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COURT OF GENERAL SESSIONS OF THE PEACE,
COUNTY OF NEW YORK,
PART II.

THE PEOPLE

v.

FRANK LOUIS, MAX BLOOMBERG and
SAMUEL GOODMAN.

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Before
Hon. JOSEPH E. NEWBURGER
and a Jury.

Tried, New York, March 26, &c., 1900.

Indicted for GRAND LARCENY IN THE FIRST DEGREE.

Indictment filed, March 6, 1900.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY STEPHEN S. BLAKE,

For THE PEOPLE.

M. H. GOTTLIEB, Esq.,

For THE DEFENSE.

FRANK S. BEARD,

Official Stenographer.

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MR. GOTTLIEB: I ask your Honor to exclude all the witnesses for the People from the court room during the District Attorney's opening.

THE COURT: All the witnesses in this case on both sides will leave the court room and remain outside until they are called.

LEON MALTER, a witness called on behalf of the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Malter, where do you live? A I live 182 Seventh Street.

Q In this City? A In this City.

Q What is your business? A Clothing.

Q What do you manufacture? A I manufacture pants and coats and vests, clothing.

Q Can't you speak louder, please? A Yes, sir.

Q Very well. You manufacture trousers? A Yes, sir.

Q Where? A I manufacture now in East Broadway. I was living in East Houston Street, 152 East Houston, but now I live in East Broadway.

Q Where is your place of business? A 102 East Broadway.

Q Where was it on the 1st day of March? A 252 East Houston Street.

Q 252 East Houston Street? A Yes, sir.

Q And what was your business there? A The same business
what it is now.

MR. GOTTLIEB: You may lead ^{him} now if you want to. I will
not object.

MR. BLAKE: Oh, no, I will not lead him at all.

BY MR. BLAKE:

Q Now, what part of the premises at 252 East Houston Street
did you occupy? A The basement.

Q The ground floor? A The ground floor.

Q On the 1st day of March, of this month, what time did you
leave your place of business? A I leave the place about
eight o'clock in the night.

Q You left the place about eight o'clock in the night?

A yes, sir.

Q Who closed up the store that night? A Myself.

Q Yourself? A Yes, sir.

Q Well, how did you -- is there any window in the rear of the
premises? A No; everything was closed.

Q I know. But will you please describe what windows were
there in the back of the premises? A Well, there was a
window with wires in the back.

Q With wire? A Yes, sir.

Q Any iron bars? A Iron bars.

Q Iron bars? A Yes, sir.

Q Now, was that fastened that night when you went away?

A Yes, sir.

Q And did you yourself lock the doors and fasten the windows?

A Yes, sir; certainly.

Q When did you next visit the premises after that night?

A I was----

Q In the morning? A Yes, sir.

Q When did you next come to the place? A Between seven and eight o'clock next morning.

Q Between seven and eight o'clock next morning? A Yes, sir.

Q What did you discover? A When I was coming I find the officer by the door, and he told me that----

MR. GOTTLIEB: Objected to.

BY MR. BLAKE:

Q Never mind what he told you. Did you go into your store?

A Yes, sir.

Q And what did you find? A Everything was closed, outside.

Q The door was closed? A Yes, sir; everything was closed.

Q And you went in? A Yes, sir.

Q And what did you find when you went in there? A I found everything was stole and the window was broke.

Q What is that? You must speak louder. A Everything was stole and the window was broke and was open.

Q Describe the injury to the window. What was its condition?

A It was broke.

Q What was broken? A The wires, the iron.

Q The iron bars? A Yes, sir.

Q And the wires? A yes, sir.

Q And how was the window itself? A Well, it was open.

Q What part of the window was open? A The upper part.

Q The upper part was open? A Yes, sir.

Q And was it still open when you got there? A Yes, sir.

Q Was it still open then? A Yes, sir.

Q Well, did you find anything missing from your place, any goods, any property? A I find missing all the goods what was in the house.

Q What was there missing? A There was 284 pair of pants and eight pieces of goods.

Q 284 pairs of pants? A Yes, sir.

Q And eight pieces of goods? A yes, sir.

Q What sort of goods? A Pants goods.

Q Well, were they rolls? A Yes, sir; rolls.

Q Was it cloth? A Yes, sir.

Q Pieces of cloth?

A Yes, sir.

Q Now, how long have you been in this business?

MR. GOTTLIEB: Well, you needn't qualify him as an expert.

MR. BLAKE: Very well.

BY MR. BLAKE:

Q What was the value of the trousers that was missing?

A About six hundred dollars.

Q And the value of the eight rolls of cloth? A About three hundred dollars.

Q A total value of nine hundred dollars? A Yes, sir.

Q Now, did you at any time see any of those goods after that?

A Only one pair of pants.

Q Officer, produce that pair of pants, please. What did you see after that? A Well, only one pair of pants.

Q A pair of pants? A Yes, sir.

Q Where did you see that pair of pants? A The officer had them in his hand.

Q Did he show them to you? A Yes, sir.

Q Did you identify that pair of pants as your property?

A Yes, sir.

Q Please look at that pair of pants, and say whether you have seen them before? A Yes, sir; that's my pants.

Q Sir? A Certainly, that's my pants.

Q From whom did you receive that? A I bought it at auction.

Q No. From whom did you receive it? A From the officer.

Q From whom did you receive it, the day after your place was broken open? A From the police officer.

Q And what is hisname? A I don't know his name.

Q He is in court? A Yes, sir.

Q Now, how do you identify that pair of pants as a portion of the property that was stolen from your place that night?

A Well, when I was coming in the morning, the policeman was by the door, and there was a couple of people by the door, and he told me----

MR. GOTTLIEB: Objected to.

BY MR. BLAKE:

Q No, I don't want to know what he told you. A Well, he showed me the pair of pants.

MR. GOTTLIEB: Well, I object to all this as irresponsible to the question.

THE COURT: He may say what he showed him. Objection overruled.

MR. GOTTLIEB: Exception.

A (Answer continued) And he showed me the pants, and I said----

MR. GOTTLIEB: Objected to.

BY MR. BLAKE:

Q No. He showed you the pants? A Yes, sir.

Q And do you know it to be a part of the property which was

taken from your store on that night before?

MR. GOTTLIEB: Objected to, as leading, and as calling for a conclusion.

THE COURT: Objection overruled.

MR. GOTTLIEB: Exception.

BY MR. BLAKE:

Q How do you know that that was your property? A Well, I saw that he had my pants there.

Q Well, how do you identify the property? A Because I have got more pants than those. It is my pants.

Q Well, just state why you knew the pants to be yours, or know them to be yours. Is there anything about the pants or on these tags here, is there anything about the pants at all that enables you to say that that is your property?

MR. GOTTLIEB: Objected to. The witness has several times answered the prosecuting officer as to the identity of these pants; that the only means by which he identified them as part of his property was that he had purchased them at auction, and that they were like the pants which he had in his store, and which had been robbed that night.

THE COURT: I will allow the question.

MR. GOTTLIEB: And then the District Attorney puts the leading question, whether he knows them by the tags

on them.

THE COURT: I will allow the question.

MR. GOTTLIEB: Exception.

BY MR. BLAKE:

Q Now, proceed, witness. A The pants is mein pants. I know the goods. I have got some more goods of that lot. Who couldn't know his property? I know it is my property.

BY THE COURT:

Q Well, how do you know it? A I know it is mine.

BY MR. BLAKE:

Q Well, now, you state, Mr. Malter, you tell the jury you know it is your property. Now, the jury want to know how do you know it? Can't you give some reason?

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

THE COURT: Objection overruled.

MR. GOTTLIEB: Exception.

A I have got a lot of pants, and I am short one pair of pants, and here is the lot list, and it is one pair of pants short, and the other goods is in the station house, and it is short this one pair of pants, and I have got here the lot number.

MR. GOTTLIEB: I move to strike out the answer as irresponsible.

THE COURT: Motion granted.

BY MR. BLAKE:

Q What is the lot number? A There (indicating). You can see it.

Q Where is it? A There it is (indicating).

MR. GOTTLIEB: Objected to, as immaterial.

THE COURT: Allowed.

MR. GOTTLIEB: Exception.

BY MR. BLAKE:

Q Well, just read that lot number.

MR. GOTTLIEB: I object to his showing any paper to the District Attorney.

THE COURT: Objection overruled.

MR. GOTTLIEB: Exception.

BY MR. BLAKE:

Q What is the lot number that you say you have? A 262 I believe it is.

Q Well, now, have you, since that date, the 1st of March, seen the other goods that were taken from your store that night? A No, sir; never.

Q I mean the eight pieces of cloth and the other 283 pairs of trousers? A I didn't see it, I didn't see it any more. I seen only the first day in court.

Q Well, did you see them there? A Yes, sir.

Q You saw the rest of the property? A Yes, sir; I saw them in

the station house in Fifth Street.

Q Well, you saw them on the first day in the station house?

A yes, sir.

Q What goods were there there? A The same goods that is mine.

Q What were they? A 284 pair of pants. We counted them in the station house, the sergeant did, because I thought it is----

MR. GOTTLIEB: Objected to.

THE COURT: Objection sustained.

BY MR. BLAKE:

Q Well, did you see the clothing also? A Yes, sir.

Q Eight rolls of cloth? A Eight pieces of cloth.

Q And is that the number that was missing from your place?

A Yes, sir.

Q Do you know where those goods were found, if you know?

A Yes, sir.

Q Where were they found?

MR. GOTTLIEB: Objected to, as he was not there.

BY THE COURT:

Q Were you there when the goods were found? A No, I was not there.

THE COURT: Well, then, do not testify. Objection sustained.

C r o s s E x a m i n a t i o n :

BY MR. GOTTLIEB:

Q Mr. Malter, did you occupy a basement in this building 252 East Houston Street? A Yes, sir.

Q A basement? A Yes, sir.

Q Then say so. Answer out loud. No one can hear you. In the rear of that basement there were how many windows?

A One window.

Q And was that window protected by iron bars? A Yes, sir.

Q And was it protected also by an iron screen over the bars?

A Over the wires?

Q Was there anything to protect the window except those iron bars. A No.

Q Nothing else? A No.

Q There was a latch on the window? A What?

Q There was a latch? A Yes, sir.

Q Now, when you got to that place on the following Monday, what time did you arrive there? A What time I was?

Q What time did you get to that place on this day in question, March 1st? A When I was coming from home, you mean?

Q Yes. A Between seven and eight o'clock.

Q In the morning? A In the morning.

Q What day of the week was it? A That was I believe on Tuesday.

- Q Are you positive? A Well, the 1st of March----
- Q Was it not on Thursday morning? A Yes, sir.
- Q And not Tuesday? A That was on the 1st. I couldn't mention the day.
- Q On the 1st of March? A Yes, sir.
- Q The morning of the 1st of March you came to that place?
- A yes, sir.
- Q And when your place was broken into, it was broken into the day before? A Not the day before, but the same day I was coming.
- Q What time did you leave your place the night before the 1st of March? A About eight o'clock.
- Q And who was with you when you left the place, if anybody?
- A There was with me one workman.
- Q One workman? A yes, sir.
- Q Now, the following morning you found these bars twisted and cut? A No, not cut. It was broken.
- Q It was broken? A yes, sir.
- Q That is, were they pushed aside or cut through? A No, it was pushed out.
- Q Pushed aside? A yes, sir.
- Q And were those very thick bars? A Well, I couldn't know it.
- Q Were they about an inch in diameter, in thickness? A I

believe about an inch and a quarter.

Q They were very strong; were they? A Well, I don't know. I never tried them.

Q Were they made of steel? A Steel?

Q Yes? A I couldn't know it. I couldn't tell you.

Q Well, I didn't ask you whether they were stolen, but whether they were made of metal. A I couldn't tell you that.

Q When did you discover that some property had been taken from you? Did you go to the station house? A Certainly. In Fifth Street. I was going with the policeman to the station house.

Q Did the policeman call at your place as soon as you opened it? Was there a policeman there waiting for you?

A Yes, sir.

Q When you came the following morning? A Yes, sir. On the 1st of March, I seen him by the door.

Q Yes; and you went with him to the Fifth Street station house? A Yes, sir.

Q And did you, in the station house that morning, see your property? A No, sir.

Q That is important. You didn't see your property? A No, sir.

Q That morning? A No, sir.

Q What time was it that you got to the station house that morn-

ing? A This was nine o'clock.

Q About nine o'clock? A After eight o'clock or so. The first I was in the store and I looked all around, and after I was going to the station house with the policeman.

Q And all the property that was then shown you was this pair of pants which was identified by you? A That's all; that's all what I saw.

Q And the officer hadn't told you at that time that he had recovered the other property; had he? A No.

Q The other property, as a fact, had not been recovered yet then? A No, I didn't see it then.

Q You did not see it then? A No, sir.

Q Were you at the station house again after that? A Well, no, I was----

Q Were you ever in the station house after that morning when you say the only property shown you was that pair of pants?

A We was going from the station house in Fifth Street to 57th Street.

Q Will you answer my question, please? Were you ever in the Fifth Street Station house after the morning, the occasion when you say this one pair of pants was shown you; were you ever in the station house again? A After I was going for 57th Street.

Q Were you in the 57th Street court? A Yes, sir.

Q Now, were you ever in the station house for the second time?

A Yes, sir; when I was going from the court, and the Sergeant told me ----

Q Never mind what the Sergeant told you. You were then in the station house the second time? A Yes, sir.

Q That was after you had been to the 57th Street court?

A Yes, sir.

Q What time was it that you were in the station house, the second time? A It was between ten and eleven o'clock.

Q The same day? A The same day.

Q Now, do you know Mrs. Christina Schneider? A Yes, sir.

Q Does she live in the same house where you had your basement store? A Yes, sir; she is the housekeeper there.

Q Yes; she is the housekeeper there? A Yes, sir.

Q Did you see her on the morning when you discovered that your place had been robbed? Yes or no. A No.

Q You did not? A No.

Q What time on that day was it that you went to 57th Street?

A That was the same day, on the 1st of March.

Q What time of day? Nine o'clock? A It was about between-- about ten o'clock.

Q About ten o'clock you got up to court? A Yes, sir.

Q And was Mrs. Schneider there then? A Mrs. Schneider?

Q Yes. A No.

Q No? A No.

Q The case was adjourned; was it not? A No.

Q Wasn't the case adjourned? Didn't you have to go to court again the second time? A No. They was coming by the judge. I don't know what they are speaking about it.

Q Well, weren't you up in the 57th Street court twice, in the court, not the station house? A Twice?

Q Yes. Twice? A I don't know.

Q Two times? A I don't remember.

Q You don't remember? A No, sir.

Q Well, did you on any occasion when you were in the 57th Street court, see Mrs. Schneider? A Yes, sir; she was there.

Q She was there in court? A Yes, sir.

Q She was in court? A Yes, sir.

Q Now, did you, before you saw Mrs. Schneider in the 57th Street court, see her in the station house? A In the station house?

Q Yes. A No.

Q You did not? A No.

Q Have you spoken with Mrs. Schneider since this case was commenced -- I will withdraw that question. A Yes, sir; I have spoken with her.

Q That is all right. I withdraw that question. That is all.

Oh, just a moment. The night before this morning when you had found this place [^] been broken into, it was raining?

A yes, sir.

Q It was a very stormy day? A Yes, sir; it was raining in the morning, too.

Q And it was raining all night, too? A Yes, sir.

MR. BLAKE: The trousers identified by the complainant are offered in evidence.

THE COURT: Admitted.

(They are marked People's Exhibit 1, without objection.)

EDWARD WHICHMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. BLAKE:

Q Mr. Whichman, are you a police officer of this City?

A Yes, sir.

Q Attached to what precinct? A Fifteenth.

Q And you were attached to that precinct on the first day of March? A Yes, sir.

Q Did you see either of these defendants on the first day of March? A Yes, sir.

Q At what time? A Well, I seen them -- the first time I

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seen them was about a quarter to three.

Q About a quarter to three? A Yes, sir.

Q And where did you see them then? A Houston Street, opposite Eldridge, about 154 Houston Street.

Q About a quarter to three o'clock? A Yes, sir.

Q And what were they doing then? A They were going west, while I was going east.

Q And then you lost sight of them? A Yes, sir.

Q And when next did you see them? A At about four o'clock.

Q In the morning? A yes, sir; coming out of the hallway of 254 East Houston Street.

Q You saw them coming out? A yes, sir.

Q When they came out on the sidewalk, what did they do? A They turned east.

Q Well, what did you see? What occurred? A Well, I was patrolling my post, which is Houston and First Street, from Bowery to Avenue B, and on the morning of the 1st, about four o'clock, I was going west, when I seen the three defendants come out of the hallway 254 East Houston Street. They had walked about ten feet when I seen them drop something. I kept on walking on towards them, and they walked towards me, and as they approached me I caught a hold of Hoodman, and I said, "Where are you going?" and he said, "I am going home," and in the meantime the other two de-

fendants kept on a going, and I said, "Stop there, or I'll take the top of your head off," and so they stopped, and so I begin a conversation with Goodman, and I said----

Q Well, which is Goodman? Please point him out. A That end man there (indicating). And I said, "What were you doing in that hall?" and he said, "I was not in that hall. I am just after coming from 175 Delancey Street. We were playing cards there," and I said, "Is those friends of yours?" and he said, "No. I just met them down where I was playing cards." And then I walked over to the other two, with Goodman, and I said to Bloomberg, "Where are you going?"

Q Which is he? A The middle man there (indicating). And I said, "Where are you going?" and he said, "Home," and I said, "What were you doing in that hall?" and he said, "Oh, we were up playing cards, with a friend of ours," and I said, "What is your friend's name?" and he said, "Ike", and I said, "What's his last name?" and he said, "I don't know his last name," and I said, "Are these friends of yours?" and he said, "No. They are friends of my friend that I was playing cards with," and I said, "All right. We will go back and see your friend," and I walked them up to 250, and backed them into the doorway, and I said, "Now, if you'se move, I'll blow your heads off," and I rapped, and Officers Dooley and Ross came, and I told the officers to

watch them here, while I went back, and got what they had dropped.

And so I went back and picked up a pair of pants, and brought them back, and I said, "Now, wait, Ross. I know what place they touched," and I went into 254, and in the yard there was a stove, with a chair on it, and I got on the stove and the chair, and I got over the fence, and there was two ladders there, leading into 252 house.

And then I went down and looked into the place, and the two bars was pried off, and the window was broke, and raised up, and I entered, and all that I could see there was a case of pants and one roll of cloth.

And so I came out and looked around the cellar, and all, and couldn't see anything.

And I came back and Officers Ross and Dooley and I took them to the station house.

And on the way to the station house I said, "Well, you'se made a nice job out of that. Where did you'se put the clothes?" and they said they don't know anything about it.

And so, in the morning, I had them arraigned and remanded until the following day, the 2nd, and so, going to court, I told them, if they would tell me where the goods was, may be this man wouldn't be so hard on them, and they

said they didn't know anything about the case.

And, when I brought them back, Sergeant Schulum said, "Oh, I know that man. That is Louis Frank. I had him before. I sent him away for two years."

MR. GOTTLIEB: That's objected to.

BY MR. BLAKE:

Q Well, were the defendants there at the time? A Yes, sir.

MR. GOTTLIEB: Well, I object to that, and ask that the witness' remark be stricken from the record as immaterial.

THE COURT: Well, what does it lead up to?

MR. GOTTLIEB: Just to show the jury that this man was convicted before.

BY THE COURT:

Q Did this man answer him? A Yes, sir; he said, "Hello".

Q And was that all that occurred between him and the Sergeant?

A No, sir; the Sergeant took him over -- we wanted to find out, if we could get him to tell where the stuff was.

THE COURT: No. Strike out what the Sergeant said. And the jury are instructed to disregard the statement of this witness in regard to any statement that the Sergeant made in the presence of these defendants. If it had referred to the crime itself, it would be proper, however.

BY MR. BLAKE:

Q Now, I understand you to say, Officer, that up against the fence, separating the back yards of 252 and 254, was a stove, and upon the stove there was a chair? A Yes, sir; in the yard of 254.

Q Yes; up against the fence? A Yes, sir; on this side (illustrating).

Q And when you got up on the chair, was there any trouble in getting over the fence? A No, sir; because there were the ladders, and I had only to put my foot on the ladders.

Q And were the bars on this window of 254 round bars?

A Yes, sir.

Q And how thick? A About an inch thick.

Q And were they cut or twisted? A No, sir. When the building was erected they were built right in the masonwork.

Q Were they cut or twisted? A Yes, sir; the masonwork was broken away, and they[^]they were raised up and bent out, and there were two bends on them to get them out.

Q Yes. Now, you say that you picked up the bundle that was dropped by one of these defendants? A Yes, sir.

Q Now, please examine that article of clothing (indicating People's Exhibit 1), and say whether that was contained in the bundle? A Yes, sir; that is the pants that I picked up.

Q And what did you do with them afterwards? Did you show them to the complainant? A Yes, sir; in the morning, about a quarter past eight.

Q And did he identify them? A Yes, sir.

Q And were there any goods at the station house next day?

A Yes, sir. The next day, when we returned from court, or the same day at least, the 1st, the Sergeant told me that---

MR. GOTTLIEB: Objected to.

BY MR. BLAKE:

Q Well, what did you do in consequence of what he said?

A That somebody had been up and informed him----

MR. GOTTLIEB: Objected to.

BY MR. BLAKE:

Q Well, what did you do? A Well, I went down to 252 East Houston Street, and in the west side basement I found the stolen goods.

Q In what basement? A In 252 basement, only the west side of the house. In the east side was the burglary committed.

Q Yes; but taken out of the store where they belonged?

A Yes, sir; and in another store.

Q Were these goods shown to the complainant? A Yes, sir.

Q Did he identify them? A And he identified them all as his goods.

Q Did you know what the character of the goods was? Can you describe them? A Well, they were all assorted. I guess there must have been about six dozen pair of them pants, and then eight rolls of cloth, and some dark and some light pants. They had them all done up in bags, ready for removal.

Q Now, did you go into the hallway of 254? A Yes, sir.

Q Any trouble in reaching the yard of 254 from the hallway?

A No, sir.

Q And then you could climb over the fence without any trouble?

A No, sir; but I couldn't get into 252, because that was locked.

Q That is, the door on the street? A Yes, sir; and the doors leading to the stairs on the airshaft was locked.

Q But then you went through the hallway of the house?

A Yes, sir.

Q And went back into the yard? A Yes, sir.

Q And went over the fence into the adjoining premises?

A Yes, sir.

Q Did you make any inquiries in 254, when you were there with the three detectives? A No, sir; I didn't.

MR. BLAKE: I now, if your Honor please, offer these trousers in evidence.

THE COURT: Yes, they have been marked, I believe, already.

BY MR. BLAKE:

Q Well, where are those goods now? A At police headquarters.

Q And there was how many pairs of pants? A 283 I think, and eight rolls of cloth.

Q And the complainant has identified them all? A Yes, sir.

C r o s s E x a m i n a t i o n:

BY MR. GOTTLIEB:

Q Officer, your post was on Houston Street on the morning of the 1st of March? A Yes, sir.

Q And where did it extend? A It took in the north side of Houston Street from the Bowery to Avenue B and First Street--

Q Wait a moment. The north side of Houston to Avenue B?

A Yes, sir.

Q Running to the Bowery? In other words, your post extended from the Bowery to Avenue B and back, covering both sides of the street? A On First Street. Only on one side of Houston Street, from the Bowery to Norfolk.

Q The north side? A Yes, sir.

Q The entire side street? A Yes, sir; First Street from Second Avenue to Avenue A.

Q Yes. Then necessarily on your post, in traversing your post, you would be obliged to pass Eldridge Street?

A Yes, sir.

Q What time did you go on post? A Twelve o'clock.

Q

Q Twelve o'clock? A Yes, sir.

Q It was raining when you went on post? A Yes, sir.

Q It rained all through the night; didn't it? A A little.

Q A little, do you say? A Off and on.

Q Off and on? A Yes, sir.

Q Is it not a fact that the rain was continuous, that the storm was continuous, this night? A No, sir; it was off and on.

Q Was it not raining in the morning? A Yes, sir.

Q Was it raining at the time you captured these defendants?

A No, sir.

Q Oh, of course not.

MR. BLAKE: Now, I object to that remark.

THE COURT: Yes, it is improper.

MR. GOTTLIEB: Yes, that is improper, I admit. I withdraw it. I am sorry. I can't do any more.

BY MR. GOTTLIEB:

Q It was not raining then? A No, sir.

Q When you were at Houston and Eldridge Street, at any time on your post, was it raining? A Yes, sir.

Q And was it raining severely? A No, not severely.

Q Not much? A No, sir.

Q You said to this -- to the Court and Jury that you saw these three defendants at Houston and Eldridge Street that night?

A At Houston, opposite Eldridge Street.

Q At Houston, opposite Eldridge Street? A Yes, sir; 154---

Q And then you saw them on the south side of Houston Street?

A No, sir; on the north side of Houston Street. I said
I seen them on----

Q On the very same side that you were on post? A Yes, sir;
that I passed.

Q And were these three men alone? A All alone, the three
of them.

Q And about what time of the morning was it that you saw them?

A At a quarter to three.

Q Did you know any of these men? A No, sir.

Q Had you ever to your knowledge seen any one of them?

A Not that I am positive of.

Q And then are we to accept your answer as no, to the best of
your knowledge you had never seen any of these defendants?

A No, sir; not that I am positive of.

Q I suppose there was a gaslamp at the corner? A No,
electric light.

Q Electric light? A Yes, sir.

Q And were these men standing at the corner or walking along
the street? A They were walking, going east.

Q Walking, going east? A Yes, sir.

Q That is towards the Bowery? A No.

Q Yes, you are right. Towards the East River? A Yes, sir.

Q And at the point where you saw these men walking east, what were you doing? Were you walking in the opposite direction?

A Yes, sir; going west.

Q Going west? A Yes, sir.

Q And did you stop the men? A No, sir.

Q You had no conversation with them? A No, sir; but I took a good look at them.

Q But you took a good look at them? A Yes, sir.

Q You were looking for trouble; weren't you? A That is what I always do, when I am out on my post.

Q And as they passed, you, you say you took a good look at them? A Yes, sir.

Q And how far away from you were these three men when you first took this good look at them? A Oh, I noticed them coming about down from 25 to 45 feet.

Q And would you be prepared -- did you have a good look at them from that distance? A When they passed me, certainly.

Q At the distance of 25 to 40 feet? A Well, I had a good look at them just as they passed me.

Q And as they passed you, you were able to so take a good look at them that you might afterwards identify the three of them?

A Yes, sir.

Q And so that, in that short space of time, you were able to

get such a good look at them as to be conclusive, that they were the men that you had seen? A Yes, sir.

Q Where is 252 East Houston Street? A Opposite Norfolk Street.

Q Opposite Norfolk Street? A Yes, sir.

Q You say that you had never known these men, never had seen them before, and still on this occasion there was nothing suspicious in their actions upon the street? They had done nothing to arouse your suspicion up to that time; had they?

A At three o'clock they didn't, but at four o'clock they did.

Q I am asking you, at three o'clock, when you say you looked at these men at Houston and Eldridge Street, they were doing nothing of a suspicious character? A No, sir; just walking along.

Q And is it a usual thing for you to take note of every individual who passes along your post, just because they happen to pass along in the small hours of the morning?

A Yes, sir; and especially because there was three together. I have had quite an experience in that.

Q And because of the fact that three were together? A Yes, sir.

Q And that you would look them over? A Yes, sir.

Q So that you might know them again? A Everybody that passes

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my post I take a look at them.

Q Every what? A Everybody that passes my post.

Q Good vigilant officer? A Yes, sir.

BY THE COURT:

Q You mean at that hour of the morning? A Yes, sir; at that hour of the morning, sure.

BY MR. GOTTLIEB:

Q Did you consider it suspicious that three men were together at that hour of the morning? A No, not at all.

Q Not at all? A No, sir.

Q Nevertheless you made it a point to look at them when they were a distance of 25 feet away? A Yes, sir.

Q And to peer in their faces as they passed you, so that you might know them again? A Yes, sir; I did that; that's right.

Q Well, you say this was about three o'clock? A A quarter of three o'clock.

Q A quarter of three? A Yes, sir.

Q Did you make a note of the time? A Yes, sir.

Q Did you look at your watch at the time? A No, sir; I know the time I left Avenue B. It was half-past two.

Q After they passed you at Houston and Eldridge Street, did you continue on your way over to the other end of your post, the Bowery? A Yes, sir.

Q And was it upon your return trip, going east again, that you saw these men? A No, sir.

Q I want to ask you, Officer, before I leave this line of examination----

THE COURT: How many witnesses have you for the defense, Mr. Gottlieb?

MR. GOTTLIEB: I am really unable to say. I may have four or five, and I may have none.

THE COURT: This case will take until recess, and no other case will be taken up until two o'clock, and the other jurors are discharged until then.

BY MR. GOTTLIEB:

Q Is there any possibility of mistake that you saw these three men at Houston and Eldridge Street; is there any possibility that you may be mistaken? A No, sir; no possibility.

Q Not at all? A No, sir; because as they passed me I actually turned around and looked after them, until they came to the corner.

Q Well, that's all. You can't be mistaken? A No, sir.

Q And when did you see the defendants again? A About four o'clock.

Q And was it at that time still storming? A No, sir.

Q Had it cleared up? A No, it hadn't cleared up.

- Q Was it not raining when you saw them? A No, sir; not at four o'clock.
- Q How far away---- A The sidewalk was wet, but it had not cleared off.
- Q Was the morning dark or light? A The morning was misty.
- Q Misty? A Yes, sir.
- Q How far away from these defendants were you when you first saw them? A Well, about seventy feet.
- Q And are you sure that when you saw them, the three men were together? A Yes, sir.
- Q No doubt at all about that? A No, sir.
- Q Didn't you -- and is it not a fact that the first man whom you accosted was this man Goodman? A That's what I said.
- Q Well, I am asking you whether it is the fact. I don't know whether you said it before or not. A Yes, sir.
- Q So that you said before that three men came out of the hallway of 254 or from a hallway, did you say? A Out of the hallway.
- Q Out of the hallway of what number? A 254.
- Q And you were at that time seventy feet away? A About seventy, yes.
- Q Were you the only people on Houston Street in that immediate vicinity at that time? A Yes, sir.

Q Were there no other men on the other side of the street?

A I couldn't look on the other side. Houston Street is about one hundred and fifty feet wide there, and I kept my eyes on them. I wasn't looking for other people.

Q And then you don't know whether there were any other people on the other side of the street or not? A No, sir.

Q And you were bent upon watching or arresting these men, and you took no notice or concern of what was going on around you? A Yes, sir; I did.

Q You did? A Yes, sir.

Q Did you notice that further down the street there were some men? A Which direction?

Q Either direction. Have it any way at all. A I can't look behind me.

Q East or west, north or south? A There was no one west.

Q Were there any east? A I couldn't tell you.

Q That you don't know? A No, sir; I can't look behind me.

Q If you turn your head? A Well, I ain't turning my head, when I have got three of them people in front of me.

Q Well, now, you are very -- I don't want to say that you are very impertinent.

THE COURT: Oh, no.

MR. GOTTLIEB: But I think you can answer my questions

without provoking this laughter.

THE WITNESS: Well, I will, if you don't try to make a fool of me.

BY MR. GOTTLIEB:

Q You say that you couldn't state whether there were any other men on the other side of the street or not? A That's what I said.

Q And you say you couldn't tell whether there were any people back of you? A No, sir.

Q Because you couldn't see from the back? A Yes, sir.

Q Well, hadn't you just passed up from that way? A Yes, sir; but there was----

Q Did you notice any men on the pathway, or the sidewalk, as you passed up Houston Street, nearing 254? A On what path walk?

Q The sidewalk, the broad sidewalk, on any walk? A On the north side or south side?

Q Either way. A Not on the north side.

Q How many people in all were around you besides these three men that were there? A The three defendants, Officer Ross, Dooley and myself, and one other.

Q A citizen? A Yes, sir; a citizen.

Q Weren't there several other citizens around? A No, sir.

Q Did you blow your whistle? A No, sir.

- Q Did you shoot your gun off? A No, sir.
- Q Did you blow your whistle or shoot your pistol off at any time? A No, sir.
- Q How did you get assistance? A With my stick.
- Q Oh, you rapped your stick? A Yes, sir.
- Q Did that bring a crowd of people? A No, sir; only brought Officer Dooley and Officer Ross.
- Q How far were these two men, Louis and Bloomberg, from Goodman when you accosted him? A They were together.
- Q Didn't you, a little while ago, say that you saw these men when you were about seventy-five feet away from 254 East Houston Street? A Yes, sir.
- Q And that the first man you spoke to was Goodman? A Yes, sir.
- Q And that Goodman was then alone? A No, sir; I didn't say nothing of the kind.
- Q And didn't you say that you called to the other two men, who were further in advance, to stop, or you would blow the roof of their head off? A Yes, sir; I said that, but----
- Q Well, now. A But I didn't say that he was alone. I said that I stopped him, and they continued walking, and then I told them to halt or I would blow the top of their heads off.
- Q And then when you were standing, speaking to Goodman, the

other two men, as matter of fact, were in advance of Goodman?

A They walked ahead.

Q They walked ahead? A Yes, sir.

Q Had they stood in front of 254, speaking at all together?

A Who?

Q Had they been standing in front of 254 East Houston Street, speaking together, before you went up there? A No, sir.

Q You are quite sure that they came out of the building together? A Yes, sir; I heard the door slam.

Q Did you see in whose possession -- oh, just a moment -- oh, a pair of pants is produced here, that apparently was wrapped in paper at the time. Was it wrapped in the same paper that is here produced? A No, sir.

Q Was the pants wrapped up at all? A No, sir; just the way it is now.

Q Did you see in whose possession that pair of pants was?

A No, sir; I couldn't say that; one of the three.

Q You couldn't say in whose possession the pair of pants were?

A No, sir; not in whose possession.

Q Were they dropped before you got up to Goodman, to speak to him? A Yes, sir.

Q Were they dropped at his feet or at a distance away?

A At whose feet?

Q Goodman's? A I didn't say that they were dropped at

Goodman's feet.

Q Where were they dropped? A They were dropped in the middle of the three of them. As the three walked down, it dropped, and I noticed it drop.

Q Now, I want to know this from you: When you stopped Goodman in front of 254---- A I didn't stop him in front of 254. I stopped him in front of 256.

Q Oh, when you stopped him in front of 256, where were the pants then? A They were lying on the sidewalk in front of 254.

Q And do you know in whose possession they were before they were dropped? A No, sir; but one of the three, I am sure.

MR. GOTTLIEB: I ask that that be stricken out, your Honor.

THE COURT: Yes.

MR. GOTTLIEB: I will move it to be stricken out, as a conclusion of the witness.

THE COURT: Motion denied.

MR. GOTTLIEB: Exception.

BY MR. GOTTLIEB:

Q Did you pick this pair of pants up from the sidewalk?

A Yes, sir.

Q Is it not a fact that they were brought to you by a citizen?

A No, sir.

Q Do you know the name of the citizen was was upon the scene at the time of the arrest? A No, sir.

Q You don't know his name? A No, sir.

Q Haven't you seen the man since? A Who?

Q You heard the question; didn't you? A No, I didn't. I won't answer, unless I hear it.

Q I asked you if you had seen the man since? A What man?

Q The witness, that is the citizen who was there at the time of the arrest? A Yes, sir.

Q Do you know where he can be found? A I don't know where he lives. He works up in Murray Hill ball room or hall, right off Third Avenue.

Q You then made the arrest of these three men unaided, in the first instance I mean? A yes, sir; unaided.

Q Did you draw your pistol at any time? A Yes, sir.

Q Why? Was there any attempt made to escape, before you had done it? A Why, I wouldn't take no chance on it.

MR. GOTTLIEB: I object to that, and move to strike it out.

THE COURT: yes, strike it out. It is certainly not responsive to the question.

BY THE COURT:

Q Had they attempted to run away? A yes, sir. Two of them

did start off.

BY MR. GOTTLIEB:

Q You said before that these two men were in advance of Goodman? A No, I didn't say nothing of the kind.

Q You say that they continued to walk on? A Yes, sir.

Q While you were talking to Goodman? A Yes, sir. I only spoke one word to Goodman, and that was, "Where do you live?" and they kept on going, and I said, "Hold on there, or I'll take the top of your head off."

Q Well, I don't see what grudge you had against the top of their head.

THE COURT: No, no. Stop, Mr. Gottlieb. That is not proper.

BY MR. GOTTLIEB:

Q How far were they away from you and Goodman, when you threatened to blow the top of their head off? A About ten feet, I am telling you.

Q About ten feet? A Yes, sir.

Q And had you your gun out at the time? A yes, sir. Then I drawed it.

Q And they turned around and went back to you? A No, they didn't. They just stopped where they were standing.

Q And then you waled^k up to where they were standing?

A Yes, sir; after I questioned these men, so that they couldn't overhear it, so that they would contradict it, which they did.

MR. GOTTLIEB: Objected to, and I move to strike out the latter part of that answer.

THE COURT: No, I will allow it to stand.

MR. GOTTLIEB: Well, I object to it, as being a conclusion of the witness, as to the various statements of the witnesses.

THE COURT: It is allowed to stand.

MR. GOTTLIEB: Exception.

BY MR. GOTTLIEB:

Q You continued to question Goodman? A Yes, sir.

Q And the other two men stopped still? A Yes, sir.

Q And then you rapped your club? A No, sir. Then I brought Goodman over to the other men.

Q Yes, and while you were questioning Goodman, the other men were standing still, ten feet away? A Yes, sir.

Q And then you told them to stand in the doorway? A No. I questioned Bloomberg then.

Q Questioned Bloomberg? A Yes, sir.

Q And then you questioned the other fellow? A No, sir; he stood there and didn't say a word.

Q And then you finally told them to stand in the same doorway there? A No, sir. The place where I held them -- all those doors are open there, and, if a man ever gets ----

Q No. Did you ask them to stand in a doorway? A No, sir.

Q Well, where did you ask them to stand, until you could rap? I don't want your reasons. A I told them to go on up and show me where they were. I got them to 250, and put them in a deep doorway there.

Q You put them in a deep doorway there? A Yes, sir.

Q And you were all alone? A I was all alone.

Q And they were standing right in front of the door, or in the hallway? A No, sir; I wouldn't put them into an

open hallway. The door was shut.

Q Well, what is the name of the other officers who were there?

A Dooley, Ross, and later on Officer Hughes came.

Q Dooley, Ross and Hughes? A Yes, sir.

Q Did they hear any of the conversation which you say you had with these men? A No, sir.

Q They heard none of it? A No.

Q They were not there when you spoke to them? A No, sir.

Q They had no conversation with these men in your presence?

A Unless they asked them where the goods was, or that.

Q Well, do you know whether they did or not? A I am telling you that they asked them where the goods was.

Q You are certain of that? A Yes, sir.

Q When was that? A When we came out.

Q When you came out of where? A Out of 252, after we found out that the place had been broken open.

Q And where were these defendants? A At 250 still.

Q And were they being covered by some other officer? A Yes, sir; by Officer Ross.

Q Did Goodman ever admit to you that he had been in 250 East Houston street? A No, sir; and he didn't deny it, either.

MR. GOTTLIEB: That is objected to, and I move to strike out the latter part of the answer.

THE COURT: Motion granted. It is stricken out.

BY MR. GOTTLIEB:

Q I ask you again: Did the defendant Goodman say to you that he was in that building? A No, sir.

Q Did either of the other two men ever say to you that they had been in that building? Yes or no. A They told me that they had been in a building on the block.

Q I am talking now, officer, of 252 East Houston street.

A They didn't know what number they were in.

MR. GOTTLIEB: I object to that, and move to strike it out, as irresponsible.

THE COURT: Motion granted. It is stricken out.

BY MR. GOTTLIEB:

Q Did either of the two men, Bloomberg or Louis, ever tell you that they had been in the building 252 East Houston street? A No.

Q The building that was burglarized? A No, sir.

Q Did you see them in that building on the night of the arrest? Yes or no. A No, sir.

Q Did you at any time see any property in the possession of any of these defendants, except as you have testified concerning this pair of pants? A No, sir.

Q And these pants that are called here, or are brought here, they were noticed by you on the sidewalk for the first time?

A No; before they struck the sidewalk they were noticed by me.

Q Before they struck the sidewalk? A Yes, sir.

Q And how many houses were you away, when you saw these pants in the possession of any of these defendants? A When they dropped them?

Q Yes, when they dropped them? A Six.

Q Which one dropped them you don't you? A No, sir.

Q Which one held them you don't know? A No, sir; I don't know.

Q You examined the bars on this window? A Yes, sir.

Q You told his Honor and this jury that they were certainly an inch thick? A I didn't say certainly. I said about an inch thick.

Q About an inch thick? A Yes, sir.

Q That had been twisted? A Bent.

Q Bent? A Yes, sir.

Q Did it seem as if they had been bent with some instrument?

A No, sir.

Q Could you twist that? A Yes, sir.

Q You could? A Yes, sir.

Q Twist bars? A Not twist them; bend them.

Q Bend them? A Yes, sir.

Q Bend a bar an inch thick? A Yes, sir.

Q Was there an iron bar at the bottom? A No, sir.

Q That had holes or sockets, into which these bars fitted?

A Not at the bottom.

Q And was some of the masonry or the brickwork torn away?

A Yes, sir.

Q And had it the appearance of having been done with the naked hands? A Oh, I couldn't tell you what it was done with.

Q You couldn't tell? A No, sir.

Q You have had how many years' experience in the Police Department? A About eight years.

Q And you have made numerous arrests for burglary? A Yes, sir.

Q And wouldn't it be your best impression or opinion that the entrance of this window was forced by some instrument?

A Yes, sir.

Q Has it been your experience ----

MR. BLAKE: Objected to.

MR. GOTTLIEB: I am calling him as my expert in this.

THE COURT: I will allow it, as he calls him as his own expert.

BY MR. GOTTLIEB:

Q Has it not been your experience that, when men go to burglarize a shop or factory building, that they come there

with tools, so as to cut bars or twist them? A It would depend upon what kind of place they are going to touch.

Q Well, now, for instance, they touched this place, if that was protected in a way by iron bars -- you found no instruments in the possession of the defendants? A No, sir.

Q Absolutely none? A No, sir.

Q You know Goodman's father, don't you? A No, sir.

Q Were you in Goodman's house after his arrest to inquire about his character? A I was there this morning.

Q Were you there to find out as to his character, officer?

A Yes, sir.

Q Did you find out that he had a good character?

MR. BLAKE: I object.

THE COURT: I will allow it. If he puts character in issue, there is no objection, I should think.

Proceed.

BY MR. GOTTLIEB:

Q Did you find that he had been working up to the day of his arrest? A No, sir; I asked ----

Q And did you have any conversation with his father? A No, sir; with his mother; with his sister, I think it is.

Q With his sister? A Yes, sir.

Q Have you any State Prison record for him? A Not for him.

Q Did he tell you in the police court where he had worked, and

for whom he had worked? A He told me he worked in Canal and Centre street, I think.

Q Did you go to that place to verify his statement? A No, sir. He didn't know the name, he says.

Q Did you ask the other man, Bloomberg, where he had worked?

A He said he was not working.

Q He said he was not working? A Yes, sir.

Q He told you he was an operator? A Yes, sir.

Q Did you ask him where he worked? A I answered that question.

Q Did you ask him where he had worked before he was out of employment? A No, sir.

Q Did the other man, Louis, tell you that he was an express-man? A No, sir.

Q Did these two men, Bloomberg and Louis, tell you that they or either of them had been over to the Turkish bath in Lafayette Place that night, and that that accounted for their presence on Houston street? A No, sir.

Q Officer, were those men represented by counsel in the police court? A No, sir.

Q Any record against the center man, Bloomberg? A He has been arrested.

Q What? A He has been arrested before.

MR. GOTTLIEB: I ask that that be stricken out. Rec-

ord assumes conviction. I have been arrested, too, within my lifetime.

THE COURT: No; that does not assume conviction.

MR. GOTTLIEB: It does not matter how trifling the offense was.

THE COURT: No. You took the chance and asked the question. It must stand.

MR. GOTTLIEB: Very well, sir.

BY MR. GOTTLIEB:

Q Now, are you prepared to tell this Court and jury when and where Bloomberg was ever convicted of crime? Yes or no.

A No, sir.

Q Do you know Mrs. Schneider? A Yes, sir.

Q Did you speak with her on the morning of the first of March?

A Yes, sir.

Q Did you take Mrs. Schneider to the station house? A Officer Larkin did.

Q Officer Larkin? A Yes, sir. Officer Larkin and I ----

Q Officer Larkin and you ---- A Yes, sir.

Q Did Officer Larkin accompany you from the station house for Mrs. Schneider? A We went down for the stolen goods.

While ----

Q And then you and ----

THE COURT: You must allow him to finish his answer.

A (continued) We had to go to the housekeeper for the key to get in to where the stolen goods were, and so she said, "There has been a ----"

MR. BLAKE: Objected to. This is improper, your Honor.

A (continued) Well, then officer Larkin says ----

BY THE COURT:

Q No. Do not tell us what she said, but what you did.

A Well, that is what we did; we went down there.

BY MR. GOTTLIEB:

Q And after you had a conversation with Mrs. Schneider at which Officer Larkin was present ---- A Yes, sir.

Q Mrs. Schneider went down to the station house in Fifth street? A Yes, sir.

Q And what time of the morning of March first was that, about, after you got back from court ---- A Yes, sir.

Q About 11 or 12 o'clock? A Yes, sir.

Q And these defendants had been in the meantime remanded from the police court back to the station house in your custody?

A Yes, sir.

Q Is Officer Larkin here in court? A No, sir.

Q He is not here? A No, sir.

Q When you got back to the station house who was the sergeant at the desk? A Schulum.

Q Were these three men brought up out of their cells?

A Yes, sir.

Q Who was there when they were brought up out of their cells?

A Sergeant Schulum and Larkin and myself.

Q And who else? A And this Mrs. Schneider.

Q Nobody else? A A couple of officers.

Q In uniform? A Yes, sir, and one man in plain clothes, Officer Livingston.

Q Officer Livingston, in plain clothes? A Yes, sir.

Q But the other officers had on their uniforms? A Yes, sir; all of them.

Q Was Mrs. Schneider asked the questions by you? A No, sir; by Officer Larkin.

Q Where were these men placed? Up against the wall in the front room? A Yes, sir.

Q Or in the section room? A No, sir; in the front room.

Q Sergeant Schulum was at the desk? A Yes, sir.

Q And you and Officer Larkin and two officers in uniform and one in citizen's clothes and Mrs. Schneider and the three defendants were there? A Yes, sir.

Q And she was in that room before the prisoners were brought out? A Yes, sir.

Q And she was asked whether she had seen these defendants before, by Officer Larkin; is that right? A Who?

Q Mrs. Schneider was asked by Officer Larkin whether she had

ever seen these defendants before? A Yes, sir.

Q And what did she say? A She looked at them and she said, well, Goodman and Bloomberg she recognized as being in the place before.

Q Goodman and ---- A Goodman and Bloomberg.

Q She recognized them as being in the place before? A Well, while I think of it, there was another lady ----

Q No; stop, stop. Goodman and Bloomberg she said she had seen before? A Yes, sir.

Q Did she say that in a positive way? A Yes, sir.

Q Positively? A Yes, sir.

Q Did she say when and where she had seen Goodman and Bloomberg? A She said in 252 East Houston street.

Q In that building? A Yes, sir.

Q When? A She couldn't say when positively.

Q She couldn't say when? A No, sir.

Q Did she give you an idea as to the date when they had been seen by her in that building? A No, sir.

Q Did you ask her whether it was within a week or a month? Yes or no. A No, sir.

BY THE COURT:

Q What was that that you were going to say about another lady?

A There was another lady that come up from that house that was in there. I forgot that.

Q She came up with Mrs. Schneider? A Yes, sir.

Q For the purpose of identifying the defendants? A Yes, sir; but she didn't know none of them.

BY MR. GOTTLIEB:

Q She didn't know them? A No, sir.

Q What did the woman say with respect to the third man, Louis?

A She didn't say anything about him until the next day in court.

Q Oh, the next day, in court? That is what I want. The next day in court this woman identified all three; is that right? A Yes, sir.

Q And the next day in court was she able to tell you when she had seen these men? A She couldn't say.

Q She had no idea? A No, sir.

Q Did she say in what part of the building at 252 East Houston street she had seen them? A At what time, did you say?

Q No; in what part of the building? A Oh, going through the hall, she said.

Q The lower hall? A Well, I didn't ask her that.

Q You did not? A No, sir.

Q Did you ask her whether she had seen them in the yard?

A There is no yard to it.

Q To this building? A No. You can't get through in

the yard.

Q There is no entrance that leads from the street, a hallway that leads from the street directly to the yard in the rear of that building? A No, sir.

Q Well, didn't this window in question look out into a yard?

A No, sir; the air shaft.

Q Into an air shaft? A Yes, sir.

Q Did she state what she had seen these men doing? A No, sir; only go through the hall; that is all.

Q Did she say whether she had seen them together, or singly?

A Together, I think, and single both.

Q Together, you think, and singly both? A Yes, sir.

Q You are not quite sure in that respect; are you? A No, sir; I didn't pay much attention to that.

Q Was Officer Larkin -- has Officer Larkin informed you -- had you heard any conversation, in the course of conversation -- as to where he was at the time you first accosted these men; whether he had seen you accost them or speak to them in the first instance, or not? A I don't understand the question.

Q Well, I will simplify it. Officer Larkin was on post where? A He was not on post.

Q He was not on post at all? A No, sir. He is the man in plain clothes.

BY THE COURT:

Q He is the ward man? A Yes, sir.

BY MR. GOTTLIEB:

Q And who was the other officer? A What other officer do you want?

Q You said there were two other officers there. A Dooley, Ross and Hughes.

Q Dooley, Ross and Hughes? A Yes, sir.

Q Then Larkin was not there on this night? A No, sir; he was not there until the next day, up in court.

Q Yes. I am mistaken. That is right. Were the posts of either of these men, Dooley, Ross or Hughes, were they on the side streets that run into Houston street?

A Dooley had the south side of Houston street, from the Bowery to Avenue B -- Clinton street.

Q Well, within how many minutes did an officer respond?

A It was a very short time. It was from Suffolk street over to Norfolk street and Houston street; and Ross from Avenue B and First street.

Q They didn't know anything about the transaction that you had with these men? A No, sir. I had all the conversation and all before I brought them into 250 and put them in the door. I didn't want them to get together.

Q Goodman denied any acquaintance with these other men?

A Yes, sir.

Q And the other men denied any acquaintance with him?

A They said they had merely met him at 175 Delancey street, and Bloomberg said -----

MR. GOTTLIEB: That is all, officer. I have not asked you anything further.

R e - D i r e c t E x a m i n a t i o n :

BY MR. BLAKE:

Q Now, officer, you know the ward these premises are situated in? A Yes, sir; Seventeenth Ward.

Q And it is in the Borough of Manhattan and the City of New York? A Yes, sir.

MR. GOTTLIEB: And that is conceded.

BY MR. BLAKE:

Q Now, these officers got there after what you have related?

A Yes, sir.

Q And they heard no part of the conversation? A No, sir.

Q And when you had them in the doorway you sounded the call for assistance? A Yes, sir.

Q And what about the citizen? What time did he get there?

A He got there when I come down to get the pants. He come from Avenue A, and walked down along with me.

Q And he could throw no light upon this case? A No, sir.

R e - C r o s s E x a m i n a t i o n :

BY MR. GOTTLIEB:

Q And it was not the citizen that picked up the pants; was it? A No, sir.

BY MR. BLAKE:

Q Oh, just one moment, officer. Let us see if we can understand this clearly. These two hundred and eighty-three pairs of pants and eight rolls of cloth, they were found on the west side of 252? A Yes, sir.

Q And were they found in the premises to which the broken window belonged? A Yes, sir.

Q And were they found in the complainant's place of business?

A No, sir; out of it. They were taken out of that store into another store, in the basement.

Q And what sort of store was that? A It was a vacant store.

Q Oh, a vacant store? A Yes, sir.

MR. BLAKE: The People rest.

MR. GOTTLIEB: If your Honor please, I respectfully move that you direct this jury to acquit this defendant upon -- just a moment. Be patient with me, if your Honor please.

THE COURT: I will be patient. I will listen to you for an hour, if you wish, but I will tell you in

advance that I am going to deny your motion. I am frank with you.

MR. GOTTLIEB: But I do not think you will deny it, after I explain to you that there is no case.

THE COURT: Well, the jury will pass upon that question.

MR. GOTTLIEB: And I will address you on the law of the case only.

THE COURT: Well, I think there is sufficient to go to the jury, on the law.

MR. GOTTLIEB: Your Honor will hear me, though?

THE COURT: Certainly I will. Proceed.

MR. GOTTLIEB: Now, here, in this indictment, your Honor, we have three counts, burglary in the third degree, grand larceny in the first degree, and criminally receiving stolen goods.

We will take the first count in the indictment, burglary in the third degree. Before there can be a conviction by this jury for the crime of burglary in the third degree, you must prove a forcible entrance and a breaking. Forcible entrance though there was, and breaking, though there appears to be by the testimony introduced, yet, under this count, there could be no valid conviction, because the breaking and entrance into

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that building, 252 East Houston street, has not been brought home to these defendants, and they cannot be convicted under that count by mere inference.

THE COURT: Yes; but their presence there must be properly explained.

MR. GOTTLIEB: I will get to that in a moment. Now, were these defendants found in the premises that were burglariously entered? If they were found in those premises, the case would be made out.

But here, your Honor, we have the proof that they were not found in the premises that were broken into. They were found coming from a hallway of a building adjoining, and all presumptions, your Honor, all presumptions must be in favor of the defendants. Where a presumption admits of two hypotheses, one of guilt and one of innocence, you must accept that one which exonerates the defendants, and your Honor will agree with me, I think, upon that statement of the law.

Now, we have this proof as to the first count, the burglary count, at least, that a place was broken into in this city, and goods were removed, and these defendants were seen coming, at an early

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hour in the morning, from a building adjoining. I think, your Honor, that that disposes of this question. We pass, then, to the grand larceny in the first degree.

THE COURT: The possession of stolen property in the night-time ----

MR. GOTTLIEB: That is just it; that is just what I am going to argue upon for two minutes, possession of the fruits of crime immediately after the commission of crime. That is the principle that we have to contend with here, I think.

In whose possession was the property found? In whose possession was the single pair of trousers found? Any proof? None, none.

And then, again, your Honor, another feature. In order to convict more than one defendant at this bar with crime, where neither have been seen to commit a crime, by an eye witness, you must prove concert of action.

Have they proven here that these men acted in concert for a criminal purpose, or that with a criminal intent they were there?

Which of these defendants had the pair of pants? If Bloomberg had them, Bloomberg is

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chargeable with an explanation. If Goodman had them, he is chargeable with an explanation; but, in the absence of any clear proof that one of the defendants had possession of this pair of pants, none of the defendants is called upon to make any explanation as to their presence there.

But I will briefly state that, on the defense, if I interpose one, that I will satisfy your Honor and the jury that this officer -- well, I had better stop there. I have no right to criticise him in this question. Now, as to receiving, what is there that allows anything to go to the jury?

THE COURT: No. I will submit the question to the jury, Mr. Gottlieb.

MR. GOTTLIEB: And we respectfully except to the denial of the motion.

THE COURT: Gentlemen of the jury, before permitting you to separate, I desire to caution you not to discuss among yourselves any subject connected with the trial of this case, or form or express any opinion thereon, until the case is finally submitted to you.

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

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MR. GOTTLIEB: May I ask if Mrs. Schneider is to be called as a witness in this case? If so, I ask that she be prohibited from speaking with the officer.

THE COURT: I do not know. The People have rested their case.

AFTER RECESS.

T H E D E F E N S E .

M A X B L O O M B E R G, one of the defendants, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. GOTTLIEB:

Q Now, Bloomberg, it will be necessary for you to speak loud enough for these gentlemen on the end to year you distinctly. A Yes, sir.

Q How old are you, Bloomberg? A Nineteen, going on twenty years of age.

Q Nineteen, going on twenty years of age? A Yes, sir.

Q And are you a single, or a married man? A Married.

Q Have you any children? A No, sir.

Q How long have you been in this country? A Five years.

Q And what is your business? A Operator.

Q And have you been working during those five years? A Yes,

sir; all the time.

Q Working at your trade? A Yes, sir.

Q Who was the last man for whom you worked? A Mr. B. Tietz, 246 and 248 Canal street.

Q And what is his business? A Overalls, manufacturer of overalls.

Q And how long did you work for him? A Nine months.

Q Were you working the day before you were arrested? A Half a day.

Q What? A Half a day, sir.

Q Half a day? A Yes, sir.

Q Do you know this defendant Louis? A No, sir.

Q I mean Louis. Do you know him? A No, sir.

Q Had you met him that day? A No, sir.

Q Do you know this other defendant, Goodman? A No, sir.

Q Never met Goodman anywhere? A No, sir.

Q The officer says that you stated that you met Goodman in some pool room; is that true? A No, sir.

Q Did you ever make that statement to him, or did you make it in the police court at any time? A No, sir.

Q You were at Houston street? A Yes, sir.

Q On the morning of the first of March? A Yes, sir; standing by a cafe; just happened to come out of there.

Q Standing at a cafe? A Yes, sir; after coming up from

the cafe, where I happened to have my coffee and cake.

Q And where is that cafe? A It is 258 or 260 East Houston street.

Q Well, that is within a few houses of 252? A Yes, sir.

Q And did you meet Louis in that cafe? A No, sir.

Q When did you enter the cafe? A What is that, sir?

Q When did you enter the cafe? A When I went in?

Q Yes. A From 2 until 3 o'clock. I don't remember the time exactly, because I happened to come down from uptown.

Q Where had you been before that? A 106th street and First avenue.

Q And whom did you visit there? A A friend of mine.

Q And what is his name? A Bloom.

Q And what is the number? A 399. I think so. I am not sure of the number. It is corner of First avenue, the first house from the corner.

Q And you went from uptown directly to this cafe? A Yes, sir.

Q Did you go down there alone, or with anyone? A All alone.

Q And how long did you remain in the cafe? A About thirty-five minutes or so.

Q Now, in coming down from 116th street --- A 106th.

Q Yes, 106th street. In coming down from 106th street to

Houston street, did you take the Elevated Railroad?

A No, sir; I went on the car.

Q The cable car? A Yes, sir.

Q And walked from the Bowery over there? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now, in order to get to this cafe at No. 260 or 258 East Houston street, was it necessary for you to pass Eldridge street? A No, sir.

Q So that you were not at the vicinity of Eldridge street and Houston street at about 3 o'clock that morning, as was testified to by this officer? A I was not there, sir.

Q You were not there? A No, sir.

Q Did you walk along Houston street accompanied by any person that night? A No, sir..

Q You saw neither of these defendants in that cafe? A No, sir.

Q Neither of them? A No, sir.

Q What did you do in the cafe? A I was drinking coffee and cake.

Q And after you were through there, you say you went out?

A Yes, sir.

Q Did you see this defendant Louis on the street when you went out? A I didn't see him walking. Only as I went out from the cafe, I was just on the top of the

stairs, when he came over to me, and he said, "Will you please tell me the time?" and I said, "No, sir; I don't know the time, because I haven't got any time on me." And he said then, "Will you give me a match?" and I said, "I don't know if I have any." And all of a sudden I heard somebody calling us back, "Hay, come back here," and I turned around, and I couldn't see who it was, because it was dark.

Q Somebody hollered, "Come back"? A Yes, sir.

Q And you went over to where the man was standing? A Yes, sir.

Q Who hollered "Come back"? A Yes, sir. First off I didn't know who had hollered at me.

Q But the second time he hollered did you go to where the voice came from? A Yes, sir.

Q And did this man go with you? A Yes, sir.

Q Who was there when you walked back? A An officer was talking to this fellow.

Q An officer was talking to Goodman? A Yes, sir.

Q Now, tell his Honor and this jury what took place there.

A Well, as I come up there the officer asked me, "Where are you going from?" and I told him, "From the cafe," and he said, "What were you doing there?" and I said, "Drinking coffee," and he said, "What have you got in your

pockets?" and I said, "I haven't got anything out of the way, and you can search me if you think I have," and he unbuttoned my coats, and he went through me that way (illustrating) and looked in my pockets, and couldn't find anything. And then he said to the other two fellows -- and he took us over -----

Q And did he have a gun in his hand then? A No, sir.

Q You made no attempt to run away? A No, sir.

Q You say that when you came back to where Goodman and the officer were standing ---- A Yes, sir.

Q The officer asked you where you had been? A Yes, sir.

Q And you told him in the cafe? A Yes, sir.

Q And he asked you what you had about you? A Yes, sir.

Q And you told him nothing? A Yes, sir.

Q And then he unbuttoned your clothes and searched you, but found nothing? A Nothing; found my book.

Q What book? A A book from my work, what I put my work in.

Q Your work book? A Yes, sir. He took it out of my pocket in the station house.

Q And what did he do with respect to this man who asked you for a light? A What is that?

Q What did he say in regard to Louis? A The same thing he said to me. And he said, "What have you got in your pockets?" and he said, "I ain't got nothing in there," and

he searched him too.

Q Did he, before that, do what he told the jury he did, threaten to blow the roof of your head off? A No, sir.

Q He had no gun out? A No, sir.

Q Nothing of the kind took place there? A Yes, sir.
Another officer q-----

Q Well, nothing took place, so far as this officer was concerned? A No, sir; he had no gun.

Q Did he search Goodman? A Yes, sir.

Q Was there anything found on him? A On the street? I didn't see whether it was found anything on him.

Q Now, a pair of pants was produced here in court this morning. A Yes, sir; I seen them.

Q Did you have those pants in your possession? A No, sir.

Q That night? A No, sir.

Q Or any other night? A No, sir.

Q Did you see either of these other defendants have that pair of pants? A No.

Q No? A No, sir.

Q At that place? A No, sir.

Q While you were standing there with the officer was a pair of pants brought to him? A Yes, sir.

Q And brought to him by whom? A By a citizen man, and a fat officer, a big fat officer, as we were standing with the

officer, the three of us. It was brought up from Avenue A or Avenue B -- I don't exactly remember where it was -- it was brought up from Avenue B by an officer and a citizen man, with a blond mustache.

Q And how long after you had walked up to the officer, when he hollered to you to come where he was, how long after that this pair of pants were brought to the officer?

A About eight or nine minutes.

Q Well, was there a crowd there? A Well, after the other officers come around, they commenced to hit us with their clubs.

Q Never mind that. Was there a crowd around there? A Not at that time. There was a few men walking up and down the street.

Q There was a few men on Houston street? A Yes, sir.

Q You pleaded not guilty in the police court; you said you were not guilty? A Yes, sir.

Q And did you make the same statement there that you made here?

A Yes, sir.

Q Have you ever been convicted of any crime? A No, sir.

Q Have you ever been arrested? A Yes, sir.

Q For any offense? A Not for anything wrong.

Q What were you arrested for? A For suspicion.

Q Suspicion of what? Breaking a window? A No, sir.

Q With a pebble? A No, sir.

Q Well, what? A It is about two years ago, I think, that I was arrested late at night.

Q Two years ago? A Yes, sir.

BY THE COURT:

Q Late at night? What do you mean by late at night? A At 2 o'clock.

Q At 2 o'clock in the morning? A Yes, sir; walking home that time.

BY MR. GOTTLIEB:

Q Were you discharged? A Yes, sir.

Q So that you never have been convicted? A No, sir.

C r o s s E x a m i n a t i o n :

BY MR. BLAKE:

Q Were you tried before a jury? A No, sir.

Q Just as you are being tried now? A No, sir.

Q Were you charged with burglary on that occasion? A No, sir.

Q Are you sure about that? A I don't know what I was charged for. I was charged with suspicious.

Q Do you know anybody by the name of Abe Goldstein? A No, sir.

Q Who were you with, when you were suspected before?

A Two more fellows.

Q Oh, there were three of you together then? A Yes, sir.

Q And wasn't the charge against you burglary? A Well, I don't know whether it was burglary, but I know it was charged for suspicion.

Q And weren't you arraigned here and charged with burglary before Judge Newburger?

MR. GOTTLIEB: Well, I suppose it is futile for me to object.

THE COURT: Well, you brought it out.

BY MR. BLAKE:

Q And was it not before Judge Newburger that you were tried here? A I don't know. I was sitting in that chair, and I was discharged for suspicion.

BY THE COURT:

Q What name did you go under then? A Morris Mappin.

Q Morris Mappin? A Yes, sir. I didn't want to give my right name. I didn't want to disgrace my family.

Q And what is your right name? Mappin, or Bloomberg?

A Well, Morris Mappin, that is my right name. I didn't want to disgrace my people.

Q Then it seems that you gave your right name before, and were not afraid to tell your right name or to disgrace your family? A I didn't know anything about it then.

Q Oh, you did not? A No, sir.

Q And then Morris Mappin is your right name? A Yes, sir.

MR. BLAKE: And I ask that the indictment be so amended,
your Honor.

THE COURT: Yes; amend the indictment.

BY MR. BLAKE:

Q Well, now, I want to know when you were working before this
night of March first. A On the same day.

Q Where did you work? A At 246 and 248 Canal street.

Q For whom? A For Mr. B. Tietz.

Q Is he in court? A No, sir.

Q How long did you work for him? A Nine months I worked
for him.

Q Steadily? A Yes, sir, steady.

Q What was your business? A An operator.

Q What? A An operator.

Q Well, there are a good many kinds of operators. What
kind? A An operator of overalls and jumpers.

Q Oh, you were engaged in making overalls? A Yes, sir.

Q In somewhat the same kind of business as the complainant
here, only yours were overalls? A Yes, sir; overalls.

Q And you say that you worked for him nine months? A Yes,
sir.

Q Steadily? A Yes, sir; only in the summer. We are
busy in summer, and we work three or four days a week in

winter.

Q And how long had you been working steadily before the first day of March? A Well, I had been working from June until about six months. I have been working all summer straight.

Q That is from June until when? A From June on; from this June past.

Q And when did you stop work? A When I started working?

Q No. In the summer? A I have been working before this. I worked in 86 ----

Q Well, but you say that you were working for Tietz from June, 1899, until when? Until how late in the year? A I started in June, 1899, by this boss.

Q And how long did you work for him? A Until I got arrested.

Q And didn't I understand you to say that you worked for him during the summer? A I worked once before for him, when he kept his shop in Henry street.

Q Well, did you work for him in September last? A Yes, sir.

Q And in October last? A Yes, sir.

Q And in November last? A The same.

Q And you worked through the winter? A Yes, sir.

Q And then why did you say you worked through the summer?

A From the summer I started in, and I worked up to the

date when I got arrested.

Q The last day of February? A Yes, sir; and I have got my book in the court room.

Q And have you communicated with him since you were arrested?

A No, sir; I didn't want to leave him know it.

Q And how much did you receive a week for wages? A Fourteen dollars and fifteen dollars a week. When I was busy I used to make eighteen and twenty.

Q And how old are you? A Nineteen, going on twenty.

Q And where were you born? A In Russia.

Q And where did you live at the time of your arrest? A 137 Ludlow street.

Q And did you know that these other two defendants were born in Russia? A No, sir; I never saw them before.

Q How do you spell Bloomberg? A (Spelling) B-l-o-o-m-b-e-r-g.

Q Did you ever take that name before? A No, sir.

Q Have you anybody belonging to you that bears that name?

A A cousin of mine.

Q Of that name? A Yes, sir.

Q And then you were not afraid of being mistaken for him?

A No, sir.

Q What is his first name? A Morris.

Q Morris Bloomberg? A Yes, sir.

Q How old did you say you were? A Nineteen, going on twenty.

Q And where did you live at the time of your arrest? A 137 Ludlow street.

Q And how long did you live there? A The first month I lived by my mother and my wife together.

Q And you are a married man? A Yes, sir.

Q And where did you work before you worked in Canal street?

A I worked at 68 Walker street -- 86 Walker street.

Q And how long are you in this country? A Five years.

Q And did you know how to speak English before you came here?

A No, sir.

Q Well, now, what explanation do you give to this Court and jury for being in company with these other men, who came from Russia also?

MR. GOTTLIEB: Objected to.

THE COURT: Objection sustained.

BY MR. BLAKE:

Q Well, you were with these two men on that occasion; weren't you? A No, sir.

Q Well, now, the officer states that you three men were walking along together. A No, sir.

Q Where did you first see these two men? A When the first officer called us back. This Louis I have seen before,

this big fellow.

Q Well, when you were called back, were you walking with any one of these other defendants? A I was walking first, and this big fellow walked on behind me.

Q Now, when the officer told you that he would blow off your heads, where were you?

MR. GOTTLIEB: Objected to, as the witness has denied that any such remark was made.

BY MR. BLAKE:

Q Well, did you stop, in response to the officer's call on you, that night? Did he cause you to stop? A I was walking.

Q And did you see the officer there? A No, sir; it was dark. I couldn't see him. And the officer hollered.

Q Now, did you hear the officer say anything? A When I come over to him he asked me what have I got.

Q Well, what caused you to go over to him? A I don't know.

Q Well, if he said nothing to you, why did you go over to him? A When I come over to him he said, "What are you doing around here?"

Q Well, why did you go over to him? A Because he called me back.

Q And what did he say when he called you back? A He said,

"Where are you going?"

Q And where were you then? A In Houston street, coming out of the door of the cafe.

Q And were you walking? A No, sir; standing there.

Q What were you doing, standing there? A I just happened to come out from the cafe, and this other man come over to me and asked ----

Q Did you come out all alone? A Yes, sir.

Q And where was Louis at the time? A Coming up to me.

Q Up to the sidewalk? A Yes, sir, on the sidewalk.

Q And where was the other man, Goodman? Where was he at time time? A I don't know where he was, because it was dark. I saw two men standing there, a big man and a small man.

Q Who keeps that cafe? A Weiss.

Q And that cafe was open at 4 o'clock in the morning? A It was not 4 o'clock in the morning.

Q What time was it? A From 2 to 3.

Q And that was the time when you were arrested? A Yes, sir.

Q And how long had you been in the cafe? A About thirty-five or thirty minutes; I don't remember exactly.

Q Where did you come from when you got to that place?

A 106th street and First avenue.

Q What were you doing up there? A Seeing a friend of mine named Bloom.

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Q Bloom? A Yes, sir.

Q What is his business? A Storekeeper.

Q Storekeeper? A Yes, sir.

Q What sort of store? A A cigar store.

Q Does he live there too? A Yes, sir.

Q Is he here in court? A No, sir.

Q Have you communicated with him? A No, sir.

MR. GOTTLIEB: That is objected to, as immaterial.

THE COURT: Allowed.

MR. GOTTLIEB: Exception.

THE WITNESS: Well, I can bring him down, if it is
necessary.

BY MR. BLAKE:

Q Well, what time did you leave Bloom's? A It must have
been about a quarter to 1.

Q It must have been about a quarter to 1? A Yes, sir.

Q How did you come down? A With the car.

Q I know; but a cable car, or elevated? A Cable car.

Q And where did you get off? A At Houston street.

Q What road did you come down? A Third avenue.

Q Third avenue? A Yes, sir.

Q And then did you go right to the cafe? A Yes, sir.

Q Have you ever been there before? A I have been always
there.

- Q Did you go in there alone? A All alone.
- Q And what time did you reach the cafe? A It must have been about 2 o'clock.
- Q And what sort of a cafe is it? What do they sell there?
- A Coffee and cakes.
- Q Who were in there; do you know? A A lot of people.
- Q A lot of people in there? A Yes, sir.
- Q At 2 o'clock in the morning? A Yes, sir.
- Q What were they doing in there? A Drinking coffee.
- Q What did you have? A Coffee.
- Q You had coffee? A Yes, sir.
- Q Well, did you have anything to eat? A Of course I did.
- Q What did you eat? A Coffee and napoleon cakes.
- Q And where did you live then? A About two blocks away from there.
- Q And in what direction is it from the cafe; east, or west?
- A I don't know whether it is east or west.
- Q Well, you know that east is toward the river? A I know that.
- Q And was your home toward the river, or the other way?
- A I live on this side of Houston street (indicating).
- Q And is your house east from the cafe, or west? A East.
- Q And were you going east? A I was going down just -- as I come out of the cafe I got across the street, and I

had to walk up two blocks to reach Ludlow street.

Q Well, were you going east when you crossed the street?

A Yes, sir; I went across the street.

Q Now, the officer says that you were going west. A No, sir. I was going nowhere when the officer called me.

Q Now, the officer says that he met you and these other two defendants about a quarter to 3. A Well, I want this officer to come up and tell me that.

Q Well, then, he is mistaken about that? A Yes, sir; he he is mistaken a great deal about that.

Q Well, now, did the officer come up to you and Louis after he had had a conversation with Goodman? A He didn't come up to me. I come up to him.

Q And he called you; didn't he? A Yes, sir.

Q And did he then ask you where you had been? A Certainly.

Q And did you say that you had been playing a game of cards with a friend? A No, sir.

Q Or a friend of Goodman's? A No, sir.

Q Nothing of that kind occurred? A No, sir.

Q What did you say to him? A He asked me where I am coming from, and I told him.

Q Where? A I told him I am just coming out of the cafe.

Q And you had no such conversation with the officer as he relates? He says that you said that you had been playing

cards. A Well, I didn't mention anything of the kind.

Q Did you mention a friend by the name of Ike? A No, sir; I did not.

Q Did you find anybody walking by your side when the officer called? A No, sir. Afterward I saw people walking up and down.

Q I mean the defendant Louis. A No, sir. He stopped me when I was coming out of the cafe.

Q Who did? A This fellow come over to me.

Q He stopped you? A No, he didn't stop me. He come over and asked me would I please tell him what time it was, and I said, "I haven't got no time around me, but I think it is between 2 and 3," and then he asked me, "Have you got a match, please?" and he was holding a cigarette in his hand, and I said, "I don't know if I have got any," and I started to look for a match, and then all of a sudden I heard the officer calling, "Here, come back," and it was dark, raining, and I turned around and I saw two men there, and I said, "Who is that there?"

Q And who were the two men? A Well, this officer and Goodman, and he made his hand that way (illustrating), and so I went back, and he said, "Where are you going from?" and I said, "The cafe," and he said, "Where do you live?" and I said, "137 Ludlow street, corner of Rivington street,"

and then he searched me.

Q And did he stand you three up in the doorway, and rap for assistance? A Yes, sir; he put us up to the doorway.

Q Did he suddenly call for assistance? A Yes, sir, with his stick, on the sidewalk.

Q And you three were together there? A Yes, sir; then we were together.

Q And two officers came up? A Yes, sir.

Q And a citizen? A Yes, sir.

Q And then all that part of the story of the officer is correct? A Yes, sir.

Q And you did see these pants there that night? A Yes, sir; when the other officer and a citizen come up to us, and he asked this officer, the one who got us, and he said, "What is the trouble?" and he said, "Those fellows were -- I have got suspicions on those fellows," and this fellow said, "I found a pair of pants"; and he called up another officer.

Q Well ---- A Well, please give me time to talk. And he called up another officer, and said to the other officer, "You stand here with these three fellows and I will go and look for something," and he went inside, and he came out and he said, "I can't find anything."

Q And it was your purpose to go to work the next day; was it

not? A Yes, sir.

Q Well, but you were in that cafe until 2 o'clock? A Well, I didn't know if I get work.

Q Now, did you mean to go to work on the first of March, or the 2d of March? A Well, I meant to work, but I didn't know whether there was any work in the shop.

Q Well, did you have any doubt about it at all? You had been working there steadily since June, you say. You had no reason to believe that the work was going to stop suddenly, had you? A Well, it always stops that time.

Q Well, did he tell you whether he had any work for you the next day? A I asked him if he had any work.

Q Well, then, did you expect to go to work on the 2d of March?

A Yes, sir. Well, I had to go to a friend of mine uptown, and I felt hungry, and I left my home at 9 o'clock to go uptown.

Q Now, did you tell this officer that you had been up to Harlem? A No, sir; I didn't tell him anything like that. Just I told him I am coming from uptown.

Q From the cafe? A No; from uptown.

Q Did you tell him that you had never met these people before and had not been in their company? A No, sir.

Q Why didn't you? A What should I tell him for?

Q Well, you knew you were charged with crime, in connection

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with these pants. A He didn't ask me anything about it. I didn't know, until I come up in court.

Q When the officer had you there and the other officers came in response to the summons of the first officer, didn't you know that you were charged with a crime? A No, sir.

Q Weren't you asked about these pants? A I didn't ask him anything.

Q Weren't you asked about these pants? A No, sir. He said, "Who had them pants?" and I said, "I don't know anything about any pants."

Q Well, you knew that there was some trouble about those pants? A Yes, sir; I knew that, that there must be some trouble.

Q Now, in view of the fact that you had not been in the company of these men, and didn't know them at all ---- A No. I told him I was not in between them; that I didn't know them at all.

Q Well, now, why didn't you tell us so, a moment ago? A Well, that is what I told him.

BY THE COURT:

Q Now, you say that you never saw any of these men before? Is that so? A Yes, sir.

Q Now, when you were tried before me, was not this other man tried with you? A No, sir.

Q He was not? A No, sir.

Q Under the name of Goldstein? A No, sir.

Q You are sure about that? A Yes, sir.

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S A M U E L G O O D M A N , one of the defendants, being
duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. GOTTLIEB:

Q How old are you? A 21 years.

Q Louder? A 21; yes, sir.

Q Where were you born? A In Russia, Galitza, Russia.

Q And how long have you been in this country? A Seven years.

Q Were you born in this country? A Yes, sir; I have got a
father and mother.

Q And sisters and brothers? A Yes, sir.

Q Do you live with your parents? A yes, sir.

Q Where do you live? A 126 Delancey street.

Q 126 Delancey street? A Yes, sir.

Q And what is your business? A Cap-maker.

Q Now, you remember the 1st day of March when you were arrested
on Houston street? A I could not speak very good English.

Q Well, try. Do you remember the day that you were arrested?

A Yes, sir.

Q Speak up? A Yes, sir.

Q Were you working before that day, the day before?

A With Schwartz Brothers.

Q You were working for Schwartz Brothers? A Yes, sir.

- Q And where do Schwartz Brothers keep? A 71 and 75 Greene street.
- Q Greene street? A yes, sir.
- Q Do they employ many people? A Yes, sir; about one hundred and fifty, I guess.
- Q About one hundred and fifty people. A Yes, sir; and may be less than that; I could not say.
- Q How long were you working for Schwartz Brothers at the time of your arrest? A About a year.
- Q How long? A A year. I was working before about four years before, and then I am going away, and I was working in another place, and then I came back in June, and I do not stop one day in the year.
- Q Now, before that year, whom had you been working for?
- A I was working by Lesser and Rafael.
- Q You were working by Lesser and Rafael? A Yes, sir.
- Q And where did they keep? A In Greene street, corner of Third.
- Q Greene street, corner of Third? A Yes, sir.
- Q How long had you worked for that firm? A The time I am going away from Mr. Schwartz.
- Q How long had you worked for them? A About six months, and then I came back to work.
- Q But before that six months you had been again working for

Schwartz Brothers? A Yes, sir.

Q And how many years altogether were you working for Schwartz Brothers? A This time that I am here in American.

Q For how many years? Were Schwartz Brothers the first firm that you went to work for? A Yes, sir.

Q And Schwartz Brothers and what other firm employed you during the seven years? A Lester and Rafael.

Q And those were the only two firms that employed you?
A Yes, sir.

Q Since you have been in the country? A Yes, sir.

Q And you worked for Schwartz Brothers all except six months, for Lester and Rafael, since you have been in the country.

Q How long have you been working for Lester & Rafael? A Six months.

Q And when you came to the country, whom did you work for?
A Schwartz Brothers.

Q And were they the only persons outside of Lester & Rafael, that you have worked for? A Yes, sir.

Q And you were in the employ of Schwartz Brothers for over six years? A Yes, sir.

Q And did you have your workbook in your pocket the morning that you were arrested? A Yes, sir.

MR. GOTTIEB: Have you that book here, officer?

THE OFFICER: Here it is.

BY MR. GOTTIEB:

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Q Is that your workbook? A Yes, sir. That is from June until the time I got arrested.

Q Yes; that is from June until the time you got arrested?

A Yes, sir.

Q Look at the last date. What is that last date in English? Can you read English? A Yes, sir; February 26th, 1900.

Q That was the last pay-day? A Yes, sir.

Q And the other entries there were for work done after the 26th of February, A Yes, sir.

Q So there are ~~four~~ three days work off ~~■~~ es, sir.

MR. GOTTLIEB: The book is offered in evidence, if your Honor please.

MR. BLAKE: It is admitted?

THE COURT: It is admitted.

It is marked Defendant's Exhibit 1.

BY MR. GOTTLIEB:

Q What time, what weekday was it, that you were arrested? What day of the week. A In the middle of the week.

Q In the middle of the week? A Yes, sir.

Q What time did you get away from work the day before you were arrested? A I worked all day.

Q You worked all day? A Yes, sir.

Q And what time did you get home? A Six o'clock.

Q About six o'clock? A Yes, sir.

Q And were you a piece-worker? A Yes, sir.

- Q Whom did you see when you got home? A My mother and her old man.
- Q Your mother and your father? A Yes sir, and my little sister; she come from school.
- Q And when did you--did you have your supper? A Yes sir; I had my supper, and I washed myself, and I am going to see my sister. She lives in Newark, and she is married, and I came from my sister at twelve o'clock.
- Q You stayed at your sisters until what time? A Until half past ten o'clock / and then I got a car, and I wanted to go down to my house, and I got down to the corner of Essex and Delancey street---it is three or four buildings from my house, and I see some boys who are playing cards, and I sit down there about two hours. I was playing with them.
- Q You played a little cards yourself? A And then I went to take a cup of coffee and something to eat, because I know that home I can not get it so late, and I come just straight for Essex street, and crossed on the other side to Houston street.
- Q There are lots of those cafes and coffee houses on Houston street? A Yes, sir. And right in the middle of the block I wanted to go in, about two houses above, and then comes the cop, and he said, "What have you got?" And he seen my money, and I wanted to see if I have got money enough in my hand, before I want to go in, and he said, "Where are you go-

ing?" And I said, "I come from 100 Essex street, from that playing place.", and he said, "Hold on. Stand here", and I said nothing and I stood there.

Q And while you stood there, what did he do? Did he halloo for somebody else? A Yes, sir.

Q And when he halloaed what did he say? A "Stay here", he said.

Q He told you to stay there? A Yes sir.

Q Did he halloo for somebody else? A He halloaed for another two people that was walking there.

Q He halloaed for two other men that were walking? A Yes sir.

Q Had you been with these two men that night? A No; I did not see them men.

Q Did you know them? A No, sir.

Q Had you ever spoken to them? A What kind of business can I do with them?

Q Had you ever spoken to them? A No.

Q So when he halloaed to the two men who were down the street to come back, did they come back to where you were standing with the officer? A Yes, sir.

Q Did the officer search you there? A Yes, sir.

Q Did he find anything about you? A No; my book.

Q Your book? A Yes, sir.

Q Did he search these men (indicating the other two defendants)

A Yes, sir.

- Q Did he find anything? A I did not look at it.
- Q And what did the officer do then? A He opened my coat, and he said, "What have you got?" And I said, "Nothing," and I leave him looking my coat.
- Q And did any other officer come up? A Two, two policemen, and two officers came from the other side, and one man came with a pair of pants from the riverside.
- Q And another man came with a pair of pants from the river side? A Yes, sir.
- Q From the east? A Yes, sir.
- Q And what did that officer do? What did the other officer do? Stand you up in a doorway and keep you there a while?
- A Yes, sir; he said, "Stay there."
- Q And did you stay? A Sure, I stayed.
- Q Did the officer pull his revolver on you? A Yes, sir; he held the revolver in his hand.
- Q And did the officer keep you three men standing in the doorway? A There was a store; I think it was a shoestore? And there was a vacant house, and he put me right inside of the door.
- Q And then where did they take you? A To the station house.
- Q And did the officer ask you whether you had been in a certain building there, broken in? A He told me, "Where you come from?" And I told him, "I don't know where I came from."

Q Now, where you in any building on Houston street that night? Did you break in anyhouse in Houston street that night? A No, sir; I was no place. I walked there just to have a cup of coffee.

Q And you had not been in any building then? A No, sir.

Q Have you ever been convicted of any offense? A Arrested?

Q Have you ever been convicted, found guilty? A No, I never was in the court ; it is the first time in my life^d.

Q The first time in court in your life? A Yes, sir.

Q Never been arrested even? A No, sir; I never had any trouble with a policeman in my life; I never even saw a policeman.

Q Your parents are in court? A Yes, sir.

Q And your employer? A What is that?

Q The man you worked for? A I don't know; yes.

Q Mr. Schwartz? A Yes, sir.

C r o s s E x a m i n a t i o n:

BY MR. BLAKE:

Q What time was it when you were arrested that night?

A That was about half past two, near three.

Q That was about half past two, near three? A Yes sir.

Q What were you doing out until that hour of the night?

A I went to take a cup of coffee.

Q And why were you out so late? A Well, that is the first time I came there so late. I came from Newark.; I went to

see my married sister.

Q And what time did you arrive in New York City that night?

A I came from the work, it was about six o'clock.

Q- Yes. A And after that I washed my hands, and I had my supper, and it was half past seven, and I go to my father, and I said to him, "I want to have a dollar". I want to go to my sister in Newark."

Q And where does your sister live there? A In Bank street.

Q What number? A I can't tell you the right number, because she does not live there very long. She is married.

Q Well, how could you find the house if you did not know the number? A Well, I am there a lot of times.

Q And how long had she lived there? A About four or five months.

Q And how long before that had you been there? A Well, I was there last Sunday, the Sunday before I was arrested, and she said she felt a little sick.

Q And you also went that day? A Yes, sir, because she told me, on that Sunday when I was there with my brother----

Q How did you come from Newark, on the train or car?

A No, on the car.

Q And what time did you get to New York? A About half past eleven or a quarter to twelve.

Q And you did not have a very long time to stay in Newark if you started from home at half past seven? A I came

at about six o'clock

there at nine o'clock.

Q You got there at nine o'clock? A Yes, sir.

Q Now, how did you reach Houston street? A I came from Essex street. I go straight from Essex street on the other side.

Q Who wrote those entries there (indicating Defendant's Exhibit 1)? Is that your writing? A No, I can not write. The man that gives out the work writes that.

Q What did you say your age was? How old are you?

A 21 years.

Q Well, you say you also have been working? A I never stopped in my life.

Q Since June? A Yes, sir, since June; I never stopped a day in my life.

Q And where did you work before June? Since last June you worked for Schwarts Brothers? A Yes, sir.

Q And before that for Rafael? A Yes, sir, six months.

Q Now, where had you been working before you worked for Rafael? A For Schloss Brothers.

Q And have you been working steadily for seven years?

A I never stopped a day in my life.

Q You say that the officer searched you that night? A Yes, sir.

Q Did he find anything else besides this book on you?

A Yes, sir; he found the needles from my machine and my two rings I give him away.

Q You work all the time, don't you? A Yes, sir; I give that in the station house.

Q Now, what wages do you get? A I work piece work. Sometimes I make twenty-five dollars a week; and sometimes eighteen dollars a week, and sometimes thirty-three or thirty-two and sometimes fifteen.

Q And was this pocket book found in your possession?

A Yes, sir.

Q And these pawn-tickets? A Yes, sir; one pawn ticket; I took 75 cents for a half pound of cotton.

Q And here is a watch pawned also? A That aint my ticket.

MR. GOTTIEB: Well, is that an evidence of guilt?

MR. BLAKE: Well, they were found in his possession.

THE COURT: Well, I will allow it simply for the purpose of contradiction.

MR. GOTTIEB: And we will find that he has money in the bank in a minute or so.

BY MR. BLAKE:

Q And thus pocket for these rings was found in your possession

A Yes; I took that pawn ticket from a boy.

Q And you don't know these other two defendants you say?

A No; I don't know them.

Q You are the man that the officer stopped first? A Yes, sir.

Q He had a talk with you? A Yes, sir.

Q What did he say to you? A He told, "What are you doing here so late?" I told him I come from 100, Essex street; I was playing there.

Q He said you told him you came from Newark? A No, I did not tell him that; I told him I had come from Essex street.

Q And had you been in Essex street? A Yes, sir.

Q And you were on your way home from Newark? A No; that is three buildings from my house.

Q Did you stop in Essex street? How long had you been playing cards in Essex street again? A I was playing about two hours.

Q About two hours? A Yes, sir.

Q About two hours? A Yes, sir.

Q So you reached New York City from Newark at twelve o'clock?

A Nearly twelve o'clock.

Q And you were playing two hours in Essex street? A Yes, sir.

Q And then you came along and just as you reached the cafe you were arrested? A Yes, sir. There is two buildings from the cafe.

Q And did you tell the officer that you came from Newark that night? A No, I did not tell him.

Q Well, why didn't you tell him? A Because I came from that place, and I would not tell him where I came from.

Q Now, the officer states that he saw you with these other two defendants, corner of Houston and Eldridge about a quarter to three o'clock that morning. Is he mistaken about that? A I did not see them fellows.

Q You were not with them? A No.

Q Well, why didn't you tell the officer where you had been playing cards that night? A I told him.

Q Did you tell him where you had been playing cards?

A Yes, sir; 100 Essex street.

Q Didn't you tell him that you had been with these other people somewhere else, these other two men? A I did not tell him, not a word more.

Q Nothing more than that? A No, sir; I did not say nothing.

Q You are sure about that? A Yes sir; sure.

Q Did you make any explanation before today, either in the Police Court or to any of the officers, that you were in Newark, that you came from Newark? A No, sir.

Q You did not tell anybody else? A No, sir.

Q Then, this is the first time that you have made that statement? A Yes sir.

R e D i r e c t E x a m i n a t i o n :

BY MR. GOTTLIEB:

Q Just a question or two. You were not represented in the Police Court by any attorney, were you? A No.

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Q You had no lawyer in the police court ? A No.

Q Now, you have a bank account, haven't you? You have money in the bank?

MR. BLAKE: Objected to as immaterial.

MR. GOTTLIEB: Well, we want to show that if this man is a burglar, he has money in bank..

The COURT: Oh, no; you are not serious about that.

THE WITNESS: They found in my clothes a few dollars.

THE COURT: You are not serious about that, Mr. Gottlieb? A Yes, sir.

THE COURT: Why, then, no man could be convicted in this country.

MR. GOTTLIEB: I want to show his thrift and industry.

THE COURT: No, you can show that by his employer.

MR. GOTTLIEB: All right, your Honor, I will not persist.

S I M O N S C H W A R T Z , a witness called on behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. BLAKE:

Q Mr. Schwartz, are you in the cap-making business? A Not cap-making but ladies' hats.

Q And are you in partnership with anyone? A Yes sir.

Q With whom? A My brother, a brother of mine.

Q And how many years has that firm been in business?

A In this line?

Q Yes? A Eleven years.

Q Eleven years? A Yes sir. This is the eleventh year in that line.

Q You have come here as a voluntary witness without a subpoena? A I have been subpoenaed.

Q You have been? A Yes sir.

Q I did not know that my office had sent you one. Do you know this defendant, Goodman? A Yes, sir.
How many years

Q Do you know Goodman? A About five or six years.

Q About five or six years? A Yes sir.

Q And has he been in your employ? A On and off.

Q On and off? A Yes, sir; except about the latter part of May or the commencement of June, until the last of February

Q And how many ~~years~~ months was he away from your employ during those five or six years? A I could not remember that exactly.

Q Was it more than six months? A I could not tell you that.

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Q That you are unable to say? A No, sir.

Q You have not any of your time books here? A No.

Q Well, he has worked right along for you, outside of---say from May to the same month, making caps?

THE COURT: No, he did not work---since the last of February, he says.

THE WITNESS: Since the last days of February.

MR. GOTTLIEB: Ten his arrest followed the next day, your Honor.

BY MR. GOTTLIEB:

Q This is your workbook, is it not? A It may be our old books. Sometimes we furnish books, and sometimes the hands themselves furnish books.

Q And do you recollect the handwriting as that of one of your employees, Mr. Schwartz? A I do.

Q Now, what is the date of the last payday when money was received by the defendant Goodman for work? A February 26th?

Q And then are there entries there of other work done by him?

A Yes, sir.

Q Now, look at those entries. Can you---do you now, without referring to any book, know when he was working in your employ, the very last day? Can you give the date?

A ~~That~~ was the 28th day of February.

Q And those entries there that follow the entry of February

26th, those are for work done on February 26th?

A Yes, sir.

Q During the year that he has been working for you, you have seen him often, of course? You have seen him almost every day, haven't you? A Before when?

Q Before his arrest, for this, you have known him, you say?

A Yes, sir.

Q And you know other people in the shop who know him?

A Yes, sir.

Q And you have heard him spoken of, have you? A I have?

Q Yes. A If we spoke of him?

Q Yes. Have you heard him spoken of?

MR. GOTTLIEB: I suppose you will not be technical on the question of character, Judge Blake?

MR. BLAKE: Of course, not, if you are fair.

MR. GOTTLIEB: Well, I will put a fair question.

BY MR. GOTTLIEB:

Q Have you ever heard anything against him in respect to his honesty? A No, sir, never.

Q Always honest since he was in your employ? A Always; we found him to be an honest and hard-working man.

Q And are you prepared, if he be discharged here today, and exonerated from this charge, could you take him back, employ him again?

MR. BIAKE: Objected to. Objection sustained.

Cross Examination:

BY MR. GOTTLIEB:

Q What is the name, Mr.----- A Schwartz.

Q Well, now, Mr. Schwartz, these items that are entered in this book are as of February 26th; isn't that so? There is not any entry after February 26th, is there? A Yes, sir.

Q Where is it? A Right there (indicating)

Q But those are under the date of February 26th?

A Well, that is our payday.

Q Well, wasn't this work done on February 26th? A No, afterwards; it might be part of it was done on the same day.

Q And how do you know that any part of it was done on the 27th or 28th? A I know he was working there after that.

Q Now, that is under the date of February 26th. A No.. That is our last payday.

Q Well, was he working on the 29th? A No.

Q He was not working on the 29th?

MR. GOTTLIEB: There was not any 29th.

MR. BIAKE: Not this year?

MR. GOTTLIEB: No.

BY MR. BIAKE:

Q Well, then, he worked on the 28th? A Yes, sir.

Q Well, now, Mr. Schwartz, you have not heard people talk about him at all one way or the other, have you?

Before he was arrested you never heard anybody talk about him at all one way or the other? You never heard anybody speak about him one way or the other? A I heard nobody speak about him at all. no.

Q Now, nobody had occasion to speak of him in your presence?

A No.

Q Before he was arrested? A No.

Q You don't know, of course---you didn't see him, of course, in the evenings? You don't see him after he leaves your shop? A No.

Q And therefore you do not know how he puts his time in in the evening? A No, sir.

MR. GOTTIEB: I had his immediate family here, your Honor, but I did not care to put them on the stand and excite any sympathy, his old father and mother and sisters and brothers.

THE COURT: No. His father and mother, like all fathers and mothers, would naturally swear that he was a good boy.

MR. GOTTIEB: yes, sir, and I will rest my case, your Honor and renew my motion---

THE COURT: Have you rested, Mr. Blake?

MR. BLAKE: I will just recall the officer for a moment or two.

REBUTTAL:

EDWARD WHICHMAN, being recalled by the District Attorney, testified as follows:

Direct Examination:

BY MR. BIALE:

Q Now, officer, Goodman says that he told you that he was in 100 Essex street, playing cards that night. Is that so?

A No, sir; he told nothing of the kind. He told me he was playing cards in 175 Delancey street.

Q Now, officer, this is very important. Have you any doubt whatever about these three people being together on that night, when you saw them the first time and the last time?

A No, sir; none whatever.

BY THE COURT:

Q At the time of the arrest of these men are you positive that the goods, the trousers, were not brought to you by a citizen? A Yes, sir.

Q Or by another officer? A Yes, sir.

Q You are positive about that? A Yes, sir.

Q And you are positive that you saw the trousers drop before they came up to you? A Yes, sir.

(The case is closed on both sides)

MR. GOTTLIEB: Now, I renew the motion made at the close of the People's case.

THE COURT: Motion denied.

MR. GOTTLIEB: Exception.

THE COURT: Go to the jury, gentlemen.

(Mr. Gottlieb summed up for the defense, and Mr. Blake summed up for the People).

THE COURT: I will submit the case in the morning.

Gentlemen of the Jury, before permitting you to separate I must caution you not to discuss the merits of this case among yourselves or with any one else, or arrive at any conclusion as to the guilt or innocence of these defendants before the case is submitted to you.

Permit no one to speak to you about the case, and let no one speak of the case in your presence. If anybody makes an attempt to do so, why, call my attention to it.

Kindly be in your seats at half past ten o'clock tomorrow morning.

(The trial was then adjourned until Tuesday morning, March 27th, 1900, at 10:30.)

TRIAL RESUMED.

March 27th, 1900.

THE COURT: Gentlemen of the jury, one of the jurors has been taken suddenly ill, but I am informed that he will be all right, probably, by recess. Therefore, this case will stand over until 2 o'clock.

But before permitting you to separate, gentlemen of the jury, it is my duty to caution you not to discuss among yourselves or with anyone else any subject connected with the trial of this case, or form or express any opinion thereon, until the case is finally submitted to you. You will kindly be in your seats at 2 o'clock. I will excuse you until that time. This case will be called again promptly at 2 o'clock.

TRIAL RESUMED, at 2 o'clock.

AFTER RECESS.

THE COURT'S CHARGE.

THE COURT: Gentlemen of the jury, the defendants at the bar are charged with grand larceny in the first degree, burglary in the third degree, and receiving stolen property, knowing it to have been stolen.

It is claimed, on the part of the prosecution, that, on the night of the first of March, 1900, the premises occupied by one Leon Walter, in this city and county, were burglariously entered, and that certain property belonging to him, consisting of clothing, was removed by these defendants.

There seems to be no dispute that these defendants were found near the premises, at the time of the alleged burglary; and the only question, therefore, for you to determine, is, what were they doing there?

If you believe, gentlemen of the jury, that the defendants were simply on their way home, were strangers to each other, and that the officer was mistaken, in his testimony as to them, your verdict certainly ought to be that of not guilty.

But if you believe that these three defendants were acting in concert together, and burglariously entered the premises in question, and stole the property belonging to this complainant, your verdict ought to be that of guilty of either burglary in the third degree, or grand larceny in the first degree.

If the premises were entered by the breaking of the glass or the removal of any fixture around the window or the door, so that they might have obtained entrance, then your verdict ought to be guilty of burglary in the third degree, provided that you find that these defendants were the persons that removed such fixture or broke the glass, for the purpose of entering feloniously.

But if you believe that the door or window was open, so that they might have entered without removing any fixture or breaking the glass, and if you find that they were the persons who entered the premises burglariously, and stole this property of the complainant, your verdict ought to be guilty of grand larceny in the first degree.

As I said to you, gentlemen of the jury, there is no dispute in this case, as I understand it,

that these defendants were near the premises claimed to have been burglariously entered; and, in order to determine what their purpose was, or who is telling the truth in this case, you ought to consider all the circumstances surrounding this case: First, the neighborhood; second, the hour of the night, and there is no dispute that it was about 3 o'clock in the morning; and, third, have these defendants made a proper explanation of their presence there?

In the consideration of this case, gentlemen, I desire to impress upon your minds that, so far as the determination of this case is concerned, you have nothing at all to do with the effect of your verdict. You are not to be moved by any sympathy or pity for anyone. Whatever sympathy or pity is to be extended, the law has vested in the Court. You are simply to determine in this case from the evidence: Did these defendants burglariously enter the premises and take therefrom the property in question?

It is immaterial whether they were able to remove from the premises all the property taken. If they took the property from the room in which

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it was, and placed it in another room, in the same building, that is larceny. The taking of the property constitutes the crime.

In this case you have, on the other hand, the positive testimony of the officer as to what occurred on that morning; and, on the other hand, you have the testimony of two of the defendants.

In this connection I desire to say to you that the fact that one of the defendants did not take the stand must not weigh against him in the consideration of this case. While, formerly, under our law, a defendant could not testify in his own behalf, yet, under our present law, every defendant has a right to testify, but his failure to testify or neglect to testify in his own behalf must not weigh against him in the consideration of a case. In other words, the prosecution must make out their case beyond a reasonable doubt.

By reasonable doubt, gentlemen of the jury, the law does not mean a mere guess or a surmise that a defendant is not guilty. A reasonable doubt must be brought about by a fair and just consideration of all the evidence in the case; and if, after you have considered the evidence in this

case fairly and honestly, you find that there is a reasonable doubt of the defendants' guilt, you must give them the benefit of the reasonable doubt, and find them not guilty.

But if you believe, gentlemen of the jury, that these defendants were on the premises in question, ^{and} did commit the burglary charged, your verdict ought to be that of guilty as charged in the indictment.

Or, if you believe that there was no forcible entry by them, no removing of a fixture or opening of a door or window, but that the premises were open, and that they simply took the property without forcible entry, then your verdict may be that of guilty of grand larceny in the first degree.

I also charge, gentlemen of the jury, that if you believe that one or more of the defendants have made a proper explanation of their presence there, you may find a verdict of not guilty as to one or more of the defendants, and a verdict of guilty as to the third; or you may find a verdict of guilty as to two and a verdict of not guilty as to one. You are to determine, from a fair consideration of the testimony, where guilt is in this case, and

render your verdict accordingly.

Any requests or exceptions?

MR. GOTTLIEB: Just one or two, if your Honor please, I ask your Honor to charge the jury that in the absence of any proof of guilt established by the prosecution the defendants are not obliged to make any explanation of their presence in the vicinity of the place mentioned in the indictment.

THE COURT: I so charge.

MR. GOTTLIEB: And that a mere denial of the counsel's motion, addressed to the Court, to advise the jury to acquit, that a mere denial of that motion is no indication of the opinion of the Court as to the guilt or innocence of the defendants.

THE COURT: I so charge.

MR. GOTTLIEB: And I ask your Honor to kindly let the jurors have a list of the defendants, and that they may have them pointed out to them, before they retire for the consideration of the case; the different defendants.

THE COURT: They have heard the names of the defendants.

MR. GOTTLIEB: So that they may make no error as to them.

THE COURT: Oh, no. The jury have heard the names of the defendants, and all of the testimony, and they

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will remember the names as well as the testimony.

They may retire.

(The jury found Frank Louis and Max Bloomberg guilty of burglary in the third degree, and found the defendant Samuel Goodman not guilty.)

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