURT: I will allow it.

MR. McKENNA: I object to the question. It deals entirely with collateral matters. I object to questions such as this question, and all such questions that have been asked, and I object particularly now to this question.

THE COURT: Overrule d.

MR. McKENNA: Exception.

BY MR. DeFORD:

Q Did you have in excess of fifty dollars in that bank in February, 1907? A I did.

Q Did you, on February 15, 1907?

MR. McKENNA: I think, if your Honor please, it is very unfair to the witness.

THE COURT: Allowed.

MR. McKENNA: Exception. I don't think that there is a man in this court room that can tell exactly how much money he has got in bank to-day, if he has a running bank account.

THE COURT: Then the witness can say that; can't he?

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That is all argumentative, counsel, and it is not calculated for any purpose that is going to help the court in passing upon the question. I am taking the evidence, and giving you an exception to it. If the witness does not know, he can say so. He may know. He may have a better memory than you or I or others. I cannot say.

BY MR. DeFORD:

Q Well, did you have that much money there?

A I see here that I had \$305.

BY THE COURT:

Q Just answer the question. A I believe so.

BY MR. DeFORD:

Q Well, is it not a fact that, during the month of February 1907, when you say that you had that much money on deposit, that you gave checks which were presented -- one check, on February 15th for \$24, which was presented and not paid by that bank?

MR. MCKENNA: I object, if your Honor please to this question. It has no bearing upon this issue, and is no part of the representation to Mr. Shepherd or no part of the transaction in any way.

THE COURT: Overruled.

MR. MCKENNA: Exception.

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A What was the question.

(The question is repeated by the stenographer.)

BY THE COURT:

Q You can answer yes or no. Is that so or not.

A I can't fix the date your Honor.

BY MR. DeFORD:

Q You don't say then that you didn't give a check in the amount of \$24, dated the 15th of February 1907, and another check, dated February 18, 1907, in the amount of \$21, drawn upon Bergstrom & Company, which, upon presentation, were not paid by Bergstrom & Company out of your account?

A I may have.

Q You may have? A Yes.

MR. McKENNA: Did you offer the bank book in evidence?

MR. DeFORD: I didn't offer it in evidence, no.

MR. McKENNA: Then we offer it in evidence, and let it speak for itself.

THE COURT: Then mark it in evidence.

(It is marked Defendant's exhibit 1.)

MR. DeFORD: Oh, I want to ask you one more question.

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BY MR. De FORD:

Q At what time and place did you have this conversation with Mr. Hassall concerning this Massapequa tract, that is to say, the conversation which I refer to in my question, and which you refer to in your answer? A I had more than one conversation. It started, one day, when he was at my house, out at New Monmouth, and it was continued on the Sandy Hook boat, coming in, and I think on two other occasions afterwards.

Q And in your office? A Not that I remember.

Q Where was it closed, where did he agree to give you the money, to pass you the money? A If I recollect, it was in the Wauburn Cafe, when we were having lunch.

RE-DIRECT EXAMINATION BY MR. Mc KENNA:

Q Now, I show you, Mr. Thompson, Defendant's Exhibit 1, the pass book on your account with Bergstrom & Company, and I ask you what moneys you have deposited in that account since January 10, 1907? Just read each one of the dates?

THE COURT: Can't you save time, counsel, by reading it to the jury?

MR. McKENNA: Yes, sir, I think so. I'll read the answers in the book to the jury. (Reads).

THE EIGHTH JUROR: Could we see the check book for that date, counsel? I would rather see the check book than the pass book.

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BY MR. McKENNA:

Q Where is your check book? A I think it is at my house, at New Monmouth.

MR. McKENNA: We would be only too glad to have it here, Mr. Juror. This is a reliable institution.

THE EIGHTH JUROR: That's all right, counsel, but, at the same time, I would like to see the check book, and see the deposits and the payments out. A man usually subtracts what he pays out, and then we can see the amount of the deposit. Or does that book show that it has been balanced?

MR. McKENNA: Yes. The balance at this date, in April -- it was balanced by the bank, in April, and shows the balance on April 26, 1907, of \$479.40.

BY MR. McKENNA:

Q Now, I understood you to say, in connection with the Massapequa property, that you had made these payments on a contract? A Yes, sir.

Q And have never taken the title to the property? A No, sir.

Q And any statements made to Mr. Hassall were in reference to payments on the contract for the purchase of the property? A Yes, sir.

MR. McKENNA: I think that's all, Mr. Thompson.

MR. DeFORD: If your Honor please, I have just one

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more question, I think.

RE-CROSS EXAMINATION BY MR. DeFORD:

Q Mr. Thompson, did you ever pay Mr. Hassall back any part of the \$250 he gave you?

MR. McKENNA: I object to that.

THE COURT: I will sustain the objection. I don't think that we need go into that any further.

LEO SOROC H, of 184 Lee avenue, Brooklyn, a witness called in behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McKENNA:

Q I understand that you live in Brooklyn, Mr. Soroch?

A Yes, sir.

Q And what is your business? A Real estate broker.

Q And at what points are you engaged in business, what locations? A Well, anywheres around, suburban property.

Q And your office is where? A Well, I haven't no office. (I live private.)

Q And you operate in Long Island property? A Partly, yes.

Q How long have you been engaged in the real estate business? A For the last seven years.

Q Seven years? A Yes, sir.

Q Are you acquainted with Mr. Thompson, the defendant in

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this case? A I am.

Q How long have you known Mr. Thompson? A For three years.

Q How many? A For three years and a little over.

Q In what connection did you meet Mr. Thompson? A I went to Mr. Thompson's office in 23rd street, to answer an ad. I answered his ad in reference to suburban property, within a five cent ride of New York or Brooklyn, and I proposed him some lots over in Bayside, and various pro ositions in East New York.

THE COURT: If you cannot speak louder, you will have to stand down. The jury complain that they cannot hear a word that you say.

THE WITNESS: All right, sir.

MR. McKENNA: Yes, Mr. Soroch, you must raise your voice. I can't hear you.

BY MR. McKENNA:

Q Now you answered his advertisement in regard to this Bayside property? A Yes, sir.

Q Now when did you do that? A Well that was just on my first acquaintance with Mr. Thompson.

Q About three years ago? A A little over three years ago.

Q And it would be then some time -- A In the latter part --

Q Some time previous to December, 1908, or thereabouts?

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A Yes, sir.

Q Or, 1906, rather? A It was in 1907.

Q 1907? A Yes.

Q That was in reference to the Bayside property?

A Yes.

MR. De FORD: Now, I wish he would let the witness tell what it was in reference to. I object to this line of questions as leading.

THE COURT: Well, direct his attention to the subject matter of it, and then fix the time.

BY THE COURT:

Q In reference to the Bayside property? A Yes, sir.

Q And what was the time? A The latter part of 1906, I think it was, it must have been.

BY MR. MCKENNA:

Q Now did you visit the property with Mr. Thompson? A I did.

Q Now are you acquainted with this gentleman, Mr. Schepherd (Indicating). A I am.

Q What is your acquaintance with Mr. Schepherd? A As a real estate broker.

Q Who introduced you to Mr. Schepherd? A Mr. Thompson.

Q Did you ever take Mr. Schepherd to these properties at Bayside? A I did.

Q Did you go out in an automobile? A Yes.

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Q Did Mr. Thompson go there with you? A Yes.

Q Is Mr. Schepherd's statement that he never went to those lots with you, or in an automobile, false? A That I don't know. I haven't heard Mr. Schepherd's statement.

MR. De FORD: I object to the form of the question.

THE COURT: Yes, you can draw out the facts, and then let the jury determine the disagreeable sequel of it.

BY MR. McKENNA:

Q How many times did you visit the property? A Once.

BY THE COURT:

Q Was Schepherd with you? A Yes, sir.

Q Are you positive of that? A Yes, sir.

Q When? A Within five or six days after the matter was taken up.

Q You are clear in your mind that Schepherd was with you?

A Yes.

Q And that Thompson was with you? A Yes.

Q Anybody else? A Two other gentlemen.

Q Did they go with you? A We went, five of us.

Q Who were the other persons? A I don't know their names, but I know their faces all right.

Q Were they brought by Thompson or Schepherd, if you know?

A I think they were brought by Mr. Thompson.

Q Brought by Mr. Thompson? A Yes.

BY MR. McKENNA:

Q The whole party was together, was it? A Yes.

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Q And you want down in an automobile? A Yes.

Q And are you positive in your identification of Mr. Schepherd? A Yes.

MR. MCKENNA: I ask Mr. Schepherd to stand up.

BY MR. MCKENNA:

Q Is that the gentleman (indicating)? A Yes.

Q Have you seen him since? A No, I haven't seen Mr. Schepherd in a year and a half, or something like that.

Q But you have seen him since that trip? A Yes.

Q And are you positive in your identification? A Yes.

Q Were you here, yesterday?, A No, sir.

Q You didn't hear him then testify that he never went down there? A No, I was out of town yesterday.

Q On that particular trip, to further identify the transaction, did Mr. Schepherd give you a card, to come to his office? A I will not exactly state whether it was on that trip, that particular trip, but I did meet Mr. Schepherd, and I did go to Mr. Schepherd's office; and I commenced to ask him what it was going to be with this deal, and "And how long will you drag me in this proposition?" And he said, "There is nothing in it with Thompson, but I've got people that I can sell it to." And then I dropped the matter with Thompson, and took it up with Mr. Schepherd.

Q And thereafter you had transactions with him in regard to the Bayside property? A Yes.

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Q And do you know whether Mr. Schepherd negotiated for that property? A Yes.

Q And bought it? A Yes.

Q And the deal was closed? A Yes.

Q And he earned his commission? A Yes.

Q And should Thompson have had a share in that commission?

MR. De FORD: I object to that.

THE COURT: Sustained.

BY MR. McKENNA:

Q Do you know of the arrangement that existed between Thompson and Schepherd? A I don't know; no, sir.

Q Do you know whether there was an arrangement between them or not?

MR. De FORD: Objected to.

THE COURT: Well, now, the objection is sustained.

If he was present at any time that anything was said in connection with the matter by the defendant and Schepherd, why I will take that.

BY THE COURT:

Q You were not; were you? A No, sir.

BY MR. McKENNA:

Q Mr. Soroch, do you know that Mr. Thompson was a broker in the real estate business? A Yes.

Q And do you know whether or not he was a broker in this

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transaction?

MR.. De FORD: I object to that. He is asking for his conclusion as to functions that Mr. Thompson performed in a certain transaction, the facts themselves not being in evidence.

BY MR. MCKENNA:

Q What was Mr. Thompson's connection with the matter?

MR.DeFORD: Objected to.

BY THE COURT:

Q If you know? A Mr. Thompson brought me out from his office, which I think was 36 East 23rd street, and we walked up as far as Times Square, and then we hired an automobile, and Mr. Thompson and myself and Mr. Schepherd and several other gentlemen went to Bayside.

Q And you recall taking the automobile at Times Square?  
A Yes, sir.

BY THE COURT:

Q Did you go at the invitation of Mr. Thompson or Mr. Schepherd? A I had never seen Mr.Schepherd before that.

Q And you were introduced to him by Mr. Thompson? A Yes.

BY MR. MCKENNA:

Q Had you ever talked this conversation over with me, or anybody connected with this case, until this morning?

MR. De FORD: I object.

A No, sir.

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Q And you never saw me before; did you? A No, sir.

MR. De FORD: Objected to.

THE COURT: I do not think it is necessary to go into that kind of examination, at present, counsel.

BY MR. McKENNA:

Q Did you inform Mr. Thompson that Mr. Schepherd had sold the Bayside property?

MR. De FORD: Objected to.

THE COURT: I will take it.

BY MR. McKENNA:

Q Did you, Mr. Soroch? A I did, yes, sir.

Q About five weeks ago? A Yes, sir.

Q And did you inform him of this transaction? A Yes.

CROSS-EXAMINATION BY MR. De FORD:

Q About five weeks ago? A Within five or six weeks ago.

Q And is it a fact that you had been down to the Bayside property a good many times with Mr. Schepherd; isn't it? A After that, yes.

Q And you say you went down once with him in an automobile, with Mr. Thompson? A Yes, the first time there was Mr. Schepherd, and Mr. Thompson, and two other gentlemen, I can't recall their names. They were represented to me as buyers of the property, to buy the property.

Q Who were they? A Mr. Thompson's friends, he told me.

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Q He told you that they were his friends? A Yes.

Q And that he wanted to take you down to show them the property? A Yes.

MR. McKENNA: If your Honor please, I object to this.

THE COURT: On what ground?

MR. McKENNA: On the ground that I want the jury to understand that Mr. Schepherd was Mr. Thompson's friend, too, at the time, and anybody that he brought would be his friend.

THE COURT: I overrule the objection.

MR. McKENNA: Exception.

BY MR. De FORD:

Q Is that the fact? A Yes.

Q Now did you make other trips in an automobile to this place with Mr. Schepherd? A Not any more to this property.

Q Not any more to this property? A No, sir.

Q But you did to other properties at Bayside? A Yes; we went by car and by railroad.

Q Did you ever make another trip in an automobile, with Mr. Schepherd? A I don't remember of any. If Mr. Schepherd remembers of any, I would gladly admit it, if he can remind me of any other.

Q And you think that you can't be mistaken that you went there in an automobile, with Mr. Thompson and Mr. Schepherd and two other men? A Yes, sir.

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Q Do you know whether or not the two men that were produced were introduced to Mr. Schepherd by Mr. Thompson? A I don't remember.

Q You don't know? A No, sir.

Q Now can you tell me when this happened, when this first trip was taken down there? A That happened previous to when I have sold the property with Mr. Schepherd, about two months agom two months previous to when I sold the property.

Q Now, on what date did you sell the Bayside property to Mr. Schepherd? A I can't recollect that. I took him over to the people that had the property there, and they had a deal there.

Q You were acting as a broker for the other people?

A Yes.

Q You sold the property to Mr. Schepherd direct?

A Yes.

Q Now, do you know when you did that? A It must have been somewheres in January, or the beginning of February.

Q What year? A 1907.

Q 1907? A Yes.

Q And was it about two months prior to that time that you made that first trip down there, with Mr. Schepherd? A Yes, something within this time; probably it may have been six or seven weeks.

Q Well, but between six weeks and two months? A Yes.

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RE-DIRECT EXAMINATION BY MR. Mc KENNA:

Q One moment, Mr. Soroch. Did you introduce to Mr. Thompson to the owner of this property, in Brooklyn? A Yes, I did.

Q And what was his name? A Dr. Kane.

Q Was it Kahn or Kane? A Kane.

Q And was the commission on this transaction \$3,950?

A Yes. I got ten dollars commission on each lot, on 395 lots.

Q And what was the profit on the transaction? A What do you mean, the profit?

Q What was the profit to Mr. Schepherd? What did he realize on the transaction, the profit? A I couldn't tell you exactly.

Q Wasn't it a profit of \$1,150? A I don't know. There was a shortage of lots there that Mr. Schepherd had to make good.

BY THE NINTH JUROR:

Q How soon after the consummation of this Bayside deal did you see Mr. Thompson? A I haven't seen Mr. Thompson then in quite some time.

Q Didn't you see him between the time that you told him that the deal went through, and the time you consummated it? A No, sir, I didn't. We had that deal closed, and Mr. Schepherd was looking for Mr. Thompson, to have him locked up on

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some thousand dollar affair, which he claims very likely now, and I saw him in court, in Sixth avenue, and I haven't seen him until five or six weeks ago, when I met him in Pine street, or somewhere like it.

RE-CROSS EXAMINATION BY MR. De FORD:

Q Just one more question. You represented the owner of certain property at Bayside; didn't you? A Yes.

Q And you had that property for sale? A Yes.

Q Did you take it to Mr. Thompson and offer it to him?

A Yes.

Q And you took it to Mr. Schepherd, and offered it to him?

A No, I took it over to Mr. Thompson, and Mr. Thompson give the property to Mr. Schepherd.

Q Mr. Thompson gave the property to Mr. Schepherd? A Yes.

Q How was that done? A Well, I don't know what agreement they have between them, but we were working as brokers in this, at the start.

Q Well you took the property to Mr. Thompson? A Yes.

Q And he introduced you to Mr. Schepherd? A Yes.

Q And subsequently Mr. Thompson -- Mr. Schepherd himself bought the property? A Yes.

MR. McKENNA: The defense rests, if your Honor please. And I am short one witness, but I rest, without that witness.

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## - R E B U T T A L -

W I L L I A M J. S C H E P H E R D, being recalled by the  
District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. De FORD:

Q Mr. Schepherd, you recognized the witness who was just  
on the stand? A Yes, sir.

Q Did you ever make a trip to Bayside --

MR. McKENNA: One moment. Pardon me, your Honor.  
I wish to keep that witness in the court-room, if you  
want to contradict his testimony, Mr. De Ford.

MR. De FORD: Only in one detail.

MR. Mc KENNA: One minute, until I get him back into  
the court-room. The point is that I want him brought  
back into the court room, and to be present when the  
District Attorney is questioning this man.

BY MR. De FORD:

Q Do you recognize the witness? A Yes.

Q State whether or not you made a trip with him in an  
automobile to Bayside? A With the witness? Yes, I did.

Q Was Mr. Thompson in the automobile, or present at the  
time? A No, sir.

Q How many trips did you make to Bayside with Mr. Soroch?  
A Two or three. I took my intended buyers down to Bayside,  
and the vicinity of Flushing also.

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Q How did you come to know of the Bayside property?

A Through Mr. Soroch.

Q Through Mr. Soroch? A Yes, sir.

Q How did you meet Mr. Soroch? A I met Mr. Soroch by him coming into the office, and presented the East New York property, as well as the Bayside property, and several other small parcels that he had in East New York.

Q Was anybody with him at the time? A No, sir, I don't think so.

Q Was Mr. Thompson with him? A I don't think so.

Q You are not sure of that? A No, sir, I'm not.

Q And Mr. Soroch offered you the Bayside property and some East New York property? A Yes.

Q And you went down with him several times to examine the property? A Yes.

Q And did you ever, at any time, have any arrangement with Mr. Thompson with respect to this Bayside property which you examined with Mr. Soroch? A No, sir; my transactions were with Mr. Soroch.

THE COURT: That is an answer now. We will take another question.

BY MR. De FORD:

Q With Mr. Soroch? A Yes, sir.

Q And did you sell that Bayside property to anybody?

A No, sir. First I bought it myself, and turned over the con-

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tract to another corporation, which developed and sold the property, probably.

Q Now did you at any time make overtures to Mr. Thompson to form a business partnership with him? A No, sir.

Q Have you ever had any friendly dealings with him, or any real estate transactions with him of any sort? A No, sir.

Q Had you ever had any transaction with him prior to this particular transaction of January 10th, with reference to these lots in Kings County, which amounted to anything; that is to say, which was closed by the payment of money, or closing of a contract, or otherwise? A No, sir.

Q You never had any transaction with him that proceeded to settlement, except this one transaction? A Except this one transaction; that's all.

Q When did you buy this Bayside property? A About January 21st, 1907.

Q Did you ever say anything to Mr. Thompson about the fact that you bought it? A No, sir.

Q You never did? A No, sir.

Q Why didn't you? A Because it wasn't presented -- Mr. Thompson wasn't the broker in the matter. Mr. Soroch acted in the matter, and he presented the matter to me.

Q He showed it to you? A Yes, sir.

CROSS-EXAMINATION BY MR. Mc KENNA:

Q Mr. Schepherd, this property now that we find out that

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you did visit , at Bayside, is that the Dr. Kahn property that you referred to? A No, sir; and I don't know any Dr. Kahn.

Q Did you buy the property? A Yes, sir, under a contract.

Q Did you become the owner of it? A No, sir, I didn't.

Q How did you become the buyer of it then? A I bought it under a contract which I assigned to a corporation, which is a matter of record. It has been filed in the County Clerk's office at the County seat.

Q What was the corporation? A The Home Sites Development Company.

Q And whose corporation is that? A Whose corporation?

Q Yes? Where is the office of this corporation?

A The office of the corporation was down in the World Building, at the time.

Q Are you connected with it? A I was connected with it; yes.

Q You are quite largely connected with it; aren't you?

A In what way?

Q As one of the owners in that corporation?

MR. DeFORD: It seems to me that this is pretty widely collateral, but I merely state it for the purpose of saving time.

A At the present time?

BY MR. McKENNA:

Q I didn't ask you about the present time. At the time you

bought the property? A At the time I bought the property, I assigned the property to that company.

Q Now, I understand that. You are not fooling us. But weren't you then one of the principal owners in that corporation?

THE COURT: Of course, counsel, you did not intend to say that, but the question is very improperly framed, and I will ask you to put another question.

BY MR. MCKENNA:

Q Weren't you an owner in the corporation at the time?

A I was a part owner.

Q In what proportion? A About one-fifth of it. I held the stock of the corporation.

Q Did your wife own any stock in the corporation?

A No, sir, she didn't.

Q Anybody connected with you? A No, sir.

Q Are you an officer in the corporation? A I was Secretary of it.

Q And were you familiar with all the business of the corporation? A I was; yes.

Q Did anybody hold any stock in that corporation for you?

A No, sir.

Q Or holds it now? A No, sir.

Q And this title was taken directly from the owner of that property to that company? A No, sir. It was turned over

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to the Assets Realization Company, of Chicago, who had taken over as well the stock of the Home Sites Development Company. My contract with the former owner of the property was assigned to the Home Sites Development Company, who, in turn, assigned it to the Assets Realization Company of Chicago.

Q Now that was a concern for settling up the defunct corporations; wasn't it? A I don't know anything about that, sir.

Q Well, isn't that the reason why this Home Sites Company transferred its assets to the Chicago concern? A That I don't know.

Q Then the title passed from the owner -- the former owner-- of this Long Island property, over to the Assets Corporation of Chicago; is that it? A Yes.

Q Did you suggest how that title should pass? A No, sir.

Q Who brought this Assets Corporation into the transaction? A One of the members of the corporation, of the Home Sites Development Company.

Q And how was he made acquainted with this property?  
A He was a stockholder in the corporation, in the Home Sites.

Q How was he made acquainted with it, except through you?  
A He was made acquainted -- if you will allow me to tell you --

Q I asked you, and you said it wasn't through you. Now, if it was, tell it?

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THE WITNESS: Your Honor, can I have the question read again?

(It is repeated by the stenographer).

A The party that introduced the Assets Realization Company was one of the stockholders of the Home Sites Development Company, of which I was a member, and held stock in the corporation of the Home Sites Development Company.

Q And how was that party introduced to the property?

A I don't recall that. I held the stock of the Home Site Company.

Q Well, but who brought the property to the attention of the Home Site Development Company? A As I say, one of the members of the Home Sites Development Company.

Q Didn't you? A No, sir, I don't think I did. I did not.

Q And you came in contact with the property through Mr. Soroch? A Yes.

Q And didn't you acquaint your corporation with the property? A There are two corporations, The Home Sites Company or the Assets Realization Company?

Q Either one of them? A The Home Sites Company, I introduced the property to them.

Q Then why didn't you say it, when you were asked?

A I am willing to say it, Mr. Counsellor.

MR. DeFORD: Now, I don't think he should abuse the

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witness, your Honor.

THE COURT: Yes, the form of the question is not proper, and the manner of the counsel calculated to help, at all.

BY MR. MCKENNA:

Q What was your profit on that transaction? A On the Bayside transaction?

Q Yes? A On this particular transaction?

Q Yes? A I received, I believe it was, \$6,800 of the stock of the Home Sites Development Company.

Q Yes. And have you got that yet? A I believe I have, yes.

Q And what was the property ~~ix~~ bought from the original owner for? What was the price? A Something like \$80,000.

Q And what was it sold for? A \$80,000. It was turned over to the Assets Realization Company, at the same price.

Q And how much did they pay for it? A \$80,000, I believe.

Q And where was the profit made then? A In my taking my payment, or equity in the property, in the stock of the Home Sites Company, I believe.

Q Well, how did you get an equity? A I had payments made on it.

Q How many payments? A One payment I had made on it.

Q How much? A \$10,000.

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MR. De FORD: Now, does your Honor think this ought to be gone into? This is entirely collateral.

THE COURT: How is it relevant, counsel?

MR. Mc KENNA: Why, it is developing, not like these various other transactions, which didn't develop, and I am developing, I think, that this man's testimony is entirely false.

THE COURT: Anything that will attack his credibility, so as to allow the jury to apply anything that he has testified to, I will allow you to go into, within reasonable limitations. Proceed.

BY MR. Mc KENNA:

Q How much commission did you receive on the transaction? A I didn't receive any commission.

Q Was there a commission on the first purchase from the original owner? A Yes.

Q Who received that commission? A Mr. Soroch.

Q How much was the commission? A That I don't recall.

Q Did you get any part of it? A I did; yes.

Q How much did you get? A I got an indebtedness -- a payment from Mr. Soroch of an amount of money that I advanced to Mr. Soroch, to help him take care of his home matters.

Q Now come right out, Mr. Schepherd, and be fair. A Just as fair as you are, counsellor.

Q One minute. I have asked you for the amount that you

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received, and I wish the amount, not the statement of some indebtedness. That is not dollars and cents? A I don't recall the amount, the exact amount.

Q You don't? A No, sir.

Q Well, have you got your bank book or check book here?

A No, sir, I haven't.

Q Was it half of the amount? A No, sir, I don't think it was.

Q Well, what was your arrangement with Mr. Soroach? A My arrangement with Mr. Soroach?

Q Yes? A It was simply to purchase the property, to take the property.

Q And do you mean to say that this matter has so passed out of your mind that you can't recall what your share was?

A I can't recall the exact amount, no, sir. I received no share of the commission.

Q This is a very important case. Did you bring your papers here in connection with this matter? A No, sir.

Q Have you got your check book or bank book here? A No, sir.

Q Did you testify to this before, in the last trial?

A As to what?

Q As to your purchase of this property? A I don't think I did; no, sir.

Q No, you didn't even bring out, at the former trial,

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that you had this note, until I brought it out in cross-examination? A The reason for that, Mr. Counsellor, and Gentlemen of the Jury, was that the note was in the possession of the District Attorney at the time. It wasn't in my possession.

Q Will you state that all the papers in this transaction in which you got this large commission and share, are now in the possession of the District Attorney, so that, if this matter ever comes up again in another trial, you can say that you hadn't control of it?

MR. De FORD: Objected to.

THE COURT: Sustained.

BY MR. Mc KENNA:

Q Now I want to know how much commission you got out of this transaction? A Which transaction?

Q The transaction of the Bayside property, from the beginning to the end? A I received no commission, Mr. Counsellor, upon the Bayside transaction.

Q Did you receive a portion of the commission? A No, sir.

Q Did you receive a part of Mr. Soroch's commission, if you want to put it that way? A No, sir; I received an indebtedness from Mr. Soroch to me, for money advanced to take care of his household expenses, and so on.

Q Why did you advance it? A Because Mr. Soroch and I were working together, and he wasn't putting any transactions

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through, and he asked me to advance him some money, and I did.

Q Didn't you just tell me that you got over \$6,000 worth of stock out of this transaction? A No, sir. I advanced \$10,000 on the contract on the Bayside property, and I got that back.

Q Then why did you get back the stock? A As a pro rata of the balance of the subscriptions that were divided pro-rata among the directors.

Q Then you must have got that \$6,800 for some reason, for your share in the commission or the profit?

MR. DE FORD: Objected to.

THE COURT: Sustained.

RE-DIRECT EXAMINATION BY MR. De FORD:

Q Did you receive any part of Mr. Sorocho's commission in that transaction? A No, sir.

Q You received some money from him? A From Mr. Sorocho.

Q And was it out of that commission that he paid you, out of his commission that he paid you? A Yes, out of money that he got, his commission.

Q And do I understand you to say that he paid you some money, and paid you out of that commission that money? A Yes.

Q And did you receive some of the stock of the Home Sites Development Company in connection with the assignment of that contract to that company? A Yes.

Q And have you got that stock yet? A Yes.

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Q Is it worth anything now?

MR. MCKENNA: Objected to.

THE COURT: Sustained.

A D O L P H I. R U D O L P H, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. De FORD:

Q Mr. Rudolph, did you ever at any time, or did Mr. Waxman, your associate, at any time, in your presence or hearing, give the defendant, Mr. Thompson, a verbal option on the lots shaded and heretofore referred to as they appear on the diagram, People's Exhibit 1?

MR. Mc KENNA: I object to that. It was covered, yesterday, thoroughly. He testified to everything that he knew about the transaction. I asked him a general question, and he did testify fairly and honestly.

THE COURT: What is your answer to that, Mr. District Attorney?

MR. De FORD: My answer to that is, that I asked him if he had ever made <sup>the</sup> a written contract which was the subject of the transaction, and he said he had not. And the defendant went on the stand, and he said that he had made an oral transaction with Mr. Waxman, in his presence.

THE COURT: I will take it. It must be confined to anything that was done in your presence, or said in your

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presence, and the presence of the defendant.

A At no time.

BY MR. De FORD:

Q At no time? A No,,sir.

CROSS-EXAMINATION: None.

PHILIP B. M c C A F F R E Y, of 31 Charles street,  
a witness called on behalf of the People, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. De FORD:

Q What is your occupation, Mr. McGaffrey? A I am a process server in the District Attorney's office.

Q Were you handed a subpoena in this case to serve upon one Harry Waxman, of 451 Pulaski street, Brooklyn? A I was.

Q I present to you, and show you a subpoena, and ask you if that is the subpoena that was given to you for service?

A Yes, that is the subpoena.

Q Did you make an effort to serve it? A Yes. I called there, on the night of January 5th, at 451 Pulaski street, Brooklyn.

Q Did you find out whose residence it was? A Yes; Harris Waxman.

Q Did you make an effort to see him? A Yes. And Miss Waxman, his daughter, came to the door, and said her father was out of town, and was gone out of town about two weeks before

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that, and she didn't know when he would return; and I asked her if she was willing to make an affidavit to that effect, and she said she was.

Q And you couldn't serve Mr. Waxman? A No.

CROSS-EXAMINATION BY MR. Mc KENNA:

Q Mr. McCaffrey, were you in court yesterday? A No, sir.

Q Did you serve Mr. Rudolph? A No, sir, I didn't.

Q Did you hear Mr. Rudolph testify that he and Mr. Waxman were engaged in real estate operations together? A I wasn't in court, yesterday.

Q And why didn't you make inquiries of Mr. Rudolph about Mr. Waxman's whereabouts? A Why, I don't know where Mr. Rudolph lives.

Q Well, didn't the District Attorney tell you that Mr. Waxman and Mr. Rudolph were associated in business together, and that you would be likely to find Mr. Waxman where you would find Mr. Rudolph? A No, sir.

Q Are you the same process server who tried to serve Mr. Waxman in this case, on the former trial, and reported that you couldn't? A I don't remember that I ever tried to serve him before.

Q You knew that he was a very important witness in this case, didn't you? A I didn't know anything about the case.

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BY THE COURT :

Q The first that you knew about the case was that this subpoena was turned over to you, a day or two ago, to serve, and that you saw the daughter of the person that you were anxious to serve? A Yes, sir.

Q That's all you know about the case? A Yes.

Q And you have told the jury all that you know about the case? A Yes.

Q And that's all the connection that you have had with the case? A Yes, sir.

MR. De FORD: The people rest.

MR. Mc KENNA: The defense rests.

THE COURT: Make your motion.

MR. Mc KENNA: I move now upon all the evidence for the dismissal of the indictment, and the discharge of the defendant.

THE COURT: Denied. Take an exception. Sum up.

(Mr. McKenna then closed the case for the defense, and Mr. De Ford summed up for the People).

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THE COURT'S CHARGE.

MALONE, J.:

Gentlemen of the Jury,

The People of the State of New York charge the defendant at the bar with the crime of grand larceny in the first degree, and, in an indictment made up of two counts, say that the crime is grand larceny in the first degree.

The degrees of larceny are controlled largely by the value of the property alleged to have been feloniously taken and appropriated. If the property be in excess of \$500 in value, the crime becomes grand larceny in the first degree. Should you find, therefore, that the defendant is guilty of grand larceny, or of any degree of larceny, you will perhaps have very little difficulty in reaching the degree of crime charged, that is, grand larceny in the first degree.

You must bear in mind that this Court is not a Civil Court, for the trial of civil causes, and that the process of this Court is not to be made the agency for the collection of debts, or the adjustment of individual agreements between parties. You are impaneled here in the name of the State, to represent the defendant and the People of the State in its corporate capacity, and to

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determine the merits of a criminal accusation on the part of the State; and let me impress upon you that, if you entertain a reasonable doubt that this is a matter not lodged in the public interest, and entertain the notion that it is a civil matter, you should not take much time in determining the matter, and returning a verdict of not guilty. I should dislike much if a jury should temporize with any matter in this court that is not firmly implanted in the interest of the public.

This charge by the People is that, on the 10th day of January, 1907, this defendant, with the intent to deprive and defraud William J. Scheperd of personal property, falsely pretended and represented to him that Adolph I. Rudolph, Harry Maxman and Leon I. Caplan were the owners of certain property in the Borough of Brooklyn, and that they had contracted and agreed to sell the said lots to him, the said Charles E. Thompson, and that a certain paper, writing and instrument which he, the said Charles E. Thompson, then and there produced and exhibited to the said William J. Scheperd, and which said paper, writing and instrument then and there purported to be signed by the said Adolph I. Rudolph, Harry Maxman, Leon I. Caplan, was then and there a contract and agreement, made, signed and executed by the said Adolph I. Rudolph,

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Harry Maxman and Leon I. Caplan, for the sale of the said lots by them to him, the said Charles B. Thompson, as aforesaid, an interest in which said contract and lots, he, the said Charles B. Thompson, then and there offered to sell to the said William J. Schepherd, for the sum of \$1,000, and that, by color and aid of those false and fraudulent pretenses and representations, the said Charles B. Thompson feloniously and fraudulently obtained from the place of the said William B. Schepherd an instrument and evidence of debt, to wit, an order for the payment of money of the kind commonly called bank checks, for the sum of \$1,000, the property of Schepherd, with intent to deprive and defraud William J. Schepherd of the same, and of the use and benefit thereof, and to appropriate the same to his own use, whereas, in truth and in fact, the said Adolph I. Rudolph, Harry Maxman and Leon I. Caplan had not therefore contracted or agreed to sell the said lots to the said Charles B. Thompson, and the said paper, writing and instrument which he, the said Charles B. Thompson so, as aforesaid, produced and exhibited to the said William J. Schepherd was not then and there an agreement or contract signed, made or executed by the said Adolph I. Rudolph, Harry Maxman, or Leon I. Caplan, for the sale of the said lots by them to the said Charles B. Thompson.

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The State charges in this indictment that, by the production of an instrument, purporting to be an agreement by these gentlemen with the defendant, the prosecuting witness, William J. Schepherd, was induced to part with \$1,000 in money; that those representations were not true, and that they were known by the defendant not to be true when made, and that the prosecuting witness, William J. Schepherd, depending and relying upon them, did have taken from his property of the value of \$1,000.

The statute which applies to this form of indictment, I shall read to you, and just such portion as I think applies to the theory of the prosecution and the indictment itself.

"A person who, with the intent to deprive or defraud the true owner of his property, or the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, obtains from such possession by color or aid of fraudulent or false representation or pretense, any money, personal property, evidence of debt or contract, or article of value of any kind, steals such property, and is guilty of larceny," and, if the property taken under those circumstances be of the value of \$1,000, it becomes grand larceny in the first degree.

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Under the old common law, dishonesty was not only treated as a crime, when it took the form of an actual wrong to the owner's possession, but it also regarded dishonesty as sufficiently affecting the public to be made criminal, though only to the degree of a misdemeanor, when an owner had been induced to part with his goods or moneys by some knave, through a device which was calculated to deceive not merely the owner but people generally. The protection and extension of public trade and commerce have extended the rule, so that no longer is there any borderline between false pretenses and larceny, because, if a crime is committed at all, it becomes the crime of larceny, the test being, and I must impress this upon you, does it affect the public, whether it is to be redressed by a civil remedy or a criminal prosecution.

You have been impaneled here to determine certain facts, and, if you keep strictly within your powers, and consider the sole question that is before you, I am inclined to believe that you will have little difficulty. You are not here to pass upon a question of business morals, or whether the conduct of these parties squares with your own notion of commercial and business honor, and fair agreement between men. You are to consider whether this defendant went to the prosecuting witness,

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and took to him an alleged agreement, and told him that, by that agreement which he showed him, he was in control of some 335 lots of property in East New York. Did that occur, did that take place? Is that true? Because, if you conclude that it is not true that that paper was taken to Mr. Schepherd, no matter what was said, that ends this case; because the People charge that, by the production of that paper, and the assurances held out and representations made in that paper, the complaining witness did part with \$1,000, and that the property was feloniously taken by the defendant.

You are to determine from the evidence that you have heard whether the defendant made those representations, as I have read them to you from the indictment; not any other representations, but those representations; and, secondly, whether they were false representations of a pre-existing fact, and whether they were appreciated as such by the defendant; and, thirdly, were they relied upon by Schepherd as true, and did they have a material and substantial influence upon him, and induce him to part with \$1,000.

There may have been other representations made, but was that representation made, and was that representation

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the inducing cause by which \$1,000 of Schepherd's money went into the hands of the defendant?

The false pretense is to be weighed by you by its effect, and one calculated to mislead a man of weak mind, if practiced upon him, is as obnoxious as one adapted to deceive one of a higher degree of intelligence.

The State charges that that representation was made as charged; the defendant denies that such representation was made. He says that there had been some negotiations with reference to this property in East New York, but that no contract or form of agreement was presented, and that nothing except a diagram, showing some lots, was presented to the prosecuting witness, Schepherd.

Well, now, is that so? You may consider the probabilities, whether a real estate operator, a speculator and broker, would be inclined to give a check, without having in his possession, without its being left in his possession, a copy of an agreement, if such an agreement were presented to him. You may consider him by a different standard than you would the ordinary individual in the community.

While it is the law that the weak and the feeble have equal rights with the strong and the manly and the cap-

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able, the statutes of the State are for the protection of the entire community, and that is, of course, made up of all degrees of mental power and shrewdness against, in fact, being cheated and swindled.

You become here the sole judges of the weight of the evidence and the credibility of the witnesses. You are to weigh them with regard to their intelligence, and their opportunities for knowing business. Men are to be held accountable for what they are, for their opportunities, and the same standard must not be exacted of the ignorant that would be required of the greatly experienced and highly educated.

The question is a very narrow one, and is one largely as to the credibility of witnesses. A great many matters have been brought out here in evidence relating to collateral matters, and important in testing the credibility of the different witnesses, extremely important for that purpose, but not relevant to any other purpose in the case. I have allowed latitude to both sides, so that you could easily, when you go into your deliberating room, sift this evidence, weigh these witnesses, and determine the truth with reference to this issue.

A person who tells a falsehood deliberately in giving his testimony is not a person whose evidence can be safely

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relied upon. Part of it may be true, part of it may not be true, but, if such a person you find, his testimony ought to be carefully scrutinized.

The defendant is presumed to be innocent, independent of the evidence. That is his protection at the threshold of the case, and becomes a shield to him at the close of the case, unless the evidence has removed it. If the evidence has removed it, and you are satisfied that he is guilty beyond a reasonable doubt, it no longer stays in the case.

Every essential that is required by the People to prove must be established by what is called proof beyond a reasonable doubt. Now what do I mean by that? I mean, when I say reasonable doubt, a doubt which you think it is reasonable for you to act upon. You have been impaneled here largely to discover whether you have any such doubts as that. That may be expressed in another way. Has this evidence left you in a state of uncertainty, so that you do not feel that you can go forward to the point of saying the defendant is guilty? If that is so, it makes for acquittal, and determines your course. The State has no other duty than to satisfy you up to that standard. If it satisfies you, beyond a reasonable doubt, of this defendant's guilt, it would be unreasonable for you to acquit him, because you have no

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interest here except to determine this issue fairly and squarely between both parties, the People of the State of New York, charging the defendant with crime, and the defendant at the bar, whose liberty is involved.

Keep in mind that the important question is: Was that alleged agreement presented to Schepherd, and was it upon that representation, or the representations made in that paper, that he gave \$1,000 to this defendant? If you are in doubt about that, then your verdict should be not guilty, no matter whether you believe the defendant may have made other misrepresentations upon which Schepherd lost his money. The People must be confined to the charge made in this indictment, and that is, that, by that representation, as an inducing cause, this defendant committed the crime of grand larceny in the first degree.

Now, take these witnesses, and scrutinize their testimony. Lay what they have said right alongside of your own experience and observation, and determine the weight that you should give them. Your duty simply comprises the finding of a verdict, which means a declaration of the truth with reference to this charge. You carry no other responsibility. You do, however, carry that. The Court's responsibility is to control the trial, and to charge you upon matters of law. The responsibility of determining the facts rests entirely

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with you, and no consideration except the resolution of faithfully performing your duty should influence you in the verdict that you render.

Consider the case just as you would an important matter in your own affairs, if you were called upon to decide it, impressed with the obligations which your oaths put upon you to determine it fairly and honestly, and return a verdict which will be one, I am certain, that will satisfy the public mind. Be fair to the defendant, whose liberty is at stake; be fair to the People, who stand here for the maintenance of the law; be fair to the witnesses; perform your duty under the oaths that you have taken.

Is there anything that you would like to have me charge, counsellor?

MR. McKENNA: No, if your Honor please, except to call to the jury's attention that the names of the streets appear upon the diagram, and need not necessarily be taken from any fake contract.

THE COURT: Well, if the jury want any evidence, I have no doubt that they will ask for it. Take the case, gentlemen.

MR. McKENNA: Oh, if your Honor please, before the jury go out, I would like to ask your Honor to charge the jury, that, before they can convict the defendant, they

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must reach a conclusion that there was a written agreement presented by Thompson to Schepherd.

THE COURT: I think I have already covered that, gentlemen. If you entertain a doubt that that formal agreement was presented to Schepherd, and was the inducing cause to Schepherd to part with his money, then your verdict must be not guilty, under the indictment. You may retire, gentlemen.

(The jury found the defendant guilty as charged in the indictment, with a recommendation to the mercy of the Court).

MR. McKENNA: If your Honor please, we ask that the sentence be deferred until some day next week, any day which will be agreeable to your Honor.

THE COURT: Some day on which you will be ready, I will put it down for. You desire to make your motions, at that time, too, I suppose?

MR. McKENNA: Yes, any day that your Honor selects.

THE COURT: Any day that you fix, I shall ask the probation officer to be ready on.

MR. McKENNA: We would like to have sentence deferred for a week from to-day.

THE COURT: Yes. And Mrs. Walker will report. And any letters you may be able to get in favor of the defendant, in view of the jury's recommendations, you may submit to Mrs. Walker, in the meantime.

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

-----X  
 THE PEOPLE :  
 -against- :  
 CHARLES B. THOMPSON: Before  
 : HON. JAMES T. MALONE, J.  
 -----X

New York, January 19th, 1910.

Indicted for Grand Larceny in the First Degree.

Indictment filed October 30th, 1909.

A P P E A R A N C E S.

ASSISTANT DISTRICT ATTORNEY WILLIAM A. DeFORD, for the People.

THOMAS P. McKENNA, ESQ., for the Defense.

THE SENTENCE.

Frank S. Beard,  
Official Stenographer.

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**THE SENTENCE.**

New York, January 19th, 1910.

The defendant being arraigned for sentence.

MR. McKENNA: If your Honor please, a week ago to-day, I believe it is, Mr. Thompson was tried and convicted before your Honor. The case that Mr. Thompson was convicted upon was upon the sole testimony of Mr. Scheperd, a gentleman holding the promissory note of Mr. Thompson, who claimed to have parted with \$1,000 on the strength of a fake contract, as it was termed in court.

In order to take this case out of the civil regime, and bring it within the criminal branch of the law, it was necessary, as we contend, for Mr. Scheperd to claim and endeavor to demonstrate to your Honor that there was some misrepresentation.

The theory that the case was tried upon, and the theory of his testimony was, that Mr. Thompson produced to him a written contract, claiming to have the right to purchase a certain number of lots; and that, upon the strength of that contract, and believing that Mr. Thompson had rights in that contract, and that the contract was genuine, he advanced to Mr. Thompson \$1,000, to make a further payment upon that contract.

Now, we hotly and most stubbornly contended, and

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still contend and deny that any such contract existed. We feel, and believe, that we demonstrated to the Court, as well as it was possible, that no such contract ever was in existence, and no such contract was ever presented to Mr. Schepherd. But the case was so nicely presented by the complaining witness that it placed us in a position where we were practically unable to present any contradicting testimony.

What we did, if your Honor please, and I don't wish to claim any sympathy for my lack or neglect of opportunity to prepare for trial in that case, but what I wish to say is that the defendant was absolutely without funds; we were not able to get together funds enough to investigate the case or get the witnesses together. But let that be as it may, but we could not meet the issues raised by Mr. Schepherd, because they lay only in his own mind; but upon every material point, outside of that idea, it seems to me that we thoroughly and completely contradicted his testimony.

We produced the testimony of Mr. Soroch here, and he completely contradicted Mr. Schepherd, and made him appear as complete and perfect a perjurer as ever appeared before a Court.

Mr. Schepherd advanced the idea that there were two signatures upon that receipt, and I understand that the

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jury, in reaching their conclusion, laid great stress upon the fact that Mr. Thompson first signed it C. B. Thompson, and then that Mr. Schepherd asked him to sign it Charles B. Thompson, because the name in this fake contract was signed Charles B. Thompson, but the jury overlooked the fact that, in this very receipt, Mr. Schepherd used the name of Charles B. Thompson.

Now, if your Honor please, coming down to Mr. Schepherd's testimony on this very point, which I can only meet by an argument, which I can only meet by presenting such circumstances to your Honor as, upon this point, will make Mr. Schepherd what he was upon all the other points, an absolute falsifier, and, in my mind, a man endeavoring to use the process of this court to collect a thousand dollar debt, and I will advance these arguments to the best of my ability.

This receipt stated that Mr. Thompson received a thousand dollars, representing himself to be the owner of, I think, 335 lots.

Now, Mr. Schepherd, upon the witness stand, stated that he had over six years' experience as a real estate operator and agent; that he had over three years' experience at the time of this transaction. He appeared to your Honor as a man, and appeared to me, and appeared to all of us, as a man of considerable business experience,

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who was old enough to be quite gray, and who was a man in every appearance of 50 or 55 years of age. And with all that history, a man admitting that he was thoroughly familiar, at the time of this transaction, with real estate contracts, that he was thoroughly familiar with the proposition that a man who takes a contract for the purchase of property, at some future day, is not the owner of the property, but simply has an opportunity or right to call for that property on complying with the terms of the contract, at a future day, and he wrote a receipt, and he says that Mr. Thompson rushed into the office, and asked for the money, and that he dictated the receipt, and he doesn't even claim that there was a contract shown that Thompson owned the lots, but only that he had an option on them; and he admittedly stated that what he said in that receipt, by his own dictation, by the use of his own stationery, he admitted that he put into Thompson's mouth statements which were absolutely false, and a man of his experience, a man of his knowledge, could not possibly be ignorant of the fact but that they were absolutely false.

Now, I wish to dwell upon another fact. Your Honor will recall that, in the testimony that referred to the Bayside transaction, Mr. Schepherd admitted that he kept a copy of the Bayside contract, in which he was to share in the profits, but he kept no copy of this vital contract

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in which he was to share in the profits, which involved \$112,000, and a multitude of detailed transactions, mortgages, etc., kept no copy of that, but he could tell to your Honor, and I am sure that it made an impression upon your Honor, he could detail every feature of that contract which was to his own interest. But when I endeavored to cross examine him upon any point which we could reach, and I say again that we could only reach this question by a series of cross examining questions, and by such circumstances and other ways in reaching what was only in his own mind, this idea that he had only in his own head -- he could state the details from memory, because he knew we had no such contract, and there never was any such contract, but, if he said that Mr. Smith or Mr. Jones was the notary public on that contract, and his number in the County Clerk's office was so and so, or so and so, we could have ascertained where Mr. Jones could be found, and could have ascertained whether any such contract was ever executed before him, but we couldn't do that, because he so planned his case that it was an impossibility to do it.

Now, I wish, also, to call your Honor's attention to this circumstance: That this man admitted, as his narration of the contents of the contract, that it provided for a payment of \$5,000 already made, and another

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\$5,000 to be made, of which Mr. Thompson needed to make up \$1,000; and he said that Mr. Thompson proposed, and he agreed, and he, Schepherd, dictated, and put it in his own receipt, that Mr. Thompson was to give him one-half of that contract, one-half of the profits of that contract, upon advancing \$1,000.

Here was a payment of \$5,000. The first \$5,000 had been paid, and five more was to be paid, and he was to give him one-half of that contract, on the loan of \$1,000. And it is in his own handwriting, in the receipt that he dictated.

And it seems to me that, as far as we could, we met Mr. Schepherd's testimony, and, without having an X-ray means of entering his mind, and discovering what was there, we couldn't do otherwise, and I submit that there is no testimony in this case to charge Mr. Thompson, except the testimony of Mr. Schepherd, and that the whole substance of this testimony is Mr. Schepherd's.

Now, as to Mr. Thompson. Mr. Thompson I knew very little about, except that he was a Jersey man, and from Jersey I came, and in that way, and through introduction of parties in Monmouth County, New Jersey, I came to represent him, and was asked to represent him.

Mr. Thompson had control of some very valuable property, near Middletown, a very valuable gravel pit, and

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has been dealing with the county and municipal authorities for the sale of that gravel -- I don't know how the title stands now -- and I came in contact with that proposition through the effort of Mr. Thompson to sell that property to a trolley company, and over property that I own they want to get rights. Now, he has worked diligently, during that portion of his life that came within my knowledge, the last four or five years.

I knew nothing about his antecedents, but, when he was asked the solemn questions that the clerk must ask on conviction, he said that he had never been convicted of any crime. I know his wife. She is a very estimable lady, a lady coming from a good family in this city. I know that she has worked, elbow to elbow, shoulder to shoulder, with this man. I know that they have lived together peacefully and quietly, and I know that he has taken care of her children as if they were his own. And I know that no one can know this man better than his wife, and I know that she sticks by him, and loves him, and does believe in his good character and uprightness beyond any limit.

And the fact is, if your Honor please, that he has suffered for two years the ignominy of this charge. He has fought it faithfully. We have been before the court before, and the jury disagreed. My statement that

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the jury stood nine to three for acquittal may not be accurate, but that was the statement of one of the jurors to us, or that indirectly came to us, that that was how the jury stood.

I think that every effort possible has been exercised to bring about a conviction in this case, and upon Mr. Thompson's part just as stubbornly fought, just as full of character, just as much respect for his manhood, he has stubbornly fought it. This man was in business after this charge was made. They undertook to publish it all through the newspapers. They tied up with other people in Pittsburg, and undertook to create a great deal of notoriety, which absolutely denuded him of all his business, and has stripped him of all financial support, and he has simply been hanging on to his effort to succeed in this trial, going from one friend to another, endeavoring to keep life going until he could reach an absolute vindication, an acquittal in this case.

Now, they are absolutely devoid of all funds. I say sincerely I don't believe that they have money enough to provide for the meals for the balance of the day. The good lady to whom you have referred the case has probably investigated thoroughly, and I leave to her investigation all those features -- I know nothing about them -- but I will say to your Honor that I have not received any

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funds whatever, not a cent, towards the preparation and trial of this case. I have come here from a sense of duty, believing this man was innocent of this charge, and because I thought it would be an outrage for me, knowing him and believing in him as I do, that it would be an outrage to let him stand before this Court without a lawyer present to make these statements to your Honor; and I say that this case is one that certainly appeals to your Honor's clemency, in my judgment, as no other case perhaps ever did.

THE COURT: Charles B. Thompson, after a fair trial, in which you were represented by loyal and devoted counsel, you were convicted by a jury of your own selection of grand larceny in the first degree. I endeavored, as far as I could, to give you the benefit of every doubt in my mind on the law. I endeavored to instruct the jury as favorably as the law permitted me, but, despite everything that counsel did for you, the jury found you guilty, and with the verdict came a recommendation to the Court for mercy.

I have caused your previous history to be investigated, and have read many letters that have been sent to me in your interest. My study of your record, however, discloses that you are a professional real estate swindler, and that poor people have been imposed upon by you. I can

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conceive of no meaner criminal than such a one as you are.

I have given a good deal of consideration to these letters. All of the grounds urged by your counsel to me were urged with great force upon the sympathetic jury who tried your case. I feel, despite the condition that your counsel states your family is in, that I have nothing but a duty to perform, and that is to protect society from such menaces as you. The judgment of the Court is, therefore, that you be imprisoned, at hard labor, in the State Prison, for not less than four years and six months, nor more than seven years and six months.

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