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COURT OF GENERAL SESSIONS,

PART IV.

-----X
THE PEOPLE OF THE STATE OF NEW
YORK

-against-

A B R A H A M S E I T Z.

:
:
:
: Before
: HON. WARREN W. FOSTER,
: and a Jury.
:
:
:-----X

Indictment filed January 27th, 1905.

Indicted for Criminally Receiving Stolen Property.

New York, February 10, 1905.

A P P E A R A N C E S.

For the People, Assistant District Attorney Isidor J. Kresel.

For the Defendant, Mr. B. L. Mitnick.

Peter P. McLoughlin,

Official Stenographer.

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JAMES MCGIFFIN, a witness for the People, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESSEL:

Q Mr. McGiffin, where do you live? A 56 West 37th
Street.

Q What is your business? A Linen importer.

Q You are an importer of linens? A Yes, sir.

Q Where is your place of business? A 37 White Street.

Q In the City and County of New York? A Yes, sir.

Q How long have you been in that business, Mr. McGiffin?

A In that business altogether? I have been all my life in
the business.

Q In the linen business? A Yes, sir.

Q How long have you been in the wholesale linen business?

A Well, I have always been in the manufacturing -- wholesale
ever since I started.

Q Now, was your place of business at this number on
White Street on the 25th day of November, 1904?

A Yes, sir.

Q On that day did you have a stock clerk?

A Yes, sir.

Q What was his name? A William E. Clackett.

Q William E. Clackett? A Yes, sir. Excuse me, just
one moment, you say on that day was he a clerk of mine? He

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was not because he had left some two weeks or so previously, but he had been in my employment and had left, but was not at the date I think that you mentioned.

Q When did Clackett leave? A I could not give you the exact date, but sometime in the beginning of November.

Q Sometime in the beginning of November of what year?
A Of last year.

Q 1904? A Yes, sir.

Q Do you know whether it was before the 25th?
A Yes, sir; before the 25th.

Q Sure of that? A Quite sure.

Q Can you fix it exactly, in any way? A I could not just at the moment; I could find out very easily.

Q You have records in your office that would show?
A Yes, sir, we have a record of the day that we paid him last.

Q Was Clackett the stock clerk? A He was the stock clerk.

MR. MITNICK: I object to that, if your Honor please, this last question and answer. Does your Honor hear my objection?

THE COURT: I hear it and pass upon it. I overrule the objection.

MR. MITNICK: I take an exception.

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THE WITNESS: He was stock clerk and shipping clerk.

Q Stock clerk and shipping clerk? A Yes, sir.

MR. MITNICK: I again object to that answer to the question because the witness has testified that he was discharged two weeks before this thing happened.

THE WITNESS: Excuse me, I did not say he was discharged.

MR. KRESSEL: I am not asking the witness for any particular time.

THE COURT: Put your question. There is nothing before me now. I have ruled.

Q He was stock clerk and shipping clerk? A Yes, sir.

Q How much of this building, on White Street, did you occupy? A The second floor, that is the first up from the ground, and the top floor of the building, which is the sixth floor of the building.

Q There are six floors? A Yes, sir; there are six floors in the building.

Q You occupied the top floor? A Yes, sir.

Q And the second floor? A Yes, sir.

Q In that building? A Yes, sir.

Q What part of your business did you transact on the top floor, what was that used as? A We kept our,-- what we might say our surplus stock up there, that is a portion of our goods

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which we were not in immediate want of.

Q You used it as a stock room? A Yes; we used it as a stock room.

Q Now, just what sort of articles are these that you deal in. Name some of them? A We deal in that general line, such as towels, handkerchiefs, sheets and cloth, napkins and kindred goods.

Q The towels, for instance, that you deal in, how are they packed? A Well, they come to us in original packages, in paper.

Q packed in paper? A Yes, sir.

Q In packages of how many? A It varies with the price, some may be three dozen, some five, some one, according to the price of the goods.

Objected to. Objection overruled. Exception.

Q And is that true, in general, of the other lines of goods that you have? A Yes, sir; generally speaking it is.

Q Now, while Clackett was in your employ did you miss any goods?

MR. MITNICK: I object to that as leading.

THE COURT: He may answer.

A While he was in our employ we did not miss any goods.

Q When he left? A After he left we missed the goods.

Q How soon after? A Probably two weeks.

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Q Did he return? A No, sir; not until I had him arrested.

Q What did you miss? A We missed various articles, towels, handkerchiefs, cloth, etc.

MR. MITNICK: I object to that. He is only charged here with towels.

THE COURT: He may answer.

Exception.

THE WITNESS: (Continuing) We missed towels, handkerchiefs, cloth, napkins, sheets and a few other of such goods.

MR. MITNICK: I object to this testimony.

THE COURT: Objection overruled.

Exception.

Q In amount how much did you miss? A In the neighborhood of \$500.

Q Do you know Boyd, this Benjamin Boyd? A Yes, sir.

Q What was his occupation? A He was not employed by us but was employed by the owner or agent of the building as elevator man.

Q Do you know Abraham Trotzsky? A Yes, sir.

Q Was he employed by you? A No, sir.

Q Where is he employed? A He is employed on one of the other floors of the building, above us.

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Q Now, do you know the defendant, Seitz?

A Well, no, I cannot say that I knew him.

Q Have you seen him before this? A I have seen him, yes, sir.

Q Have you seen him in the building where your place of business is located? A I could not say that I have, no, sir.

Q Now, I am not quite clear, Mr. McGiffin, and I don't think that the jury is as to how Clackett left your employ?

A Well, he had been drinking and I had spoken to him several times.

MR. MITNICK: I object to all this, if your Honor please.

THE COURT: objection sustained.

Q Don't tell us what you said to him. Did you discharge Clackett?

MR. MITNICK: I object to this.

THE COURT: I sustain the objection.

MR. KRESSEL: I am nonplused to know the reason for your Honor's sustaining the objection.

THE COURT: I will tell you why, because you want to get before the jury that this witness came to an unfavorable opinion concerning the defendant.

MR. KRESSEL: No, sir, I am not trying to do that at all.

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THE COURT: Then make plain by your question what you are trying to do.

Q Did you send Clackett away or did he leave of his own accord?

Objected to.

THE COURT: Objection sustained. It does not make any difference whether you discharged him or whether he left of his own accord; it has nothing to do with the stealing --

Q When Clackett left did he return after that?

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

THE COURT: He may answer that.

A No, sir, he did not return until he was arrested.

Q Where and when was he arrested? A He was arrested in Brooklyn.

Q Were you present at the time of the arrest?

MR. MITNICK: I object to that unless the witness knows of his own knowledge. I ask that it be stricken from the record.

Q Were you present at the time of the arrest. Will you answer, please? A No; I was not.

THE COURT: Strike it out.

Q Mr. McGiffin, this defendant is charged with buying

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certain stolen property on the 25th of November, 1904 --

MR. MITNICK: I object to this question.

MR. KRESSEL: I have not finished the question yet.

MR. MITNICK: It is very suggestive.

Q Will you state to the jury how it is that if Clackett left your employ before the 25th of November, that you charge it as of that date?

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

MR. KRESSEL: I have tried to bring that out by asking the witness when he left but there seems to be some doubt about it.

THE COURT: He may answer the question.

Exception.

THE WITNESS: There must be some mistake about the date; I don't charge him with taking the goods or receiving the goods on the 25th of November.

MR. MITNICK: I object to the question and answer.

MR. KRESSEL: It is a responsive answer.

Objection overruled. Exception.

Q Do you know now the exact date when Clackett left?

A No, sir; I could not tell you the exact date.

Q Will you find it out for us? A Yes, sir; I will.

MR. KRESSEL: You may cross examine.

MR. MITNICK: I have not any questions to ask Mr.

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McGiffin.

WILLIAM CLACKETT, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESSEL:

MR. MITNICK: I have been requested by Mr. Coleman that before Clackett testifies to notify him, as he represents the interests of this witness Clackett.

MR. KRESSEL: I object to any counsel being notified or my witness being interviewed.

THE COURT: You have no right to say anything at all about the matter. You are here to defend this defendant as this man is called as a witness.

Q What is your name, Clackett? A William.

Q William Clackett? A Yes, sir.

Q What was your last occupation? A I worked in the painting business with my step-father.

Q In the painting business? A Yes, sir.

Q Where were you working before you worked at the painting business? A With the castle Island Linen Company.

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

Q Is he one of the firm of the castle island Linen Company? A Well, he is the representative, not one of the firm, the representative.

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Q Where is the place of business of the Castle Island Linen Company? A 37 White Street, corner of Church Street.

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

Q What was your position with that company? A Porter.

Q What? A Porter, in the shipping department.

Q Did you ship goods? A Yes, sir.

Q And unpack them? A Yes, sir.

Q Were you the shipping clerk? A Yes, sir.

Q How long were you with that firm? A I was with them, I started to work for them in 1899; I worked with them up until 1903; then I left them a year and I went back in 1903; I left them in 1902, I stayed away for a year, and I went back the following October, 1903, and I worked for them until last October.

Q Do you remember the exact day when you left them the last time? A No, sir; I do not know exactly.

Q Now, what part of that building, 37 White Street, did this company occupy? A They occupied two lofts, the first loft over the store and then the top loft.

Q What was the top loft used as? A A store-room.

Q What was the general line of business of this company; what did they deal in? A Linen.

Q Linens? A Yes.

Q Now, do you know the defendant, Abraham Seitz?

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A I don't know him, no, sir, but I am acquainted with him;
I don't know him.

Q You are acquainted with him? A Yes, sir.

Q How long have you been acquainted with him? A Well,
I could not say; I have seen him; I have seen him, I guess,
for the last three or four months back.

Q Well, when was the last time that you saw him?

A I don't know.

Q Have you ever seen Seitz in the place of business of
this Castle Island Company? A Yes, sir.

Q Now, when was the last time that you saw him there?

A I don't know.

Q How long before you left the employ of the company?

MR. MITNICK: I object to that. He has testified
that he does not know.

THE COURT: I do not understand the objection.

MR. MITNICK: I withdraw it.

THE COURT: Gentlemen of the jury, do not talk about
this case nor permit any one to talk with you about it
nor form or express any opinion thereon until the case
be finally submitted to you.

We will take a recess until 2 o'clock.

(Recess)

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After Recess.

WILLIAM E. CLACKETT, a witness for the People, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. KRESSEL:

Q Now, Clackett, before the adjournment I was questioning you as to the last time when you saw the defendant in the place where you were working, Mr. McGiffin's place?

A Well, I could not say when.

Q Do you remember when you left the employ of Mr. McGiffin? A I remember, yes, sir.

Q Do you remember what month that was in? A Sir?

Q Do you remember the month it was in? A I think it was in October, the latter part of October.

Q Well, was it before or after the election? A I think it was before election -- after election.

MR. MITNICK: I object to that, if your Honor please, as already answered. He said the latter part of October.

THE COURT: objection overruled. Exception.

Q You say it was after election? A Well, now I cannot be positive when it was so therefore --

Q That is what I am trying to fix, I am trying to fix the date as near as I can. How long is it since you have been

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in prison? A Well, I went in on the 13th of December; then I went out on bail and I have been in now for three weeks.

Q You were arrested then the 13th of December?

A Yes, sir.

Q How long before the 13th of December was it that you left Mr. McGiffin's employ? A What did you say?

Q How long before the 13th of December was it that you left Mr. McGiffin's employ? A Well, you asked me before and I ~~was~~ told you I don't know when.

Q About when? A I say I think it was about the latter part of October.

Q Well, in answer to my question whether it was before or after election you said it was after election, now, is that so? A Well, no, sir, it could not be if it was the latter part of October; it could not be after election.

Q You know when election falls? A Yes, sir.

Q When, what month? A In November; I am positive.

Q In November? A Yes, sir.

Q Now, do you know whether it was after or before election? A It was before election.

Q You think it was before election? A Yes, sir; well, now you can ask me that and I can't tell you when it was now, before it was before or after.

Q How long before you were arrested -- how long were you

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out of work? A I was not out of work at all.

Q How long were you working at the painting trade before you were arrested? A I worked at the painting business on and off.

Q Well, I mean since you left Mr. McGiffin's employ?

A How long was I in the painting business? I went right to the painting business when I left his employ.

Q How long did you stay in it until you were arrested?

A I stayed in it until the week before I was arrested.

Q How long was that? A Well, I don't know, because I don't know what date it was I left Mr. McGiffin's.

Q Now, how long before you left Mr. McGiffin's employ, whenever that was,-- how long before that time did you see the defendant last? A How long before I left him?

Q Yes. A Well, I believe I saw him about a day or so before.

Q A day or so before? A Yes, sir.

Q What happened between you and him on that occasion?

A Well, we had a little transaction.

MR. MITNICK: I object to that unless he states the time.

THE COURT: He may answer the question.

Exception.

A We had a little transaction that day.

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Q What was it?

MR. MITNICK: I object to that.

Objection overruled. Exception.

A He bought some goods from me that day.

Q What was your last answer? A I said he bought some goods from me that day.

Q He bought some goods from you? A Yes, sir.

Q What goods? A Linen.

Q What were they? A Linens.

Q What sort of linens were they, towels?

MR. MITNICK: I object to that. I do not think it is fair or proper for the District Attorney to suggest anything.

THE COURT: You are entitled to your opinion. I overrule the objection.

Exception.

A I could not say.

Q Where did you get those linens? A On the top left, in the store-room.

Q A little louder? A In the store-room of the left top.

Q Whose store-room? A James McGiffin's.

Q Do you mean the place where you were working?

A Yes, sir.

Q Where did you take them out of? A Out of this store-

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room.

Q Were there other goods there? A Yes, sir.

Q These goods were Mr. McGiffin's goods? A Yes; they were.

Q They were not your goods? A No, sir.

Q Now, what was said between you and him on that occasion with reference to these goods? A There was nothing said.

Q Not a word said? A Well, very little said, no, sir.

Q Just tell us that little that was said? A Now, I don't know what was said.

Q Tell us what you recall of the conversation?

A I don't recall anything, because I don't remember anything said; we had a deal, that is all; there was nothing said.

Q What was the deal. Just tell us what the deal was?

MR. MITNICK: I object to the "deal".

THE COURT: Objection sustained.

Q What was done? A He purchased some goods from me and there was very little said about it; he purchased them and that was all.

Q Was anything said about the price? A He about knew the price.

Q Did you ask him for any price? A I don't remember whether I asked him or not.

Q Did he give you any money? A Yes, sir; he did.

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Q How much money did he give you? A I don't remember.

Q Was it \$1,000? A A No, sir; not quite as much as that?

Q Was it \$100? A No, sir; nowhere near \$100.

Q \$25? A No, sir.

Q \$15? A No, sir.

Q \$10? A No, sir.

Q \$5? A No, sir.

Q More than \$5? A Less than \$5.

Q \$4? A Well, now I don't remember exactly, but I know it wasn't near \$5; it was less than \$5.

Q It was less than \$5? A Yes, sir.

Q You understand, don't you, Clackett, that I am only trying to get at the truth? A I know that, yes, sir.

Q I am not trying to trip you in any way?

A No, but what I say is this that I don't remember these questions and perhaps I don't say it right; I don't remember, therefore --

Q You don't remember the exact amount you got?

A No, sir.

Q Now, how much goods did you sell him on that occasion?

A That I could not say; I don't remember.

Q What sort of goods were they? A They were linen goods; I don't remember what sort of linens, I know they were

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linens.

Q How many times did you sell him goods?

MR. MITNICK: I object to that. This man is charged with obtaining goods under false pretenses, to wit, towels. This witness says he doesn't know anything about towels and he keeps putting the word "linens" before this jury.

THE WITNESS: I should judge I sold them to him four or five times.

Q Do you remember the first time that you met the defendant? A I remember the first time I met him, yes, sir.

Q Now, about how long ago is that? A Well, I have seen him for, I should say, six months or may be more back, but never had any dealings with him.

Q Do you mean six months before you left McGiffin's employ? A Yes, sir.

Q When was the first time that you had any dealings with him? A Well, it was not very long before I left there.

Q About how long? A Well, that I could not say because I did have dealings with him before I sold him the linens; I sold him other burlap.

Q What dealings did you have with him before you sold him the linen? A I sold him old burlaps, pieces of burlap which I used to save from bales.

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Q Where did you get those? A Those were left when we used to make up bales, I would sell him them.

Q These were left when you used to make up bales?

A yes, sir.

Q Did those belong to you? A Yes, sir.

Q As the shipping clerk? A Well, they had only been thrown away.

Q Now, you sold him those? A Yes, sir.

Q How long before you left McGiffin's employ did you first sell him anything else but burlaps? A About a week before or a week and a half before.

Q About a week and a half before? A Yes, sir.

Q Now, you remember that occasion well? A No, sir; I do not.

Q What do you remember about it? A Well, I remember
he saw the
that he came up and I sold him burlap and other goods and then
he wanted to know what they were and I showed them to him.

Q He asked you what the goods were? A Yes, sir.

Q Where did he see them? A In this room.

Q In this stock-room? A Yes, sir.

Q He saw these goods and asked what they were?

A yes, sir.

Q You showed them to him? A Yes, sir; showed them to him, and told him.

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Q What did you tell him? A Told him they were linen; I told him what they were used for.

Q What did you tell him they were used for?
A He knew what they were used for, I guess.

Q You just said you told him what they were used for.
A Well, I say I told him, but I guess he knew; he had eyes to see.

MR. MITNICK: Objected to.

Stricken out.

Q What did you say to him as to how they were used?
A I showed him some towels and told him what they were.

Q You told him they were towels? A Yes, sir; told him they were towels.

Q Now, in what form were those towels, packed or loose?
A In a bale.

Q How many were there; how many in the bale?
A One dozen in a package.

Q A dozen? A Yes, sir.
Q So that you showed him this package of a dozen towels?
A Yes, sir.

Q In the stock-room of Mr. McGiffin? A Yes, sir.

Q Then what happened? A Well then I asked him if he wanted to buy them; I don't remember whether he asked me or I asked him, but I sold them to him nevertheless.

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Q You sold him one dozen? A Yes, sir; I think about one dozen.

Q Were there other towels in the place? A Yes, sir.

Q Other linens in the place? A Yes, sir.

Q Did he ask you whose the towels were? A No, sir, he did not.

Q How much did you get for that dozen of towels?

A I don,t remember now.

Q Well, about how much? A I could not say about, because I don,t remember the first time.

Q Well, we will leave that first time now. How soon after that did you have the second transaction with him?

A I could not say but I should judge about a day or so.

MR. MITNICK: Objected to.

THE COURT: Strike it out.

Q About a day or so what? A Well, I don,t know then, if I cannot judge, because I cannot tell about and therefore I cannot say if I cannot judge.

Q You say you had four transactions with him, is that right? A No, I say about that.

Q About four? A Yes, sir.

Q Are you sure of having two? A Yes, sir, I am sure of having two.

Q Are you sure of having three? A Yes, sir, I am sure of

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having three.

Q Are you sure of having four transactions with him?

A Yes, sir, I am.

Q All right. Now then you have had four transactions with him and you have said that those transactions took place within about a week or a week and a half before you left Mr. McGiffin's employ, is that right? A Yes, sir.

Q So that the second transaction that I am questioning you about now took place within a week or within a week and a half before you left? A Yes, sir.

Q Is that right? A Yes, sir.

Q Where did that transaction take place? A In the same place; in the loft, in the store-room.

Q In the store-room? A Yes, sir.

Q Where you were working? A Yes, sir.

Q Now, what was the transaction? A I sold him some towels.

Q Towels again? A Yes, sir.

Q How many? A I don't know how many, one or two dozen, I don't remember.

Q One or two dozen? A Yes, sir, I don't remember which.

Q Were they in packages? A Yes, sir.

Q Do you remember how much you got? A No, sir.

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Q For them? A No, sir; I do not.

Q Well, did you and he agree upon a price for the dozen towels?

MR. MITNICK: I object to that as leading and calling for a conclusion.

MR. KRESSEL: I withdraw the question.

Q Did you say anything to him, to the defendant, or did the defendant say anything to you, at any time, as to how much he was to pay you for a dozen towels? A No, sir, he did not.

Q Do you remember now how much you got for a dozen towels from him at any time in the four transactions?

A Well, if he could sell them he would give me, maybe he would give me 75 cents for them; if he thought he could not sell them --

Q Did he pay you when he took the goods? A Yes, sir.

Q He did pay you? A Yes, sir.

Q Did he pay you as much as a dollar for the dozen?

MR. MITNICK: I object to that again as leading.

BY THE COURT:

Q How much did he pay you? A Well, he did not pay me any uniform price; he paid me one price one time and one another.

BY MR. KRESSEL:

Q Now, tell us one price that he paid you on an occasion?

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A He paid me 65 cents on one occasion.

Q On one occasion he paid you 65 cents? A Yes, sir.

Q For a dozen towels? A Yes, sir.

Q Now, what sort of towels were these? A In what way?

Q Well, did they have any particular name in the stock?

A No, sir,; they did not.

Q Well, what were they, white towels? A Yes, sir;
white towels.

Q How long were they? A I don't know.

Q What sort of material were they made of? A They
were made of cotton, some of them.

Q Was there no name by which you could name these particular towels? A No, sir.

Q Were they known by any number? A Yes, sir; they
were known by a number.

Q A stock number? A Yes, sir.

Q What stock number were they? A I don't remember
what stock number.

Q What other price did you get; you said sometimes he
gave you one price and sometimes another; you have told us
of a time when he gave you 65 cents. A I don't remember what
other price.

Q Did he, at any time, give you any more than 65 cents
for a dozen? A No, sir.

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Q That was the highest price he ever paid you for a dozen? A Yes, sir.

Q Now, what was the third transaction you had with him? A The third?

Q Yes. A I don't remember when it was.

Q Well, was it a sale of something? A Yes, sir.

Q So far then it was a sale of something? A Yes, sir.

Q What was it you sold him? A I sold him some towels, some linen towels.

Q What is that? A Linen towels.

Q How many dozen did you sell him on that occasion?

A I don't remember.

Q Well, more than one dozen? A I think so, yes, sir.

Q More than two dozen? A I don't remember now; I did not keep track of that but I know there was some.

Q You know what? A I know I sold him some towels.

Q When you sold him those towels how were they packed?

A They were packed in paper; in bundles of one dozen.

Q In bundles of one dozen? A Yes, sir.

Q And wrapped in paper? A Yes, sir.

Q The first time that you sold him towels you told us that he asked what they were? A Yes, sir.

Q Did you open them, tear off the paper to show him what they were? A I opened them and took the paper off them.

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Q When he took the towels away how did he carry them away, in what manner? A In a burlap bag, in a bag.

Q In a burlap bag? A Yes, sir.

Q Did he have the burlap bag with him every time that you sold him any goods? A Yes, sir.

Q Did he come up with the burlap bag? A Sir.

Q Did he come with the burlap bag or did you give it to him? A No, sir; I did not; he came up with it.

Q He came up with the burlap bag? A Yes, sir.

Q In what particular place in the loft did you have the towels, were they in cases or on shelves or how?
A On a shelf, yes, sir.

Q You took them off the shelf? A Yes, sir, from the shelf.

Q Was the defendant there when you took them from the shelf? A Yes, sir.

Q You say you had known the defendant for about six months before you left this place? A Yes, sir; I didn't know him but I had seen him on the street.

Q You had seen him? A Yes, sir.

Q And you had sold him some burlap before that?

A Yes, sir.

Q Did you tell him who you were? A No, sir, I did not.

Q Did you tell him what your business was? A Yes, sir.

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Q What did you tell him? A I told him that I was the shipping clerk.

Q In this place? A Yes, sir.

Q Did you tell him that before you sold him the goods?
A yes, sir; I think I did.

Objected to. Objection overruled. Exception.

Q Did you tell him that before you sold him the goods?
A I did, yes, sir.

Q Now, we come to the last transaction -- what was it you sold him then? A I sold him some towels.

Q Did you ever sell him anything but towels? A I don't remember; I don't remember selling him anything but towels.

Q Altogether how many dozen of towels did you say that you sold him? A I don't remember how many dozen.

Q Well, give us your best recollection, of course, you don't remember the exact amount, but give us your best recollection of it? A Well, I cannot say about, because I don't remember.

Q Did you sell him as many as four dozen towels?
A yes, sir.

Q You did? A Yes, sir.

Q Did you sell him as many as ten dozen towels?
A I guess I did, yes, sir.

Q Well, you know you did, don't you, in the four trans-

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actions? A Now, I told you I don't know, I couldn't say how many so there is no need of my saying.

MR. MITNICK: I object to all that and ask to have it stricken out.

THE COURT: Motion denied. Exception.

Q Now, you tell us that you don't know the exact number?

A I do not, no, sir.

Q But you do know that you sold him as many as four?

A I do, yes, sir.

Q Now, did you sell him as many as six dozen?

A I did.

Q Did you sell him as many as eight dozen? A I don't know. All

Q All right. You stop then at six dozen? A I don't know when I stopped.

Q You are sure of six dozen? A Yes, sir; I am sure of six dozen.

Q Altogether how much money did you get from the defendant? A I don't know how much I get altogether.

Q Well, give us your best recollection of that?

A Well, I don't know how much I get altogether all the different times.

Q You don't know exactly how much; give us your best recollection; just think it over, will you? A I could not

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say how much altogether, at all the times.

Q Now, you remember when you were arrested, don't you?

A Yes, sir.

Q Clackett? A Yes, sir.

Q What date was it? A The 13th of December.

Q 1904? A Yes, sir.

Q Between the time that you left McGiffin's employ and the day you were arrested did you see the defendant?

A No, sir; I did not.

Q You did not? A No, sir.

Q When was the last time that you saw the defendant before you saw him in court? A Right until a few days previous, or before I saw him in court; I saw him when he was arrested.

Q Before he was arrested? A I should judge I saw him about three days before that, before I left the concern.

Q Three days before you left? A A few days before, yes, sir.

Q A few days before you left Mr. McGiffin's?

A Yes, sir.

Q From that time until the 13th of December you did not see him? A No, sir, I did not.

Q Where were you arrested? A In Brooklyn.

Q What were you doing in Brooklyn? A I was working.

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Q You were working? A Yes, sir.

Q Who arrested you? A Officer Copeland of the Leonard Street station.

Q When was the defendant arrested? A I don't know.

Q When did you see him under arrest? A I don't know the date.

Q How long after you were arrested? A Let us see, I was arrested on a Tuesday and I think he was arrested the following Tuesday.

Q The following Tuesday? A I believe that, yes, sir.

Q Do you know Benjamin Boyd? A Yes, sir.

Q Do you know what his business is or was?

A Elevator man, yes, sir, he runs the elevator.

Q Where was he working? A He was working with us at 37 White street, in the same building with the Castle Island Linen Company.

Q What was he doing there, did you say? A Elevator man.

Q He was running the elevator? A Yes, sir.

Q What was it, passenger or freight? A Passenger and freight.

Q Both passenger and freight? A Yes, sir.

Q Did that elevator lead to the floor where this stock room was located? A Yes, sir.

Q You told us a little while ago that the price that the

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defendant paid you varied with the fact whether he would be able to dispose of the goods, is that right? A Yes, sir.

Now, just explain to the jury what you mean by that.

A Well, any person would take them by the quality of them but he --

MR. MITNICK: Objected to.

Q Answer the question. A Any person would take them by the quality of them, but I suppose he took them by the size.

THE COURT: Strike that out.

THE WITNESS: I suppose he took them by the size.

Objected to. Objection sustained.

THE COURT: Do not state what you suppose.

BY MR. KRESSEL:

Q What did you mean when you said that he would pay you a price according as to whether he could dispose of the goods or not? A Well, he knew his business; he knew whether he could sell that kind of goods or not.

Q Did he ever say anything to you about that; what did he say to you about it? A He said that if he could sell them he would buy them; if he could not sell them he would not buy them.

Q When was it you had this conversation with him?

A I don't remember.

Q The first time or the second time? A About the first

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time.

Q Before you sold him the first dozen? A Yes, sir.

Q He said he would buy them if he could dispose of them?

A Yes, sir.

Q When you had the second transaction with him did he say anything about being able to dispose of the goods?

A I don't remember whether he said it or not.

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

Q Did you, at any time, during these various transactions call the defendant to come to your place? A No, sir; I don't think so; I think not.

Q He came there himself? A Yes, sir.

Q Without your calling him? A Yes, sir.

Q And every time he came there did he have a bag with him? A Well, he would have a bag in the cart and then he would bring the bag up.

Q Do you know Abraham Tretsky? A No, sir.

Q Do you know a boy by that name that worked in the place 37 White Street? A I have seen him, yes, sir.

CROSS EXAMINATION BY MR. MITNICK:

Q Now, Clackett, you have just testified that you never called the defendant into that place to buy anything whatever?

A Yes, sir.

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Q Do you remember testifying in the Police Court in answer to Judge Flammer, who was on the bench at the time, as to when you first met this man and you testified that you saw him on the street with his cart and asked him to come up to buy some burlap and old discarded rags, is that correct?

A I could not answer the question yes or no; I cannot answer it because I don't remember.

Q You remember that you were convicted, you know that, don't you? A Yes, sir.

Q You know that you are a confessed thief? A No, sir, I do not.

THE COURT: Now, if he is convicted he is convicted.
BY MR. MITNICK:

Q Now, you testified here, throughout the entire transaction, until Mr. Kresel reminded you of what the goods were, that it was linens? A Yes, sir.

Q Right along? A Yes, sir.

Q You did not mention towels from the beginning to end until Mr. Kresel suggested it to you. Now, I want to ask you this: You again testified that it was explained to the defendant what they were used for, what these articles were used for that you sold to him? A Yes, sir.

Q Is that correct? A Yes, sir.

Q You showed him the towels? A Yes, sir.

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Q Why would it be necessary for you to explain to the defendant what they were used for when you showed him the towels? A Perhaps he didn't know; they were folded up and nobody could tell but the person that knew -- you couldn't tell.

Q You testified yourself that you didn't know anything about what these packages contained except the linen?

A I said they were linens, yes, sir, but I said previous to that that they were towels, yes, sir.

Q Now, you, in answer to the learned District Attorney's questions, in regard to your meeting this defendant -- at first you testified here, in your direct examination, that you saw the defendant six months before but did not know him, is that correct? A Yes, sir.

Q That the first time that you ever sold him anything whatever was a short time before you left the premises of this concern? A I said that I had sold him some pieces of burlap before that.

Q How long before that? A I don't remember how long; I didn't keep track of anything.

Q How long had you known the defendant? A I don't know how long I have known him but I have seen him for quite a while around there.

Q Now, you don't know how long you have known him, you

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were positive about six months before? A I did not say I had known him but I said I had seen him.

Q How long before that had you seen him? A I don't remember how long before that, before I sold him the goods I may have seen him for a good long while; I do not remember; I may have seen him.

Q But you never sold him anything excepting these towels, is that correct? A I did, yes, sir.

Q You sold him burlap? A Yes, sir.

Q Old rags and burlap? A Yes, sir.

Q But this is the first time that you sold him any goods? A yes, sir.

Q of any character? A Yes, sir.

Q Now, can you account for the articles missing; you claim that all that you did sell this defendant was, after a long and tedious suggestion by my friend here, Mr. Kresel, who suggested to you that you may have sold about six dozen -- A I told him I did not remember.

Q I don't say what you told him, I am simply stating to you what Mr. Kresel suggested to you, that you might have sold him about six dozen. A Yes, sir.

Q Now, as a matter of fact -- you want to be fair about this, don't you? A I yes, sir.

Q You don't know how much you sold this defendant?

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A No, sir.

Q Now, let us see how fair you are. When you first met this defendant on what street was this, since you have been working with this concern? A On what street?

Q Yes. A Well, that I don't know, but I should judge, I think it was on White Street.

Q Now, he is a push-cart junk dealer, isn't he?

A I believe he is, yes, sir.

Q Now, don't you know, if you have known him for six months, don't you know whether he is or not?

THE COURT: There is no dispute about that. You have it in testimony once or twice.

MR. MITNICK: It is simply to attack the credibility of this witness's testimony.

THE COURT: It is wasting time.

MR. MITNICK: I think it is very material, your Honor.

THE COURT: I do not. You have it in twice and there is no use in putting it in three times.

MR. MITNICK: I will take your Honor's suggestion and I won't lose any further time on that.

BY MR. MITNICK:

Q Now, is it not a fact, Glackett, that when you first saw this defendant he was wheeling by that place with his push-

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cart and his bells ringing and you called him in to sell him burlap, isn't that true? A I don't remember; that man had come into the building before I knew him.

Q I am talking about the time that you made his acquaintance. How long have you been in that building?

A I have been working there since 1899 excepting one year.

Q Now, how much property have you stolen from this firm?

A I don't know.

Q \$500 worth? A No, sir.

Q \$1000 worth? A No, sir.

Q Did you hear Mr. McGiffin testify? A I did not.

Q Well, Mr. McGiffin testified that there was over \$500 worth of goods stolen from the premises. A Does he charge me with stealing that?

Q I am not asking you that, I am simply telling you what he testified to. Do you know anything about that property?

A No, sir, I do not.

Q Now, did you ever receive \$15 from this defendant?

A At once?

Q Yes, or any other time? A I did, yes, sir.

Q You are positive about that? A Yes, sir; but not at once.

Q Will you state to this jury, in whatever manner you desire to have them believe you got it, how you got \$15?

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A I got it by selling him these towels.

Q How do you know you received \$15? A Well, I don't know, if you say that --

Q Why do you sit there and swear to this jury that you received \$15 when you don't know? A Well, I said I did after you asked me how and why and I said I don't know.

Q Any way you desire to explain it? A I say I did get \$15 from him.

Q How did you get \$15? A I got it in small sums each time.

Q Can you explain to this jury what sums you received it in? A I don't remember, no, sir.

Q Then how can you remember that you received \$15?
A Because I knew in the transactions I did get that amount.

Q Now, you claim that you sold him one dozen for 65 cents, is that correct? A I said about 65 cents, yes, sir.

Q About 65 cents? A Yes, sir.

Q When Mr. Krenel asked you whether you ever received any more, or the equivalent, you told him you never received that much for the rest of it, is that correct -- that you always get less than that? A Yes, sir.

Q That you never received above 65 cents? A I said I did receive above 65 cents.

Q Now, you want to change that answer, do you?

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(No answer)

Q Do you remember, Clackett, that Mr. Kresel asked you, after an exhaustive questioning of you, as to whether or not you received more than 65 cents and you testified that you never did get more than 65 cents for a dozen of these towels from this defendant. Do you want to change that now?

(No answer)

MR. MITNICK: I won't press the question.

Q How much more did you ever receive for a dozen of towels than 65 cents from this defendant? A I don't know.

Q Do you know anything? A No, sir.

MR. MITNICK: That is all.

JAMES MCGIFFIN, a witness for the people, recalled:

BY MR. KRESSEL:

Q Mr. McGiffin, have you refreshed your recollection, since you last testified, as to the date when Clackett left your employ? A Yes, sir; I have looked up the books.

Q What is the date when he left your employ?

A He left on the 22nd of November.

Q The 22nd of November? A Yes, sir.

Q What year? A Last year.

Q 1904? A Yes, sir.

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Q What sort of towels, Mr. McGiffin, what price of towels did you keep in the store-room in your place of business? A They are known to the trade as huck towels.

Q How do they come packed? A They come packed in five, three and one dozen parcels, according to the price of the goods.

Q How low in value do the prices run, say a dozen of such towels? A What towels do you mean, generally? or these particular towels?

Q What was the lowest price? A Well, the lowest price would be \$1.60 a dozen.

MR. MITNICK: Objected to, if your Honor please, upon the ground that they have not established any basis or ground for identifying anything in this case; there has been no identification of any particular property that they sold to this defendant or which is alleged to have been sold to this defendant; it is simply a speculation, a Wall Street stock-breaking scheme of trying to bring evidence in here as to what kind of goods or alleged goods have been sold to this defendant.

BY THE COURT:

Q What is the lowest price at which huck towels are sold at wholesale? A Generally, your Honor?

Q (Repeated) A Do you mean generally or these particular

towels?

Q I mean generally. A Well, we are not in the very low end of the business; we are in the medium end.

Q Just tell what was the lowest that you had?

A About \$1.60 a dozen.

BY MR. KRESSEL:

Q Now, what towels did you miss from your store-room?

A Do you want the quantity?

Q Of the huck towels, I mean? A Do you mean the quantities? I should have to give you that from my memorandum.

Q Have you a memorandum of it? A Yes, sir.

Q You may use your memorandum to refresh your recollection? A There were 18 dozen of one --

MR. MITNICK: I object to the memorandum.

THE COURT: I will pass upon that objection when it is offered.

Exception.

THE WITNESS: (Continuing) Two dozen of another; 24 dozen of another; 3 dozen of a finer towel; 1 dozen of a finer still and some other goods, not towels.

Q But I am speaking of towels; have you enumerated all now? A There were seven different numbers of towels.

Q What is the lowest price of any of those towels that

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you missed, per dozen? A \$1.57-1/2.

Q \$1.57-1/2? A Yes, sir.

Q Is that the wholesale price? A That is the price at which we sell them.

Q What is the price at which you buy them?

A We don't buy them; we manufacture them.

Q You manufacture them? A Yes, sir.

CROSS EXAMINATION BY MR. MITNICK:

Q Are you directly connected with the manufacturing of these goods or are you simply selling on a commission basis as a broker? A We are not selling them on a commission basis; we are a part of the firm here; our firm is abroad and we are the American house, the American end of the house.

Q Are you the only people, directly, in this city, selling the goods? A The only people.

Q Representing the mill directly? A Yes, sir.

Q Have you got your book here showing the date upon which you allege that this Clackett left your employ? A Yes, sir.

Q Would you let me see it, please? A I will; I have the date on which we last paid him.

Q Will you let me see it, the date upon which you swear that he left your place of business? A Yes, sir, I will let you see the book. (Witness produces a book)

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Q Now, Mr. McGiffin, Clackett swore and testified here that he left your place of employment the latter part of October, is that correct? A It is not correct.

Q Were you in the Police Court, Mr. McGiffin, at the time of the hearing of Clackett and this defendant, downstairs?

A I was in the court, yes, sir.

Q You were? A Yes, sir.

Q Do you remember the question that was asked Clackett as to how he became acquainted with this defendant, and do you remember his answering the question at that time, while you were standing up at the railing, that he saw him with his cart and bells on the street, called him into the place to buy some burlap? A Yes, sir, I remember such a statement.

Q Now, Mr. McGiffin, I just want to ask you this one other question: You also remember, in answer to a question that I put to him, Clackett, at that time, that he said as to when he first met this defendant he said it was when he heard the bells on that push cart, or something to that effect, on the street, and called him up in the building to sell him these rags and burlaps? A I don't recollect that particular statement.

Q Well, I mean something to that effect as to when he first met him? A The general idea I got from Clackett's statement was --

Q I mean at that time? A (Witness continuing) -- was that he had become acquainted with him about two weeks previous, in general terms, I could not be more definite than that.

Q Two weeks previous? A Yes, sir.

Q That is exactly my recollection now. A Yes, sir.

J O H N D. C A H I L L, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESEL:

Q Officer, Cahill, to what precinct are you attached?

A The 29th.

Q Where is your house? A 104th Street.

Q East 104th Street? A Yes, sir.

Q Did you arrest this defendant? A Yes, sir.

Q On what day? A On the 23rd of December.

Q Speak a little louder. A The 23rd of December.

Q What year? A 1904.

Q Prior to arresting the defendant had you arrested Clackett? A Yes, sir.

Q When did you arrest Clackett? A The 13th day of December.

Q The 13th? A Yes, sir.

Q Did you have a conversation with Clackett? A Yes, sir.

Q just say yes or no? A Yes, sir.

Q Was it in consequence of that conversation that you arrested the defendant? A Yes, sir.

Q Where was it that you arrested the defendant? A The defendant here?

Q Yes. A In Mr. McGiffin's office; they sent for me to

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the station house.

Q You arrested this defendant in Mr. McGiffin's office?

A Yes, sir.

Q Do you mean on White Street? A 37 White Street.

Q When you got to Mr. McGiffin's office, was the defendant there? A The defendant was there; yes, sir.

Q Where was it that you first saw him? A In the office.

Q In Mr. McGiffin's office? A Yes, sir.

Q Who else was in the office? A Mr. McGiffin and some of his clerks, about two, that is all at the time.

Q And you? A yes, sir; and myself.

Q And the defendant? A Yes, sir; and Officer Copeland and Clackett and Clackett's counsellor, Mr. Coleman.

Q Mr.--who? A Mr. Coleman, the counsellor, that went in with me.

Q Who went in with you? A Clackett, the counsellor, and Officer Copeland.

Q Did you bring Clackett down with you? A yes, sir; I did.

Q Now, state as fully as you can all the conversation that was had in the presence of the defendant in that office?

A I asked the defendant if he knew this man Clackett; he says, "No"; I said, "Did you ever see him?" He said, "No"; I said, "Were you ever in this building?" He said, "No". I asked him if he took any goods out of here, he said no.

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I took the defendant to the station house, and on the next morning I brought him to court; he was held for trial at the police court. From the police court down to the Tombs; he had told me he bought some white goods from Clackett and sold them on the street for the sum of five dollars; there was not very much he said.

Q He said he bought them for \$5? A Yes, sir.

Q How did he describe them, as white goods? A Yes, sir; as white goods.

Q Did he say anything else as to what they were? A No, sir; he did not.

CROSS-EXAMINATION BY MR. MITNICK:

Q Now, you are positive that the first time you heard this defendant say that he knew Clackett was when you were taking him over the bridge, is that correct? A Yes, sir.

Q You are positive about that? A yes, sir.

Q As positive as you are in all the rest of your testimony? A yes, sir; that is right.

Q Do you remember me being in the police court defending this man that day? A Yes, sir.

Q Do you remember when Clackett was brought up to testify in this case? A I do.

Q Do you remember the defendant making a statement there? A I don't know if I do.

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Q In answer to my questions put to him? A I don't remember the questions, no, sir.

Q I didn't ask you about the questions, but you know I questioned him then and there before the Judge at that time? A I think you did; yes, sir.

Q Do you remember him testifying while you were standing just within reach of my arm? A yes, sir.

Q That the only thing Clackett sold him was burlap? A Yes, sir; he testified to that, yes, sir.

Q Then he did testify that he did know Clackett by selling him burlap? A In the police court.

Q Yes, he said it in the police court? A I did not testify anything about the police court, or what he said there.

Q You were standing right on the platform alongside of myself, weren't you? A yes, sir.

Q Now, officer, did he explain at that time that the white goods that he had was this white covering that goes over goods, kind of white covers, with burlap, isn't that true? A No, sir.

Q As he explained in court at that time? A I explained nothing to the Court at all; he had made no confession.

Q I say this defendant explained? A I forget what he explained to the Court at that time.

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Q Did he say he bought some old rags and burlap, wasn't that what he testified to? A I think he did, in the police court.

Q You, yourself, do not know what he did buy? A No, sir; I don't know what he bought.

Q Nor what Clackett sold him? A It is only information that I got.

RE-DIRECT EXAMINATION BY MR. KRESEL:

Q Lest there be any misunderstanding, you say that the defendant told you that he had bought white goods, when you were taking him to the Tombs? A From the police court to the Tombs.

Q Was that after his examination, or before his examination? A After his examination.

Q Now, that was the same day? A Yes, sir; the same day.

BY MR. MITNICK:

Q You are positive that he told you, going over to the Tombs, after testifying in the police court, that he bought burlap and that he bought white goods? A Yes, sir; that is what he said, yes, sir.

Q Now, how did he come to tell you, on the way over to the Tombs, after his examination in the police court, that he bought white goods? A Well, that I don't know, why he came to tell me; he told me.

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Q You want this jury to believe that without any effort on your part, during my absence, after an examination, when you were taking him across the bridge, that he simply came and told you that he bought white goods? A He told me he bought white goods and sold them on the street off his wagon.

BY MR. KRESEL:

Q He told you that after he was held for the Grand Jury?

A Yes, sir; after he was held for trial.

BY MR. MITNICK:

Q Who was present at that time? A The defendant and myself.

Q And yourself only? A Yes, sir.

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

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Boyd, where do you live? A 239 West 60th Street.

Q You must speak a little louder? A 239 West 60th Street.

Q Where were you last employed? A Last employed? I was employed by Mr. Campbell, the milk place, 87th Street.

Q Were you ever employed at 37 White Street? A yes, sir.

Q When did you leave the employ at 37 White Street?

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A I left there about, I think it was about the latter part of November.

Q The latter part of November? A Yes, sir; about the first of December, along there.

Q About the first of December, 1904? A Yes, sir.

Q What was your occupation in that building? A Elevator runner.

Q How long had you been employed there? A Well, I had been employed there I guess about three months.

Q Three months? A Yes, sir; about three months.

Q Do you know William Clackett? A Yes, sir.

Q Was he employed in the same building? A In the same building, yes, sir.

Q Do you know this defendant? A Yes, sir; I have seen him.

Q How soon after you began working in the building did you see him, about? A Well, I should say about a week or so after I got to working there.

Q Where did you see him then? A Well, he came in my elevator.

Q Where did you take him to? A To the top floor.

Q What was the top floor? A Well, it was a vacant loft where Mr. McGiffin kept his goods.

Q A stock room there? A Yes, sir; a stock room.

Q When he went up, did he have anything with him?

A He had a bag.

Q Was there anything in the bag? A Not when he went up, no, sir.

Q When he came down was there anything in the bag?

A Something in the bag, what it was I don't know.

Q How often did you take him up in the elevator in that way? A Well, about a week and a half.

Q For about a week and a half? A Yes, sir.

Q How often? A Well, about every other day or so.

Q About every other day? A Yes, sir.

Q Did he have something in the bag every time he came down?

MR. MITNICK: Objected to. That is suggestive.

THE COURT: He may answer the question.

Exception.

A Yes, sir.

Q Did he? A Yes, sir.

Q Every time he went up, did he have the bag with him?

A Yes, sir.

Q Every time that he went up, was the bag empty?

A Yes, sir.

Q You don't know what he had in the bag? A No, sir.

Q Did you ever have any conversation with him? A No, sir.

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Q About these goods? A No, sir.

Objected to. Objection overruled. Exception.

CROSS-EXAMINATION BY MR. MITNICK:

Q You are also convicted of crime, ain't you? A Yes, sir;
in one way.

Q You are convicted, ain't you, for stealing, isn't
that correct? A No, sir; it is not.

Q Well, what were you convicted of, being honest?
A Well, I am no thief.

Q No? A No, sir.

Q But you are convicted just the same; did you plead
guilty? A I took a plea.

Q You were honest, and yet you pleaded guilty?

MR. KRESEL: You don't need to answer that ques-
tion. It is argumentative.

THE COURT: I sustain the objection.

Q All you know, Boyd, is that you saw this man go up
and come down? A Yes, sir.

Q You have never seen him get anything or leave anything
in the place, did you, is that correct? A I seen him coming
downstairs.

Q Will you answer me promptly? A I seen him coming
downstairs with something on his arm, or in his bag; I could
not say what it was.

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Q You don't know what it was? A No, sir.

Q Now, try to be fair about this; didn't you see Clackett sell him burlap? A No, sir.

Q At any time? A Burlap down on the second loft.

Q You did see him sell him burlap? A Yes, sir.

Q And old rags? A On the second loft, yes, sir.

Q Why don't you say so and save all this time? A Yes, sir.

Q That is all you ever saw Clackett sell him, isn't that the fact? A That is all, sir.

Q Now, is it not true that every time that you did see this defendant come there was at that time that this Clackett was giving him old burlap and these white rags, old rags that cover up goods, isn't that true? A Not all the time, no, sir.

Q Every time you did see any transaction, you saw these goods? A Not all the time, sir.

Q But it was old burlap and rags, isn't that true?
A When on the second loft; yes, sir.

BY MR. KRESEL:

Q How many times did you see him sell burlap on the second loft? A Well, I seen him get burlap about once.

Q Once? A Yes, sir.

Q The other times you took him up to the top floor?

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A Yes, sir; the top loft.

Q Whatever he had in the bag when he came down from the top loft, you don't know? A No, sir; I don't know.

BY MR. MITNICK:

Q Have you ever been on the top loft, Boyd? A Have I?

Q Yes. A Yes, sir; I have.

Q Have you ever been up there? A Yes, sir; my work is up there.

Q Now, haven't you time and again seen old burlap lying there off the elevator shaft, with red paint on it, red painted burlap? A No, sir.

Q And rags? A No, sir; on the rags, but not the burlap.

Q On the rags? A Yes, sir.

Q White rags, wasn't it? A yes, sir; white rags.

Q Now, can you describe -- see whether I understand this -- these white rags is a kind of stiff white covering, isn't it? A Yes, sir.

Q That is used in dry goods houses and trimming houses for covering cloth, is that correct? A I guess so.

Q You have seen that very often? A These rags you are speaking about; you are right about that.

Q They are pieces about that long and that wide (illustrating), generally? A Yes, sir.

Q It is used for folding in white goods and linens and

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farmer's satin and any kind of goods of any description used in those trimming houses? A Yes, sir.

Q Now, that looks like linen, doesn't it, and is stiff, isn't it? A Yes, sir.

Q And has the appearance, when taken in the hand, of being linen, hasn't it, you have handled that stuff, have you? A Yes, sir.

Q Now, to a person who is not familiar with the nature of goods, would he not accept that for linen goods?

MR. KRESSEL: Objected to.

Q Anyone who doesn't know the nature of goods, if this were sold to him or given to him, would he not accept it for linen? A Yes, sir; I suppose he would.

Q It looks like linen, doesn't it? A Yes, sir; it looks like it.

Q And it is just as stiff as new linen would be? A Yes, sir.

Q These white goods? A Yes, sir.

Q You don't know whether it was those kind of goods that were sold to the defendant, you don't know that, do you? A No, sir; I don't know.

BY MR. KRESSEL:

Q Where did you ever see this thing that looks like linen that the counsel has described to you? A Well, this

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was white goods, kind of like burlap, you know, used for wrapping.

Q Where did you see that? A Well, we had some down in the second loft, that the gentleman left there to give away --

Q Did you ever see any on the top loft? A No, sir.

Q You say that this looks like linen, that you would take it to be linen, just what do you mean by that? A At a distance you would.

Q At a distance? A Yes, sir.

Q Did you ever take it as linen? A No, sir; I never did.

Q You know the difference between burlap and linen?

A Yes, sir.

Q When you saw this burlap, was it packed up in paper?

A This burlap was loose, you know, and it comes in rolls and small pieces, you know.

Q When it is taken off the article which it covers, it is loose then? A yes, sir.

Q Like a rag? A yes, sir; like a rag.

Q Did you ever see it in layers, in pieces? A Yes, sir.

Q In what places? A Not in pieces, no, sir.

Q You saw it after it was taken off packages of goods?

A Yes, sir.

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Q You saw it on the floor? A Yes, sir.

Q As refuse, as waste? A Yes, sir.

BY MR. MITNICK:

Q Boyd, how long have you worked in the drygoods district? A In the drygoods district?

Q Yes? A About thirteen years, to my knowledge.

Q You have worked in a good many dry goods houses, haven't you, where they handle all characters and nature of goods? A I have.

Q Such as linings, farmer's satin, serges and trimmings of that character? A Yes, sir.

Q Isn't it a fact that all this character of goods is folded up, is wrapped up in this sort of cloth which you now call burlap? A Not always.

Q But as a general rule it is? (No answer.)

Q Now, I will ask you this: This covering that I am speaking about, that Mr. Kresel has laid such strong stress upon, is not burlap, is it? A No, sir; it is not burlap.

Q It is a fine woven white goods, isn't it, woven the same as linen, you have seen linen, haven't you? A Yes, sir.

Q And as I have explained to you, it has been folded up time and again, and used as a covering after being removed from the goods? A Well, it wasn't in bales; it was only packed up the same as we would pack up newspapers in packages.

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Q But it was not bundled up as rags? A No, sir.

Q It laid out in this shape, didn't it? A Yes, sir;
the ones we have reference to was on the second floor.

Q It wasn't wrinkled up like that? A No, sir.

Q But folded up like this paperis, isn't it? A Yes,
sir.

Q Covers are of the same character as this paper?

A Yes, sir.

Q Stiff? A Yes, sir.

Q And looks like linen, white goods? A At a distance.

Q To anyone who doesn't know the nature of goods, it
would be accepted as linen, wouldn't it?

Objected to. Objection sustained.

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

DIRECT EXAMINATION BY MR. KRESEL:

Q How old are you? A Seventeen.

Q Speak a little louder? A Seventeen.

Q Where do you live? A 11 Eldridge Street.

Q Where are you working? A 35 and 37 White Street.

Q For whom? A J. E. Dreyfuss.

Q What sort of business are they doing there? A Pants.

Q Manufacturers of pants? A yes, sir.

Q How long have you been working in the building?

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A Over a year.

Q Do you know William Clackett? A Yes, sir.

Q Was he working in that building while you were there?

A Yes, sir.

Q For whom? A James McGiffin.

Q Have you ever been on the top floor in the store-room of Mr. McGiffin? A Yes, sir.

Q Do you know the defendant? A Yes, sir.

Q How many times have you seen him in the building?

A About twice.

Q Where, in the building, did you see him on those two occasions? A On the top floor.

Q Do you remember going there in the month of November? A Yes, sir.

Q 1904? A Yes, sir.

Q About what date was it? A Well, I think it is about the 10th or 12th day of November.

Q Did you go to the top floor? A Yes, sir.

Q Whom did you see there? A I seen William and that man up there.

Q The defendant? A Yes, sir.

Q When you say "William", do you mean William Clackett? A Yes, sir.

Q Why did you go there? A For an iron strap.

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Q You went there to get a strap? A Yes, sir.

Q What did you see occur there? A Well, the first time I seen him up there, he was putting some packages into a bag.

Q You saw the defendant putting some packages into a bag? A Yes, sir.

Q How many packages? A Well, I was not up there long enough to count them.

Objected to. Objection overruled. Exception.

Q Well, there was more than one package, anyway?

A Yes, sir.

Q What sort of packages were they? A Well, about --

Q How were they done up? A Wrapped up in paper.

Q Wrapped up in paper? A Yes, sir.

Q Were they very long? A Oh, about fifteen inches.

Q Fifteen inches long? A Yes, sir.

Q About how wide, would you say? A About ten --

Q Just putting them in the bag? A Yes, sir.

Q Did you hear any conversation between them? A Well, the last time I was up there I heard a conversation between them; they were arguing about the price.

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Q Now, about when was it that you were up there the last time. You say it was about the 10th or 12th of November, was that the first or second time? A The 10th or 12th, that was the first time, and a couple of days later they were arguing about the price.

Q That was about the 14th or 15th of November? A Yes, sir.

Q What took you to the place on that occasion? A Well, I would always go up for an iron strap.

Q What was it that took you up on that occasion, the second occasion? A The same thing, an iron strap.

Q Did you find a strap there? A Well, he would throw them away, and so I would go up and get a few.

Q Who would throw them away? A William Clackett would put them out in the hall.

Q You were well acquainted with Clackett? A Since I worked there; yes, sir.

Q What happened on this second occasion? A The second occasion I seen him they were arguing about the price up there.

Q What was said? A Like "seven dollars", I heard something.

Q Who said that? A That man there.

Q The defendant? A Yes, sir.

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Q He said what? A He said seven dollars.

Q Seven dollars? A Yes, sir.

MR. MITNICK: I ask that all this be stricken out as not connecting the defendant with any transaction, simply hearing someone say "seven dollars".

THE COURT: I do not know how he could connect it more directly with the defendant. He says he heard the defendant say it. I cannot conceive of anything more directly connecting the defendant with a matter than that.

Exception.

Q Did Crackett or the defendant see you on each occasion while they were talking? A Crackett seen me after.

Q But not while they were talking about it? A No, sir.

Q What else did you see the defendant do then? A Well, he had a bag up there.

Q Did you see him put anything in the bag? A The second time; no, sir; there were goods in the bag, but I didn't see him putting it in.

Q He had something in the bag? A Yes, sir.

Q Did you see what it was? A Well, they were put in the bag just like packages, laid in straight.

Q What sort of a bag was it? A A burlap bag.

Q Now, did you see the defendant leave on that occasion, or didn't you wait? A I seen him going down in the

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elevator.

Q Did he go down at the same time you went down, or how was it? A Well, I was downstairs at the time when he came out of the elevator.

Q So you left both Clackett and the defendant there?
A Yes, sir.

Q And went down to your floor? A Yes, sir.

Q What floor is it you are working on? A The floor beneath them, on the fifth.

Q On the fifth? A Yes, sir.

Q That is next to the top floor? A Yes, sir.

Q Now, besides these two occasions that you have mentioned, have you seen the defendant around the place?

A No, sir, I did not see him around the neighborhood; that was the first time I ever seen him.

CROSS-EXAMINATION BY MR. MITNICK:

Q Now, Trotzsky, are you positive that you understood the question put to you by Mr. Kresel? A Yes, sir.

Q You are positive that you answered them in accordance with your understanding? A Yes, sir.

Q Do you remember testifying in the police court downstairs here? (No answer.)

Q Do you understand that question? A Yes, sir.

Q Why don't you answer? A Yes, sir.

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Q Do you remember testifying there? A Yes, sir.

Q Do you remember Mr. McGiffin being there alongside of you and testifying also? A Yes, sir.

Q Do you remember when you were urged by someone to tell all you knew there? A Nobody urged me at all.

Q Do you remember the answers you made to the questions put to you by myself? A I do not; no, sir.

Q Do you remember anything that took place in November last? A Yes, sir.

Q And yet only two or three weeks ago, at the examination downstairs, you don't remember? A Well, I don't remember who it was.

Q The questions I put to you? A I don't remember who it was.

Q Do you remember when you testified downstairs in the police court, that the only time you ever saw this defendant was when he came down in the elevator with a burlap bag? A No, sir; I have said upstairs I seen him.

Q I didn't ask you what you said; I am asking you whether or not it is true -- didn't you so testify?

A No, sir.

Q Do you remember when I asked you how you knew what he had in the bag, that you said, "Because I seen something through white in the bag when he came down in the elevator"? A No, sir.

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Q Now, you remember you are under oath? A Yes, sir.

Q You swear that that is not true? A Yes, sir.

Q Will you now swear that in the police court, downstairs, that you did not testify there that the reason you knew he had some goods in that bag was because you saw the white paper through the bag? A Yes, sir.

MR. KRESEL: He has already answered that question.

MR. MITNICK: There is another question that I put to him.

Q You now swear that you were upstairs and saw him take the goods? A Yes, sir.

Q Did you see the packages opened? A Well, the packages were tied up.

Q Sure about that? A Yes, sir; sure about it.

Q Where were you standing? A I was out in the hall.

Q Is that door open leading into the hall? A There is an elevator shaft there.

Q Is that door open leading from the hall into that loft? A Yes, sir.

Q Positive about it? A It was open at the time.

Q Who opened that door? A Well, the people that were in there, William Clackett and that man there.

Q You know there has been a lot of stealing done in that place? A No, sir; not at all.

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Q You are 'sure you were not one of the trio that has been robbing that place?

MR. KRESSEL: I object to that question.

THE COURT: I sustain the objection to the question, because it is improper. The witness is entitled to the protection of the Court, and there is no ground for the innuendo contained in the question.

Q Whose place is that upstairs, that loft? A Mr. McGiffin's.

Q Whom did you work for? A Dreyfuss.

Q What floor is Mr. McGiffin on? A He keeps the first and the sixth.

Q Mr. Dreyfuss doesn't keep the floor above, does he? A He keeps the floor underneath, the fifth floor.

Q What were you doing in Mr. McGiffin's loft at that time in the day?

THE COURT: He has told you that he went up for an iron strap. We have had that three times. He said that McGiffin threw away some iron straps in the hall, and he used to go in the hall and take them.

MR. MITNICK: I understood him to say that he went inside.

THE WITNESS: No, sir; out in the hall.

Q Did you ever see any money pass between this defendant and Clackett? A No, sir.

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Q Now, where was the elevator man Boyd? A He was on his elevator .

Q Did he see you there? A Yes, sir; he seen me.

Q At that time? A Yes, sir.

Q On the 10th or 12th of November he saw you standing there? A Yes, sir.

Q Did you tell him anything about it? A No, sir.

Q Now, you knew Mr. McGiffin, didn't you? A Yes, sir.

Q Did you tell Mr. McGiffin? A No, sir.

Q Why didn't you? A Well, I thought that he was going to--

Q Why didn't you? A He was going to -- I think he told us he was going to discharge him himself, and there was no use going down to tell him.

Q Notwithstanding the fact that you saw this Clackett delivering goods belonging to Mr. McGiffin to this defendant, and he putting them in a bag, you did not go down and report to Mr. McGiffin that he is being robbed? A No, sir.

Q You never told anybody about that? A No, sir.

Q When did you first tell Mr. McGiffin that you saw anybody get goods in the place? A Well, after I found out that William Clackett was arrested.

Q Did you ask Clackett what he was doing giving these goods to somebody else? A No, sir; that was none of my business.

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Q It was not your business? A No, sir.

Q You didn't tell the elevator man, Boyd, what you had seen? A No, sir; not at all.

MR. KRESEL: He has already answered that.

Q You say that you didn't tell him? A The elevator man seen me there.

Q Clackett didn't see you there? A No, sir.

Q Now, on what date was this that you saw Clackett give these goods to this defendant? A About the 10th of November.

Q Are you sure it was the 10th? A I don't remember the date exactly.

Q How do you know it was the 10th of November? A I think it was about that time.

Q We don't want you to think, we want you to be positive? A About the beginning of the month.

Q Was it the first? A No, sir.

Q That is the beginning of the month, isn't it? A Well, about the beginning of the month.

Q Was it the second? A I don't exactly know the date.

Q Was it the third? A No, sir.

THE COURT: Now you have it that it was about the beginning of the month, and he says he cannot tell you whether it was the first, second or third.

Q Wasn't it the 19th? A No, sir; before that.

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Q Did you see the defendant in the place on the 19th?

A No, sir; I was not up there that day.

Q You saw Clackett every day, didn't you? A Yes, sir.

Q Did you see Clackett there on the 20th? A I think I seen him working.

Q You saw him on the 20th. Did you see him on the 21st?

A No, sir.

Q Sure about that? A Yes, sir; sure.

Q Did you see him on the 22nd? A No, sir.

Q Did you see him on the 23rd? A I think I seen him down in the court then.

Q Sure you saw him on the 23rd of November in court?

A Yes, sir.

Q You cannot be mistaken about that? A I don't know.

Q Now, suppose I tell you that it was on the 23rd of December that you saw him in court; then you would be mistaken, wouldn't you? A Well, I can't exactly tell you the date.

MR. MITNICK: I will not ask this witness any further questions, your Honor.

BY MR. KRESSEL:

Q Do you know when Election Day falls? A In November some day.

Q Do you know what month? A November, I think.

Q Do you know how late in November it is? A The 23rd.

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Q What is that? A The 23rd.

Q What did you say? A About the 23rd.

Q You don't know, then. Now, do you know whether it was before or after Election Day that you first saw the defendant on this top floor of 37 White Street? A I seen him before Election.

Q And the second time? A It must have been before Election also.

Q When you say it must be, why do you say that, what do you mean by that? (No answer.)

Q Do you remember whether it was or not before Election? A Well, I do not exactly remember.

Q When you say that it was about the 10th or 12th of November that you saw him the first time, do you fix that with reference to anything that occurred? A Well, that is the date I figure I seen him up there.

Q Now, you think that Election time falls about the 23rd of November? A Yes, sir.

Q You say that it was before Election that you saw him? A Yes, sir; before Election.

Q Now, suppose it was true that Election Day, this last Election Day, fell on the 8th of November, would it be after or before Election Day that you first saw the defendant? A What is that again?

MR. MITNICK: Objected to.

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Q (Question repeated.) A Well, after then.

BY THE COURT:

Q Now, let me ask a question. Have you any recollection of Election Day of last year? A No, sir.

Q Do you remember anything that happened on that occasion? A No, sir.

Q Now, are you able to say whether the time that you saw this defendant was before or after Election? A Well, I couldn't really say whether it was before or after.

Q But you think it was sometime before the 23rd and after the 8th of the month? A Yes, sir.

Q Now, what gives you that impression? A Because the elevator was broken one day, on the 7th.

Q It was after the breaking of the elevator? A Yes, sir.

THE COURT: Now, I do not believe you can get it any more definitely than that.

MR. MITNICK: We take an exception to the testimony of this boy as to the fixing of the time.

BY MR. MITNICK:

Q Now, if you knew that that elevator was broken on the 7th day of November, when you were asked so many questions as to the time, why didn't you say it was immediately after the breaking of that elevator?

Objected to. Objection sustained. Exception.

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ROBERT H. COPPLAND, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESSEL:

Q To what precinct are you attached? A The Eighth Precinct.

Q Were you with Officer Cahill when this defendant was arrested? A Yes, sir.

Q You were? A Yes, sir.

Q Where did you arrest the defendant? A We arrested this defendant at Mr. McGiffin's place, 37 White Street.

Q Who was present at the time, Officer? A Why, Mr. McGiffin was there.

Q Who else? A And one of his clerks.

Q And Officer Cahill? A Officer Cahill; yes, sir.

Q And the defendant? A Yes, sir.

Q And who else? A I don't remember anybody else that was there.

Q Was Clackett there? A Clackett came in a few moments afterwards, after we had arrived there.

Q After you had come there? A Yes, sir.

Q Who came with him? A Counsellor Coleman.

Q Counsellor Coleman? A Yes, sir.

Q Now, do you remember Officer Cahill asking the de-

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defendant whether he knew Clackett? A Yes, sir.

Q What did the defendant say?

MR. MITNICK: I object to this, as leading, if your Honor please.

THE COURT: In what possible respect could such a question lead a witness to the answer. I do not understand your objection.

Exception.

A After Officer Cahill and myself had placed him under arrest in Mr. McGiffin's place, and Clackett came in and Counsellor Coleman, I asked this gentleman here, and also Officer Cahill did, if he knew Clackett; he said that he did not know him; we asked Clackett if this was the man that he had disposed of the goods to, and he said it was; we also sent upstairs for this young boy Trotzsky and asked him if it was the man, and he also identified him as the one. So then we placed him under arrest.

Q Then you placed the defendant under arrest? A Yes, sir.

Q You took him to the station house? A Yes, sir; we took him to the station house.

Q Did you, at any time after that, have any further conversation with the defendant? A Well, no, sir, simply asked him, at different times, whether he did know this Clackett, and he denied it every time; we questioned him as

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to what he had done with the goods, where he had left them, and so forth, and we could get no information out of him.

Q He would not tell you anything? A No, sir.

CROSS-EXAMINATION BY MR. MITNICK:

Q The fact is, he denied ever buying any goods, didn't he? A He denied everything; yes, sir.

Q Now, did he ever state that he knew Clackett at any time? A Not in my presence.

Q Positive about that? A Yes, sir; I am positive of it.

Q Do you remember testifying in the police court downstairs, you yourself? A Yes, sir; I do.

Q Do you remember whether or not you did not testify, before the Magistrate, that the defendant told you that the only thing he ever bought from Clackett was burlap and old rags? A I believe he testified to that in the court.

Q Didn't you testify that this defendant told you that? A I don't remember it, no, sir.

Q When you asked this defendant what he had done with the goods -- you told the Magistrate that the only thing he said, in answer to my question as to what he said to that, was that he never bought anything but burlap and old rags -- you did not testify to that? A No, sir.

Q Will you now swear you did not so testify? A Yes, sir.

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MR. KRESSEL: He has already answered.

Q Did he, at any time, say that he knew Clackett?

A I asked him about three times if he knew Clackett, and he denied it each time.

Q Isn't it a fact that he told you he did not know anyone by that name? A He never told me anything of the kind; no, sir.

Q Now, when did he tell you that he didn't know Clackett; on what occasion. Can you explain that? A In Mr. McGiffin's office the day I placed him under arrest.

Q Immediately after you placed him under arrest? A When William E. Clackett came into the office I asked him, I says, "Do you know this gentleman?" He said no. I asked William E. Clackett if he knew this defendant, and he said yes.

Q Didn't you ask this defendant whether or not he bought any goods from Clackett, didn't you? A I asked him, yes, sir.

Q Did he say to you "No"? A He denied it.

Q "And the only thing I bought was burlap?" A He never mentioned burlap to me, no, sir.

Q And rags? A No, sir.

Q Where is Officer Cahill now? A Right in the court.

Q In the courtroom, is he? A Yes, sir.

Q Was he there with you at the time? A Officer Cahill

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when I --

Q I asked you one simple question? A He was not right there at that moment; I had not been in Mr. McGiffin's office but a few moments when he came in.

Q Now, did you find any property anywhere? A No, sir.

BY MR. KRESEL:

Q By the way, do you know whether the defendant had a place of business? A Well, we investigated that, and we found that he had only, just a short time previous to his arrest, got a license out as a junk man under a man's name, a business man's name on the East Side that had a junk shop, but he had no place, he simply had this wagon.

Q And that he was selling this to this junk man?

A I don't know whether he was selling the thing to this junk man; he was doing business with him, I understand.

BY MR. MITNICK:

Q This place that you refer to is No. 57 Sheriff Street, isn't it? A I believe that is the number.

Q 66 Suffolk Street, isn't that right? A There were two or three places that we visited; Officer Cahill investigated that matter.

Q You said "we", didn't you? A We were both together.

Q This place is an Italian's, isn't it? A Yes, sir.

Q An Italian runs the place? A Yes, sir.

MR. KRESEL: The People rest.

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MR. MITNICK: I move, if your Honor please, for a direction in this case, as the People have utterly failed to make out a case against this defendant; they have no corroborating testimony here leading up to any part of any transaction that is alleged to have taken place between this defendant and the man who stands uncorroborated and whose testimony cannot be taken with any certainty, who is a self-confessed thief, or a man who has been convicted of crime, and upon whose testimony the Prosecution seems to rely in this case.

THE COURT: Well, the thief testified that the property was stolen, did he not?

MR. MITNICK: Yes, sir.

THE COURT: The thief testified that he stole this property, did he not?

MR. MITNICK: The property that is spoken of here; yes, sir.

THE COURT: And the owner of the property testifies that he missed it about that time?

MR. MITNICK: There is no doubt about that.

THE COURT: Then there is corroboration of the fact that property was stolen. Now, the thief testified that he gave it to the defendant, did he not?

MR. MITNICK: Yes, sir; but there is no corrobora-

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tion that he did.

THE COURT: The little boy Trotzsky says that he saw the defendant take it, didn't he?

MR. MITNICK: He saw some packages but he didn't know what it was.

THE COURT: There is corroboration on that point, isn't there?

MR. MITNICK: Only that he saw something, but he could not identify any of the goods.

THE COURT: Then you come to the question of scienter, and the thief, of course, tends to establish that, does he not?

MR. MITNICK: Guilty knowledge, that is.

THE COURT: And the price that he paid. That has been proven.

MR. MITNICK: It is contradicted by the witness himself for the prosecution.

THE COURT: I will deny the motion.
Exception.

MR. KRESEL: Will your Honor permit me to move that the indictment be amended so as to read the 15th instead of the 25th day of November?

MR. MITNICK: If your Honor please, we object upon the ground that it will be a surprise to us. We are here to meet a charge upon a certain specific date, and we

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are taken by surprise.

THE COURT: Motion granted.

Exception.

THE COURT: We will now adjourn the case over until Tuesday.

MR. MITNICK: Under those circumstances, the amendment of the indictment, we move that this case be taken from the jury.

THE COURT: I have already denied that motion.

Exception.

THE COURT: You can have until Tuesday morning to prepare your defence. Gentlemen of the Jury, do not talk about this case or permit anyone to talk with you about it, nor form or express any opinion thereon until the case be finally given you in charge.

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New York, February 14th, 1905.

Trial resumed.

MR. MITNICK: I again renew my motion that the jury be instructed to acquit upon the ground that the People have utterly failed to make out a case against this defendant.

THE COURT: I will deny that motion as I have already done.

Exception.

MR. MITNICK: Also on the ground that there is no testimony corroborating the testimony of a person convicted of crime, the self-confessed thief.

THE COURT: I also deny that motion.

MR. MITNICK: I take an exception. I have left some important papers at home -- papers that I wished to use in this case.

MR. KRESSEL: I have sought to find out from Mr. Mitnick exactly what these papers are which he wanted to introduce because I do not want to take any unfair advantage of this defendant. He tells me that one of the papers was an affidavit of a witness whom he cannot have here. He says that he wanted to introduce that. Of course he knows, as well as I know, that such affidavit

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could not be introduced in evidence. In the second place he said he had a digest of the testimony already taken in this case. I have now given Mr. Mitnick the testimony in the case as it has been written out by the stenographer and therefore he is in as good a position to try the case as he ever will be.

Mr. Mitnick opened the case on behalf of the defendant.

A B R A H A M S E I T Z, the defendant, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MITNICK:

Q Now, Seitz, where do you reside. You understand English, don't you? A A little bit.

Q Where do you live? A 47 Sheriff Street.

Q Speak loud enough so that these twelve gentlemen can hear you. Now, what is your business? A Junk business.

Q How long have you been in it? A One year and six months.

Q One moment. How long have you been in the junk business? A One year and six months.

Q Do you remember the 23rd day of December last when you were arrested? A No, sir; I don't remember.

Q Do you remember when you were arrested? A I know 53

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days I am arrested.

Q Do you understand the question? A 53 days.

Q What do you mean by 53 days? A I am arrested.

Q You were arrested on the 23rd day of November last year, weren't you? A Yes, sir.

Q You were arrested on November 23rd? A Yes, sir.

Q Now, it has been testified to by Clackett that he sold you some linens. Did you ever buy any linens or linen goods from Clackett? A I am buying rag with red paint on with big numbers on the rags I bought.

Q Did you ever buy any linen goods in packages from Clackett? A In packages? No, sir.

Q Did you ever buy any linen towels from Clackett?
A No, sir.

Q Now, when was the first time that you ever came into the premises of Mr. McGiffin and bought rags from Clackett?
A Yes, sir.

Q When was the first time? A About four months more; I don't remember.

Q Four months before you were arrested? A Four months more when I was buying rags and burlap.

Q I don't understand what you mean by "four months more". Do you mean four months before you were arrested?
A Yes, sir.

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Q You were arrested on the 23rd day of November?

A Yes, sir.

Q You said that you bought rags and burlap four months before that? A Yes, sir.

Q Is that right? A Yes, sir; with these 53 days it is four monthsmore.

Q I cannot understand you. Four months back from now?

A Yes, sir.

Q From the present time? A Yes, sir.

Q That is the first time that you ever bought any rags from him? A Yes, sir.

Q Now, what did you buy, what was the nature and kind of rags you bought from Clackett, what were they? A I bought the rags.

Q What kind of rags? A White rags and painted with very big numbers on the rags.

Q That was the white covering? A Yes, sir.

Q That was already explained here at the trial?

A Yes, sir; I bought them off him.

Q These covers that come over white goods?

A Yes, sir.

Q And linens? A Yes, sir.

Q As well as cloth? A Yes, sir.

Q Now, was that stiff or soft goods, was it thick, soft

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goods like this here? A I don't understand you.

Q Do you see this card here? A Yes, sir.

Q Were they similar to that? A (No answer)

MR. MITNICK: I think we had better have an interpreter with this man.

Q Do you see this card here? A Yes, sir.

Q The rags that you bought, were they anything like this card? A No, sir; a little more.

Q Now, was it soft and wrinkled up like a handkerchief or was it stiff like this card? A Yes, sir.

Q Like this? A Yes, sir.

Q It was ~~not~~ folded up, was it not? A Yes, sir.

MR. KRESSEL: Now, Mr. Mitnick, it is evident that the defendant does not understand what you say. I think we had better have an interpreter.

THE WITNESS: Like little bags.

Q Did you ever give Clackett any amount of money, amounting to \$15? A (No, sir.

Q Did you ever pay him \$15? A No, sir; never.

Q Now, Seitz, how many times did you say that you had been there at his place? A Three times.

Q Now, on each occasion, how much rag did you buy from the man Clackett? A For 60 cents.

Q How much money did you give Clackett altogether the

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three times you visited the place? A One time 60 cents, one time, for the burlap, 40 cents, and the third time I bought rags and something to open a box, and I gave him 65 cents; there were three times, 60 cents, 40 cents and 65.

Q Now, he testifies here that he sold you some towels and opened the package and you gave him 65 cents for the towels, is that true? A No, sir.

Q Did Clackett ever open a package, showing you linen towels, and ask you to buy the same? A I don't see it never.

Q Did he ever show you any towels? A No, sir.

Q Did he ever open a package and tell you that there were linen towels in it? A No, sir.

Q Did you ever buy any linen towels from him? A I don't know what this is.

Q Now, who did you sell your rags to? A (No answer)

BY THE COURT:

Q Did you ever buy any linen towels from this boy?

A No, sir; never.

Q You understand the question, do you? A I understand.

BY MR. MITNICK:

Q Who did you sell your rags to? A Well, my rags, when they are too heavy to be carried away on the push cart, then I go in the shop and sell them in the shop.

Q To whom do you sell your rags when you buy them from

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other people, what do you do with them? A I sell them anywhere I have the chance.

Q You take them to regular dealers, don't you, junk dealers? A Yes, sir; I get plenty of shops.

Q Now did you, at any time, buy a package of linen or any white goods wrapped up in a paper from Clackett?

A Never.

Q Or any other person in the premises? A No, sir.

Q Do you understand the question? A No, sir; I don't buy it in a package; I don't buy in packages, never.

Q You are sure that you have never been in the place more than three times? A Never, because I was five weeks home, I was sick.

Q I want to ask you this: How did you first come to go into the place? A I came along with the push-cart and he called me there.

Q Who called you? A This man in the window and the elevator fellow takes me down.

Q What man are you talking about, Clackett?

A No, sir; this elevator man.

Q The colored man? A Yes, sir.

Q On what floor? A I don't remember.

Q What floor? A I can't remember the floor.

Q What floor did he sell you these burlaps on, where

did he take you to to get the burlap; from what floor did he get those burlaps that he sold to you? A I can't remember the floor; I am going with the push-cart and I go about 25 times in the house and if it was the third floor or the second floor I don't remember; I did not see the floor.

Q Have you been in the place a dozen times?

A What place?

Q In that place 37 White Street? A Three times.

Q Is that all? A That is all.

CROSS EXAMINATION BY MR. KRESEL:

Q Mr. Seitz, you don't mean to say that you were arrested on the 23rd of November, do you? A Yes, sir.

Q The 23rd of November? A 53 days, I don't remember.

Q Well, you answered to your counsel that it was the 23rd of November; it was the 28th of December, wasn't it?

A Yes, sir.

Q Now, you say you have been to 37 White Street three times, is that right? A Yes, sir.

Q You bought goods three times? A Yes, sir.

Q Did you buy these goods from Clackett every time?

A No, sir.

Q From Clackett? A No, sir.

Q Well, the rags or whatever you call them? A Yes, sir.

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Q You bought them from Clackett? A Yes, sir.

Q This man that was here? A Yes, sir.

Q Now, the first time you say you paid him 60 cents?

A Yes, sir.

Q That is right? A Yes, sir.

Q Do you remember what day that was? A No, sir; I cannot remember it.

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

Q Do you remember the month? A No, sir.

Q Now, Mr. Seitz, you say you don't remember the date when you first went to this place at 37 White Street?

A Yes, sir.

Q You do remember the date? A No, sir.

Q Do you remember the month? A No, sir.

Q You don't? A No, sir.

Q Do you remember the date when you went there the last time? A The last time; I was there after this -- it was five weeks I got sick and I don't remember this.

Q You don't remember the last time? A No, sir; I cannot remember.

Q Was it in the month of November, 1904? A 1904, yes, sir.

Q Was it in the month of November? A No, sir.

Q What is that? A No, sir; I don't remember.

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

Q Do you remember whether it was after election day that you went there the last time? A After election day?

Q Yes. A May be, I can't tell.

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

Q Now, just what did you buy from Clackett the first time that you went there when you paid him 60 cents?

A Yes, sir.

Q What did you buy? A Rags.

Q Rags? A Yes, sir.

Q You say it was rags? A Yes, sir.

Q What sort of rags? A White rags with red painted numbers.

Q White rags? A Yes, sir; with numbers on them.

Q Were there a great many of these rags? A What is that?

Q Was it a very big lot? A No, sir.

Q Half a bag? A A full bag, yes, sir.

Q A full bag? A Yes, sir; a little bag full.

Q Full? A Yes, sir.

Q How did you buy it, by the pound? A No, sir; I buy it --

Q In bulk? A Yes, sir.

Q How do you sell these rags, by the pound? A Yes, sir.

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Q How much do you get a pound? A Two and a half cents.

Q Two and a half cents a pound? A Yes, sir; these white rags and other rags I get a cent and a half.

Q Now, these were white rags? A Yes, sir.

Q You sell them at two and a half cents a pound?

A Yes, sir.

Q And you paid him 60 cents? A Yes, sir.

Q Can you tell us now how many pounds of rags there were for 60 cents? A I don't remember.

Q Well, give us your best recollection? A I got in the push-cart plenty of rags.

Q I mean this bag of rags that you got from him?

A Yes, sir.

Q How many pounds were in that? A Oh, about forty pounds.

Q Forty pounds of rags? A Yes, sir.

Q You had them in the bag -- about forty pounds of rags? A Yes, sir.

Q You paid him 60 cents for them? A Yes, sir.

Q Now, the second time you paid him 40 cents for the burlap? A That is right.

Q What distinction do you draw between burlap and rags?

A Burlap?

Q What is burlap? A The difference is that the white

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rag are more valuable, dearer, and the burlap is bags, they make bags of it.

Q Now, the second time you say you bought burlap only?

A Yes, sir.

Q No white rags? A No, sir.

Q You paid him 40 cents? A Yes, sir.

Q How many pounds of rags and burlap did you get at that time? A I remember I got in the push-cart the burlap and I mixed them up; I don't remember.

Q You don't remember? A No, sir; because the burlap is not heavy.

Q Not heavy? A No, sir.

Q Now, the third time that you went there you paid him 65 cents? A Yes, sir.

Q What did you get at that time, what was it at that time, burlap or rags? A Burlap.

Q Also burlap? A Yes, sir.

Q How many pounds of burlap did you get for 65 cents? A I gave him 40 cents for the burlap.

Q I am speaking of the third time 65 cents.

A Yes, sir, I got one thing where you take out the nails --

Q What is that? A One thing where you take out the nails from a box.

Q You got an instrument to pull out nails with?

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A Yes, sir.

Q You bought that from him too? A Yes, sir; altogether I gave him 65 cents.

Q You don't remember how much you gave him for the others? A No, sir.

Q Now, do you remember seeing Boyd, this colored man? A Yes, sir; he takes me in the elevator.

Q He took you up there? A Yes, sir.

Q What floor did he take you to? A I don't remember the floor.

Q Was it the top floor or was it the first floor?

A I don't remember the floor.

Q You don't remember the floor? A No, sir; I don't look at the floor; I look at where I buy the rags.

Q Did you see this boy Trotsky that testified here? A No, sir.

Q Did you ever see this boy? A No, sir.

Q Now, altogether how much money did you give Clackett?

A For the three times, 60 cents, 40 cents and 65.

Q That is \$1.65? A Yes, sir.

Q You say that you have been going around every day and that you go to about 25 or 30 houses a day, don't you?

A Every two weeks I go to them people in that street.

Q Do you mean that you go into that place once in two

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weeks? A Every two weeks I am going in the street.

Q Do you mean you only go into it once in two weeks?

A Yes, sir; in this street, but I go in other streets; I cannot go every day in the same street.

Q Now, you do go around every day whatever street it is - you do go around every day? A Yes, sir; always around different streets.

Q How many of these places do you visit a day?

A (No answer)

Q How many houses do you go into during the day?

A I am going from 7 o'clock and I am coming back between 4 and 5 o'clock.

Q From 7 to 4 or 5 o'clock? A Yes, sir.

Q How many houses do you go into it? A As often as I can --

Q 25? A May be 30, may be 20.

Q May be 20 or 30? A Yes, sir; may be 35.

Q Now, how is it that you remember so exactly about this particular occurrence and that you gave him 60 cents once, 40 cents the second time and 65 cents the third time, what is there about these transactions that fixes them in your mind so well? A Because I have no other business to do and so I have a good memory of my own business.

Q Did you buy other rags in other places? A Yes, sir.

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Q You bought ether burlap in other places? A Yes, sir.

Q You bought ether white rags? A Yes, sir, and iron and brass and copper.

Q You bought ether rags in other places? A Yes, sir.

Q Do you keep a book showing how much you pay to each man? A No, sir; because I am selling every day.

Q Do you have any way of telling how much you pay to any person? A No, sir.

Q You have no way excepting your own memory, is that right? A No, sir.

Q You remember now that you paid him 60 cents on one occasion, 40 cents on the second occasion and 65 cents on the third? A Yes, sir.

Q You don't remember what month it was that you bought these rags? A No, sir.

Q You don't remember the date that you bought them on? A No, sir.

Q Now, Mr. Seitz, I want to show you --

MR. MITNICK: I object to anything being shown here unless they show it was part of the proceeds of this larceny.

THE COURT: I will tell the jury to pay no attention to it except when it is offered in evidence.

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BY MR. KRESSEL:

Q I want to show you these pieces and ask you whether that is the sort of burlap that you bought there?

A That is burlap.

Q That is the same as you bought there? A No, sir; sometimes it is not as this is, but in little pieces.

Q Is this the sort of goods? A This is burlap.

Q This is what you call burlap, isn't it? A Yes, sir.

Q Now this is the sort of burlap you bought there?

Objected to. Objection overruled.

Q Is that the sort of burlap you bought there?

A There is such a quality of burlap but not in such big pieces, in small pieces.

Q In smaller pieces? A Yes, sir.

Q Now, just describe to us what you mean by white rags that you bought, what sort of rags were they? A Any sort of rags, white rags.

Q Something like this (showing witness a towel)?

A No, sir.

Q Sure about that? A No, sir.

Q You knew what that is, don't you? A No, sir, these rags were rags, not such kind as that, they had red painted numbers on them.

Q Did you ever get from Clackett a package like this,

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wrapped up in paper? A I don't see the package, never.

Q What is that? A I didn't see this, no, sir.

Q Clackett testified that on the first time you came there you saw one of these packages and you asked him what it was, and he opened it and showed it to you.

MR. MITNICK: I object to that, if your Honor please. Clackett did not say anything of the kind as he did not have any package here to identify.

Objection overruled. Exception.

Q Clackett testified that the first time you came there you saw a package and you asked him what it was, that he opened it and showed you it was towels and that you bought it from him at that time; is that true? A No, sir.

Q Not true? A I did not see it.

Q Did you never get anything from Clackett that was wrapped up in paper? A No, sir.

Q Nothing? A No, sir.

Q All the things that you bought from him were rags?
A Yes, sir; rags and burlap.

Q Not in paper? A No, sir.

Q They were not put together in folds? A No, sir.

Q Just thrown together in a heap? A These rags were on the floor and I put them in the bag.

Q You picked them up and put them in the bag? A Yes, sir;

no paper or nothing.

Q You carried the bag down yourself? A Yes, sir.

Q You carried the bag down to the push-cart? A Yes, sir, I put them in the elevator and the push-cart was standing there at the elevator.

Q Now, every time you came up to the building you went up in the elevator, didn't you? A Yes, sir; in the elevator, I came in the elevator.

Q That is true? A Yes, sir.

Q Every time that you went to the floor where you bought the rags from Clackett you went up in the elevator? A Yes, sir
BY MR. MITNICK:

Q Now, Seitz, were you ever arrested or convicted of any crime? A No, sir; never, no one time.

A D O L P H M. R A D I N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MITNICK:

Q Mr. Radin, you are a Reverend Minister? A Yes, sir.

Q Do you know the defendant Abraham Seitz? A Yes, sir; I saw him in the Tombs as Chaplain when he was arrested.

Q Now, did you investigate the case of Seitz?

A Yes, sir.

Q Did you inquire into the character of this defendant

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in the neighborhood in which he resided?

MR. KRESSEL: I object to that. It would be hearsay evidence.

THE COURT: The trouble with character evidence is that it is necessarily hearsay evidence. He can testify to the reputation of the defendant. I think under the peculiar circumstances of this case I will receive this evidence. It is a little dangerous to permit people who are in prison to have others go out and investigate their reputation and then come in and testify, but in this case I will let it go to the jury for what it is worth and they will have to say what weight it should receive.

Q Have you made any

THE WITNESS: Yes, sir.

Q Have you met any people in the neighborhood where this defendant resides who know him? A Many people.

Q After making this investigation into the character of this defendant do you now know what his reputation for honesty is? A As far as I have investigated --

Q Yes or no? A Yes, sir.

Q What is it, good or bad? A Very good.

Q Did you visit the home of this defendant? A Yes, sir.

MR. KRESSEL: Objected to as immaterial.

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Q Don't say what anybody said to you.

A Yes, sir.

THE COURT: It doesn't make any difference whether he went to his home or not. It is clearly incompetent.

MR. MITNICK: That is all. The defense rests.

TESTIMONY CLOSED.

(The jury failing to agree upon a verdict were discharged from the further consideration of the case.)

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