

START

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CASE

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- : I N D E X : -

WITNESSES:

Direct: Cross: Re-Dir.: Re-Gro.:

Peter F. Williams,

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Morris Lowenstein,

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- : I N D E X : -

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK :
vs. :
A A R O N S I L V E R S T E I N . :
-----X

B e f o r e :
HON. THOMAS C. T. GRAIN, J.,
and a Jury.

New York, January 7th, 1918.

Indicted for grand larceny in the first degree and receiving.

Indictment filed April 24th, 1918.

2897

A p p e a r a n c e s :

ASST. DISTRICT ATTORNEY EDER, for the People.

JOSEPH S. ROSALSKY, ESQ., for the Defendant.

A jury was duly impaneled and sworn.

Mr. Eder opened the case to the jury on behalf of the
People.

James E. Lynch,
Official Stenographer.

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PETER F. WILLIAMS, a witness called and sworn on behalf of the People, testified as follows:

(The witness stated that he resided at No. 99 Norman street, East Orange, New Jersey).

DIRECT EXAMINATION b/ MR. EDER:

Q Mr. Williams, what is your business? A I am a clerk employed by the New York Transportation Company, Pier 19, East River.

Q How long have you been with that transportation company?

A Since 1908.

Q Do you keep books of account there? A Well, yes.

Q And you have books showing the consignees of the cases of merchandise there? A Yes.

Q Will you please look at the books of November 9, 1915, and tell me whether there were any cases consigned to Morris Lowenstein?

MR. ROSALSKY: I object to that as incompetent, irrelevant and immaterial.

MR. EDER: I will withdraw the question and lay a proper foundation.

Q Can you from memory state whether there were any cases consigned to M. Lowenstein from Pier 19, East River, on the 9th day of November, 1915? A Not from memory, but I saw the documents to-day, so I know that they are there, but from memory, if I don't know anything about the case I would not be able to tell.

MR. ROSALSKY: I move to strike the answer out.

THE COURT: I will leave in part of his answer. I will strike out that part of his answer where he said from memory he

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A Yes?

the documents. If you will
by I can tell you whether

it out.

ber 9th, for M. Lowenstein.

to the question as immaterial and
proof.

sustain the objection, Mr. Eder. In the

you any witness who you can produce who saw

ses on the dock on the 9th, marked in Lowenstein's name?

MR. EDER: No, if your Honor please, but we have the evi-
dence here that there were seven cases marked Lowenstein from the
entry made that time, and that they were taken away on a truck,
the entry made at the very time they were taken away, with
numbers and all.

THE COURT: You have got to show a little more of the course
business, where this man was, what his business was and what
did.

is your duty over there? A My duty is claim agent.

name for one moment. On the 10th day of November, 1915,
were you working? Where did you do your work on the 10th
November, 1915? A On the 10th day of November, 1915, if it

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was not on a Sunday, I was working on Pier 20, East River.

Q Pier 20, East River, is about the foot of what street? A It is the foot of Peck Slip, your Honor.

Q On the 10th day of November, 1915, the work that you did on that pier was done inside of an office? A Inside of an office, your Honor.

Q Not out on the pier? A Not out on the pier.

Q And your duties on the 10th day of November, 1915, were in general, what? What were you called upon to do in the course of your employment on that day? A Clerical work, such as handling claims.

Q You were on the 10th day of November, 1915, a person employed by what company? A The *New Haven* and New York Transportation Company.

Q Your designation - that is to say, what your duties were called what were you called, a claim clerk? A A claim clerk, your Honor.

Q In connection with that work did you keep on that day some books, yes or no? A Books?

Q Did you make entries on that day in any books?

MR. ROSAESKY: One moment, if your Honor please, I object as leading.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A What books do you mean?

Q Did you on the 10th day of November, 1915, make any entries in any book whatsoever? A Oh, yes, I did. The cash --

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Q Now, you have answered my question; you did? A I did, yes, sir.

Q Are the books in which you made entries on that day now in this court room? A They are not, your Honor.

Q Will you describe briefly and plainly, as distinctly as you can, what your duties on November 10, 1915, as claim clerk, were?

A The handling of any claims that were being worked at that time; also the handling of transferred freight - that is, freight which arrives in transit destined to ports beyond New York, and which has to be transferred from our piers to piers of our connecting lines. Those records are kept also in addition to claims work.

Q Do you know what person on November, 1915, was employed by the company that you worked for on that day to turn over to persons calling for merchandise on that pier, such merchandise? A Of course, we have several delivery clerks, and of course, they change.

Q Will you state briefly the course of business on that pier when a person comes to the pier for the purpose of receiving from the pier goods on the pier which are there for delivery? A The truck driver calls at the pier and with his proper documents he is sent to the delivery clerk; the delivery clerk makes delivery.

Q In other words, a man comes on a truck, if you please, to that pier, having in his possession certain documents calling for the delivery to him of merchandise upon the pier? To whom did such persons show such documents on November 10, 1915? A Evidently to the party --

Q I don't want "evidently." I want your answer.

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MR. ROSALSKY: If he knows.

A (Continuing) The truck driver shows his document to the first delivery clerk he meets on the pier.

Q How many delivery clerks were employed on that pier on November 10, 1915? A On that pier, four.

Q Will you give me their names? A I could not from memory give you their names now.

Q Can you give me the name of any one of them? A Hall - William Hall is one, and the others I don't know, your Honor.

Q Now, those men - that is to say, those four delivery clerks, the name of one of whom you now remember, and the names of the others you cannot now recall, were working on that pier on November 10, 1915? A They were.

Q What if you know, was the course of business on that pier, if a person called with documents for the delivery of merchandise and that merchandise upon search was not found upon the pier?

MR. ROSALSKY: I object to that, if your Honor please, as incompetent, irrelevant, immaterial and speculative.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A In that case if the freight was not located at the time the truck driver called, we would notify him afterwards when the freight was located, and then, he came back the following day; but if he left it for any length of time we would notify him that the goods were on the pier.

Q The man comes on the truck with documents to the pier

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and goes to one of the four delivery clerks and shows that delivery clerk the document which he has; is that so? A Yes, sir.

Q That delivery clerk then goes out on the pier and searches for the merchandise mentioned in the documents; is that so? A Yes, that is right.

Q If that merchandise is found upon the pier then it is loaded upon the truck; is that so? A Yes, your Honor; that is quite right.

Q The driver of the truck then gives a receipt, does he, for the merchandise he takes upon his truck? A On the truck.

Q And drives off? A No. In addition to that he is given a pass so that he can leave the pier.

Q Having given a receipt, he receives a pass and having the pass he leaves the pier? A Leaves the pier.

Q You have nothing to do and had nothing to do on November 10, 1915, with the delivery of merchandise upon the pier? A No, your Honor.

Q You had nothing to do on November 10, 1915, with searching on the pier for merchandise said to be there? A No, your Honor.

Q Was it any part of your duty on November 10, 1915, to make any entry in any book of merchandise upon its arrival at the pier? Do you understand that question? A Yes.

MR. ROSALSKY: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled. Answer.

MR. ROSALSKY: Exception.

A Upon its arrival at the pier, as I said before, the trans-

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ferred freight is entered on such book --

Q What I mean to say is this --

MR. ROSALSKY: I move to strike out the answer.

THE COURT: I will leave it in.

MR. ROSALSKY: Exception.

Q (Continuing) If, on November 10, 1915, a case of goods reached that pier, would you, in the ordinary course of business make an entry in any book showing the arrival of that case upon that pier?

A No, your Honor, because that is not our system.

Q The answer is "No?" A The answer is "No."

Q Would you make a memorandum -- that is to say, any independent paper showing the arrival of the goods upon that pier? A No.

Q Did you on November 10, 1915, keep any book purporting to show what merchandise had been received upon that pier? A With the exception of the transferred freight.

Q Now, tell me what you mean by the transferred freight? A The transferred freight is freight which is destined to points beyond New York and have to be transferred from our piers to piers of connecting lines.

Q In other words, what merchandise did arrive at that pier which was not for delivery to parties in New York, and had to be sent on from New York by connecting lines, you made entries in books showing the arrival of such merchandise on that pier? A Yes, your Honor.

THE COURT: I don't see what you can prove by this witness?

MR. EDER: What entries, if any, are made of goods received from places other than New York on your pier?

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MR. ROSALSKY: I object to that as immaterial, irrelevant, incompetent, and not proper proof.

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

THE WITNESS: Shall I answer?

Q Yes? A The system is when a shipment is offered to us for forwarding at Providence, Rhode Island, the shipment is manifested on our ship's manifest. In addition to that a delivery bill is made out on board the ship, which is turned over to the cashier, and when the consignee calls for his goods he goes to the cashier, pays the freight charges and is given the delivery, and with that he obtains the goods.

THE COURT: I think I will strike out that answer.

MR. ROSALSKY: I move to strike out all the testimony.

THE COURT: Yes. I will strike it out and the jury will disregard it.

Q Who makes the entry upon the books of the delivery of the goods consigned to certain persons, to be delivered?

MR. ROSALSKY: I object to that.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

A The delivery clerk.

BY THE COURT:

Q In other words, what goods are taken from that pier, an entry is made in a book by one of the four men whom you have called delivery clerks; is that so? A Yes, that is right.

BY MR. EDER:

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Q Now, do you know whether there were any cases on November 9th consigned to M. Lowenstein & Sons?

MR. ROSALSKY: I object to that, unless the witness knows of his own knowledge.

THE COURT: Yes, sustained, unless he knows of his own knowledge.

Q Do you know? A I know of my own knowledge there were cases manifested and cases delivered.

Q Now, can you tell us the number of cases that were there manifested and delivered?

THE COURT: Well, I consider this witness does not know of his own knowledge, although he has said that he does--he does not know of his own knowledge.

BY THE COURT:

Q You didn't see any cases there, did you? A No.

Q And you made no entry? A I personally made no entry. The entries are made by the delivery clerk.

MR. ROSALSKY: I move to strike out the witness's last answer that he knew of his own knowledge.

THE COURT: Strike it out.

Q Do you know whether there are any entries in a book about cases consigned to M. Lowenstein & Sons?

MR. ROSALSKY: I object to that.

objection sustained. It is immaterial whether he knows or does not know that. You have got to get the delivery clerk here.

Q I show you a book and ask you if you know in whose handwriting

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this is (Showing book)? A No, sir.

Q You don't? A No, I don't know the man.

THE COURT: It may be marked for Identification.

(The book last referred to was marked People's Exhibit 1 for Identification).

(NO CROSS-EXAMINATION).

MORRIS LOWENSTEIN, duly called and sworn as a witness on behalf of the People, testified as follows:

(The witness stated that he resided at 46 West 25th street, New York City).

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Lowenstein, what is your business? A A converter of cotton goods.

Q And where is your place of business? A 40 to 46 West 25th street.

Q Have you any mill of your own? A What is it?

Q Have you any mill of your own? A No, we are interested in the mills, that is all.

Q Are you interested in any mills in Providence, Rhode Island?

A Yes.

Q Do you remember the month of November, 1915? A I do.

Q Did you have an order in cotton goods from your Providence mills? A Yes, sir.

Q Did you subsequently to having an order of such merchandise see any merchandise anywhere that you had ordered? A I did.

Q Where? A What kind of merchandise do you refer to?

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Q I mean the cotton goods that you had ordered? Had you seen it at any institution or building? A I did.

Q Where? A I saw some in the police station house.

Q What did you see at the police station house? A Seven cases of goods.

Q What kind of goods were they? A Cotton goods.

Q Can you tell us without referring to anything, from memory, what these seven cases of cotton goods contained? A I cannot without looking upon the slips from the mills of the goods, as to being shipped.

Q Can you tell us as to the number of the cases, the marks on the goods without looking at any paper? A No.

Q Looking at a paper - have you any paper with which you can refresh your recollection? A I have.

Q Will you please look at it? A (Referring to memorandum) Seven cases of cotton goods. Case No. C-17065; case No. C-17295; case No. C-16320; case No. C-16361; case No. DE-99670; case No. DD-9782 and case No. DD-9200, consisting of seven cases.

Q When you saw those seven cases in Headquarters - in Police Headquarters; is that right? A Yes.

Q Did you get those goods back at any time? A I got all the goods back with the exception of probably four or five hundred yards which were missing, but besides that there were taken seven pieces.

MR. ROSALSKY: I object.

THE COURT: Objection sustained.

MR. ROSALSKY: I ask your Honor to instruct the jury to dis-

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regard it.

THE COURT: Yes.

Q Did you get all the goods that you saw at Police Headquarters back? A No.

Q What did you get back? A Out of these cases I got back ^{the} most part of them, but the Police Headquarters retained a piece out of each case.

Q I show you this piece of cotton goods. Please look at it.

A This is case No. 17291.

Q Was this one of the pieces that you left at Headquarters as a sample? A One of the pieces taken out by one of the employes, or the officers.

Q Detectives? A Officers of the Police Department.

Q And the balance you took over to your place of business? A We did.

Q What was the fair and reasonable market value of this per yard in November, 1915? A At the time of the sale we sold these goods at eight and a half cents per yard.

Q How long have you been in the business? A Thirty-five years.

Q And you have bought and sold similar merchandise? A I did.

BY THE COURT:

Q How many yards? A About 3,000 yards to the case.

MR. EDER: I ask that this be marked for Identification.

(The roll of cotton goods last referred to was marked People's Exhibit 2 for Identification).

Q Please look at this piece of goods and tell me where this

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comes from, out of what case? A Case No. 9670 DD, containing imported drill.

Q And what was the fair and reasonable market value of that per yard at the time? A Nine and a quarter cents at that time.

Q How many yards of that were there? A About 3,000.

MR. EDER: I ask that it be marked for Identification.

(The roll of cloth last referred to is marked People's Exhibit 3 for Identification).

Q Will you please look at this piece of merchandise (Showing)? A Case No. 9,782, containing Beechwood holland. Every case has got a lot number thereon, and containing about 3,000 yards.

Q And what was the fair and reasonable market value of that? A Eight cents per yard.

Q You say every case has a lot number thereon? A Each case has a lot number, to compare with the mill.

Q And that lot number is assigned to you? A That lot number is assigned to us.

Q M. Loewenstein & Sons? A Yes.

MR. EDER: I ask that it be marked for Identification.

(The roll of cloth last referred to was marked Exhibit 4 for Identification).

Q Look at this, please? A 9,670, Regal holland. That is our own name which is registered on all these goods.

Q How many yards of that were there? A 3,000 yards, average.

Q And what was the fair and reasonable market value of that?

A Eight cents.

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MR. EDER: I ask that this be marked for Identification.

(The roll of cloth last referred to was marked People's Exhibit 5 for Identification).

Q Now, this one? A 17,065, Asiatic, 3,000 yards, average, to the case. This is used for rubber coats for the soldiers.

Q What was the fair and reasonable market value of that per yard? A Ten cents.

MR. EDER: I ask that this be marked for Identification.

(The roll of cloth last referred to was marked People's Exhibit 6 for Identification).

Q Please look at this? A Case No. 16,320, Long Beach cloth.

Q What was the fair and reasonable market value of that per yard? A Ten cents per yard.

Q How many yards of that were there? A About 3,000.

MR. EDER: I ask that this be marked for Identification.

(The roll of cloth last referred to was marked People's Exhibit 7 for Identification).

Q Look at this please? A 16320; ten cents per yard; Long Beach. That is the same case.

Q Will you please look at this number. Look at the last one you saw, again? A 16361.

Q That is the last one? A The last one. Long Beach; ten cents per yard.

Q Now, please look at the 16320. Where did that come from?

A That comes from the - 16320 - that comes from the Imperial Finishing Company, Providence, Rhode Island.

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Q Case No. 16320? A Case No. 16320, yes.

Q And the fair and reasonable market value of that is how much? A Ten cents per yard.

Q How many yards of that were there? A About 3,000.

MR. EDER: I ask that that be marked for Identification.

(The roll of cloth last referred to was marked People's Exhibit 8 for Identification).

Q Now, these lot numbers that are on each piece of goods are your lot numbers? A Are our lot numbers.

Q The lot numbers of M. Lowenstein & Sons? A The lot numbers of M. Lowenstein & Sons.

Q And these are single pieces taken out of the cases that you saw at Police Headquarters; is not that correct? A I did.

Q And left there, and the rest were taken back by you? A Yes.

Q Up to the time that you had found these cases of merchandise at Police Headquarters, had you sold them to anybody? A I did not.

Q Did you authorize anybody to take them from the piers? A No.
BY THE COURT:

Q I understand that on the 10th day of November, 1915, you were a member of a co-partnership? A I was.

Q And the firm did business under what name? A M. Lowenstein & Sons.

Q And it consisted of whom? A Of Morris Lowenstein, Abraham Lowenstein and Leo Lowenstein.

Q And its place of business in New York was where? A 20 West Houston street at that time.

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Q And its business you described as converters of cotton goods?

A Converters of cotton goods.

Q And for our information, what do you mean by converter? A We purchase the goods in the crude, and after we purchase them in the crude we give them out to the different finishers, either to be printed, dyed or bleached.

Q The merchandise which you have seen in court is not in the crude state, but in the finished state? A In the finished state.

Q In the crude state, you had had it already and had sent it out to concerns to be finished, had you? A That is it.

Q Those concerns, as I understand, in order to distinguish your goods from goods which they might receive from others, gave the goods belonging to you certain lot numbers? A Yes.

Q And you have mentioned in your testimony those lot numbers? A I did.

Q So that you identify these particular goods as being yours by reason of the fact that certain lot numbers - your lot numbers - appear upon the merchandise? A Our lot numbers and our names which we named them.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Mr. Lowenstein, the number and kinds in each case- are you guessing at the number of yards? A About; but I can give you the exact yardage, if you wish.

Q The reason I ask is I see somewhere in the indictment that some of the cases contain about 1,900 yards? A I can give you the exact yardage. I am sorry to say that I did not give you the exact yardage.

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Here I have the goods in general. There are about 3,000 yards to the case. There may be a difference in yardage, on account of the lot numbers, in order to finish the lot. Now, I will give you the itemized yardage, if you wish it. I can not only give you the yardage but the itemized yardage of each piece.

Q In giving the price, have you got the price on the memorandum?

A I have not, but I can tell you, because I am connoisseur of those goods.

Q What is the lowest cost per yard which you gave the jury?

A About eight cents.

Q Have you got any memorandum from the mill in Rhode Island?

A I have.

Q Which shows the price per yard? A These mills have not to look at the price. The merchandise is mine in the crude as well as in the finished state. They are only finishing these goods and they are getting a certain amount of money for finishing them.

Q Were these goods sent to the mill in Providence by your concern? A By M. Lowenstein & Sons.

Q And the mill in Providence finished the goods? A Yes.

Q And then you pay the mills? A For the finishing.

Q For the finishing? A That is all.

Q And then this mill in Providence sends the goods back to you?

A That is it. The goods never change title.

Q All that the mill in Providence did was to finish the goods?

A They were paid for their work.

Q And received so and so much compensation for finishing the

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goods? A That is it.

Q Did you ever give any price of a certain yardage - look at your memorandum? A I have only a memorandum here of the mills.

Q See whether you have any item, 3,153 yards of cloth? A What case number?

Q I don't know the case number. It did not appear in the indictment. It just says 3,153 yards; that is all. See if you have any such amount? A Yes, 3,153, Ancona white lineen.

Q And did you anywhere give the price of that as six and a half cents? A Might be. I will tell you why. In order to give you the price of these goods, when we give them to you we give them to you in the crude without finishing. The finishing of these goods, the lowest price of goods in bleaching costs three-quarters of a cent a yard, plus freight and expenses, and when I gave you these prices, I can give you these prices in the crude without being finished.

Q Now, have you got any other item, something like 1967-1/3 yards? A You have another bill there, Mr. Eder, of the DD Finishing Company. May I have it?

(Mr. Eder hands paper to witness).

A Yes.

Q And what was the price of that in 1915? A Beechwood holland.

Q What was the price of that? It appears in the indictment, six and a half cents? A Yes, that is in the crude. Of course, in that time I think it cost about seven or seven and a quarter cents, and finishing a cent and a half, is eight and three-quarter cents.

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Now, wasn't there another item of 4099-1/2 yards?

THE COURT: The witness can state generally the price named in the indictment. The price in a crude state, not finished. You want to bring out that the values stated in the indictment are different from the values as stated by the witness on his examination.

MR. ROSALSKY: That is my point.

THE COURT: And the witness sticks to a claim that the discrepancy by stating that on the examination he made here of it, he has given the price of the finished product, and the indictment gives the price of the crude product. Does that cover it?

MR. ROSALSKY: That covers it.

A What do you say, 4099 yards?

Q Yes? A I guess you are mistaken.

Q Well, we will leave it at that. A What was the case number?

Q I don't know? A Well, then, I can't tell you.

Q You never saw Mr. Silverstein before? A I saw him, yes, in court.

Q Before his arrest? A I never saw him.

Q Do you know of your own knowledge when these goods were shipped from Providence, Rhode Island? A From my own knowledge? When we get a bill of lading - we receive a bill of lading for all our goods. When we get a bill of lading these goods are laid on the docks, supposed to be taken away, and we have an agreement, that we instruct --

THE COURT: I think it can be conceded that this witness had

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no knowledge of the fact of the shipment of these goods from Providence, Rhode Island.

Q When did you get the bill of lading? A I cannot tell you.

I am not a delivery clerk or a shipping clerk.

Q Have you got the bill of lading here in court? A I don't know.

Q Did you ever see the bill of lading? A I never saw it.

Q Then, you don't know when the goods arrived? A I do not.

(The Court thereupon admonished the jury and a recess was taken until January 8th, 1918, at 10:30 o'clock A.M.)

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THE PEOPLE v. SILVERSTEIN.

New York, January 8th, 1918,
10:30 o'clock A.M.

TRIAL RESUMED.

PETER F. WILLIAMS, recalled as a witness on behalf
of the People, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Williams, how long did you say you were employed by the
Hartford & New York Transportation Company? A Since 1908.

Q During your term of employment, was one George Masterson em-
ployed there? A Yes.

Q How long was he employed there? A Three or four years.

Q What was his duty? A Delivery clerk.

Q Was he such delivery clerk on November 9th and November 10,
1915? A He was.

Q When, for the last time, did you see John Masterson? A I saw
John Masterson either in July or August of last year.

Q Nineteen -- A Seventeen.

Q Did you see a subpoena that was served upon the clerk of the
Hartford Transportation Company for John Masterson? A I didn't see
the subpoena, but I saw the envelope.

Q Did you make any inquiries anywhere for John Masterson when
you saw that paper? A Yes, I made several inquiries from his
friends.

Q Tell me just what you have done? A I have called up people
that were acquainted with him and where he was working before he was
working for us, but they did not know where he is now.

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Q Did you see him during 1917? A I saw him in July or August.

Q 1917? A 1917.

Q That was the last time you saw him? A That was the last time I saw him.

Q Did you have a talk with him? A Not any more than I asked Masterson what he was doing. He said he had joined the army, or he was going to join the army.

Q That was the last you saw of him? A The last I saw of him.

(NO CROSS-EXAMINATION).

R I C H A R D H. G I B B S, duly called and sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Gibbs, you are attached to the District Attorney's office?

A Yes.

Q As a process server? A Yes, sir.

Q How long have you been connected with the District Attorney's office? A Three years.

Q Amongst your duties is the serving of process papers and subpoenas? A Yes.

Q Were you given a subpoena to serve upon John Masterson?

A Yes, sir.

Q Pier 19, East River? A Yes, sir.

Q Do you remember whether you had such a subpoena on the 5th of January, 1918? A Yes.

Q And where did you go with it? A To pier 19, East River.

Q Where is that? A That is at the - about the foot of Beekman

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street.

Q Whom did you see there? A I saw a clerk. As I recall, his name was Taska. He told me that John Masterson had been in the employ there previously, but had not been in their employ for over a year. So I asked him if I could see any one else, and he said "Go up to Pier 20 to see Mr. Noble, the general manager", and I went there and I saw Mr. Noble personally.

Q And what did he say to you? A They said they had no record of Masterson; that he had left there over a year; that he was one of the checkers employed from time to time, and they did not keep any straight records of it.

Q He was no longer in their employ? A He was no longer in their employ.

Q Did you attempt to ascertain the address, of his home? A Yes. They had no record.

(NO CROSS-EXAMINATION).

BY THE COURT:

Q Did you look in the New York City directory? A Yes, sir. There are several Mastersons there.

Q Did you go to any of the houses indicated in that directory as being occupied by men of that name? A No, sir.

GEORGE C. HILLS, duly called and sworn as a witness on behalf of the People, testified as follows:

(The witness stated that he resided at Garden City, Long Island).

DIRECT EXAMINATION BY MR. DER:

Q Mr. Hills, what is your business? A I am a general freight

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and passenger agent of the Hartford & New York Transportation Company.

Q How long have you been such general freight and passenger agent of the New York & Hartford Transportation Company? A Twenty-two years.

Q What are your duties as general freight and passenger agent of the Hartford & New York Transportation Company? A I have full charge of the traffic department of the Hartford & New York Transportation Company.

Q Are you in charge of all the men? A All the and records.

Q Was one John Masterson in your employ? A He was.

Q During November, 1915? A Yes.

Q How long a period was he in your employ? A He was there two or three years.

Q Do you know the regular course of business pursued by your company? A I do.

Q And did you help formulate those rules? A I did, sir.

Q Is there any record kept of merchandise arriving upon your pier from foreign destinations, from foreign points? A Not at the time it is unloaded; no, sir.

Q When, if at any time, is a record made of merchandise appearing on your pier, Pier 19, East River, New York County? A At the time it is delivered to any truck driver.

Q Then, an entry is made? A Then an entry is made.

Q What sort of an entry is made and where is the entry made?
A The entry is made by the delivery clerk in a delivery book furnished by my office to him for that purpose. It shows the date of the

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arrival of the shipment at New York, the progressive number of the shipment, the description of the goods, the package numbers, if any, the consignees, the number of the truck to which delivery is made, and on that record is taken the signature of the driver who actually took the delivery.

Q Was John Masterson a delivery clerk in your employ? A He was.

Q Are you familiar with his handwriting? A I am, sir.

Q How many times have you seen him write? A Probably I have seen him write fifty or sixty times.

Q How many times have you seen his handwriting? A Probably five thousand.

Q You have a book in your hand? A I have.

Q Will you please look at the book that you hold in your hand, and one of its pages, marked People's Exhibit 1 for Identification, and I ask you what that book is? A That book is the delivery book which was turned over to be fill in by John Masterson at the time of making deliveries, between October 27th and November 13, 1915.

Q And has each kind of goods a separate delivery book? A Yes, sir.

Q And what delivery book is that? A This is the dry goods delivery book.

Q Will you please look at the page marked as an exhibit?

A Yes, sir.

Q And can you tell me in whose handwriting that was made, that entry upon that book? A With the exception of the signature, Tony Marco --

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MR. ROSALSKY: One moment. I object to his reading anything from that page.

THE COURT: He may state in whose handwriting it is, qualifying by stating what is in the handwriting of some one else.

BY THE COURT:

Q Is it in the handwriting of more than one person? A It is.

Q Would you have the kindness to name the persons whose handwriting appears on that page? A I know the handwriting only of Masterson, which appears on this page, and his handwriting is --

MR. ROSALSKY: I object to the witness stating the contents of the page.

Q Wait a moment, please. Will you kindly state what words, if any, appearing on that page, are not in the handwriting of Masterson? A Tony Marco at the bottom of the page, and in the middle of the page this writing which I cannot read.

Q And that page, as I take it, is lined, is it not? There are lines across the page? A There are.

Q Will you have the kindness to count from the top of the page and give me the number of the line beginning with No. 1 at the top, where the handwriting on that page appears which you say is not in the handwriting of Masterson? A Twelfth line, and the last two words of the last line.

Q With that exception, all you see is in the handwriting of Masterson? A It is.

BY MR. EDER:

Q And do you know whether those entries there in the handwriting of Masterson were made in the regular course of business? A They

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were, sir.

Q This book, at the ending of each business day, what happened to it? A It is put in the chief delivery clerk's office.

Q And the next morning? A Taken out by the same delivery clerk.

Q And each day the entries are made, they are consecutive; is that correct? A Yes.

Q Will you please tell us what entries appear upon that page in the handwriting of Masterson?

MR. ROSALSKY: I object to it.

THE COURT: I think I will sustain that. I will receive it in evidence.

MR. EDER: I offer the Masterson entry on that page in evidence.

MR. ROSALSKY: I object to it as being incompetent and no proper foundation.

THE COURT: Overruled, and received.

MR. ROSALSKY: Exception.

(The entry last referred to was received in evidence and marked People's Exhibit 8 and read to the jury by Mr. Eder.)

Q Mr. Witness, will you please read this, in the handwriting of Masterson, and tell me what it is (Indicating)? A "Cotton fabrics."

Q Each one of these cases contained cotton fabrics. Will you please look at the different dates, 11/9, 11/3, and 11/7, and tell me what that means? A That represents the date of arrival at New York.

Q Upon your pier? A Yes.

Q And 11/9 at the head of the page represents the date which it

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left your pier? A The dates these were loaded upon the trucks.

Q From your pier? A Yes.

Q On November 9, 1915? A Yes.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Mr. Hills, you say he different numerals 11/9, 11/9, 11/9, 11/3 and 11/7 indicate the dates that the goods left your pier?

A Date of arrival from Providence at our New York pier.

Q Have you any paper showing the statements of the merchandise taken away from your pier? A That is the evidence when they were taken away from our pier.

Q Oh, that is the evidence? A That is the evidence.

Q Then, these various cases of merchandise were taken away on November 9th, November 3rd -- A No, sir. The date is at the top of the page.

Q Well, I asked you if 11/9 -- A That is the date of arrival.

THE COURT: In other words, he tells you in substance, as I understand it, that there are entries that show both the date of arrival at the pier and the date the merchandise was put upon the truck to be taken away from the pier.

Q Did you ever see the defendant Silverstein at that pier?

A No, sir.

Q Do you know Tony Marco? A No, sir.

Q Can you tell the time of the day when this merchandise was taken away from the pier? A Approximately.

Q Can you tell? A Not the exact time, only approximately. That is the only deliveries that that clerk made during the day, and they

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are made consecutively as the deliveries are made.

Q Is there anything showing the time? A Not the exact time, no, sir.

Q Is there anything on here showing approximately the time?

A Only as it shows each delivery. I can tell by looking at the books
BY THE COURT:

Q In other words, from the first entry upon that page, you would draw the inference that that was the first delivery made by that delivery clerk on the day referred to? A Not necessarily, because there may be previous pages of the same thing.

BY MR. EDER:

Q Do you know whether the delivery in this case was made before noon? A No, sir.

Q You don't know? A I don't know.

Q All you know is that the delivery, the second delivery, must have been made earlier in the day, there were a certain number of deliveries following it, as appears to be in this case? A Yes.

Q I ask you to look at People's Exhibit 1 and tell me how many deliveries there were made on that day, November 9th? A Twenty-five.

Q And what is the number of this delivery? A The second.

Q What time is the office open for delivering goods? A Seven o'clock in the morning.

Q When you say you could tell approximately the number of deliveries, you would estimate this delivery was made early in the morning? A I should, sir.

JOSEPH FLANNENBAUM, duly called and sworn as a
witness on behalf of the People, testified as follows:

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(The witness stated that he resided at 34 Pennsylvania avenue, Brooklyn).

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Flannenbaum, what business are you in? A Cotton goods.

Q Are you a jobber or a manufacturer? A A jobber in cotton goods.

Q Where is your place of business? A 330 Church street.

Q New York County? A Yes, sir.

Q How long have you been in that business? A Twelve years.

Q Do you know this defendant, Aaron Silverstein? A Yes, sir.

Q How long have you known him? A Three years.

Q Do you remember the 10th day of November, 1915? A Yes.

Q Did you see this defendant that day? A Yes.

Q Where did you see him on that day? A In my place of business.

Q He came to your place of business? A Yes, sir.

Q Did he have a talk with you that day? A Yes.

Q Please tell us the talk you had that day? A He came in the morning about ten o'clock, and he showed me samples of goods, and says he had got to buy these goods from the manufacturer, if I would buy the goods, and I told him I could use that goods, and I asked him what price he wanted for them.

Q You said he came there about ten o'clock in the morning?

A He came there about ten o'clock in the morning and he showed me samples of goods and asked me if I could use that goods.

Q Before that you said something he told you where he bought

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-it? A He says I buy it of the manufacturer. I ask the price and he says he wants for them five cents a yard. I told him I only pay four cents. He says I could not sell for four cents and he went away, and about half an hour later he came back and he said he was by Richmond & Company and he offered him five cents a yard, but as he is buying goods from me, he will give me for four cents a yard for that goods and on condition I should pay him cash as soon as I delivered the goods and I give him a price of four cents a yard cash.

Q Did you ever buy anything from this defendant before that time? A Yes, about six months before that.

Q What if anything did you buy from this defendant?
A \$75 worth of goods, voiles.

Q Do you know what business this defendant is in? A He has a store, a dry goods, and had a store of ladies clothing.

Q Retail? A Retail.

Q He said you were in the habit of selling him goods, is that correct? A Yes.

Q And about six months before that --- A He came into my place, and he bought a lot of goods, and he could not sell them all in the place, and he wanted to leave a few pieces he wants to sell to me.

Q Did he ask you for cash at that time? A No.

Q You say this time he came in there he said he will sell you that at that price, but he wants cash? A Yes.

Q What happened after that? A About one o'clock he deliv-

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ered the goods.

Q That same day? A That same day.

Q Did you send a truck? A No, sir; it was sent with his truck.

Q His truck? A A double truck., two horses and he delivered the goods, seven cases of goods and came in about half an hour later and he says he wants to have the cash for it. I said I could not give you the cash until I check off the goods. He says he wanted the money because he has to pay the man. I gave him \$300 right away and the balance when I check up the goods.

Q You gave him \$300 in cash? A A check.

Q And the balance you told him you would give him when you checked off the yardage of the goods? A Yes.

Q Did you see this defendant again. Yes. He came in later for the money. I told him I had not checked off the goods. He said "Why don't you check it off, I want the money for it." I told him I sell the goods to a man named Bernstein, and he has an adding machine. I want to save the trouble of checking up the cases. "I will send my man with the goods and you can go over them and check off the goods on the adding machine. I sent the goods at half past four on the 10th of November, and he went over with my clerk and checked off the goods.

Q This defendant went over with the man to Bernstein's place to check off the yardage? A Yes.

Q Did you then pay him the balance? A Yes, I paid him the balance.

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Q Do you know how much? A (No answer.)

Q Was it \$809.20 A I think it is. I don't remember exactly the amount now.

Q You afterwards, you say, sold the goods? A To Bernstein.

Q Where is his place of business? A Broadway, corner of Grand.

Q Did you say to him, to this defendant, about seeing the goods before you bought them? A I told him I wanted to see the goods before I --- He said "I could not show you the other places; it is a matter of business. I could not show you the other places."

CROSS EXAMINATION BY MR. ROSALSHY:

Q How many times did you see Mr. Silverstein before you bought the goods? A When? Before, may be about two hundred times.

Q I mean, in connection with this transaction? A Before I bought it?

Q Yes. A Once.

Q Did you buy from sample? A Yes.

Q Did he say he would sell the goods to you the first time he came there? A He wants to sell me, but I could only give him four cents, and he could not take that.

Q And he came back the second time? A Yes.

Q The second time that he came back, on what date was that?

A The same date.

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Q Do you remember the date? A It was the 10th.

Q Was he over at your place on the 9th? A No, sir.

Q Did he tell you that he had been to Richmond & Company and several other places and they did not want to offer any more than you offered? A Yes.

Q The second time that he came back was there any one with him? A No, sir.

Q After you had agreed to buy the merchandise, then the merchandise was delivered to your place; is that right? A Yes.

Q At the time the merchandise was delivered was there any other man there? A No.

Q Besides Silverstain? A No, Silverstein wasn't either. The truckman brought the goods by himself. Then Silverstain came in and he says here is the bill for the goods, and there come in another man, and I asked him who is that man and he says, I have to give that man the money. Give me the money for it. He didn't tell me how much money to pay for the goods. He said give me \$300 because I have got to pay for it.
BY THE COURT:

Q When you had your first talk on that day with Silverstein, Silverstein was alone? A Yes.

Q When the goods came on a truck Silverstein was not on the truck? A No, sir.

Q After the goods had come on the truck Silverstein called at your place with another man? A Yes.

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BY MR. ROSALSKY:

Q This Silverstein, did he tell you that he was buying goods from that man? A He didn't tell me from that man. He told me from the manufacturer. He told me he sent that man for money because he did not have enough money to pay for the goods. That is what he told me.

Q Did you get a bill for those goods? A Yes.

Q And did this man who was with Silverstein offer to give you the bill? A No, sir.

Q And did you say to Silverstein "I don't know this man; I am buying the goods from you?" A No, sir.

Q And did not Silverstein tell you that all he is getting in this case was he was just acting as a salesman, selling the merchandise? A Didn't tell me nothing like that.

Q However, you insisted on getting a bill from Silverstein? A I bought the goods of him. I got a bill from him.

Q Didn't Silverstein tell you he was acting as an agent to sell these goods? A No, sir.

Q Didn't Silverstein tell you he could not use these goods? A He didn't tell me nothing of the kind.

Q Whose truckman took the goods to Bernstein? A My own truckman.

BY THE COURT:

Q About how long had you known Silverstein before the 10th of November? A About three years. I used to sell him goods, your Honor.

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BY MR. ROSALSKY:

Q Were you ever at Bernstein's place during this time they were getting the number of yards? A No, sir.

Q Where did you pay Silverstein? A In my place of business.

Q And was this man you talked about with Mr. Silverstein at your place? A When?

Q When you paid Silverstein? A The balance?
BY THE COURT:

Q When you gave Silverstein the check for \$300, as you say, was Silverstein alone, or was the man that you have spoken of with him? A He was.

BY MR. ROSALSKY:

Q There was a man with him? A Yes. The first \$300.

BY THE COURT:

Q When you paid him the \$300 by check was Silverstein alone or was there a man with Silverstein? A It was a man.

BY MR. ROSALSKY:

Q And when you paid the balance was the same man there with Silverstein? A No, sir.

Q Sure about that? A Yes.

Q How long did that man remain at your place who was with Silverstein? A About an hour.

Q An hour? A Yes.

Q Did you see Silverstein give him any money? A I could not tell you that. I don't know. I don't remember that.

Q What time did you pay Silverstein the last check? A It was about half past five or six, something like these.

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Q And you say the man was not Silverstein? A No, sir.

Q And you were with Silverstein during the checking of the articles? A No, sir.

Q But your man was? A Yes.

Q What is the name of your man? A I got two men, but I don't know which one. I think Kessler.

Q Was the \$300 check cashed? A Yes.

Q How many more checks did you get besides the \$300 check?

A Two.

Q In what amounts? A The balance of that amount.

Q Well, what amount? A I could not tell you exactly now.

Q Were any of those checks cashed? A I stopped them, but it was cashed by a man by the name of Koplek, and he was the one with me when I paid for it.

Q Did you claim from Silverstein that you had this transaction with Silverstein and not with any one else?

MR. EDER: Wait a minute.

THE COURT: Just repeat that question.

(Repeated.)

THE COURT: I don't understand the question.

MR. ROSALSKY: I don't understand it myself.

Q Did you get your money back from Silverstein?

MR. EDER: I object to that as incompetent, irrelevant and immaterial.

THE COURT: It only bears upon the attitude of the witness towards the defendant -- if he received his money back,

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I will allow it as bearing upon the attitude towards this defendant.

BY THE COURT:

Q Have you got back from this defendant the sum of money that you paid to him? A Yes.

BY MR. EDER:

Q When did you get that money back? A About four or five weeks later.

BY MR. ROSALSKY:

Q At the time you got this money back did not Silverstein tell you that he was only the agent for Mike Ross? A No, sir.

Q And that he sold it to you only as a salesman? A No, sir.

M O R R I S J. B E R N S T E I N, duly called and sworn as a witness on behalf of the People. testified as follows;

The witness stated that he resided at 40 Morningside avenue, New York City.

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Bernstein, what is your business? A Cotton goods.

Q Jobber of cotton goods? A Jobber and converter.

Q And where is your place of business 458 Broadway.

Q Do you remember the 10th day of November, 1915? A Yes.

Q Did you purchase seven cases of cotton goods from Flannbaum? A Yes.

Q What time of the day or night did you receive them?

A About five o'clock or quarter past five, around that hour.

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BY THE COURT:

Q In the afternoon? A In the afternoon.

BY MR. EDER:

Q Do you remember the next day after you had received the merchandise detectives coming up to your place of business? A Yes.

Q Did they seize or take away the seven cases of merchandise?
A Yes.

Q Were those the same seven cases of merchandise all cash goods that you purchased from Flannenbaum? A Yes.

Q Did the see the defendant there and Silverstein there in your place of business the day before?

THE COURT: Yes or no. Did you see the man who is on trial in the inside of your place on the day before you bought these goods?

A I believe I did.

Q And you measured the goods in his presence; is that correct? A No. I had nothing to do with the measurement.

Q Who did the measurement? A Flannenbaum's clerk.

Q Those seven cases, that were taken away were the same goods that were sold by Flannenbaum to you; is that correct?

A Yes.

Q Did you see any names or marks upon the cases as the police officers were taking them out? A I saw some small lettering.

Q What names? A I don't remember whether I saw names or not; but I remember seeing some small lettering.

Q Did you see M. Lowenstein on the cases? A I cannot re-

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member that positively, but I think I did.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Who was doing the measuring at your place? A Mr. Flannenbaum first and two other men came up to do the measuring. I had nothing to do with it. We had our own method of measuring. We put it off until the next day, the usual way.

Q What do you mean two other men? A Mr. Flannenbaum's clerk and another man, and I believe Mr. Silverstein was with them.

Q And the other man you don't know? A I don't know; a tall fellow;

BY THE COURT:

Q Flannenbaum's clerk came over to your place? A Yes.

Q Silverstein was with him? A Yes.

Q That is two persons? A Yes.

Q And anybody else? A And another man.

Q That made three? A Three.

BY MR. EDER:

Q You knew detective Fennelloy? A Yes.

Q And you know detective Oliver? A Yes.

Q And those were the two detectives who came up to your place? A Yes, and another detective too.

Q Dowling? A Dowling.

RICHARD A. FENNELLOY, duly called and sworn
as a witness on behalf of the People, testified as follows:

(Detective Bureau, Squad 2.)

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DIRECT EXAMINATION BY MR. EDER:

Q Mr. Fennelloy, how long have you been on the Municipal Police Force? A About seven years and four months.

Q And how long have you been attached to the Detective Bureau? A About six years and two months.

Q Do you remember the 11th day of November, 1915, officer? A I do.

Q Did you on that day visit the premises 458 Broadway? A I did.

Q In this county? A I did.

Q And what if anything did you find there? A Seven cases of merchandise.

Q Do you remember in whose place of business? A I do; Morris Bernstein.

Q And were there any markings on those cases? A There were.

Q Do you remember the name that was marked on those cases? A I do.

Q What was it? A F. W. Lowenstein & Sons.

Q Were there any cases numbers? A There were.

Q Can you from memory state the case numbers? A I can state two or three of them from memory.

Q Can you state all of them from memory? A I cannot state all of them from memory.

Q Did you make a memorandum at that time of those numbers? A I did.

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Q Can you by looking at that memorandum refresh your recollection? A I can.

Q Will you please look at that memorandum and read the numbers? A 17291, 17065, 16320, 9670, 9100, 16,261, 9782.

Q When you found these cases up there tell us what you did if anything. Who was with you first? A Detective Oliver and Dowling.

Q What did you do after finding those seven cases? A We waited for Mr. Bernstein to come in.

BY THE COURT:

Q About what hour of the day did you get there? A About 8:30 a. m.

Q On your arrival there were the cases opened or closed?
A They were opened. On the arrival of Mr. Bernstein I showed him the cases, and as a result of the conversation with him, Mr. Bernstein, detective Oliver and myself went down the elevator. On the street, coming in the building, was Mr. Flannenbaum. As a result of the conversation with Mr. Flannenbaum and Mr. Bernstein, we went over to Aaron Silverstein's, the defendant's place, at 109 West Houston street.

BY MR. EDER:

Q Who went with you? A Detective Oliver, Mr. Flannenbaum and Mr. Bernstein. Mr. Bernstein had left before we arrived at Silverstein's place and went back to his own place.

Q Mr. Flannenbaum went down there with you? A He did.

Q When you reached Silverstein's place of business was

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Mr. Silverstein, the defendant there? A He was not.

Q What did you do? A Waited a short time for him to come outside the door, with Mr. Flannenbaum and Detective Oliver.

Q And did he come? A As a result of a conversation with Mr. Flannenbaum, Mr. Flannenbaum, Detective Oliver and myself went over to him, Silverstein, as he was about entering the place and Flannenbaum said to Silverstein, "This is the man, pointing to me, that bought that merchandise."

Q I didn't get that? A This Flannenbaum said to Silverstein pointing to me -- "This is the man that bought that merchandise". This is as a result of the conversation I had with Flannenbaum prior to the arrival of Silverstein -- "and there is 400 yards short." Silverstein said, "Oh, I will make good that 400 yards". I said, "Will you pay me for the 400 yards and he says yes. I says, you sold these seven cases of goods to Mr. Flannenbaum. He said, yes I did, then I says I am a police officer, and I think these goods are stolen and I am going to make an investigation of it. I says, can you tell me where you got these cases. He says yes. I says, who did you buy them from. He says, I bought them from a man. I says, where is the man's place of business? He says, up in Waverley place. I says, do you know the man? He says, yes. I says, have you got a bill for them? And he says yes. I says, can you show me the bill?" He referred to his papers and pulled out a bill and he showed me the bill.

Q I show you this piece of paper and ask you if that is what he showed you and called it a bill? A Yes.

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Q Did he give you that? A He did.

MR. EDER: I offer it in evidence.

(The bill last referred to is received in evidence and marked People's Exhibit 9.)

Q This People's Exhibit 9 in evidence is in the same condition as when you received it, isn't it? A Yes.

Q Then what happened? A I looked at the bill and I said to the defendant, Silverstein, "Did you take these seven cases into your place here. He said no; I took them right from Waverley place". I said, the man that sold you the goods sold you them up in Waverley place? He said yes. I says it looks strange that a man who will sell you the goods in Waverley place did not have a bill head of his own. He says the reason he done that was he didn't have billheads with him. He said we walked out of his place and came down here. I says the lines on this bill head look similar to the billhead you have on the desk here. He said yes, that is one of my billheads. " He said he hadn't any billheads with him and he wrote it on my paper. I said, get Michael Ross & Company on the telephone. And we looked through the telephone book and we could not find any such name in the telephone book. I then called up Information and tried to locate Michael Ross & Company, and could not locate any. I then turned to him and I said, what kind of a concern is it on Waverley place? Was a desk there? He said yes, there was desks all around there; there was men working and there was a cage and inside of the

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cage there was a man at a high desk". I said, we will go over to 14 Waverley place, and see where this place is." Then Silverstein, Flannenbaum, Oliver and myself walked over to Waverley place; and ^{at} University place and Waverley Flannenbaum says, "I think I will go home." The defendant Silverstein said "Don't let him go; he will stop my check. I told Flannenbaum in the presence of Silverstein that he was not under arrest and he could do just as he pleased. He said, I am going back home." We continued on to 14 Waverley place. We went in the elevator. The defendant Silverstein brought us to the fifth floor. On the fifth floor there was a concern there in operation. He said that is not the floor. He then brought us to the third floor. On the third floor there was a concern in operation. He said, this is not the floor. I then spoke to the elevator man and I says, "Do you know any floor in this building ---"

MR. ROSALSKY: I object to that.

Q Was that in the presence of the defendant? A He was on the elevator, right in his presence.

THE COURT: I think I will exclude it.

Q You had a talk with the elevator man in the presence of the defendant? A Yes.

Q Then what happened? A We went into the first floor.

Q You say you went into the first floor. Did the defendant say anything before you went in there? A No, only while talking to the elevator man.

Q Did the defendant ask the elevator man anything? A I saw

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the elevator man. We were on the first floor. The first floor was an empty loft, and in back of the loft was filed a lot of empty boards; it looked like shelves. There was considerable dust on the boards, and there was considerable dust on the floor. I says is this the place you got the goods from? He says yes. I said I thought you said there were desks around. He said, there was. I says, when did you buy the merchandise? He says the day before yesterday. Then I said, "In that time the concern has moved out. He said, they have. I said, you can see the dust around here; look at the floor; it doesn't seem as if there had been anybody here in some time. He says, this is the place I was in". We went out to the elevator man and I said to the elevator man ---

MR. ROSALSKY: I object.

Q Did this defendant join in the conversation at all with the elevator man? A He was right there present.

Q Did he join in the conversation? A He did.

THE COURT: I will receive it.

A I asked the elevator man, did you see ---

MR. ROSALSKY: Exception.

THE COURT: Give us the whole talk participated in by the defendant? A (Continuing) "Did you see this defendant before?" He said he did not. The defendant said "Yes you did; I was in here. The elevator man says "I never saw you before". I says, how long was it since this loft has been occupied? He said not in about six months. I says has there been anybody in

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here since the day before yesterday? He says no. I says any cases in here since the day before yesterday? He says no. I says this man here, have you ever seen him before? He says no". Silverstein, Oliver and myself went downstairs and went into the ground floor. We inquired for the owner of the building; we could not locate him at the time, and came out. I considered the defendant Silverstein had --- I then told the defendant Silverstein he was under arrest and the cases evidently are stolen.

The defendant Silverstein said, "Well, I am a married man." He says, give me a chance". He says, all I make on the cases is \$180; the cases are wrong, and you cannot locate the man I bought the cases from."

At Police Headquarters we notified M. Lowenstein & Sons, and Mr. Morris Lowenstein and a clerk came down and identified the cases as cases that were coming to them. We then got into communication with the Joy Line and Mr. Masterson came over as a checker.

Later on, about three days after, in the Second District Magistrate's Court, Mr. Masterson & I were in the hall, and I spoke to Mr. Silverstein the defendant.

I said to Silverstein "This is the checker on the dock", and he said he delivered these cases to a truck; "maybe you can help us out by telling us where you got the cases." He said "I don't know anything about the cases."

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Q When Lowenstein came to Headquarters and identified the goods, did you return the seven cases to him?

A With the exception of one piece of each case which we got.

Q Are these the seven pieces of merchandise, one piece coming from each of those cases which you kept?

THE COURT: Referring now to People's Exhibits ---

MR. EDER: Referring now to People's exhibits 2, 3, 4, 5, 6, and 7 for identification.

A Yes.

Q And you brought them to court here?

A Yes.

MR. EDER: I ask that they be marked in evidence.

THE COURT: I will receive them.

(The six rolls of cloth last referred to having been previously marked People's Exhibits 2 to 7 for identification were received in evidence and marked People's Exhibits 2 to 7 inclusive.)

Q Can you tell us how many pieces each piece contained?

A Yes.

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Q Please do? A Case No. 17391, fifty pieces; case No. 17065, 27 pieces; case No. 16320, 54 pieces;;case No. 9670, 49 pieces; case 9,100, 45 pieces; case 16261, 54 pieces; case 9782, 31 pieces.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Officer, how long have you been a member of the force?

A About seven years and four months.

Q And connected with the Detective Bureau how long? A About six years and two months; about that time.

Q Your memory was fresh at the time you made the arrest?

A It was.

Q The testimony you gave in the Police Court was fresher in your mind than it is to-day? A I presume it was.

Q Did you make a memorandum of the conversation you had with Silverstein in the Police Court at the time? A Not the whole conversation; just part of it, to refresh my memory.

Q When did you make a memorandum of that conversation, to refresh your memory? A The night of the arrest, and also the day after the Police Court prosecution.

Q Have you got that memorandum with you? A I have.

Q Did you testify in the Police Court about any conversation with Silverstein about four hundred yards being short?

MR. EDER: I object to that as incompetent, irrelevant and immaterial and improper.

THE COURT: I think I will allow it to test his recollection.

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A I don't know as I did.

Q Is that the best answer you can make? A It is.

Q Did you testify in the Police Court that Silverstein said, "I will make good?" A I don't recall that I did.

Q Is there "Four hundred yards short" on your memorandum which you made? A No, sir.

Q Is this conversation, "I will make good" on your memorandum? A No, sir.

Q As I understand you to say, Flannenbaum said to Silverstein that you bought the goods from Flannenbaum and they were four hundred yards short? A Yes.

Q Is that in your memorandum? A No, sir.

Q Did you testify in the Police Court? A I did.

Q That you bought the goods - Flannenbaum said you bought the goods from him? A I don't recall that I did.

Q Did you testify in the Police Court that Silverstein told you these were desks all around? A I did.

Q Plural, "desks" all around? A I don't recollect.

Q Did you testify in the Police Court that there was a high cage office?

MR. EDER: One moment. I object to that.

THE COURT: Sustained. Now, you have gone far enough along that line.

Q Did you testify in the Police Court that you said to Silverstein that there was dust on the floor?

MR. EDER: The same objection.

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THE COURT: Same ruling. If you wish to interrogate him about the evidence that he gave in the Magistrate's Court, you may call his attention to it. You have proceeded along that line as far as I will allow. I have allowed it solely for the purpose of testing his recollection.

Q Officer Fennelloy, you were examined in the Police Court, and I will ask you to look at your testimony in the Police Court --

THE COURT: Now, the limitation, Mr. Rosalsky, is this -- If you contend that this officer testified to something in the Magistrate's Court which is at variance with the evidence given by him on this trial, you may direct his attention by calling his attention to an alleged question and an alleged answer, and ask him whether he recalls having made it?

MR. ROSALSKY: Will your Honor kindly give me this aid? Will your Honor give me aid where he has testified to certain things which do not appear in the minutes? I am asking a suggestion of your Honor. Will you be kind enough to give me the method, how to proceed as to the other, and how shall I proceed where I do not find anything in the record here?

THE COURT: If you find in the record a question which in the ordinary course would have called for an answer, which would have embraced the statement made by the officer here, then when you read the question and read the answer as it appears to have been given in the Magistrate's Court and the witness's answer in the affirmative that that was the answer he gave, you may argue, if you please, to the jury and the officer

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having an opportunity by the question to say there what he has said here, his omission is indicative of, if you please, an inaccuracy.

MR. ROSALSKY: Thank you, your Honor.

Q Have you testified now to everything which you know about this case? A I have.

Q Did you testify to everything about this case in the Police Court? A I supposed I did - that I remembered at that time.

Q And at that time the matter was fresher in your mind than it is to-day? A It was.

Q This was in November, 1915? A Yes.

Q Now, Officer Fennelloy, you were called and you testified:

"Q Did you arrest this defendant? A I did in company with other detectives.

"Q Did he say anything to you at that time? A Yes, sir.

"Q What did he say? A With Mr. Flannenbaum we went over to Mr. Silverstein's place of business. We asked Mr. Silverstein if he had sold Mr. Flannenbaum seven cases of goods. Silverstein said he did. We asked him had he a bill for the goods. He said 'Yes.'"

Did you give that answer? A I did.

MR. DER: One moment. I object to it. There is no variance between that answer and the answer he has given thus far.

THE COURT: I will allow the answer of the witness to stand.

Q Did you there say anything about the "Four hundred yards, I will make good?" A I don't know. I don't recall that I did.

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

MR. ROSALSKY: My point is to bring out the entire testimony of this witness --

THE COURT: If you contend that this witness has testified here differently from what he did in the Magistrate's Court upon some matter upon which he was interrogated in the Magistrate's Court you may direct his attention to what you say was the question put to him and as to what you say was the answer given by him, and you may elicit from him either that he did make that answer to that question or that he didn't, or that he does not remember.

MR. ROSALSKY: Now, I come back to the same proposition. How am I to interrogate him about matters which do not appear in the Magistrate's Court and which he has testified to here to-day?

THE COURT: You have got to show that in the Magistrate's Court there were questions which purported to elicit statements of the character he made here to-day, and that is a matter of argument to the jury when the case goes to the jury. The mere fact that a witness says something upon one trial that he did not say upon another trial is probative of nothing unless it appears that the question upon the first trial was one which was directed to the same point as the question upon the second.

Q Now, a further question:

"Q Did he show you that bill (Handing paper)? A He did. He took it from a desk in the rear of the store. He said he bought the goods from Michael Ross & Company. We asked him where Michael Ross & Company were. He said at 14 Waverley Place.

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I picked up the telephone book to find Mr. Ross's telephone number and I couldn't locate him. I also telephoned to Central Office and asked for information. They said they had no record of Michael Ross & Company. We asked the defendant if he wouldn't mind coming up to 14 Waverley Place and show us the man. He said, 'What is the difference? I have a bill here.' I said, 'The bills don't look good to us because of the fact that the billhead is off it.' He said the man was in a hurry. I said, 'Put on your hat and coat and we will go to Waverley Place.' On the way to Waverley Place we asked Mr. Silverstein what kind of a place this was in No. 14. We asked him if there was an office there. He said there was an office there and there were a lot of men in there working. We continued on, and when we were about making Waverley Place Mr. Flannenbaum said, 'Well, you haven't placed me under arrest, have you?' We said, 'No, we haven't.' 'Well,' he said, 'Mr. Silverstein has given me some checks which I would like to stop.' Mr. Silverstein said, 'If you let him go he will cash the checks and get my money.' We let Mr. Flannenbaum go because he was not under arrest. We entered 14 Waverley Place. Mr. Silverstein brought us up to the fifth floor. There was a concern there. He said, 'I think it was on the third floor.' We came down to the third floor. The third floor was an empty floor. We went in there, and he said, 'No, I didn't get them from that place.' We asked the elevator boy if there was any other lofts in the building. He said, 'Yes, on the first floor.' We went down to the first floor, and he said, 'Yes, I

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bought them from this floor.' That was an empty loft. In the rear of the loft there were some old broken packages, and we asked the elevator boy if he remembered seeing Mr. Silverstein, and he said he did not."

Did you give that testimony? A I did.

Q And you gave the answer to the question which is put? A I did.

Q Did you in that answer say anything about the dust was on the floor? A Not according to that statement.

Q Did you say anything in there that there was a cage, an office, a cage? A Not according to that statement.

Q Did you say anything about Silverstein telling you there were desks all around? A Not according to that statement.

Q Did you say anything in there that "there are four hundred yards short and I will make good?" A Not according to that statement.

Q And your memory was fresher then than it is now? A It was.

Q You know Silverstein is not a married man? A I don't know.

Q You were in court when his pedigree was taken, were you not?

MR. EDER: I object to that as immaterial.

THE COURT: Sustained.

MR. ROSALSKY: Exception.

Q You say Silverstein told you he was married? A I did.

Q Did you make a memorandum of the language which Silverstein used about the goods being wrong? A I did.

Q Have you got that memorandum with you? A I have, I think.

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Q Did he say to you that he saw the place was empty, that the goods -- did he ask you to give him a chance? A He did.

Q Did he say to you that, "I think I must be in wrong?" A No, sir.

Q Did you make a memorandum of the exact words which he did use? A I think I did.

Q Do you know whether you did? A I did.

Q Didn't he say to you, "I see the goods might be wrong, that there was no one there around the loft, that the Waverley place was empty?" A I considered he used a different phrase.

Q You considered he used a different phrase? A Where he made the statement about wrong. That is a different phrase from what you are after saying, "think."

Q What did he say? A "I cannot get the man who sold me these goods. The goods are wrong. I only made \$180 on them. Give me a chance. I am a married man."

Q When did he say that? A On the street, down in front of the premises 14 Waverley Place.

Q Did you give any such testimony in the Police Court? A I don't recollect.

Q You regard this testimony as important, don't you? A I do.

Q I will continue reading where I left off. This is on page 43:

"A (Continuing) We asked the elevator boy if there were any cases delivered in there or taken from there. He said there had not; the loft had been empty for five months. Detective

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Oliver and myself later interviewed the chief engineer and the owner of the building. Mr. Silverstein and I and Detective Oliver left the building, and on the way to the Broadway car Mr. Silverstein said, 'What's the use? The goods are wrong.' He said, 'Give a fellow a chance. I am married. Give me a chance.'

"Q 'The goods are wrong,' he said? A The goods are wrong.

"Q Did you inquire at 14 Waverley Place if any firm by the name of Michael Ross had ever had an office there? A I did."

Did you give any testimony in the Police Court there that he said he only made \$180, and that the goods were wrong? A Not on that statement.

Q Well, is there any statement you made in the Police Court covering that point? A About the \$180?

Q Yes? A Not that I know of, outside of what you have there.

Q Then, you didn't give such testimony? A I don't recollect.

THE COURT: You have gone far enough on that now, Mr. Rosalsky.

Q When did you last see that elevator boy? A About a month after the defendant's arrest.

Q Do you know whether that elevator boy has a record or not?

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

THE COURT: Sustained.

MR. ROSALSKY: Exception.

Q Did you ever see - would you recognize that elevator boy if you saw him? A I don't believe I would.

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Q Did you ever look in the Rogues' Gallery to see whether there was a picture of that elevator boy in the gallery?

MR. EDER: I object to that.

THE COURT: Sustained.

Q You had the number of the truck in your memorandum, did you not? A I did.

Q The truck that took away the goods? A I did.

Q Did you trace that number? A I did.

Q Have you got that truck driver in court? A I don't know.

RE-DIRECT EXAMINATION BY MR. EDER:

Q After you made investigation as to the number of the truck, did you ascertain whether the owner of that license number on the truck took these goods? A I did.

Q What did you find?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

MR. EDER: If your Honor please, Mr. Rosalsky asked the question.

THE COURT: The door is not opened to that extent.

MR. EDER: May I have your Honor's indulgence for a moment?

THE COURT: You may.

MR. EDER: He leaves in the minds of the jurors now a blank thought, the fact that he searched for this truckman and he is not in court now.

THE COURT: On the contrary, the witness said he does not know whether he is here or not.

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MR. EDER: We have been informed that Officer Oliver is in the Magistrate's Court in a rape case at 121st street. We telephoned him and they said he is on his way down. He should have been here this morning.

THE COURT: Have you any other witnesses?

MR. EDER: No.

THE COURT: I will allow you to produce the officer later. You may rest with that exception.

MR. EDER: The People rest, then, with the exception of calling Officer Oliver to corroborate the last officer.

THE COURT: The case is now with the defense.

MR. ROSALSKY: I would make the suggestion, if your Honor please, that we now adjourn, until the evidence of Officer Oliver is put in.

THE COURT: Suppose we take a recess now till half past one?

MR. EDER: That will be very well, your Honor.

THE COURT: We won't lose any time then and you can get your case in.

(The Court thereupon admonished the jury and a recess was taken until 1:30 P.M.)

(After Recess).

R I C H A R D F. O L I V E R, duly called and sworn as a witness on behalf of the People, testified as follows:

(Detective Bureau, Squad 3).

DIRECT EXAMINATION BY MR. EDER:

Q Mr. Oliver, how long have you been attached to the Municipal

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Police Force of the City of New York? A Going on nine years.

Q How long have you been a detective? A Seven years and a half.

Q Do you know this defendant? A I do.

Q Do you remember the 11th day of November, 1915?

MR. ROSALSKY: I object to the witness referring to any paper.

Q (Continuing) Don't look at any paper. A This is from my memorandum. I do remember.

Q That was the first day you met this defendant; is that correct? A Yes.

Q Were you in company with Officer Fennelloy, going to 458 Broadway? A I was.

Q After going to 458 Broadway, what did you find there? A We found seven cases of such goods that are on the table there.

Q And you took those cases out of there? A We did.

Q After you found those seven cases where did you go with your brother officer? A We went downstairs with a man who owns the concern upstairs - I don't remember his name - Bernstein - Morris Bernstein - went downstairs -- after a conversation with him, we went downstairs, and we met another man by the name of Flannenbaum.

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After a conversation with Flannenbaum we went to Houston street, 109 West Houston street, and we had a conversation with the defendant. We asked him -- Detective Fennelloy -- no, Flannenbaum said to him -- and Flannenbaum said those are the two men that I bought the goods. There is 400 yards short. He said 400 yards short? He said that cannot be." Well, I don't remember what else he said. The owner then said, you sold him the seven cases. He said yes. "Where did you get them? He said, I have a bill for them." Well, get the bill." Well, he went in back of the store and he brought out a bill.

Q I show you People's Exhibit 9 in evidence, and ask you whether that is what he showed and brought out and what you term a bill? A Yes, this is the bill.

Q Go on. A We asked him where did he get that bill. He said that the man who made it out made it out down in his store.

Q In whose store? A In his store.

Q The defendant? A The defendant's store. We asked him where did he get the goods from. Well he would not tell us. We did not know and he would not tell us. But finally he did say that he got from at 14 Waverley place. We went over to 14 Waverley place, and when we got to the corner of Greene street Flannenbaum said, "I have got a check. Is there any use of me going along?" He said "I don't know anything further about this." He said no, you can go. The defendant said, "Don't leave him go; he has got my check". "I want to stop that." We hadn't any

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right to place this man under arrest. He has been honest with us. He told the truth and we let him go. Then we went to 14 University place and had a conversation with the elevator man and went through the building from the top floor down.

Q You say you went through the building from the top floor down. Did this defendant direct you to any of the floors?

A He did.

Q What floor did he direct you to first? A He first said upstairs. "How high up?" "Well, he said, a few floors up". "Well, do you know exactly the floor". "I don't know exactly the floor". "Well, we will start from the top and go down", and we stopped on every floor, and somebody worked on every floor but the first floor. That was an empty loft. We went in there and looked around and he said, "This is the place where I got it" but, he said, they were working here. This was a regular place-- desks. There was desks here when I got it here." We also spoke to the owner of the building. We looked around the premises in there and we could not find any evidence to show that those cases were in there.

Q Is that all the talk you had with him? A We brought him downstairs and after getting downstairs he said, "Well, I will tell you, he says, the goods are wrong. He said I wish you fellows would go a little easy, he said, I am a married man." And he brought him to Headquarters.

Q And the several cases that were taken out of there they were taken to Headquarters? A Yes.

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Q And there was one piece taken out of each case; is that correct? A That is right.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you have any talk with Officer Fennelloy? A I did.

Q Did you go over the facts in this case? A I did.

Q Have you now testified to everything that took place between you and the defendant? A Yes, as near as I can remember.

Q You were not with him in the police court, were you?
A Yes, I was in the police court.

Q You did not testify in the police court? A No, I don't believe I did.

Q When was the last time you spoke to Fennelloy? A Just spoke to him outside now.

Q Did you speak to him outside about the 400 yards being short? A We went over the whole case.

Q Answer my question? A Yes.

Q Did you just talk to him about Flannenbaum saying to Silverstein "These are the two men who bought the goods"? A Yes.

Q Did you also go over the conversation that the goods were wrong, go easy, I am a married man? A We did.

Q In other words, went over all the facts? A Went over the story from beginning to end.

Q Did Fennelloy tell you that he testified to these things to-day? A No, he did not.

Q Did you also go over the fact that there was dust on the floor? A No.

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Q Didn't tell you about that? Fennelloy didn't tell you about that? He didn't tell you that the floor was full of dust?

A No, sir.

Q Fennelloy didn't tell you about that being a high office with a grate around? A No, sir.

Q Didn't tell you about that? A No, sir.

Q How many desks did the defendant say there were in that place? A Did he say?

Q Yes. A I don't remember.

Q More than one? A I could not say that positively. I could not be positive about it. He said there were desks there, and people working there at the time.

Q Did you get the number of the truck that took the goods away from the dock? A Now, Fennelloy attended to that.

Q Would you know the number if I told you? A No, I would not.

Q Haven't you got it on your memorandum? A No, I have not.

Q Have you got any memorandum of the fact --- A I have just got a memorandum of Aaron Silverstein's name, and 109 West Houston street. I put the address down, that is all, because it is two years ago since this happened, and we have had many cases since then.

Q And you didn't make a memorandum of the alleged statement about the goods were wrong? A No. I know that. All I did was to refresh my memory for the story.

Q But you didn't have any occasion to put down the exact

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words? A That is numbers I put down.

Q Did this little conversation "I am a married man, give me a chance, that the goods are wrong" - that you remember? A I do.

Q And that same conversation you went over with Officer Fennelloy before you came on the stand? A I did.

RE-DIRECT EXAMINATION BY MR. EDER:

Q You and Officer Fennelloy are partners, working up cases together? A We have been partners for seven years.

Q And each time before you come to testify ---

MR. ROSALSKY: I object to that.

Q Did you talk the case over before you testified?

MR. ROSALSKY: I object to that.

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

A We do in every case.

THE PEOPLE REST.

MR. ROSALSKY: I move to dismiss the indictment on the ground that the People have failed to make out a case.

THE COURT: Motion denied.

MR. ROSALSKY: Exception. I move to dismiss the first count of the indictment charging grand larceny in the first degree.

THE COURT: Motion denied.

MR. ROSALSKY: Exception. I move to dismiss the second count of the indictment, the charge of receiving stolen property, on the ground that not sufficient facts have been

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proven to constitute a crime.

THE COURT: Motion denied.

MR. ROSALSKY: Exception.

THE DEFENSE.

A B R A H A M S I L V E R S T E I N, duly called and sworn as
a witness on behalf of defendant, testified as follows:

THE WITNESS stated that he resided at 206 Wilson street,
Brooklyn.

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Mr. Silverstein, talk up loud so that the jury will
hear you. You are the father of the defendant? A Yes.

Q Talk up loud? A I am the father.

Q Are you the father of the defendant Aaron Silverstein?
A Yes, I am the father.

Q Were you employed by him in his place of business on
West Houston street in the year 1915? A Yes.

Q Do you remember on or about the 9th day of November, 1915
a certain man calling to see your son -- yes or no -- do you
remember? A 1915?

THE COURT: Better have an interpreter, Mr. Rosalsky.

(An interpreter is called.)

Q On or about November 9th, 1915, did any one call at your
son's place of business? A Yes, I was in the store.

Q Was your son there at the time? A Not at that time.

Q Did the party that called leave a card? A He gave me

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the card.

Q Have you got that card with you now? A No.

Q Do you remember what was on that card? A There was written on the card, Jobber, cotton goods.

BY THE COURT:

Q When you say written, what do you mean? A I didn't mean written. It was printed -- jobbing, cotton goods.

BY MR. ROSALSKY:

Q What else? A Rosen & Company.

Q Was there any telephone number on the card? A I don't remember.

Q What was the name, do you say? A Rosen & Company -- Rosen Company.

Q Did you say Rose or Rosen? A Rose or Rosen; I could not tell you.

Q That is what you remember? A Yes, Rosen & Company or Rose & Company.

Q Do you remember the address? A It seems to me it was something like Waverley street.

Q Well, did that party come back on that day. I will withdraw that. Give a description of that party? A He was about 26 or 28 years old. There were two who came at the time. Two came and when they gave me the card they gave me samples at the same time. I looked at the goods and I said the goods are not for me. I told them if you come later when my son will be in then he might look at the goods, maybe he might like it.

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Q Did they come back? A In about an hour they did.

Q And was your son there when he came back? A Yes.

Q Did your son have a talk with them? A Yes. He looked at the samples and said that the goods were not for him.

Q By that what do you mean -- the goods were not for him?

MR. EDER: I object to that.

THE COURT: I will allow it.

A That he cannot use this kind of goods.

Q Then what did your son do? A I myself told my son "perhaps you might sell the goods and make some commission on the sale".

Q And then did your son go away then? A Then he spoke to them that they should give him five per cent commission. They went away and he went with the samples to sell the goods.

MR. EDER: I object to that, if your Honor please, and I ask that the latter part of the answer be stricken out.

THE COURT: I will strike out the last part. I will leave in "They went away and he went away with the samples."

CROSS EXAMINATION BY MR. EDER:

Q Do you remember September 9, 1915? A I cannot remember exactly September or November.

Q Well, will you tell us as definitely as you can when - what month and what day these men came to see you or your son? A I cannot remember exactly whether it was in September or November.

Q How many times did men come with samples to your place of business? A Hundreds of them come with samples every day.

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Q And do they all leave their cards when they come with samples? A Every salesman who comes in to sell goods first of all he hands his card.

Q And do you read over all the cards? A Yes.

Q You can read and write English too? A Yes.

Q How long are you in this country? A Eleven years.

Q And you can speak English, can you? A I cannot speak very goods. The whole time I am ---

Q Whenever they bring a card in you read it? A Yes.

Q And do you remember everything that is printed on the card all the time? A The cards that I am interested in I keep. Others I throw away.

Q Were you interested in the card that you are talking about, that you tell this jury about? A No.

Q Did you make a special effort to recall what was on that card? A There was not much printed on that card, jobbing, cotton goods.

Q Will you please answer my question.

THE COURT: Strike it out as not responsive. Read the question.

Q (Repeated). A No.

Q How many times did you see that card? A Once.

Q Will you tell us some of the men that your son was dealing with, buying from?

MR. ROSALSKY: I object.

THE COURT: Objection overruled.

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MR. ROSALSKY: Exception.

Q Mention one or two? A Claflin, -

Q Have you ever seen a card of Claflin?

MR. ROSALSKY: Wait a while. Let him go ahead.

THE COURT: Yes, he may.

Q Mention two or three names? A Rosenflan -- I can bring you the bill. There is a whole lot of bills.

Q Have you ever seen a card of Claflin? A No, never got a card from him.

Q Did you ever see him billhead? A Yes.

Q How many times have you seen Claflin's billhead? A Whenever we get the goods, we see the bill, and whenever the time comes to pay the bill we pay the bill.

Q Will you please tell me what is printed on Claflin's billhead?

MR. ROSALSKY: I object to that.

THE COURT: I will allow it as testing his memory.

MR. ROSALSKY: Exception.

A The firm, Claflin, and what kind of goods they are dealing in.

Q What kind of goods have they got on there? A Cotton goods, and linens and serges.

Q And is that all of the printing? A Yes.

Q I am asking you what is the printing on Claflin's billheads? A Only the firm name.

Q What else? A Nothing else, and the rest is written - and the kind of goods, the different kind of goods written there.

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Q Do they give the address? A Yes.

Q What address? What is the address? A I don't remember.

Q You don't remember the name or the address printed on the bill head, do you? A No, I don't.

Q How many times have you seen billheads out of Claflin's place of business? A About six or seven times.

Q When the card was presented to you as you claim, you read it and you saw the name; is that right? A Yes.

Q What name did you say you saw on it? A Jobbing, cotton goods, Rosen & Company.

Q How do you spell Rosen & Company? A (Spelling) R-o-z-e-n

Q Are you sure there was an "en" at the end of the name?

A I cannot remember it exactly.

Q Do you remember whether there was an "n" sounding at the end of the name? A I cannot remember exactly. I know I read it, and it was something like it. I read myself the name. I cannot tell you --- when I read I cannot -- I can read my name. If you ask me how to spell or how to write it I would not be able to do it.

Q But you know the difference between Ross, Rosen and Rose, don't you? A I cannot remember exactly whether it was Ross or Rosen.

Q What street did you say was on there? A I cannot remember exactly. It seems to me it was something like Waverley St.

Q You spoke over this case with your son, didn't you? A When?

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Q Yesterday? A Yesterday? No.

Q You didn't say a single word to your son about this case, did you? A I spoke about the case.

Q That is what I am asking you. Did you talk this case over with your son yesterday? A Yes, this case is on our heads.

Q And you went over the facts of the case, didn't you?

A There is not much to talk about.

Q Did you state to your son or did your son state to you the name of the person you saw upon that card that day? A I saw it myself; nobody else tell me that.

Q And you have not discussed the name with your son at any time since the time he was arrested; is that correct? A We don't always talk about it. We talk about Rosen or something like it.

Q When was the last time that name was discussed between you and your son, the defendant in this case? A I don't remember exactly that we ever talked about that.

Q Well, after these two men came in what was the first thing they said if anything? A They gave me the card and they showed me the samples and said "These goods we have for sale."

Q What did you do with the card? A Put it on the counter.

Q And then what happened? A Nothing. I looked at the samples and I said the goods are not for me. They are not useful to me.

Q Are you employed by your son or are you the boss and your son is employed by you? A It was one and the same.

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Q That is a partnership, you and your son? A It was his. It was just the same mine, and the people knew it was his and mine.

Q And you had over there a retail store; is that correct?
A Yes, sir.

Q You sold dry goods there? A Yes.

Q And you sold it single, by the yard, didn't you? A By the yard.

Q You didn't sell whole pieces over there, did you? A No, no, no.

Q Did you keep goods similar to that which he showed you in your place of business? A Different goods.

Q Did you keep goods similar to that which he showed you in your place of business, which he showed you samples of? A Yes, there were such kind of goods.

Q Why did you tell him that you could not use those goods?
A I had no need for the goods.

Q And then did they leave? A No, I told him later when my son would be in, and he would then decide whether he could use the goods or not.

Q But you said a moment ago you had no need for the goods?
A Yes.

Q Why did you tell them to return? A I was not the buyer there. My son was the buyer, and although I said we had no need for the goods I thought they could come back and see my son.

Q Had you ever seen these men before? A No.

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Q Did they come back? A Yes, in an hour.

Q And when they returned in about an hour your son was there; is that right? A Yes.

Q Did you overhear the conversation between your son and these men? A Yes. I was quite close by.

Q What language were they talking? A In English.

Q Any Jewish spoken at all? A No, English.

Q Did you join in the conversation at all? A I didn't say anything.

Q What if anything did they say to your son? A That they were willing to sell these goods.

Q What else? A So he said he did not need this kind of goods, but he said "If you want to, I will try and sell it for you, but I want some commission".

Q Did he say that at once? Did he say that himself at once as soon as he said that he could not use it? A Yes, he told them that he could sell the goods, but he wanted a commission.

Q Didn't you on your direct examination say that it was you who suggested that to your son after he refused to buy the goods?

A Yes, that is right; I told him that,

Q Then after that what did those men say? A They agreed that he should go and sell the goods.

Q Did you see these cases arrive at your place? A No.

Q Did you know what goods they had reference to? A The

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samples I saw, but the goods I didn't.

Q Do you know whether these goods were ever purchased, of your own knowledge, by anybody? A This I don't know.

Q Did your son ever sell any goods on commission before for any one? A It happened often.

Q Tell me one instance, at any time, that your son sold goods in bulk on commission to any one? A It happens that my son used to go out and buy a lot of goods cheap and go right ahead and sell the goods at a profit.

Q That you don't call selling on commission, do you?

A No, sir; this is not selling goods on commission.

Q Didn't they do the very same thing in this case, went out and bought it cheap? Is not that the fact?

MR. ROSALSKY: I object to that as incompetent and immaterial.

THE COURT: Objection overruled.

A No, I didn't buy the goods.

Q Well, will you please give me any other time that your son sold a lot of goods in bulk on commission for any house. A He used to go to auctions and buy goods and then sell the goods to stores.

Q Will you please tell me whether there is any other time than this one that you claim that your son sold those goods in bulk on commissions for anybody?

MR. ROSALSKY: I submit that the witness has answered and that he has explained the transaction.

THE COURT: I don't think that the witness has answered

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and that he has explained the transaction.

THE COURT: I don't think that the witness has answered the question.

BY THE COURT:

Q Are you able to give us the name of any person or firm for whom your son sold goods on commission?

MR. ROSALSKY: I submit the witness has said no.

THE COURT: I will allow him to answer.

A He never sold on commission. Why should I tell you that he did? He didn't sell on commission. He used to buy goods at auction and sell the goods.

BY MR. EDER:

Q Do you desire to help your son now?

MR. ROSELSKY: I object to that as immaterial.

THE COURT: Objection sustained.

Q Are you in business now? A Not now.

Q Is your son in business? A No.

A A R O N S I L V E R S T E I N, the defendant, duly called as a witness in his own behalf, testified as follows:

(The witness stated that he resides at 206 Wilson street, Brooklyn.)

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Mr. Silverstein, how old are you? A 32.

Q And you are in what business? A I was in cloaks and suits and dry goods.

Q In one store you had cloaks and suits? A Yes.

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Q What was the number of that place? A 109 West Houston street.

Q Where did you have the dry goods? A 115 West Houston street.

Q Were you married in 1915? A No, sir.

Q Have you ever been married? A No, sir.

Q Do you remember on or about the 9th day of November seeing a man by the name of Ross? Will you state what took place when you met this Ross, what happened when you first saw him, in your store, the first time you ever saw him? A I came in the store. My father says that a certain gentleman was here with certain goods to sell him. I asked him where are they. He said they were coming back soon. Subsequently I was in the place and he came back, the gentleman --- two gentlemen came in, and they showed me samples of goods, big quantities, but I cannot use it in my retail store, and I said to them "I know quite a number of people in this line of business at wholesale. I might dispose of it for you if I can make anything on it." They says all right. I asked the price of the goods. They asked me six cents for the goods. I went out the same day, over Canal street and Church street and Eldridge street, some people, to see what I could do with the trade. The highest price I could get for them was three and a half, three and three-quarters and four cents. I went back and told the gentlemen that I can get the highest price at four cents a yard. They refused to accept the price, and they

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went away, and afterwards they came back to me and they say I should sell the goods. Certainly I went over to Flannenbaum's. I says you can have the goods for the price, and I told the gentlemen, "I want to go to where is your place of business. They told me over to 14 Waverley place, on the first floor -- the second floor that is in there. They showed me the goods. The cases was in sight, and I looked at the goods. I says, all right, you ship these to this and this address, to Flannenbaum.

Q Before you go any further, had you ever been in 14 Waverley place before that day, before you went there with these two gentlemen, had you ever been there? A No, sir.

Q And you went up in the El. road? A Yes.

Q Do you know what floor you stopped on when you went up the first time? A I stopped off on the second floor, but the second time when the detective took me up there I got puzzled up. I didn't know what floor. I could not recollect what floor it was.

Q Now go back with your story. Now, you say you went back with him to 14 Waverley place and went upstairs. Now go ahead and proceed. A Went upstairs and I looked at the goods and I told them to ship it over to Flannenbaum, and I came over to Flannenbaum. Then when I came to Flannenbaum the goods were there. Just the time I came in the expressman came along and he dropped the cases with the proprietor, Ross, and certainly Mr. Flannenbaum said to the man on the truck to put the goods on the sidewalk. Then he says anyhow somebody is to go to that

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shop and take the goods over to some other place by the name of Bernstein, over in Broadway, and down there they have a machine, and we will check up the goods, and the man was with me, Mr. Rosen, said he wants to have money for the goods; he did not know the other party, he knows this place will deliver the goods, and Mr. Flannenbaum would not give any money for the goods before they were checked off; he does not know what is in the cases. He would not examine the goods to see if it is satisfactory to him. Mr. Flannenbaum gives me \$300 on account. He says here, Silverstein, here is \$300. Go over to my bank and change it and give the man, because the man refused to accept any check, he says he wants the cash for the goods. I turned over the \$300 to him, and then they walked down and Mr. Flannenbaum went for the truck over there and we checked off the goods. Mr. Ross and me and Mr. Flannenbaum's clerk and Mr. Bernstein's clerk was checking off the goods. We checked off the goods, and there was a shortage. I didn't know what it was. We straightened it out with him. We went back to Flannenbaum and Flannenbaum paid the balance of the money and he said to Mr. Silverstein, I don't know this man. I know you. It seems to me Mr. Bernstein came into the place and spoke to Mr. Flannenbaum, and I don't know what it was, but they told me I should give him a bill for the goods. I don't know anything about the goods. I says all right, I will give you a bill. I know where I got the goods. That was the result. And the next day he came

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in, Mr. Flannenbaum, over to my place, and I was not in. Just by the way he met me by it in the store. He met me on the way. He says, Silverstein, you know I bought for you the goods. I say what is it about. He says to me, well, that is all. The goods was stolen from somebody. I says, I don't know anything about it. So the detective asked me the question, where did I get the goods. I says "I got the bill, I know where I got the goods, I can take you to the place even. " He took me over to 14 Waverley place. Actually I didn't know what floor I was going to because I was all excitement. I told him on the third floor and then the fourth floor. I didn't know where. Consequently I went downstairs and recognized the floor where it was everything had been removed from there.

MR. EDER: I ask that be stricken out.

THE COURT: No, I will leave it in, because it purports to describe the difference in the condition of the place between the time he was there first and the time he was there again.

A (Continuing) These cases were in the front of the loft. They was removed to the back of the loft, put in one corner. The floor was full of wheels, because such cases are heavy, you have to pull it by the trucks, and all the floor was scratched by that truck, and, in fact I told him it was floors scratched, to the officer. Then they took me down to the station to have me locked up.

Q Before you go any further, was there any desk in the

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place when you went there? A Yes.

Q How many desks were there? A One desk.

Q Were there any chairs there? A Yes, sir.

Q Were there any men around there? A Yes, sir.

Q In the place? A Yes, sir.

Q Were there several other cases besides these seven or eight cases there? A Yes.

Q Were there any shelves in the place? A No, sir.

Q There were a number of cases? A Yes.

Q Did you see the goods in 14 Waverley place? A Yes, sir.

Q Now, you knew that Flannenbaum had sold the goods to Bernstein, didn't you? A Yes.

Q You knew that at the time the police came with Flannenbaum over to your place? A Yes.

Q Did Ross or any one tell you that the goods were stolen?

A No, sir.

Q Did you know any expressman by the name of Tony Marko?

A No, sir.

Q Did you know that Tony Marco -- I withdraw that. Did you know that the truck that took the goods away from Pier 19 was truck No. 1041? A No, sir.

Q Have you tried to locate Ross? A Yes.

Q Have you been able to find him? A No, sir.

Q Did you tell the police, "Give a fellow a chance; I am married; the goods are wrong; what is the use; the goods are wrong." Did you say that to the officer? A No, sir.

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Q What did you say? A I said I left 14 Waverley place to identify -- find out the people there, and they were not there, the people, and the elevator man denied in front of me and the officer that he didn't take me up at the time when he did take me up. I says, well -- and then we went away from the building. I says, yes, there must be something wrong wrong about this matter.

Q Is that the first time you said there mustbe something wrong? A The first time; yes, sir.

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

Q You say that when you went back to the place the things were moved away? A Yes.

Q When you went back to 14 Waverley place? A Yes.

Q Did you tell Officer Fennelloy that you only made \$180?
A No, sir.

Q Did you tell him that you knew the property was stolen property? A No, sir.

Q How much were you to make for the sale of those goods?

MR. EDER: I object.

THE COURT: I will let him answer.

Q How much? A Five per cent.

Q And how much did Ross & Company get? How much money did Ross & Company get? A Something about \$800.

Q And about how much was paid to Flannenbaum? A I don't know that.

Q How many hundred dollars did you give back to Flannenbaum?

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MR. EDER: I object to that as incompetent, irrelevant and immaterial.

THE COURT: I think they are entitled to show what this witness received for the property.

MR. EDER: Yes.

THE COURT: This witness may testify as to what was paid to him. That is a little different question.

MR. ROSALSKY: I want to show ---

THE COURT: You may elicit if you care to from this witness how much was paid to him by Flannenbaum.

Q How much money was returned to Flannenbaum?

MR. EDER: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

Q Well, the money that you paid to Ross and the money that you paid back to Flannenbaum has never been returned to you, by any one?

MR. EDER: One moment. I object to that. There is no foundation for the question.

THE COURT: ~~Admitted~~ed. You may find out from this witness if you care to do it, how much Flannenbaum paid him, how much he received from Flannenbaum.

MR. ROSALSKY: I don't see any necessity for that, your Honor.

THE COURT: Very well.

MR. ROSALSKY: Well then, I will put these questions

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separately if your Honor please.

Q How much money did you pay to Ross? A Ross got \$800 and some odd cents; I don't remember.

Q Ross got that money? A Yes.

Q Now, how much money have you paid to Flannenbaum?

MR. EDER: I object to it, if your Honor please. There is no evidence that he paid anything to Flannenbaum, and I object to it as incompetent, irrelevant and immaterial.

THE COURT: I think it is. I only allowed it when Flannenbaum was on the witness stand as bearing upon the attitude of mind conceivable of Flannenbaum to the defendant. You might have argued that if Flannenbaum had parted with money and had received nothing in return that that circumstance might have induced him to give biased or improper testimony against the defendant. In other words, if it appears from the testimony of Flannenbaum that he deposited money and had received nothing back and that was the outcome of the transaction with the defendant, you might have been in a position to argue to the jury and Flannenbaum was not an unprejudiced or unbiased witness against the defendant. Now, proceed.

MR. ROSATSKY: Then, your Honor rules out the evidence?

THE COURT: I do.

MR. ROSATSKY: Exception.

Q Now, you are not in business now? A No, sir.

Q How long is it since you are out of business? A About

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seven weeks.

Q Was an involuntary petition in bankruptcy filed against you? A Yes.

Q And that is the reason of your being out of business? A Yes.

Q What became of the card which was given to your father? A I don't know. I placed it amongst the cards, and I could not find it.

Q Have you looked for it? A Yes.

CROSS EXAMINATION BY MR. EDER:

Q When did you look for the card? A When the officer came down to my place.

Q That was one day -- how many days was that after Ross was in your place? A The second day.

Q Two days after; is that right? A No, the next day.

Q What do you mean by the second day? A Well, the second, that means -- to-day and to-morrow is the second day.

Q Don't you mean by it that it was two days after? A No.

Q What day was Ross in your store? A He was down in my store the 10th.

Q What time on the 10th? A Just a minute -- the first he was down in my place on the 9th.

Q Oh, then it was the second day, the 9th, he was in your place? A Yes; and the next day he come around again.

Q On the 9th of November you saw Ross in your place? A Yes.

Q Who was there when he came? A Another gentleman with

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him.

Q Were you there when they first came? A When they came first?

Q Yes? A No.

Q When he returned that day were you there? A Yes.

Q That was the day you went out with the samples? A Yes.

Q On the 9th? A On the 9th, yes.

Q Was it the 10th of Novemer that you came along with the samples? A The next day I had them samples too.

Q How many times was Ross and the other man in your store?
A Twice.

Q Twice that same day; is that correct? A Yes.

Q Twice on the 9th? A Yes.

Q On the 10th he was not in your store, was he? A Yes.

Q He was in your store? A Yes.

Q Then, he was more than twice in your store?

MR. ROSALSKY: I object to that.

THE COURT: Objection overruled.

MR. ROSALSKY: Exception.

BY THE COURT:

Q How many times altogether was Ross inside of your store?

A There present with me he was twice.

Q While you were in the store he was there twice, and you heard from your father that he had been there once before you saw him; is that so? A Yes.

BY MR. EDER:

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Q How many times did you see him on the 9th? A Twice.

Q How many times did you see him on the 10th? A Once.

Q Where? A Over in my store.

Q And that is the only place you saw him on the 10th? Is that right? A Yes.

Q Sure about that now? A Positive.

Q You didn't see him at any other time on the 10th in your place of business; is that right? A I saw him once -- but in fact I don't know --

Q Pardon me.

THE COURT: Wait a moment.

MR. ROSALSKY: I submit the witness should be allowed to answer, if your Honor please.

THE COURT: Wait a moment, now.

BY THE COURT:

Q You are being asked at what place you saw the man who you called Ross. Do you understand the question? A I misunderstand it, your Honor.

Q You are asked where it was that you saw Ross? A In my place of business.

MR. ROSALSKY: On what date, does your Honor mean?

Q Do you understand what I have asked you? A Yes.

Q Now, I don't want you to get frightened or confused, and if you don't understand what I have said will you please let me know? A Yes.

Q Will you do that? A Yes, sir.

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Q Where did you see Ross? A In my place of business.

Q In your place of business? A Yes.

Q Did you ever see Ross outside of your place of business?

A No, sir.

Q So that whenever you did see Ross it was inside of your place of business? A Yes.

Q How many times did you see him inside of your place of business? A Well, the first day I saw him twice.

Q On November 9th you saw him twice? A Yes.

Q Did you see him on November 10th? A In the morning.

Q So that you saw him twice on November 9th in your place of business and once on the morning on the 10th in your place of business? A Yes.

Q Did you see him after that? A After that I went away.

Q Did you see him after that? A Yes.

Q Where? A Up at Flannenbaum's place.

Q You saw him at Flannenbaum's? A Yes.

Q You saw him twice on the 9th in your place of business and once on the morning of the 10th in your place of business? A Yes, sir.

Q And once on the 10th -- was it -- at Flannenbaum's? A Yes.

Q In the afternoon of the 10th? A In the afternoon, yes.

Q Did you see Ross after you had seen him on the afternoon of the 10th at Flannenbaum's place? Did you see him after that? Did you see him again? A I have seen him all day long, because--

Q You saw him because he went with you to Bernstein's place

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from Flannenbaum's? A Yes.

Q And that was on the afternoon of November 10th, was it?

A Yes.

Q Did you and he leave Bernstein's together? A Yes.

Q Did you and Ross leave Bernstein's together? A Yes.

Q And when you left Bernstein's where did you go? A To Flannenbaum's.

Q And where did Ross go? A To Flannenbaum's.

Q Now, that was the second that that Ross was with you at Flannenbaum's; is that so? A Yes.

Q Do you understand me? A Yes.

Q I understand that you and Ross went to Flannenbaum's on the afternoon of November 10th; that you and Ross went from Flannenbaum's to Bernstein's, and that after you and Ross had been at Bernstein's, you and he went back to Flannenbaum's on the afternoon of November 10th; is that so? A Yes.

Q Did you and he leave Flannenbaum's that second time together? A Yes.

Q When you left Flannenbaum's the second time where did you go? A I went down to Koplek's.

Q Where is that? A It is by Division street, corner of Allen.

Q Did Ross go there with you? A Yes.

Q What kind of a place is that? A It is a banker.

Q After you had been to this banker's with Ross did you and he leave the banker's together? Did you go out together from

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the bank? A No, he went separately, and I gave him the money.

Q He went out? A Yes.

Q And you left afterwards? A Yes.

Q After that did you see Ross again? A No, sir.

Q Never? A No, sir.

Q So that you saw Ross twice on the 9th in your place of business? A Yes.

Q Once on the morning of the 10th at your place of business?
A On the 10th, yes.

Q Once on the afternoon of the 10th at Flannenbaum's? A Yes.

Q You went with him from Flannenbaum's to Bernstein's?
A Yes, sir.

Q You went back with him from Bernstein's to Flannenbaum's?
A Yes, sir.

Q You went with him Flannenbaum's to the banker's? A Yes.

Q And he left the banker's before you did? A Yes.

Q And that was on the afternoon of the 10th? A The evening of the 10th.

Q About what time? A About seven o'clock.

Q About seven o'clock? A Yes, we left Flannenbaum's about six o'clock.

Q How old are you? A 32.

Q Where were you born? A Russia.

Q How long have you been in America? A Fourteen years.

Q How long have you been in business on Houston street in that store? A About seven years, six years or seven.

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Q This business was carried on in November of 1915 under what name? A Aaron Silverstein.

Q That is your name? A Yes.

Q Were you and your father partners? A No, sir.

Q Did your father work for you? A Practically I give him all he needs.

Q What kind of business did you carry on at Houston street?

A 109 West Houston, I had my cloak and suit store.

Q Did you have a cloak and suit store? A Yes.

Q On the ground floor? A On the ground floor, yes.

Q You sold suits and cloaks retail? A Yes.

Q What else? A And 115 I had my dry goods store. This was in the corner store and the other was in the middle of the block.

Q On the same block, but in the middle of the block you had another store? A Yes.

Q That was a dry goods store? A Yes.

Q In your name? A In my name, yes.

Q Your father was not a partner? A No, sir.

Q The dry goods store, did you sell retail or wholesale or both? A Sold retail, mostly.

Q Mostly retail? A Yes.

Q Had to sell some wholesale to pushcarts and things of that sort? A Yes.

BY MR. EDER:

Q Were one of the stores or both of them in the name of

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A. Silverstein at one time, your father's name? A No, sir.

Q Never? A Never.

Q Now, the first time that Ross came in and saw you he showed you the goods, showed you samples; is that right? A Yes.

Q Did you ask him what firm he represented? A Yes.

Q What did he say? A Mike Ross & Company.

Q Did you ask him for a card? A Yes.

Q Did he give you one? A No, I had a card with me.

Q Where did you get it? A My father gave it to me.

Q Was that on the morning of the 9th or the afternoon of the 9th? A The afternoon.

Q You saw the card? A Yes.

Q A telephone number on the card? A Yes.

Q Do you recall the telephone number? A No, sir.

Q Do you remember the printing on the card, what it contained? A I don't understand.

Q Do you remember what was printed on the card? A Yes.

Q What? A It was -- it was cotton goods, jobbing; it was jobbing, cotton goods.

Q Jobbing, cotton goods; you remember that distinctly? A Yes.

Q What did you do with the card? A I placed it among the cards.

Q What did you say to him? What did you say to Ross? A I saw the samples that were in the place, and I told him the goods is too big of a quantity to be used.

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Q Did he tell you how much he had of it? A Yes.

Q How much did he say he had? A 22,000 yards, or something like.

Q He told you that? A Yes.

Q Go ahead. A He had on every sample marked so many yards.

Q You said that it was too large a quantity for you? A Yes.

Q Well, go on? A Then I went out to see people on Canal street.

Q Is that all you say to him that night, at that time, the first time? A No.

Q What else did you say to him? A I asked him the price of the goods.

Q What did he say? A He wants six cents for it.

Q What did you say? A Six cents. I says I don't know anything about it. I will try the goods, if it is worth it. I will see what I can get for the goods.

Q Did you say to him that you cannot use it, and that you will try to sell it for him? A Yes.

Q What did he say as to that? A He was satisfied.

Q What did he say? A He said I should go out and try to sell it.

Q Did you ever sell any goods for any one else before that? A A good many times.

Q For whom? A Cloaks and suits.

Q Did you ever sell any cotton goods for any man, coming into your place trying to sell it to you? A I don't understand

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you.

Q Did you ever sell any cotton goods for any price for any person or firm that came in and tried to sell cotton goods to you?

A All the goods. I have been handling cloaks and suits and woollens.

Q Did you ever sell any cotton goods on commission for anybody as a salesman? A I cannot remember the last time. I have been doing business right along. The probability I have done some commission sales.

Q Can you give us any one instance where you sold any cotton goods for any person or firm on a commission basis for that firm or for that person? A Yes. I sold some goods for -- I don't remember his name exactly -- I have sold some goods from him.

Q From whom? A Auerbach.

Q Did he sell it to you? A He didn't sell it to me.

Q Where is his place of business? A On Canal street.

Q Was the goods billed to you? A It was billed to the other party.

Q It was billed to another party? A Yes.

Q Who did you sell it to? A I don't remember. It was some jobber on Eldridge street.

Q You don't remember the name? A I don't remember the name.

Q What kind of goods was it? A Woollens.

Q How much? A 75 cents a yard.

Q How many yards? A About 300 yards of it.

Q When? A I don't remember exactly when was it, maybe a year and a half or two years ago.

Q Wasn't that woollen sold to you and you went out and sold it to somebody else? A No, sir.

Q Tell Auerbach that you would go out and sell it for him? A Yes.

Q He could not sell it for himself, is that right? A I didn't sell that.

Q Did he have any salesmen? A Yes.

Q He had salesmen? A On a commission basis.

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Q He had salesmen in this place of business? A Yes.

Q How large a place has he got? A Quite a big place.

Q And he engaged you specially to sell these three hundred yards; is that right? A He didn't engage me specially. He was acquainted with me. I used to buy goods of them, and he had a certain woolen and he could not dispose of it, and I says "I have a customer for it," and I sold it for him.

Q But he charged you a certain amount for it and you charged your customer a certain amount? A No, sir.

Q You said to him you will sell it on a commission basis?
A Yes.

Q When this man came to you and showed you these samples you said you would try to sell it for him? A Yes.

Q Did you tell him when to come back to your place? A Yes.

Q When did you tell him to return? A The next morning.

Q Did he return the next morning? A Yes.

Q Didn't he return that same night? A Yes.

Q When did you tell him to return that night? A Well, I haven't see him - I saw him once that evening.

Q Didn't you tell his Honor, when his Honor directed you to answer the question, that you saw him on the 9th twice? Didn't you tell that to his Honor only a few minutes ago? A I saw him the day, on the 9th, he was the second time in my place of business.

Q Didn't you tell his Honor that you saw him twice, that he was there once before when your father told you he was there? Didn't

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you tell that to his Honor? A Yes; that was the second time.

Q On the 9th. The first time you saw him you had this talk with him about the price and about the quantity and you said you were going out to sell it for him; is that right? A Yes.

Q Did you tell him when to return that day? A He gave me a sample --

Q Did you tell him when to return that day; yes or no? A No.

Q Did he return that day? A No, sir.

Q Then, it is not a fact that you saw him twice on the 9th; is that correct? A Well, my father says once the 9th --

Q Did you see him the first time he saw your father? A I saw him once and my father saw him once.

Q Then you only saw him once that day; is that right? A Yes.

Q You told him to return the next morning then? A Yes.

Q What time did he appear the next morning? A He was at the place about - I called up the store from Flannenbaum--

Q What time did he appear the next morning? A It was not in the morning.

Q What time did you see him there the next day at your place?
A I saw him about - it was about ten o'clock.

Q In the morning? A Yes.

Q Did you have a talk with him? A Yes.

Q What did you say to him? A I told him about the price--

Q What did you say to him? Tell us everything you said to him? A I said to him, "The goods ain't worth the price what you are asking of me, and the highest price that I am getting for the

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goods is four cents, because people offer me three and a half, three and three-quarters, and if you take that I can dispose of it for you."

Q What did he say? A He refused it.

Q What did he say? A He refused to accept the offer.

Q He said, "I refuse to accept the offer?" Those are the words he used? A Not exactly the same words, but he say he didn't want to sell them at that price.

Q What did he say then? A Then he went away, and then he came back to me.

Q He went away? A Yes.

Q What time was that? Ten o'clock on the 10th; is that right? A Yes.

Q At that time had you already been at Flannenbaum's; is that right? A Yes.

Q Did you say to Flannenbaum that these goods comes from a manufacturer? A Yes.

Q Did Flannenbaum ask you where, and he wants to see the goods; didn't he? A He did not.

Q Did you hear him testify here? A Yes.

Q That he did say that? A Yes.

Q You say he didn't? A He didn't.

Q Did you say to him that you refused to divulge the name of the manufacturer? Did you refuse to give him the name? A He didn't ask me and I didn't refuse. I just simply told him that it come from a manufacturing house, a jobbing house.

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Q Well, is a manufacturing house the same as a jobbing house?

A Well, sometimes it is so.

Q Is a manufacturing house in cash goods, the same as a jobbing house? A Not exactly so.

Q When you told him that it came from a manufacturing house you didn't want to tell him what kind of a house it came from; is that right? A He didn't ask me.

Q But you told him it came from a manufacturing house? A Yes.

Q Didn't you want him to believe that it came from a manufacturer who was closing out the goods? A I told him it is a party who is manufacturing or jobbing - I don't remember what I told him, but I say it is a party who wants to close out some goods.

Q Didn't the party tell you he wants to close out some goods?

A Yes.

Q He told you that? A Yes.

Q You never said anything of this kind before about closing out some goods? This is the first time you mentioned about closing out goods? A Yes.

Q And Flannenbaum offered you four cents; is that right? A Yes.

Q And then you went back to your place of business and saw this man and told him you could dispose of it at four cents? A Yes.

Q And he went away? A Yes.

Q When did he next appear in your place? A He was back in about half an hour later.

Q What did he say to you? A A half or an hour, and he told me is satisfied. I suppose he went around.

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Q No, no. What did he say to you? A He said he is satisfied and I went with him to Waverley Place.

Q He said he was satisfied? A Yes.

Q At four cents a yard? A Yes.

Q Anything else said at that time? A Certainly made an agreement between us how much I was to make on it.

Q What was said at that time? A I told him I want to ^{make} five per cent on that transaction.

Q Didn't you tell us that was said at the first conversation you had with him? A I reminded him again. I said it twice.

Q What did you say this time? A I said "I want to make five per cent commission on the transaction."

Q What did he say? A He was satisfied.

Q Anything else said at that time? A Nothing particular.

Q You had been buying from Flannenbaum before, hadn't you?

A Yes.

Q You say he had quite a large business? A Who?

Q Flannenbaum? A Yes.

Q And you were in the habit of buying from them on credit?

A Yes.

Q Did you owe him any money at that time? A Yes.

MR. ROSALSKY: I object to that as being immaterial.

MR. EDER: I will promise to connect it.

THE COURT: I will receive it subject to connection.

MR. ROSALSKY: Exception.

Q Did you tell this Mr. Ross who you were selling the goods to?

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A Yes.

Q Who did you tell him you were selling it to? A A certain party on Church street.

Q Did you give him the name? A Yes.

Q Did you tell him the man is in business? A Yes.

Q Did he ask you if the man is rated? A No, sir.

Q Did he ask you if you are selling it for cash or credit?

A He didn't ask me that.

Q Did you tell it to him? A I say, "Well, it is for cash basis."

Q You never said anything of the kind before, did you?

MR. ROSALSKY: I object to that.

Q Did you tell us at any time before this jury here that you were told to sell it for cash? A I was told to sell it for cash.

Q But you never said that before, did you? A (No answer).

Q When did he tell you to sell it for cash?

MR. ROSALSKY: I submit that the testimony is --

THE COURT: I don't recall; I don't remember myself that the witness did say it, but the jury will remember what the testimony was.

Q When did he tell you to sell it for cash? When? A When he produced the samples.

Q The first time? A Yes.

Q Didn't you at that time tell us he was trying to sell that goods to you, when he produced the samples? A Certainly he wants to sell it to me, but I refused to buy.

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Q And at that time he says, "I want you to sell it for cash?"

A Yes.

Q And then when you saw Flannenbaum you told him you wanted cash for it? A I told him this is a cash proposition. The man wants the cash for his goods.

Q Did you tell Mr. Ross to give you a memorandum of the goods that he has, a bill? A I asked - memorandum? What do you mean by memorandum?

Q Don't you know what a memorandum is? A Memorandum? When you sell somebody goods - I was receiving goods on memorandum.

Q Did you tell him to mark down anywhere -- A He had a list of the goods.

Q Did he give you that list? A The list of every sample was written of how many yards in a case.

Q And you had those samples with you? A Yes.

Q When you came back and he said, "Oh, I will sell it," you went with him to Waverley Place? A Yes.

Q Did he ask you to go there with him? A No, I went myself.

Q What did you say to him? A I says, "I want to go down to where your place is."

Q Why did you ask him to do that? A I wanted to look at the goods.

Q After you had sold the goods you wanted to look at the goods? A I wanted to look at the goods where it is come from.

Q After you sold the goods to Flannenbaum, then you wanted to see the goods? A Yes.

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Q And at that time he says, "I want you to sell it for cash?"

A Yes.

Q And then when you saw Flannenbaum you told him you wanted cash for it? A I told him this is a cash proposition. The man wants the cash for his goods.

Q Did you tell Mr. Ross to give you a memorandum of the goods that he has, a bill? A I asked - memorandum? What do you mean by memorandum?

Q Don't you know what a memorandum is? A Memorandum? When you sell somebody goods - I was receiving goods on memorandum.

Q Did you tell him to mark down anywhere -- A He had a list of the goods.

Q Did he give you that list? A The list of every sample was written of how many yards in a case.

Q And you had those samples with you? A Yes.

Q When you came back and he said, "Oh, I will sell it," you went with him to Waverley Place? A Yes.

Q Did he ask you to go there with him? A No, I went myself.

Q What did you say to him? A I says, "I want to go down to where your place is."

Q Why did you ask him to do that? A I wanted to look at the goods.

Q After you had sold the goods you wanted to look at the goods? A I wanted to look at the goods where it is come from.

Q After you sold the goods to Flannenbaum, then you wanted to see the goods? A Yes.

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Q Why? A Because I wanted to prove myself where the goods come from.

Q Did you have any suspicions about that time? A No, sir.

Q When every salesman sold you goods, did you go out to find where the goods come from? A Their goods is shipped to me.

Q Weren't these goods going to be shipped to you? A No, sir.

Q Did you have to go over there yourself to get the goods?
A No, sir.

Q What then? A Just look at the goods and what the place looked like.

Q Why did you have to go and look at the goods to see what the place looked like if you had already sold those goods to Flannenbaum?

A The reason why I done that is because I wanted to go to the place and find out if the goods was there, and then I gave him the address where to ship the goods.

Q Why did you have to go to see if the goods were there? You were not giving him any money until the goods were delivered, were you? A What is it?

Q You didn't have to give him any money until the goods were delivered, is that right? A Yes.

Q Why did you have to go to see if the goods were delivered?

A Just for the sake of proving to myself whether the goods is there or not.

Q Why did you want to prove it to yourself? A Well, it come to my knowledge that way, and I was just anxious to know where these goods come from.

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Q Was it any different business dealing than you were in the habit of doing? Did you ever do that before after a salesman came and showed you the goods? Did you follow the salesman up to see where the goods came from? A Sometimes I went up to look at the goods.

Q Then, when you bought it for yourself before, you bought it; is that right? A Yes.

Q But now you had already sold the very goods that he was supposed to have in this place; it was sold; is that right? A Yes.

Q To Flannenbaum? A Yes.

Q You had no interest in it except to get your commission? A Yes.

Q You came and showed the samples which you got this man to Flannenbaum? A Yes.

Q Is that right? A Yes.

Q Why did you go to see if the goods were there? A Because I went down to see the goods. I wanted to see what pieces, how they ran, whether they are perfect goods, whether they are damaged goods, or soiled goods, or from a fire goods, and I have to make it sure when he sends to the other party for the goods. That is the only reason I don't that.

Q Don't you do that before you sell goods? Don't you see whether it is seconds? A But a piece of ---

THE COURT: Go on to something else.

Q When you came over to Waverley Place, did you see a sign, "Ross & Company?" A I haven't noticed it.

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Q Did you see any name on the door? A No, sir; I happened¹⁰⁵
just not to notice it.

Q And you were not excited, were you? A No, sir.

Q It was a regular business transaction? A Yes.

Q And you took the elevator, didn't you? AA Yes.

Q What floor did you go to? A The time I went before my
knowledge it was the second floor.

Q You mean one flight up, is that right? A Yes.

Q Did you open the cases or were they opened? A They were
opened.

Q How many men were working in the place there? A Four or
five of them.

Q What were they doing? A They were fixing some cases there.

Q Hats on? A No.

Q Hats off? A Yes.

Q Coats off? A Yes.

Q Were there any women there? A No women.

Q Was any bookkeeper there? A No, sir.

Q You just saw them fixing the cases? A Yes.

Q Did you examine each piece of goods? A I just looked at
the top of the case and took out one piece of goods and looked at it.

Q Each one of the cases? A Not exactly each one. There were
five or six.

Q Then what did you say? A I said, "All right, you can pack
them up and send them over to the place.

Q Send them to where? A Flannenbaum.

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Q And you gave him the address? A Yes.

Q Did they ask you for money? A No, sir.

Q Did he walk along with you, the same man; is that right?

A Yes.

Q Then what happened? A He delivered the goods. I met him up to Flannenbaum's place.

Q Did he come there before you did? A No, I was there.

Q Do you know whether he was on the truck himself? A I have not noticed.

Q Did you see the truck arrive there? A Yes.

Q Will you swear that he was not on the truck with the goods?

A Well, I cannot swear that.

Q Didn't you see him go on the truck with the goods? A No, sir.

Q Was he in the place of business of Flannenbaum or waiting outside for you? A Inside.

Q Do you know whether he had spoken to Flannenbaum or not before? Did he tell you he had spoken to Flannenbaum?? A (No answer).

BY THE COURT:

Q When you got to Flannenbaum's place of business was Ross already there? A Yes, he was there already when I came there.

Q You mean to say that when you went into Flannenbaum's place Ross was inside of it? A Inside the place.

Q What floor was Flannenbaum on? A The ground floor.

Q Right off the sidewalk? A Yes.

Q When you came there what did Ross say to you? A Ross didn't say nothing. The only thing I said to Mr. Flannenbaum was "This is

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the gentleman who owns the goods."

BY MR. EDER:

Q You said that to him? A Yes. He brought the goods in. He says, "All right, you can drop the goods on the sidewalk." Then he told to him or to me, he sold to a certain party and he wants to take the goods over to Bernstein's place, so my party answered that he refused to give the goods over in the other place.

Q Who said that? A Ross.

Q He said he refused to give the goods over to the other place? A No, not refused to give them. He refused to remove them from one place to another; he will take the goods back to his place.

Mr. Flannenbaum explained himself the reason why he did not want the check or the goods here, because Bernstein has got a machine printing that checks up the goods quicker than we will do it in this way.

Q Yes? A So Mr. Flannenbaum took the express and sent over the goods to Bernstein's place.

Q The same express it arrived in? A No, sir.

Q Did you see that express go away? A Yes.

Q Do you know what express that was? A I don't remember. Mr. Flannenbaum knows.

Q Knows what? A The express.

Q I am talking about the express that brought the cases over there? A No.

BY THE COURT:

Q Who was it that drove the wagon from 14 Waverley Place to

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Flannenbaum's place of business? A I don't know. I heard that the Baker Express Company, with two horses.

Q Did you see the horses? A No, sir; I haven't seen his wagon.

Q Where was Flannenbaum's place? A On Church street.

Q Between what streets? A Between Canal and Lispenard.

Q How did you go from 14 Waverley Place to Flannenbaum's? A I went over to the store.

Q You went from 14 Waverley Place over to your own store? A Yes.

Q On Houstonstreet? A Yes.

Q And then you went from there to Flannenbaum's? A Yes.

Q But Ross didn't go with you? A No, sir.

Q And when you got to Flannenbaum's store, Ross was already there and inside of Flannenbaum's place? A Yes.

Q And the trunk was outside with the cases on it? A I didn't notice that - yes, that is right, your Honor. The goods was dropped at the time on the sidewalk.

Q Were they already on the sidewalk? When you reached Flannenbaum's place were the cases on the truck or on the sidewalk? A They were on the truck, I imagine so. I cannot recall, because it is two years ago.

Q You are not sure? A I am not, your Honor.

BY MR. EDER:

Q And then you and Ross went over to Bernstein's to see the goods measured, is that right? A Ross and his clerk and I.

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BY THE COURT:

Q What is his clerk's name? A I don't know his name.

Q What did he call his clerk - oh, that is Flannenbaum's clerk? A Flannenbaum's clerk.

BY MR. EDER:

Q You measured the goods; is that right? A Yes.

Q Then you came back to Flannenbaum, is that right? A Yes.
said

Q Then what happened? A Flannenbaum, there was some shortage on yardage. He deducted whatever it was shortage.

Q Yes? A And we went away.

Q And did he give you anything? A Flannenbaum gave me a few checks.

Q At that time? At that time did he give you a few checks?

A (No answer).

BY THE COURT:

Q That is when you came back from Bernstein's? A Yes.

BY MR. EDER:

Q A few checks he gave you? A Yes.

Q How much? A One check was \$200 and one check \$150.

Q Didn't you tell his Honor that the first thing he gave you was a check for \$300? A That is the first time.

Q When was that? A When he arrived with the goods.

Q Before he had measured it? A Before he had measured it.

Q What did he do with the \$300? A I went over to the bank and changed it.

Q That is before you went to Bernstein's? A Before I went to

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Bernstein's.

Q And you say you gave that to Ross; is that right? A Yes.

Q Sure about that? A Positive.

Q When did you receive the bill from Ross? A The bill I received in the evening.

Q That evening? A Yes.

Q Where? A At Flannenbaum's place.

Q The bill that Ross gave you, you say was at Flannenbaum's place?

A Yes.

Q That evening? A Yes.

Q After all the money had been paid him? A Yes.

Q You are sure about that? A I misunderstood you, what you asked?

THE COURT: The witness says this - he arrived at Flannenbaum's place; the goods were already there, either on the truck or on the sidewalk; Ross was inside; Flannenbaum paid him - the witness - \$300 by check; the witness went to a bank and got that check cashed; he then went with Ross from Flannenbaum's to Bernstein's; there the goods were measured; he returned from Bernstein's with Ross to Flannenbaum's and received from Flannenbaum other checks, one for \$250, and one for \$150, and he went with Ross to a banker's - he has named the banker - and he says these checks were cashed there and he paid the money to Ross.

Q I am asking the witness - Where did you receive the bill from Ross? A In Flannenbaum's place.

Q When did you receive it? After the first payment was made or

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when all the payments were made? A When all the payments was made.

Q That is, after you got all those checks that you have mentioned - the \$800 - that is the first time that Ross gave you the bill; is that right? A Yes.

Q I show you People's Exhibit 9 in evidence, and I ask you whether that is the bill that he gave you (Showing)? A It is.

Q Who wrote that bill? A I did.

Q You wrote the bill yourself; is that right? A Yes.

Q The whole bill? A Yes.

Q Could not Ross write? A Well, I made it; he told me I should make out the bill.

Q He told you to make out the bill. A Yes.

BY THE COURT:

Q Whereabouts were you when you did the writing on that bill?

A I was on a table.

Q A table where? A In Flannenbaum's place.

Q That is, you were at a table in Flannenbaum's -- A Yes, I will explain you. I didn't suppose to give a bill, that the only thing Mr. Flannenbaum said to me, that he didn't know the gentleman; he would like to have a bill of me. Momentary I didn't consider it, and I gave him the bill, and then I asked Ross, "I want to have a bill. He says, "All right, you make out a bill and I sign you for it." And I made out the bill.

Q And did Ross sign it? A Yes.

Q In Flannenbaum's place? A Yes.

Q That was before he had received the money at the banker's?

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A Yes. He signed me before I received from the banker the money, but he had a bill in his pocket.

Q Didn't you tell us he gave you that bill after the goods were delivered, and that you got all the money? Didn't you tell that to the jury a moment ago, that that bill given you by Ross was given after you returned from the bank, after Flannenbaum had paid you all the money? Didn't you tell us that? A I don't understand you.

Q Didn't you tell us a moment ago that Ross gave you the bill, People's Exhibit 9 in evidence, after you had paid him all the money?

A Yes;

Q Is that right? A Yes.

Q And that is the time you wrote out the bill after you paid him all the money; is that right? A Well, it is not exactly so. We made out the bill, but we didn't want to accept the checks. He signed the bill, and then he say he wants the cash for it, and I says, "All right, I will go down and I will change it and some cash I will maybe have it in my pocket, and I will pay it out in full."

Q The first thing you got from Flannenbaum was \$300; is that right? A Yes.

Q Did you turn that \$300 over to Ross? A Yes.

Q Show me on this bill anywhere that you gave him \$300 (Showing Exhibit 9)? A I didn't put down \$300. I only put \$200, by mistake.

Q When did you notice that mistake? Just now? A Just now, yes.

Q Why did you put down on account, deposit, \$200, paid in cash, and then \$203, and then \$400, if this bill was made out and given to

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you after all the money was paid? Why didn't you merely make out a bill for \$808 and mark it paid? A That was a misunderstanding between Flannenbaum and me. I was supposed to turn the checks over to him, and he refused to accept the checks. You understand? I put down whatever the checks amounted to. For instance, there is \$300. You understand? I didn't spell that right, and I made a mistake.

Q They are figures. There is no spelling there. A The checks should tabulate with these amounts. I have to give him to tabulate with his bill of goods in cash --

Q You took \$300 and turned it over to the gentleman, didn't you, the cash? A Yes.

Q You could write "3" and "3", could you not? A Yes.

Q Why didn't you put down here \$300? A I didn't notice what I put down there.

Q Have you got a check account? A Yes.

Q Did you have a check account then? A That time?

Q Yes? A Yes.

Q Why didn't you give Ross your check? A He refused to accept any check.

Q Did you offer him any checks? A Yes; Flannenbaum did.

Q Did you offer him your check? A No, sir; I did not.

Q Was Koplek your banker? A No, sir.

Q Whose banker is Koplek? A He is a banker for everybody.

Q Did Flannenbaum have an account in Koplek's? A No, sir.

Q Did you have an account there? A No, sir.

Q What did you do with the first check you got, the \$300?

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Where did you cash that? A Flannenbaum's bank.

Q You went to his bank and cashed it? A Yes.

Q And Ross went along with you? A Yes.

Q At that time you didn't have a bill yet, did you? A No, sir.

Q When did you get this? After all the money was paid?

A All the money was paid.

Q Didn't you tell Ross to give you a bill with his billhead?

A Yes, I did that.

Q Why did you take this bill at all, People's Exhibit 9 in evidence? A Why?

Q Yes? A Because I gave Flannenbaum a bill and I want to have for him a bill.

Q Did you give Flannenbaum a bill on your own billhead?

A No, didn't give him my own billhead.

Q On whose billhead did you give Flannenbaum a bill?

A Flannenbaum gave me a billhead.

Q Whose billhead was it? Flannenbaum's billhead or your billhead? A Flannenbaum's billhead.

Q Didn't you write this in your own place of business, People's Exhibit 9 in evidence? A No, sir.

Q Didn't you tell that to the police officer? A No, sir.

Q Sure about that? A Positive.

Q Then you paid Ross all the money and he went away? A Yes.

Q And you went about your business? A Yes.

Q How much money did you have left? A I got \$40 and odd

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cents.

Q And you gave Ross \$808.05, didn't you? A Yes.

Q Did you give him that full amount? A Yes.

Q Sure about that? A Positive.

Q You gave him the full amount, eight hundred and some odd dollars? A Yes.

Q Where did you get the \$40 from? A Except I take out \$40.

Q Why didn't you say this on your bill?

MR. ROSALSKY: I object to that.

THE COURT: Objection sustained.

Q Then the police officer came to your place the next day, didn't he? A Yes.

Q And Flannenbaum pointed to you and said that you sold him the goods, is that right? A I may be mistaken about that.

Q You misunderstood me? A Yes.

Q Don't I talk plainly? A Yes.

Q Flannenbaum told the police officer in your presence that you sold him the goods; is that right? Didn't he? A Yes.

Q And the police officer asked you and you said that was right; is that so? A Yes.

Q And they asked you where you bought the goods? A Yes, sir.

Q What did you say? A At 14 Waverley Place I bought them.

Q You told the police officer that at once, that it was at 14 Waverley Place that you bought it? A Yes.

Q You remembered the address, didn't you? A Yes.

Q And you remembered the names? A Yes.

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Q And then the police officers - you showed the police officers the bills? A Yes.

Q And then the police officers asked you to describe the place? A Yes.

Q You did? A Yes.

Q You told them it was 14 Waverley Place? A Yes.

Q What floor did you tell them it was? A He didn't ask me what floor.

Q When you came into the building, 14 Waverley Place, you first took the police officer to the top floor, didn't you? A I don't know whether it was the top floor.

Q Well, it was further up than the place you finally took him to? A No, I took him up first to the third floor.

Q Why did you take him to the third floor? A I didn't know exactly whether it was the second or the third.

Q Didn't you take him up to the third floor before you took him to the place that you finally told him you bought them? Didn't you take him to the third floor? A Yes, it was this way; first we stopped on the third floor.

Q Third, fourth, and the fifth; you were going up all the time? A Yes. Consequently the officer asked the elevator man whether there was any other floors, and he said, "The second floor."

Q You first went to the third floor with the police officer. Of course you told him you can take him to the place where you got these goods; is that right? A Yes.

Q And you took him to the third floor first? A Yes.

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Q Was the door open? A He opened it.

Q And there was people working there? A I didn't see anybody.

Q What is it? A A partition.

Q What did you say to the police officer? A That is not the place.

Q Then you want one floor up; is that right? A Yes.

Q Did you look into the place again? A Yes.

Q But said "That is not the place?" A Yes.

Q You went up another floor? A Yes.

Q You looked into the place and again you told the police officer "That is not the place;" is that right? A Yes.

Q Then what happened? A The officer asked the elevator man - I asked him myself first, "You know the place I was here yesterday?"

Q What did he say? A He says "I don't know." And the officer asked the elevator man, "Do you know any more floors here?" And he says "The second floor here." Well, the officer asked him to let us off there. We went off there, and I saw these boxes standing.

Q When you went off on the second floor with the police officer you saw no one in there? A Yes.

Q You saw the floor empty? A There was cases there.

Q There were some pieces of wood or shelves, were there not?

A No, sir; cases.

Q Old cases? A Old cases.

Q There was no person there? A There was no person there.

Q It was empty outside of these cases? A Yes.

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Q Any shelving? A Yes.

Q Any desk? A No, sir.

Q Any table? A No, sir.

Q Any chairs? A No, sir.

Q Any typewriters? A No, sir.

Q And then you said, "That is the place," and then you told the police officer you recognized the place? A Yes.

Q Were you inside then? A Yes.

Q And then the police officer told you you were under arrest; is that right? A Yes.

Q You never had any trouble with this police officer before, did you? A No, sir?

Q And you never had any trouble with Lowenstein? A No, sir.

Q And you never had any trouble with Flannenbaum? A No, sir.

Q After you left 14 Waverley Place, ^{and} the police officer said to you "You are under arrest," didn't you say to him, "Now, give me a chance?" Didn't you say that? A I told him --

Q Didn't you say that? A No, sir.

Q What did you say? A I said there must be something wrong in this matter of the goods.

Q There must be something wrong? A Yes.

Q What did the police officer say? A He didn't say nothing.

Q Didn't you say that you were married? Didn't you tell him you were married? A No, sir.

Q Didn't you tell the police officer you made \$180 on the deal?
A No, sir.

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Q You didn't say anything of the kind? A No, sir.

Q Just answer this one more question: At the time when Flannenbaum came to you and said the goods were stolen, tell us exactly what you said to him? Tell us what you said? A Flannenbaum?

Q Yes? A I don't understand what you ask me?

Q When Flannenbaum and the police officer came to you and told you that the goods were stolen, what did you say? A He didn't ask me momentary the goods were stolen.

Q What did he say? A He asked me a question-- "The goods which I bought of you was stolen goods," he says.

Q What did he say? A No, he didn't ask me that. He asked me that - I imagine - the officer asked me first, --

Q Don't imagine. Tell us what you remember? A I imagine that the officer asked me, "Did you sell Flannenbaum goods?"

Q Go ahead? A And I said "Yes." And "Where did you get the goods?" I said, "Down there, 14 Waverley Place." "Have you got a bill," he said. I said "Yes." And I went over to the store and I showed him the bill and we tried to locate the people after that.

Q Was there anything said in your store about the goods that you had sold having been stolen? A The officer told me.

Q What did he say? A He said it was stolen goods.

Q What did you say? A I said I didn't know anything about it.

Q Just in that fashion, just the same way you are answering this now? A No, I was excited at that time.

Q What did you say? A I said I didn't know anything about it.

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THE DEFENDANT RESTS.

(The Court thereupon admonished the jury and a recess was taken until January 9, 1918, at 10:30 o'clock A.M.).

(Convicted)

120
126
300

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