

START

207

CASE

UNIVERSITY

150

7

I N D E X.

Names.	Direct.	Cross.	Re-D.	Re-C.
The People's Witnesses:				
Abraham Littman,	2	7	8	
Joseph Goldstein,	8	19	37	
Abraham Littman (recalled),	38	38	40	43
Nathan Bangel,	45	51	56	65
John J. Bradley,	66	66	67	
James A. Murray,	68	69	69	70
Joseph Goldstein, (recalled),	70			
The Defendant's Witnesses:				
Samuel Pesky,	73	74		
Max Schwartz,	79			
William Pesky,	80	81		
Abraham Littman (recalled),	88			
Julius Littman,	88			
James A. Murray (recalled),	91			
The Court's Charge,		92		

1507

2017

#874

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

.....
THE PEOPLE
v.
WILLIAM PESKY.
.....

"
"
" Before
Hon. JOSEPH E. NEWBURGER
and a Jury.
"
"

Tried, New York, March 23, &c., 1900.
Indicted for BURGLARY IN THE THIRD DEGREE.
Indictment filed, January 19, 1900.

.....

APPEARANCES.

ASSISTANT DISTRICT ATTORNEY THOMAS F. BYRNE,
For THE PEOPLE.
JAMES W. McLAUGHLIN, Esq.,
For THE DEFENSE.

.....

FRANK S. BEARD,
Official Stenographer.

1507
207

A B R A H A M L I T T M A N, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. McLAUGHLIN: I ask that all the other witnesses for the prosecution and the defense be excluded.

THE COURT: Yes. All the other witnesses in this case will step outside and remain outside until they are called.

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

BY MR. BYRNE:

Q Well, now, speak so that the last juror can hear you, please. A I can't speak English very well.

Q Oh, you, I think you can. Well, you were in business on the 16th of December last? A Yes, sir.

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

Q And what was your business at that time? A Manufacturer of furs.

Q And the business was in your wife's name? A Yes, sir.

Q Esther Littman? A Yes, sir.

Q And you managed the business for her? A Yes, sir.

Q Where was it carried on? A I carried it on.

Q Where? A In West Houston Street.

Q What number? A 96.

Q 96 West Houston Street? A Yes, sir.

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

107

- Q And on what floor there? A On the second floor, first floor up.
- Q One floor up? A Yes, sir.
- Q One flight up? A Yes, sir.
- Q And how many floors are there in that building? A About six.
- Q About six? A Yes, sir.
- Q And all the floors were occupied at the time; were they?
- A Yes, sir.
- Q Now, on the 16th day of December, last -- which was Saturday; was it? A Yes, sir.
- Q When did you leave there in the morning? A Half-past eleven in the morning.
- Q Half-past eleven in the morning? A Yes, sir. And I tell the elevator man when somebody come, a man, and ask for me, then he tell him I will be back at half-past two, and that was every Saturday, and I pay this elevator man a quarter for every Saturday, to look out for the door.
- Q Now, at half-past eleven you left there? A Yes, sir.
- Q Did you have any goods there? A Yes, sir.
- Q What goods did you have? A All the fur business; capes and silk and everything that belonged to the manufacturing.
- Q And were some of them done up ready for shipping?
- A Yes, sir; I have got a couple of boxes that were ready

1509

207

for shipping. And I come at half-past two.

Q No. Never mind. We will come to that. You had how many boxes? A Well, I don't know how many boxes, five or six boxes. The boxes were packed up, and I was to ship them off after dinner.

Q Bundles or boxes? A Boxes.

Q Wooden or pasteboard boxes? A Pasteboard boxes.

Q Pasteboard boxes? A Yes, sir.

Q Now, when you went away, was there anybody in your place?

A No, sir. I come back at----

Q What did you do when you went out? A When I come back?

Q No. Now, just wait. When you went away, what did you do with the doors? A I locked the doors. I put three locks outside and one lock inside.

Q And when did you get back? A At half-past two.

Q At half-past two? A Yes, sir.

Q And what did you find when you came back? A When I come up on the floor, I find the door were a little open, and I call up the elevator man, and the elevator man said nothing.

Q And what was the condition of the door? A Well, the condition of the door was very good.

Q When you went away? A Yes, sir.

Q And when you got back? A It was open and the locks were open.

102
GAS 2017

Q Had they been broken open? A Yes, sir; all three locks.

Q And did you miss any goods? How much goods were taken away?

A Well, about twenty-seven hundred dollars of goods were taken away that I know of good.

Q Well, what did the goods consist of? A Fur capes.

Q Yes. A And silk.

Q And silk? A Yes, sir; and some other kind of goods, collarettes and scarfs. But I can't explain everything.

Q Now, open this dress suit case, and tell me if those are some of your goods. A I can't open it.

Q Well, I will open it for you. I can't open it either. I will let the officer open it.

MR. McLAUGHLIN: I can open it and I will open it. It is easy to see that he doesn't know anything about dress suit cases.

MR. BYRNE: And there is something in that too.

BY MR. BYRNE:

Q Look at those two capes there. A Yes, sir.

Q Were they part of your goods? A Yes, sir.

Q And this cape (indicating), what was it worth? A At wholesale I sold it for twenty dollars.

Q At wholesale you sold it for twenty dollars? A Yes, sir.

Q And this cape (indicating)? A I have got the shipping list. Those are the cheap capes.

- Q And how much are they worth? A Six dollars.
- Q And this is worth twenty dollars (indicating)? A Yes, sir.
- Q And the other six dollars? A Yes, sir.
- Q At wholesale? A Yes, sir.
- Q And there were twenty-seven hundred dollars worth of furs and silks? A Yes, sir.
- Q Missing? A Yes, sir.
- Q Where did you see these two capes, after Saturday? A After Saturday -- after Sunday?
- Q After Sunday? A Yes.
- Q Where? A In East Broadway.
- Q In whose place? A In Mr. Margolius' place.
- Q He is a brother-in-law of yours? A Yes, sir.
- Q You found them with Margolius, who is your brother-in-law?
- A yes, sir.
- Q Sunday at what time? A My brother-in-law come by me, on Sunday, at eleven o'clock, and he said, "Your capes is saved. Now come right away in the court."
- Q Well, that will do. This defendant, did you ever see him before? A I can't remember what man this is.
- Q You don't know him? A No, sir.
- Q He was not in your employ at any time? A No, sir.
- Q And he had no right to be about your premises? A No, sir.

67-207

Cross Examination:

BY MR. McLAUGHLIN:

Q Now, where else did you see some of your goods? A What?

Q Did you find any more of your goods? A I will find some. Mr. Bangel told me he sell some silk in Madison Street, ninety-five yards.

Q Did you see any more of your goods? A What I see was found by Goldstein's, in the bed.

Q But did you find any more of your goods anywhere else?

A I got five capes back, and that's all that are here.

Q Did you find any more of your goods by any other person?

A No, sir.

Q Either by Weissman -- did he have some of your property?

A Mrs. Weissman.

Q Yes. A Well, my brother-in-law told me----

MR. BYRNE: Objected to.

THE COURT: Objection sustained.

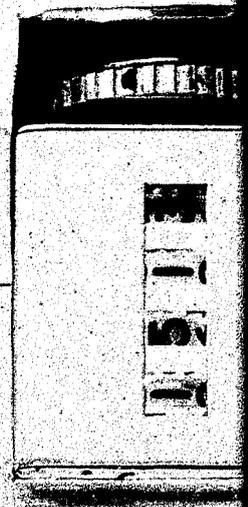
BY MR. McLAUGHLIN:

Q No. Did you find any more of your property there? A No, sir.

Q Or any of your property with Fishbein? A Well, Mr. Goldstein told me----

Q No. Did you find any of your property at Fishbein's?

A No, sir; I didn't.



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

BY MR. BYRNE:

Q Now, these two capes and some others, you say you found?

A Five capes, which I got back.

Q And where did you get those? A The detective give me them.

Q And where did he get them? A These two (indicating)? I don't know.

Q No. The other five capes. A I have got them in my store.

Q And you got them from the detective? A Yes, sir.

Q And he got them where? A From Bangel.

J O S E P H G O L D S T E I N, a witness called on behalf of the People, being duly sworn, testified as follows:

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

BY MR. BYRNE:

Q Mr. Goldstein, now talk loud enough so that the last juror will hear you. Where do you live? A 11 Clinton Street.

Q And in December last where did you live? A In Willett Street.

Q What number? A 37.

Q What were you doing there? Janitor? A No.

Q You were not janitor? A In 37 Willett Street I never was janitor.

Q Now, do you recollect the 16th of December of last year,

51517

51517

Saturday? A (No answer)

Q Do you recollect that it was Saturday? A Yes, sir.

Q Now, did you see this defendant there? A Yes, sir.

Q Now, state all that occurred, all that took place there.

A (No answer)

Q On Saturday, December 16th. State all that took place there.

A (No answer)

Q Do you understand? A Yes, sir.

Q Well, go on. Tell the jury all that happened there. A At 11 Clinton Street?

Q At 11 Clinton Street. Yes. A I was janitor at 11 Clinton Street.

Q And you did not live there? A No, sir. Before that I didn't live in Clinton Street, when I lived in 37 Broome Street.

Q Well, where did you live on the 16th of December? A 37 Broome Street.

Q And at that time were you janitor in Clinton Street?

A yes, sir.

Q Did you see the defendant at 11 Clinton Street? A Yes, sir.

Q State what took place there, what happened at 11 Clinton Street? A It was Saturday, this day was Saturday. I was standing in the hall, and I was sweeping the hall, and I see

7

coming an express, with some goods.

Q Talk loud. A With some goods.

Q You saw an express wagon coming with some goods? A Yes, sir. And he was asking me, "Who is the janitor here?"

Q Who asked you that? A One fellow.

Q One fellow? A yes, sir; one fellow. And I said, "What you want?" and he said, "I got some -- a lot of goods on the wagon, and I want you to let me inside. I see the sign of a furniture room," and he said, "I've got some goods, and I want to leave them a little while in the house, and I want to pay you for them."

Q Now, did you see this man there at the time (indicating the defendant)? A yes, sir.

Q How many men were there there? A Four of them.

Q Four of them? A yes, sir.

Q Now, after he said that, what did you do? A I am going to my wife -- my wife was laying in the bed in the bedroom sick, and I was going to my wife, and I told to my wife, "Somebody brings some goods, and he want to"-----

Q Never mind that. Then you came back to the men? A Yes, sir.

Q And what did you say to these people? A And I told the people, "I don't like to keep you the goods," because I didn't see it is straight goods. And so they were talking

to me so long and they beg me and I say---

Q Well, what did you do? A So I went back to my wife again and I spoke to my wife.

Q And then you came out again? A Yes, sir.

Q And then what did you say? A And then I come again and said to them people, "Well, then, take your goods, and in not more than two hours you must take them back."

Q Now, where was your wife? A She was laying in the bed.

Q Where? A At 11 Clinton Street.

Q I thought you said you lived in Willett Street? A Two years ago I lived there.

Q But in December, '99, you lived in Clinton Street?

A Yes, sir.

Q And how many rooms did you have there? A Four.

Q You were janitor there? A yes, sir.

Q Your rooms were on what floor? A On the ground floor down stairs.

Q How many rooms altogether were there on the ground floor?

A Not more rooms like mine.

Q What is that? A There is no more rooms.

Q There is only one tenant to a floor? A The other parts was locked up. It is a store.

Q The other parts of the building were locked up; it is a store? A yes, sir.

Q And you had how many rooms? A Four.

Q What were they? A kitchen? A The first was a kitchen, and two bedrooms, and the front room. I have got two doors, in the kitchen a door and in the front room a door on the hall.

Q And what room did they take these things into? A They took them in the front room.

Q And who brought them in? A The four fellows.

Q Three others beside this one (indicating the defendant)?

A Yes, sir.

Q And you are sure that he was there? A I am sure.

Q Now, who else came there then? What took place then?

A What price?

Q No. What happened besides, after they brought in the goods, what happened? A Then one fellow is going away.

Q One fellow went away? A One fellow went away.

Q Not this fellow (indicating the defendant)? A No.

Q This fellow stayed there? A Yes, sir.

Q Well, go on. A One fellow was going away and, about half an hour, he is coming back with Nathan Bangle.

Q Well, did you hear what took place between Nathan Bangle and them? A I hear this fellow say, "Do you want buy some goods?" and Nathan Bangle said, "I ain't got no money." Well, he was talking with him and he said, "Well, I am go-

ing"-- well, when he was talking with him, in about two or five minutes came another man, with little whiskers he has got, and when Bangel sees the other man he says, "I won't buy the goods, because you have got a buyer, another man." "Well," he says, "never mind. We buy them together, partners, with the other fellow."

Q Who said that, that he and the other fellow would buy them together? A Yes, sir; this man that comes in.

Q That was the man with the whiskers? A Yes, sir. And then this fellow make a bargain for one hundred and sixty dollars.

Q Do you know the name of the man with the whiskers? A Pesky.

Q Pesky? A Yes, sir.

Q Well, what did they say next? A Well, they said that they buy them in partners.

Q Buy them as partners? A Yes, sir.

Q Pesky and Bangel? A Yes, sir. Well, they make a bargain for one hundred and sixty dollars, and Nathan Bangel said to Pesky, "Well, you wait here, and I am going for my money, because I ain't got my money in my pocket."

Q Bangel said that? A Yes, sir. And Bangel is going away, and he is coming again in about an hour. He is coming back then.

Q Yes. A And he bring the money.

Q Yes. A He bring the money and he said, "Well, you have got to give eighty dollars," he said to Pesky, "because we are partners. I have got eighty dollars, and you have got to give eighty dollars," and Pesky said, "That's not your business. I'll give away the eighty dollars to the fellows. You have got to give eighty dollars." And he took his money from the pocket, and gave the eighty dollars to pesky, and Pesky gave the big fellow, that was arrested before, the money, the eighty dollars, and the other fellow gave him a punch.

Q Whom did he punch? A Bangel.

Q The big fellow that got the money punched Bangel? A Yes, sir. I don't know his name.

Q The big fellow punched Bangel? A Yes, sir. And Bangel said, "What for you hit me?" He said, "I want the last money."

Q He said he wanted the rest of the money? A Yes, sir. And Bangel said, "The other fellow has got to give eighty dollars. I give you my eighty dollars and we were partners," and the big fellow said, "I don't want no partners. You must buy all the goods. You must give me the other eighty dollars." Well, and Bangel said, "I ain't got no money." Well, then, he was hollering in the house, and shouting and hollering, and Bangel said, "What can I do with you people?"

I will give you my watch, and I have got my ring on my finger, and I'll give you my ring and my watch, and when I bring you the other eighty dollars, you will give me the watch and the ring;" and those people took the money, and the watch and the ring and went away.

Q Those four people went away? A Yes, sir.

Q And Bangel stayed in the house? A Yes, sir.

Q And then did Bangel go away with some of the goods? A No, sir. And when these people go away, and Bangel is in the house, I said to Bangel, "Now, you must take away these goods from the house, because I don't want any trouble in the house, because I see the goods isn't right goods," and Bangel said, "It is Saturday now, about four o'clock, and what can I do with the goods on Saturday? I have got to keep the goods to-night, and to-morrow morning will be Sunday, and I will find a buyer to-morrow, and I will take away the goods." And I said, "Well, I will knock the goods in the hall, when you don't want to take them out."

Q And then did he go away? A No. Bangel was talking with me so long.

Q Well, after he got through talking he went out? A Yes, sir.

Q Did he take any goods with him? A Well, I couldn't say what I will do with those goods, and I think I will keep

them until the morning. I thought I had to keep them so long that I didn't want to knock them out into the hall.

Q Well, go on. A And Bangel took some silk lining and some fur capes and he is going away.

Q Yes. A He is going away. And to-morrow about seven or eight o'clock Bangel is coming with a man to sell the goods, and the man see the goods and he said, "How much do you want?" and I don't hear how much he wanted. I hear this man, he says, "It's too much for me. The goods aren't for me," and he is going away, and I said, "What't the matter Bangel? Take away the goods. I don't want to keep the goods here," and he said, "All right, I'll sell them to-day," and he is going away again, and he is coming with another man, and the other man---

Q That was all on Saturday? A No, sir; on Sunday, to-morrow morning, Sunday.

Q Sunday? A yes, sir. And he is coming with another man, and the other man saw the goods.

Q And he didn't buy them? A Yes, sir. He said, "It's all right. I'll buy you the goods and I'll pay you. Come along with me."

Q Yes. A And he is going away with that man and, when he is going away with that man, about an hour after he is coming, with three men, three other man, and one was the boss and he

said, "I am the boss," and two fellows he makes for detectives.

Q They made out they were detectives? A Yes, sir. And one was standing by the door of the kitchen, and the other was standing in the front room, and he come into the house and he said, "Is your name Goldstein, and are you the janitor here?" and I said, "Yes," and he said, "You've got stolen goods in your house."

Q "You have stolen goods in your house?" A Yes, sir. And I said, "How do you know anything about those goods is stolen?" and he said, "I know that it is mein goods." And one fellow is going from the house for an officer, and he said, "I will go right away and get you arrested, if you don't give me the goods," and my wife was crying with the children, and I was talking with them, and I said, "Don't do that. Don't do me any harm. Don't make any trouble. I'll give you away the goods." And they went in the front room, and take two bags, and pack is no quick the goods, and on the table in the front room they left two capes.

Q These two capes (indicating)? A Yes, sir.

Q Now, what did you do with those two capes? A When the people is going away I was standing in the front, and about two minutes after I go to my wife, and I said to my wife, "I think it isn't the right boss from that goods, because they

took them so quick the goods, and they left two capes on the table, and they don't count the goods," and she said, "You go in the street and may be you will find the people with the express," and I walk in Houston Street, between Norfolk and Suffolk, and I didn't see the express, and I didn't see the man and the goods.

Q You didn't see the goods or the man? A No, sir.

Q And what were you doing with the two capes? A Well, I took the two capes, and I laid them in the bed in the corner.

Q You put them in bed with your wife?

MR. McLAUGHLIN: Objected to, as leading.

BY MR. BYRNE:

Q And what did you do with the two capes? A My wife was in the bedroom, and I put the capes in the bed.

Q Your wife was in bed? A Yes, sir.

Q And you put the capes in the bed with your wife? A Yes, sir.

MR. McLAUGHLIN: Objected to, as leading.

THE COURT: Objection sustained.

BY MR. BYRNE:

Q You are sure that you saw this defendant here with those men, as one of the four? A Yes, sir.

Q Now, who carried in the goods? A They carried them in altogether.

Q Altogether? A yes, sir.

Q And you say you saw him there when the express wagon came up?

MR. McLAUGHLIN: Now I object to this leading. It is aw-
fully leading.

THE COURT: You must not lead, Mr. Byrne.

BY MR. BYRNE:

Q Did you say that in your testimony? A Yes, sir.

Q And when did he go away? A He is going away when he took
the money.

Q Did the others go away with him? A yes, sir.

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

BY MR. McLAUGHLIN:

Q Now, Mr. Goldstein, what other names are you known by, be-
sides Goldstein? A (No answer)

Q We don't need to wait, you know.

BY MR. BYRNE:

Q Have you any other name? A The other name, I haven't.

MR. McLAUGHLIN: One moment. I object. This ought to
stop, your Honor.

THE COURT: One moment, Mr. Byrne.

MR. McLAUGHLIN: Just as I asked the question, Mr.
Byrne interrupted.

MR. BYRNE: It was to make it clear.

THE COURT: But you had no right to do that.

MR. BYRNE: Then I want an interpreter, your Honor. I
so
tried to frame my questions, that he would understand
them, and when I try to help my friend, he objects.

THE COURT: But you had no right to help him.

MR. BYRNE: And then I ask that we have an interpreter.

THE COURT: No.

MR. BYRNE: I only want to call your Honor's attention--

THE COURT: No. I will have no interference. Proceed.

BY MR. McLAUGHLIN:

Q Now, keep your eye right on me. What other names besides
the name of Goldstein have you assumed at different times?
What names have you gone under? A I have got no other
names. That's my right name.

Q Did you ever reside in Chicago? A No, sir.

Q Or in Elmira? A No, sir.

Q Or in Boston? A No, sir.

Q You said that rather slowly. Will you reconsider that?

Did you live in Boston? A Yes, sir; I was living in
Boston.

Q Yes. Weren't you known in Chicago, Elmira and Boston as
Herics?

MR. BYRNE: Objected to, on the ground that he has already
testified that he did not live in Chicago, and did
not live in Elmira, but did live in Boston.

THE COURT: I will allow the question.

BY MR. McLAUGHLIN:

Q Weren't you known in Chicago, Elmira and Boston as Herics?

A (No answer)

BY THE COURT:

Q Do not you understand the question? A Yes, sir.

Q Then answer it. A I didn't say in Chicago.

BY MR. McLAUGHLIN:

Q No, no. Was your name ever at any time Herics? A That's my first name, Joseph Goldstein. That's my name.

BY MR. BYRNE:

Q And what is your last name? A I ain't got no last name.

BY THE COURT:

Q Were you ever called Herics? A I hear it for the first time, such a name.

Q You hear it for the first time, such a name? A Yes, sir.

BY MR. McLAUGHLIN:

Q Lazarus Herics? A I hear for the first time such a name.

Q Oh, this is the first time you ever heard such a name?

A Yes, sir.

Q Were you ever convicted under such a name? A No, sir.

Q Positive? A yes, sir.

Q You were never convicted? A No, sir.

Q Were you ever convicted of anything? A Who?

Q Who? No. What? Were you ever convicted of receiving stolen goods? A No, sir.

Q Never? A No, sir.

Q Were you convicted of anything? A No, sir.

Q Stealing anything? A No, sir. I was convicted here -- I was discharged.

Q Then you were not actually convicted? A Then I was discharged.

Q Didn't you in a case here give testimony, the same as you are doing now, as receiver, and afterwards plead guilty, and sentence was suspended on you? A No, sir.

Q You are positive of that? A Yes, sir; positive.

BY THE COURT:

Q Do you understand the question? A I understand it.

BY MR. McLAUGHLIN:

Q Four or five people were arrested with you? A No, sir.

Q Just as we have them in this case almost? A No, sir.

Q And you took the stand as a witness to the receiving of the property, and were afterwards discharged? A No, sir.

Q Now, one minute. A No, sir.

Q One minute. A No, sir.

QX Have you told the same story this time that you did on the other trial? A No, sir.

Q You haven't told the same story? A No.

THE COURT: He does not understand.

MR. McLAUGHLIN: Yes, your Honor, he does. He didn't have any detective business in the last trial.

MR. BYRNE: And I ask the Court that an interpreter be had.

THE COURT: One minute, Mr. Byrne. The interpreter will step up here.

MR. McLAUGHLIN: Oh, now we have an interpreter.

THE COURT: Yes; we want this witness to understand perfectly. Ask the witness if he has told the same story as he did on the other trial.

(The question is repeated through the official interpreter, Gustave St. Albe.)

BY THE COURT:

Q In this transaction, before me. Tell the witness that it was before me. A yes, sir.

THE COURT: He says yes; that he testified to the same thing that he has testified here.

BY MR. McLAUGHLIN:

Q Did you say a word about some men coming into your place as detectives?

MR. BYRNE: I submit that it is immaterial and irrelevant.

THE COURT: Oh, no; it is proper cross examination.

FBI

207

GAS 207

MR. BYRNE: Well, he wouldn't have said it if he had objected, on account of his client, because his client had gone away at the time.

THE COURT: Objection overruled.

BY MR. McLAUGHLIN:

Q Did you say a single word in the last trial about some people saying that they were detectives, and they came to your house and took away the property that was left there?

A Yes, sir.

Q In the last trial you said something of that kind? A Yes, sir.

Q Do you mean to say you did? A Yes, sir.

Q Did you say a single word about this boy being present -- in the last trial -- about this young man being on the street, when the express wagon came up? A I was talking with all four of them, all the men.

Q Did you say that? A Yes, sir.

Q On the last trial? A No. On the last trial I don't see him in the court.

MR. BYRNE: I ask, your Honor, that the last answer be read to the jury.

THE COURT: Yes.

(The answer is read to the jury by the stenographer.)

MR. BYRNE: This man was not in the court at all.

THE COURT: Now, Mr. Byrne, that is entirely improper.

If you desire to make any comments, you can do so when you go to the jury.

MR. BYRNE: And will the same ruling apply to Mr. McLaughlin?

THE COURT: Why, certainly, it applies to you both.

BY MR. McLAUGHLIN:

Q Didn't you say, on the previous trial, that the wagon was driven up by two men, and that old Pesky was on the sidewalk?

A I didn't say that.

Q You didn't say that? A There was all four men.

Q And didn't you say that, after awhile, that Pesky came into the inner room and, sometime later, this boy came in?

A This boy? This boy was coming altogether with the others, and the other Pesky was coming about five minutes after.

Q Who drove that wagon to the front of the house? A They were sitting altogether on the wagon.

Q Who drove it? A A black fellow. He was driving the horse.

Q Wolf? A No, I don't know the name.

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

Q Either one of the two men that were tried the last time in Part I? A I didn't see that man in the trial.

1531

217

- Q You remember three men being tried? A Yes, sir.
- Q Were either of those men on the cart? A On the car?
- Q Yes; on the express wagon? A It wasn't a car, it was a wagon.
- Q Yes; the wagon? A yes, sir.
- Q Who was on it? A All the four fellows.
- Q Old Pesky? A Not old Pesky. They were all young fellows, all four young fellows.
- Q Four young fellows? A yes, sir.
- Q Who brought the stuff into the house? A It was so heavy, in two bags, all the four fellows bring them in.
- Q Who came in first? A The first two is coming in with one bag and the other two fellows is coming in with the other bag.
- Q Who brought in the first bag? A The first bag?
- Q Yes. Don't repeat it. A One fellow can't carry one bag himself. One fellow is carrying it with the other fellow, this fellow (indicating the defendant).
- Q This fellow carried in the first one (indicating the defendant)? A yes, sir; with another fellow.
- Q And then somebody brought in the other one? A Yes, sir the other two fellows.
- Q And you are positive of that? A Yes, sir.
- Q And these people never knew you before? A No.

1532

67-217

- Q Never knew you in the world? A No, sir.
- Q That's right; is it? A yes, sir.
- Q And they drove up to your flat? A Eh?
- Q They drove up to where you lived? A They stopped the wagon by the house.
- Q And you were standing there? A I was standing in the hall.
- Q You were not waiting for them? A No, sir.
- Q You didn't know they were coming with this stolen property?
- A No, sir; no, sir.
- Q You didn't? A No, sir.
- Q But, just as soon as they began to talk to you about it, you thought it wasn't straight? A yes, sir; they talked to me. They wanted to leave the goods in the house, and I told them I didn't want it, and they speak so long, and they talked so much to make me take the goods in the house,.
- Q And then you went in and consulted your wife, whether you would take in the goods or not? A yes, sir; I was by my wife.
- Q And then you went in and consulted her again, after talking with the men again? A yes, sir.
- Q And then you consulted her again? A yes, sir.
- Q And you didn't take the property into your place until you had consulted your wife several times? A Every time.

Q Every time? A Yes, sir.

Q And then you brought it in? A Not every time. They brought it in the first time.

Q But you let them bring in the property then? A yes, sir. It is my flat that I let them bring it in.

Q But you let them bring it in? A yes, sir; that's my flat.

Q And how long was it before Bangel came to your place?

A It was about half an hour.

Q You never knew Bangel before? A yes, sir; I knew him.
one time
I was working with him in a shop.

Q Oh, yes, you worked with Bangel before? A yes, sir.

Q But you had nothing to do with sending for Bangel?

A yes, sir.

Q Bangel came to the place? A Yes, sir.

Q And began to dicker about how much he would give for this property? A yes, sir.

Q Did you up to that time know that the property was stolen?

A No, I was not sure it was stolen.

Q No, but you thought it was, you thought it was? A What thought?

Q You believed it was stolen? A I don't believe it, and I don't believe it not.

Q You don't believe anything; do you?

MR. BYRNE: Objected to.

100-207

BY MR. McLAUGHLIN:

Q How many of these capes was there in the room? At the time?

A I couldn't count them.

Q There were so many? A I wouldn't count them. It isn't my business.

Q Now, how much did Bangel offer for them? A Old Pesky made the offer. He told him he make the bargain for one hundred and sixty dollars.

Q Eighty dollars? A yes, sir; eighty dollars this man and eighty dollars the other man.

Q And Bangle paid his eighty dollars? A yes, sir.

Q And there was a whole lot of those capes? A yes, sir; and there was silk too.

Q And a whole lot of silk? A yes, sir.

Q yes? A yes, sir.

Q And did you then think it was stolen? A I stole this?

Q No. Did you think then that the property was stolen?

A After, I know for sure it was stolen goods.

Q Yes, a little later on? A yes, sir.

Q But did you know then that it was stolen? A No.

Q Why didn't you go out, when you saw this dickering over the stolen property, why didn't you go out and tell the police?

A Well, I got afraid, when I got the goods in my house; I got afraid for my house.

- Q You got a little frightened then yourself? A Yes, sir.
- Q You never got any of the money? A Money?
- Q Yes. A Where can I get money?
- Q You didn't get anything for it? A No, sir.
- Q Bangel took away some of the silk? A yes, sir.
- Q A piece of silk? A No, sir; a couple of pieces.
- Q No, a couple of pieces? A yes, sir.
- Q And four of these fur capes? A Four or five; I am not sure.
- Q Four or five? A Yes, sir.
- Q When pangel got back again, there wasn't any property there; was there? A yes, sir; it was in the house, after to-morrow morning, when Bangel comes back again but, after two o'clock, he didn't find the goods in the house.
- Q The first time bangel came back, he came back with somebody to sell the property to? A yes, sir; to sell the property to.
- Q Now, who was that? A I don't know the man that he brings in.
- Q Who was it? Fishbein? A No, sir.
- Q Mrs. Weissman? A No, sir.
- Q On his second visit, who did he have with him? A There was a young man. I think he is a cousin to that man from the goods.

- Q Margolius? A I don't know the name.
- Q And was the property there then? A Yes, sir.
- Q And he tried to sell it to him? A Yes, sir.
- Q How long was it before he came back again? A After he was coming, he don,t find the goods no more.
- Q Well, but how long after the first visit was it that he came again? A About an hour or two hours I think.
- Q And then the stuff was gone? A Yes, sir.
- Q And there was nothing there for him to get? A No, sir.
- Q And now you tell this jury that -- how many men came as detectives? A Only the boss and two is the detectives, three men. One man makes himself the boss.
- Q One said that he was the boss detective? A Yes, sir.

MR. BYRNE: I object, if your Honor please. He didn't say that.

BY MR. McLAUGHLIN:

- Q One of them said he was what? A What?

MR. McLAUGHLIN: Get that from him, Mr. Interpreter.

(The question is repeated through the Official Interpreter, Gustave St. Albe.)

A He said he was the boss.

BY MR. McLAUGHLIN:

- Q Of what? A Of the goods.
- Q Oh, the owner of the goods? A Yes, sir.

1537

GAS 207

- Q And the other two---- A And the other two said they was detectives.
- Q And the other three men? A Not three. There was three altogether.
- Q Yes? A And one was the boss for the goods he said, and the other two he said they were detectives. He said he brings two detectives.
- Q And they took the goods away? A Yes, sir.
- Q And you didn't want to make any trouble about it? A No, sir.
- Q For yourself? A Yes, sir.
- Q And you let them have the goods? A Yes, sir.
- Q Now, all these goods were put in one place; were they not?
- A Yes, sir.
- Q And when the boss and the detectives carried them off, they left two capes behind? A Yes, sir; they left them on the table.
- Q And you put them under your wife? A And I was taking the two capes, and I was bringing them to my wife, and I said, "They left two capes, and I don't think that he is the right boss."
- Q And your wife was in bed? A Yes, sir.
- Q And you put them under the clothes? A No, sir; not under the clothes; at the back of the bed.

GA 207

- Q And you covered them up? A No, sir; I didn't cover them up. There was some dirty things in the bed; I don't know.
- Q You didn't cover up the two capes? A No, sir; because I am going right away to look for the people, and I want to give away the two capes.
- Q And why did you put them in the bed? A Well, I take them from the front room, and when I tell my wife that the people leave two capes, and I will show them to my wife, and I said, "The people leave two capes, and I think it is not the right boss from the goods."
- Q And you left the capes in the bed? A Yes, sir; behind the bed.
- Q Behind your wife in the bed? A No, sir; I didn't.
- Q Well, you didn't put them on top of your wife; did you?
- A No, sir.
- Q Send in old man Pesky. You can see the old gentleman there (indicating)? A Yes, sir.
- Q He is the man that you said came into your place? A Yes, sir.
- Q And negotiated the -- A He make a bargain, and he buy the goods, with Bangle.
- Q And you claim that this boy brought him in? A No, sir; he came a few minutes after.
- Q Who did? A The old man.

Q The old gentleman? A Yes, sir.

Q You are sure of him? A I am sure of him.

Q And you are just as positive that he was there as that the defendant was there? A Yes, sir.

Q There is no question in your mind about it? A No, sir.

Q And he was standing on the street when the stolen property was brought up on the express wagon?

MR. BYRNE: I object to that. He has testified that he came there five minutes afterwards.

THE COURT: yes; so I understand it.

MR. BYRNE: And the other were four young men on the wagon.

BY MR. McLAUGHLIN:

Q And the old man was on the street? A No, sir; I didn't see him on the street. He is coming in a few minutes afterwards in the house.

Q And didn't you see him on the street as the wagon came up, old Pesky? A No, sir; I didn't. I was in the house when the goods was there, and after that he comes in about two minutes.

Q No. When the wagon had just rolled up? A I see the four young men on the wagon. That's all I see.

Q You didn't see the old gentleman on the sidewalk? A No, sir.

- Q Or anywhere near the wagon? A No, sir.
- Q And you didn't say that you did at the last trial? A No.
- Q Now, did you tell the complainant that Mrs. Weissman bought a part of that stolen property? A No, sir.
- Q Stand up, complainant. I mean that man (indicating). A No, sir.
- Q Did you tell him that Fishbein bought a part of the stolen property? A Yes, sir; I tell him that Fishbein take the goods from the house, I tell him this.
- Q Didn't you tell him that Fishbein bought part of the stolen property? A Bought it?
- Q Yes. A No, sir. I said he took away from the house the property, and he said, "I am the boss of the goods."
- Q Oh, you say that Fishbein was the boss, with the two detectives? A Yes, sir.
- Q Was Fishbein arrested? A Yes, sir; he was arrested in Jefferson market.
- Q And discharged? A And discharged.

MR. BYRNE: Objected to, as immaterial.

BY MR. McLAUGHLIN:

- Q Was Mrs. Weissman arrested? A I don't know.

MR. BYRNE: Objected to, as immaterial.

THE COURT: One moment. What is the object of it?

MR. McLAUGHLIN: As contradicting his story.

MR. BYRNE: Well, he has not testified on the direct examination as to this at all.

THE COURT: I will allow it. It is a proper cross examination. Proceed, Mr. McLaughlin.

BY MR. McLAUGHLIN:

Q Was Mrs. Weissman discharged in the Jefferson market?

A Yes, sir.

Q And you are positive that you didn't tell the complainant that both of these people purchased part of the stolen property from you? A Yes, sir. I tell the detectives too when somebody took the goods from the house.

Q Yes. But you didn't so testify in Jefferson market; did you?

A What?

Q Did you? A When they were arrested in Jefferson market?

Q No. Did you testify against Fishbein or Mrs. Weissman in the Jefferson market?

MR. BYRNE: Objected to, as it is immaterial what occurred as to some others.

THE COURT: I think this is material. I will allow it.

MR. BYRNE: But I didn't bring it out on the direct.

THE COURT: Well, it is not necessary for you to do so, in order to cross examine.

BY MR. McLAUGHLIN:

Q Did you? A No.

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

BY MR. BYRNE:

Q Is Bangel any relative of yours? A Eh?

Q Is Bangel any relative of yours? Is Bangel your brother or uncle? A No; a stranger.

Q No relative of yours at all? A No; a stranger.

Q Now, were you at Jefferson Market when you were arrested?

A Yes, sir; I was in Jefferson Market.

Q Did you see Mrs. Weissman there? A No, sir.

Q How do you know she was arrested? A Well, they take me at the night -- I don't know if she was arrested, I don't know.

Q You didn't see her in court? A No, sir.

Q Did you see Fishbein in the Jefferson Market Court?

A Yes, sir.

Q Did you see him there? A Yes, sir.

Q Did you say anything about him to the judge? A No; the judge wouldn't ask me for nothing.

Q No; the judge didn't ask you for anything? A No, sir.

Q You told all this story to the detectives, did you, that you told here? A Yes, sir.

Q And you told it to the Court? A Yes, sir.

Q ^{any relative of} Bangel isn't yours? A No, sir.

Q Bangel? A No, sir.

Q

Q When were you arrested in connection with this matter, if you were arrested at all? A I couldn't say.

Q In December? A May be. I couldn't tell you the date.

Q Before New Year's? A Before New Year's, yes.

A B R A H A M L I T T M A N, being recalled, testified as follows:

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

BY MR. BYRNE:

Q Where is your place of business now? A To-day?

Q Yes. A Nothing, I have got nothing to do to-day. The property was taken out, and I can't pay my bills, and I can't have more credit.

Q And then you had nothing left, after this was through?

A No, sir.

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

BY MR. McLAUGHLIN:

Q Now, didn't this last witness tell you that Mrs.-----

MR. BYRNE: I am going to object, if your Honor please, on the ground that he brought all this out on the cross examination.

THE COURT: Well, let me hear the question first, please. Do not answer this question until I tell you. Now, go on and put the question.

BY MR. McLAUGHLIN:

Q Didn't the witness Joseph Goldstein tell you that Mrs. Weissman and Fishbein bought some of this stolen property?

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

MR. McLAUGHLIN: As contradicting the other witness.

MR. BYRNE: I object. He brought it out on cross examination.

THE COURT: That rule might be true, if it were a collateral matter, but this is not a collateral matter.

MR. BYRNE: But it is not a part of this case.

THE COURT: I differ with you. I think it is. Proceed. Answer the question.

A I don't understand it. I am frightened, and I can't understand English so well.

THE COURT: Repeat the question, Mr. Stenographer and Mr. Interpreter. Repeat it to the witness.

(It is repeated by the Interpreter.)

A Mrs. Weissman tell me another day.

MR. BYRNE: He didn't ask you about Mrs. Weissman.

A (Answer continued) Mrs. Goldstein----

THE COURT: Now, keep quiet. Now, put the question again.

(It is repeated by the interpreter.)

A Yes, sir.

BY MR. McLAUGHLIN:

Q And Weissman and Fishbein were in the Jefferson Market Court under arrest, and Goldstein didn't testify against them?

A (No answer)

Q Is that so? A (No answer)

MR. BYRNE: I object, unless he asks whether this man was there or not.

MR. McLAUGHLIN: What man?

MR. BYRNE: This witness.

MR. McLAUGHLIN: Oh, he was there as the complainant.

THE COURT: Yes, certainly he was there. Put the question.

(It is repeated by the interpreter.)

A He didn't say anything before the Court but afterwards he spoke to me about it.

BY MR. McLAUGHLIN:

Q Told his story to you? A Yes, sir.

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

BY MR. BYRNE:

Q Where did Mr. Goldstein tell you that Mr. Fishbein and Mrs. Weissman bought some goods; where? A How?

(The question is repeated by the Interpreter.)

A Many times he told me that, and yesterday he told me in court.

Q Who told you that? A Goldstein.

Q And what did he say? A He said that the three men -- he give me the names -- they took the goods, and I give you the names yesterday.

Q What did he say to you? Tell the jury. A Mr. Goldstein said that three men came into his place, and brought the goods there, and that he took the goods.

THE COURT: No, I understood him to say that three men took the goods away. Ask him that question again.

(The question is repeated by the Interpreter.)

A Those three men came and took the goods away that were in the possession of Goldstein at the time.

BY MR. BYRNE:

Q Did Goldstein tell you that Mrs. Weissman bought any goods from him, bought any goods from him; yes or no?

A I don't understand.

(The question is repeated by the Interpreter.)

MR. BYRNE: Will the Court direct that the witness must answer the questions as they are asked him?

THE COURT: Well, I have attempted to do that several times, Mr. Byrne, and you know how successful I have been.

MR. BYRNE: But I didn't think it was as serious then, as it is now, your Honor. I must insist upon an answer.

BY MR. BYRNE:

Q (Question repeated) A He didn't say it, Goldstein didn't say anything about Mrs. Weissman. Bangel said something.

MR. BYRNE: Now, will you tell him, Mr. Interpreter, that he is required to answer the questions that are put to him, and none other, and to say yes or no to the question put by me, and not speak of what anybody else said?

BY MR. BYRNE:

Q Now, then, Goldstein didn't tell you that Mrs. Weissman----

THE COURT: No. He says that Bangel told him. Now, why waste any more time on it?

BY MR. BYRNE:

Q You told the counsel here that Goldstein told you that this man had bought some goods. Then you made a mistake; didn't you? A Well, when the three men----

Q Answer through the interpreter. A No. Bangel told me that Mrs. Weissman was there.

MR. BYRNE: I ask to strike it out.

THE COURT: Yes, strike it out.

BY MR. BYRNE:

Q Did you tell the counsel for the defendant that Goldstein said that Mrs. Weissman had bought the goods, and if you did say so, did you make a mistake? A No; Goldstein didn't

say that.

Q And you didn't mean to tell the counsel so? A No. I can't say something which is not true.

Q Now, did Goldstein tell you that Fishbein had bought some goods? A No. Goldstein tell me that Fishbein takes the goods out.

Q I understand. You say that Goldstein told you that Fishbein and two other man took the goods away? A Yes, sir.

Q And did Goldstein tell you that Fishbein bought any goods?

A I don,t know. I can't tell you.

Q He didn't tell you that? A No.

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

BY MR. McLAUGHLIN:

Q But he told you that Fishbein , with two others, took the property out of his house? A yes, sir.

Q The stolen property? A yes, sir.

MR. BYRNE: And Goldstein said that himself, too.

MR. McLAUGHLIN: No, he didn't.

MR. BYRNE: Well, I beg pardon, and I will ask permission to refer to the minutes.

MR. McLAUGHLIN: No; he said that the man who claimed to be boss was the person who took the goods.

MR. BYRNE: No. And I will ask the Court to refer to the stenographer's minutes as to that, as to Goldstein

154

207

saying that.

THE COURT: Well, the jury are familiar with the testimony.
They will recollect.

7

1

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

Direct Examination:

BY MR. BYRNE:

Q Where do you live, sir? A 78 Market street.

Q Do you recollect the 16th of December of last year?

A (No answer).

Q Do you recollect the date -- do you understand what I say?

A Yes, sir.

Q Talk louder, please. What day of the week was it?

A On Saturday.

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

Q Did you go to his place on that day? A Yes, sir.

Q Now, state how you came to go there. A A boy come to me.

Q Where were you when he came to you? A To my house.

Q Where did he come to you? A In my house.

Q A boy came to you? A Yes, sir, and he said, "Mr. Goldstein wants you."

Q And he said, "Mr. Goldstein wants you"? A Yes, sir.

Q And did you go there then? A Yes, sir.

Q Now, then, did you see this defendant there? A No.

Q You did not see this defendant there? A No, sir.

Q Whom did you see there? A Only Mr. Goldstein and his wife.

- Q Did you buy some goods there? A After, in five minutes after, is come in a small fellow.
- Q And where did you see Mr. and Mrs. Goldstein? A In the bedroom.
- Q Now, did you -- where were the goods? You bought some goods there; didn't you? A Yes, sir.
- Q And where were they? A In the front room.
- Q In the front room? A Yes, sir.
- Q Now, did you go into the front room? A After, I go, I go in the front room.
- Q Yes; you went into the front room? A Yes, sir.
- Q Now, how many people were in the front room? A In the front room there was that fellow (indicating the defendant).
- Q You mean the defendant? A Yes, sir; and four more; the two that they sent away at the last trial, and two other men.
- Q Now, you say this man was there then? A Yes, sir.
- Q Now, state all that took place in that room. A After, when -----
- Q Now, who spoke to you first when you went in there?
A That fellow (indicating the defendant).
- Q This defendant spoke to you first? A Yes, sir.
- Q Now, open your mouth, please, so that the last juror can hear you. A Yes, sir. That fellow said to me, "You

107

want to buy goods?" and I said, "I ain't got any money."

After these words is coming in the old man, his father.

Q The defendant's father came in? A Yes, sir. And he said to me, "Here is a partner for you."

Q The defendant said that to you? A Yes, sir.

Q Did you know this defendant before? A No, sir.

Q You didn't know Pesky before? A No, sir.

Q And you didn't know any of the others before? A No, sir.

And the old man Pesky come in and he said, "Here is a partner for you," and I said, "Well, that is all right." I said to him, "I can't buy goods; because I haven't got no place where to sell them," and he said, "I have got the store in Division street, 138 Division street, and we buy, and I sell the goods," and I said, "All right," and he make the price, and he is gone away for money, and I gone away for money, and I come back and I find the other fellows and old Pesky too.

Q You found old Mr. Pesky and the other fellows there?

A Yes, sir.

Q And what was done then? A He said to me, "You got money?" and I said, "Yes," and he said, "Where is your money?" and I said to old Pesky, "Where is your money?" and he said, "I give the other fellows my money. You give yours," and I gave old Pesky my eighty dollars, and he gave it to

207

the fellow, to Wolf, the black fellow -- I think his name is Wolf -- and he counted over the money, and he find eighty dollars, and then he give me a punch in the face.

Q Yes. A And I said, "What is the matter you hit me?" and he said to me, "Where is the other money?" and I said to him, "The old fellow must give to you the other money," and he said to me, "I don't want him for a partner. I want you to buy the goods," and I said I didn't want to buy them. I can't buy them. And he said, "I want you to buy the goods. You must buy the goods yourself," and I said, "I can't buy, because I haven't got anywhere to sell. Please give me back my eighty dollars," and he said, "I wouldn't give you back the eighty dollars," and I said to Mr. Goldstein, "Please ask the fellows to give me back my money," and they wouldn't answer, and the woman said to the fellows, too, to give back the man the eighty dollars and let him go, and they wouldn't answer. And, after that, the other fellow wanted to kill me, and took out a gun, and they took off my watch and chain, and they said, "Give me your watch and chain and ring, and, after, when you sell that goods we will bring you the watch and chain and you give us the eighty dollars." And I couldn't help it, and I gave them the watch and chain and ring and everything, and after that the other fellows run away.

Q All the other fellow went away? A Yes, sir; and I took the sample to my house.

Q Did you take some goods? A Yes, sir.

Q What goods did you take? A Five capes.

Q Five capes, you took where? A To my house. And that is Saturday night.

Q Yes. A And, after that, I was looking around on Sunday for a buyer. Well, I couldn't find any. I find a boy. My wife lives with him when she was a girl, she lives in the same house with him. And I said to him, "Do you want to buy such a goods?" and he said to me, "Yes."

It was about 11 o'clock on Sunday, and he is going with me to Mr. Goldstein, 11 Clinton street, and he is looking at the goods, and he said to me, "I will come to you with my father to your house," and he goes -- I was going on ----

Q What is his name, Margolius? A Yes, sir, Margolius. And he said he was coming to me in my house, and make a price with me. And I go with Margolius to his shop in East Broadway, and he give me a paper, and I take a friend from next door, and I said to him, "Please give me help to carry goods to Margolius," and I toom the car with him and I was going to 11 Clinton street and I am coming into the house and I didn't find the goods and not Mr. Goldstein.

127
678

The woman was on the floor. She was washing the floor.

Q Where was this? A Mrs. Goldstein.

Q Never mind that. A She said to me, "Two boys is coming and taking the goods."

Q And what became of the five capes? A The five capes? The two fellows from Margolius carried it to his house.

Q And Margolius is the brother-in-law of the complainant?

A Yes, sir.

Q And did you know Littman? A No, not before. After, when I was taking the paper and I was going to Mrs. Goldstein, to take the capes, she said, "Two boys is coming and taking the goods."

THE COURT: One moment. Your cross examination will take some time?

MR. McLAUGHLIN: Yes, your Honor.

THE COURT: Then we will take the recess now.

Before permitting you to separate, gentlemen of the jury, I caution you not to discuss among yourselves or with anyone else any subject connected with the trial of this case, or form or express any opinion thereon until the case is finally submitted to you.

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

NATHAN BANGEL, his direct examination being continued, testified as follows:

Direct Examination, continued:

BY MR. BYRNE:

Q Mr. Bangel, did you see your watch and chain afterwards?

A Yes, sir.

Q How long after the 16th of December? A I think about three or four weeks. I can't remember.

Q You think about three or four weeks, but you can't remember?

A Yes, sir.

Q Do you know where it is now? A The captain has got it.

Q Captain Albertson? A Yes, sir.

Q About what time of the day on Saturday was it that you got there to Goldstein's? A What time I was come to Goldstein's?

Q Yes. A It was about 4 o'clock -- about 3 o'clock.

Q It was about 3 o'clock? A Yes, sir.

Q On Saturday afternoon, December 16th? A Yes, sir.

Cross Examination:

BY MR. McLAUGHLIN:

Q Now, Mr. Bangel, you never knew Pesky? A No, sir.

Q Or any of these other people? A No, sir.

Q You never saw them in your life before? A No, sir.

Q You were sent for by Goldstein? A Yes, sir.

- Q How long had you known Goldstein? A About three years, I guess.
- Q Had you bought any stolen property from Goldstein before?
- A No, sir.
- Q Or through him? A No, sir.
- Q Did you know what you were sent for for, what they wanted of you? A I think because I was working about three years before with him, and then, when I was going to him, I had no work, and I think maybe he has got some work for me, has got a place for me.
- Q You didn't know that he was -- that he had some stolen property for you? A No, sir.
- Q Now, when you arrived there, when you arrived at the place of Goldstein, who was there? A Who was there?
- Q Yes, when you got to -- a boy came for you? A Yes, sir.
- Q And you went to Goldstein's place; didn't you? A Yes, sir.
- Q And now, when you got there, who was there? A Who was there?
- Q Yes. A Mr. Goldstein.
- Q And Mrs. Goldstein? A Yes, sir.
- Q And nobody else? A No, sir.
- Q How long afterwards was it that you claim that these other people came in? A About five or ten minutes.

Q About five or ten minutes? A Yes, sir.

Q Do you know who came in first? A The bartender; what is his name?

BY MR. BYRNE:

Q The bartender? A Yes, sir.

BY MR. McLAUGHLIN:

Q Fine? A Yes, sir.

Q And who next? Wolf? A Well, that fellow, and Wolf and the other fellow. After the goods were inside there, come in the fifth fellow, a fat fellow.

BY MR. BYRNE:

Q An old man? A No. After this comes in the old man.

Q That was six altogether? A Yes, sir.

BY MR. McLAUGHLIN:

Q It was after everybody was there you claim that the old man came in? A Yes, sir.

Q Old Pesky? A Yes, sir; he was the last man who comes in.

Q Now, you purchased all this property, did you? A What, sir?

Q You purchased all this property, the furs and silks?

A Yes, sir; old Pesky and me together.

Q And you gave up eighty dollars? A Yes, sir.

Q And your watch? A Yes, sir.

- Q Now, you took away with you four capes? A Five capes.
- Q Five capes? A Yes, sir.
- Q And two pieces of silk? A I can't remember how many pieces. It was a couple of pieces of silk.
- Q And then you came back to the place again? A Yes, sir; to-morrow.
- Q No. Who came with you? A Nobody, in the morning.
- Q No. I am talking of the first time you came back?
A Nobody.
- Q Nobody? A No, sir.
- Q And the second time you came back was anybody with you?
A Nobody.
- Q And the third time Margolius came? A Yes, sir. And when I come and Margolius, I find the property, the goods. That was 11 o'clock on Sunday.
- Q Then the property was there still? A Yes, sir. He was looking over all the goods, Margolius, but, when I come to take the goods at 1 o'clock, all the goods were gone; only I find Mrs. Goldstein there.
- Q And Goldstein was present during all the money negotiations?
A I don't understand you.
- Q When the money was paid by you, Goldstein was there?
A Yes, sir.
- Q In the premises? A Yes, sir.

- Q Now, did you have anything to do with Fishbein in any of these transactions? A No, sir.
- Q Did Mrs. Weissman? A No, sir.
- Q You are positive of that? A Yes, sir.
- Q And you never told the complainant that Mrs. Weissman purchased some of the goods? A What do you mean?
- Q Bought the goods. A No. I didn't say that. In Jefferson Market they told me did I see that man, Fishbein, and I don't know him.
- Q You mean Fishbein? A Yes, sir, and I said that I don't know him.
- Q You didn't tell anybody that Fishbein took the goods from Goldstein's? A No, sir; I didn't say nothing. I go to look at the goods, and the goods is gone, and only I see Mr. and Mrs. Goldstein when I go to see them.
- Q And when you purchased all these goods for eighty dollars, did you know that the goods were stolen? A After that I knew it.
- Q But you didn't think it was all right? You didn't think that you could buy all those goods for eighty dollars, your share of them? A Well, I didn't know what the goods were. Old Pesky makes the price, and I didn't know what price he makes. I can't make no price, because I don't know the goods.

Q You were not present when the two sacks were found under the clothing in the wife's bed, were you? A What is that, sir?

Q Were you there, were you in Goldstein's place when the two sacks were found? A No. I was arrested.

Q You were already arrested? A Yes, sir. I sent the detective to Mr. Goldstein's. He find him. I don't show that to him.

Q You say you never have had any transactions with Goldstein before? A No.

Q In the purchase of stolen property? A No.

Q Never? A No, sir; never.

Q Never? A No.

Q But Goldstein sent for you by the boy? A The boy says, "Goldstein wants you." That is all.

Q And when you got there there was nobody there but Goldstein and his wife? A Yes, sir.

Q And it was after that that these others came in, as you claim? A Yes, sir.

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

BY MR. BYRNE:

Q This boy that came for you, did you ever see him before?

A No; no, sir.

Q What did the boy say to you? A What boy?

- Q That came to you and ---- A He say, "Mr. Goldstein wants you. Go to Mr. Goldstein."
- Q Now, when you got there did you see any express wagon?
- A No, I didn't see it. I was in the house.
- Q Did you see an express wagon there at all? A No, sir.
- Q No? A No, sir.
- Q What room did you go to when you went there? A In the kitchen.
- Q In the kitchen? A Yes, sir.
- Q And where was Mrs. Goldstein? A Mrs. Goldstein was in the bedroom.
- Q In the bedroom? A Yes, sir.
- Q Now, where was the front room? A The front room? First, you go in the kitchen, and after is a bedroom, and straight is the front room.
- Q Are the rooms all one after the other? A First is the kitchen, then the bedroom, and the third ----
- Q Will you make a mark on this piece of paper, how the rooms are? Are they in front, or back? A In the back.
- Q And what is in the front of the building? A The front is a store, outside.
- Q A store outside? A Yes, a bakery store.
- Q A bakery store? A Yes, sir, and a Chinese store.
- Q Is that a double house, or a single house? A I don't

know if it is a double house.

- Q A double house has a hallway, and some people living on one side and some people on the other side. Or, is it a single house, with the hallway on one side and the people living on the other? A (No answer).

BY THE COURT:

- Q Now, are there two stores, or one store? A Two stores. On one side there is a Chinese store and the other is a bakery.

BY MR. BYRNE:

- Q And Goldstein lived behind what store? A The bakery.
- Q And do the rooms run right in a line? A Yes, sir.
- Q Which is at the back of the house, the kitchen? A The front room is in the back.
- Q The front room is at the back? A Yes, sir. First you go into the kitchen, and then after the bedroom.
- Q Yes. A And the last is the front room.
- Q The last is the one that you call the front room?
- A Yes, sir.
- Q And so the last shall be first, then. How many bedrooms were there? A I can't remember. Two or one. I can't remember that.
- Q And when you went there you went into the first room?
- A Into the kitchen, and after ----

- Q And then where was Mrs. Goldstein? A She was in the bedroom, in the middle room.
- Q Was she in bed? A I couldn't remember.
- Q Well, but she was in there? A Yes, sir.
- Q Who was in the kitchen when you got there? A Goldstein.
- Q Goldstein? A Yes, sir.
- Q Now, how did you go into the front room? A I was in the kitchen, and after, I went straight through the bedroom to the front room.
- Q Now, when you got into the back room, the front room, were all the goods in there? A Yes, sir, afterwards, when the boys take them in.
- Q But did you go into the front room before you went into the kitchen? A No, sir.
- Q You didn't go into the front room until you had been in the kitchen? A No, sir.
- Q And how long did you remain in the kitchen? A About twenty minutes or half an hour; I couldn't remember.
- Q Now, when you went into the front room, were there any goods in there? A Yes, sir, after. After I was come it was about ten minutes that the fellows bring in the goods.
- Q Did you see them bringing in the goods? A Yes, sir; I was in the kitchen and I looked and the fellows bring the goods in the front room.

207

- Q Did you see the fellows bringing them in? A Yes, sir.
- Q How could you see them if you were in the kitchen?
- A First, I come into the kitchen, and then afterward into the front room.
- Q Is there a door from the hallway into the front room?
- A I don't remember that. First I come into the kitchen and then the bedroom and then the front room.
- Q And the goods were brought into the kitchen? A Yes, sir.
- Q And you saw them bringing them in? A Yes, sir.
- Q Who did you see carrying them in? A This fellow (indicating the defendant) and three fellows more.
- Q How many bundles were carried in? A I couldn't remember how many bundles.
- Q Two? A Three, I think; I think so.
- Q Do you remember who carried in the first bundle? A I guess I can't remember.
- Q You couldn't remember? A No, sir. It was the two fellows, the other two fellows, Wolf and Fine, and this fellow and another fellow, and after when the goods was come in there was a fat fellow.
- Q Now, did you see old Mr. Pesky before you went into the front room? A No. When I go into the front room, right away is coming in old Pesky.
- Q But you didn't see him carrying in any goods? A No, sir.

156

207

- Q Now, Mr. Goldstein says that the goods were there before you came. A No, sir.
- Q You are sure that you were there before the goods came? A Yes, sir.
- Q Now, what was Goldstein saying to you, speaking to you about, in the kitchen? A Nothing.
- Q What did you say to him? A I tell him, "What for you send for me?" and he said to me, "My wife is sick and -----"

MR. McLAUGHLIN: Objected to, in the absence of the defendant.

THE COURT: Yes; objection sustained.

MR. BYRNE: Do you object to what took place between him and Goldstein?

MR. McLAUGHLIN: Yes.

THE COURT: Certainly he does.

BY MR. BYRNE:

- Q How long did you remain in the front room before you went out to get the money? How long were you in the front room? A About half an hour.
- Q What? A About half an hour.
- Q Do you know how those goods came over to Goldstein's? A No, sir.
- Q Whether they were carried, or came in a wagon? A No, sir.
- Q You didn't see any wagon? A No, sir; I was in the

1567

207

kitchen and I looked and I seen fellows bringing in goods, bags; and afterwards I seen the goods.

Q But you didn't go into the back room, or front room? A No.

Q Not until the goods were all in? A Yes, sir.

Q And the four fellows were there? A Yes, sir.

Q Who told you to go into the front room? A I think that fellow (indicating the defendant).

Q This one (indicating the defendant)? A Yes, sir.

Q What did he say to you? A He said, "Do you want to buy goods?" and I said, "Maybe I don't want to, because I ain't got a lot of money," and after these words, is coming in the old man, and he said to me, "Here is a partner for you, and that partner will ----"

Q Now, you never saw these four men before? A No, sir.

Q Did you see this man when he was arrested? Did you see him when he was arrested, when the officer arrested him (indicating the defendant)? A Yes, sir; certainly.

Q Where was he arrested? A In 52 Orchard street. I was with the detective. The detective is come to my house, and I was going with the detective.

Q And how long was he arrested after the others? A About two or three weeks; I couldn't remember that.

Q Do you know where he lived at that time? A No, sir.

Q Did you know where Mr. Pesky lived? A No, sir. I was

going in the street to Macdougall street to ask the captain -- I was to find about about my watch and chain in the saloon, and I seen that fellow in Spring street near Broadway; I seen him there, and I look on him and he look on me, and I look for a policeman, and I couldn't find him, and I was going to the station house, and I said to the captain, "I just see Pesky, young Pesky." After that he said, "Go home and I will send to you the detectives," and after they come ----

- Q Now, then, the detectives came for you and you went to 52 Orchard street? A No, sir. We went first in the saloon. They took me to 52 Orchard street, and he was standing in the door, and the other fellow, with the red mustache, he catch him.
- Q Did you say anything to the detectives about him? A No, sir. I said, "There is the youngest fellow," and the fellow catch him. One fellow is run away. I don't know where that fellow is.
- Q You said to the detectives, "There is the youngest fellow"?
A Yes, sir.
- Q And the detective arrested him? A Yes, sir.
- Q And you are sure that he was one of those who brought these goods in? A Yes, sir.
- Q And that was about 3 o'clock on Saturday, December 16th?

A Yes, sir.

Q And, if Mr. Goldstein says that you came there afterwards, you still say that you came there before they came? A I come before the fellows come.

Q Yes? A Yes, sir.

Q When you met him on Spring street near Broadway and he looked at you and you looked at him ---- A He is going with another fellow, with two other boys, he is going, and he is in the middle.

Q And he was in the center? A Yes, sir. I was going in Greene street, and I was afraid ----

Q No, no. Now, when you looked at him and he looked at you, which way was he going? A I was going to Macdougall street station, and he was going to Broadway.

Q And did you look at him after he passed? A Yes, sir, of course; because maybe he will hit me, and I see he is going on the other side to see where I am going.

Q And did you look back more than once? A Yes, sir; all the time I am looking at him, for maybe somebody comes after me. When I come in Greene street he was going on the other side, and he is looking where I am going.

Q And you had never had any dealing with him before? A No, sir.

FBI

207

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

BY MR. McLAUGHLIN:

Q How long after the first time that you saw him on the car did you have him arrested? A What is that?

Q The time that you looked at him and he at you? When did you have him arrested? A This was about 5 o'clock on Saturday. I think three weeks it was after that, I seen him in the street, on Saturday about 5 o'clock. At 5 o'clock I was going to the Macdougall street station to take a detective to take the watch and chain, and the captain said to me, "Go home, and 9 o'clock the detectives come to you." And at 9 o'clock the detectives come, and we was going to the saloon to take away the watch and chain, and the detectives took me with them to look for Pesky, and we was go to 52 Orchard street, and he stand there with a couple of boys, and one is run away, and I don't know where he is run away.

Q Now, you didn't know Pesky before that day? A No, sir.

Q And when you saw him earlier in the day he looked right at you? A Yes, sir.

Q And you looked right at him? A Yes, sir.

BY MR. BYRNE:

Q What day was it that you first saw Pesky? A The day that the goods was bring in.

J 571

207

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

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

BY MR. BYRNE:

Q You are a police officer? A I am.

Q And attached to what precinct? A Tenth Precinct.

Q Do you know the defendant here, Pesky? A No, sir. I did not make the arrest.

Q Who did? A Officer Murray made the arrest in this case.

Q You had been looking for this man Pesky? A We had been looking for him, yes.

Q When did you begin to look for him? A We began to look for him after I arrested Bangel in East Broadway.

Q Do you know his father? A I do, yes.

Q Was it before you saw his father that you began to look for this man? A After.

Q After? A Before I saw his father, yes.

Q You were looking for this man? A We were looking; through the information furnished by Bangel we were looking for Pesky.

Q What information was it that Bangel furnished you with?

MR. McLAUGHLIN: Objected to.

THE COURT: Objection sustained.

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

BY MR. McLAUGHLIN:

Q You are the man that found the coats? A Yes, sir.

Q And two of them, where did you find them, the two other than these here? A Two of them I found on the bed in Goldstein's house, under a quilt.

Q Under a quilt? A Yes, sir.

Q Covered up? A Yes, sir.

Q And she was on top of them? A Sir?

Q And she was on top of them? A Well, she was not necessarily on top of them.

Q But pretty near on top of them? A Well, they were down at the foot of the bed, and she was lying at the head of the bed, and the two capes were under the quilt, at the foot of the bed.

Q And all covered up? A Yes, sir.

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

BY MR. BYRNE:

Q And were they all covered up by the quilt, officer?

A Yes, sir.

Q And how did you discover them? A I lifted up the quilt, looking for property.

Q And when was that? A On Saturday afternoon, about half past 2, the 7th.

Q Had you arrested Bangel before? A I had arrested Bangel

and had him held at the Seventh Precinct Station House, and immediately went to No. 11 Clinton street, where I found Goldstein.

Q Before you arrested Bangel, with whom did you have a conversation? A With Mr. Margolius.

Q With Mr. Margolius? A Yes, sir.

J A M E S A. M U R R A Y, a witness called on behalf of the People, being duly sworn, testified as follows:

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

BY MR. BYRNE:

Q You are a police officer? A Yes, sir.

Q Attached to what precinct? A Tenth Precinct.

Q And you arrested this defendant? A Yes, sir.

Q Where? A At 52 Orchard street, on the sidewalk.

Q And what day was that? A About the 7th of January.

Q You had been looking for him for how long? A Well, Bangel and I was there about a week or ten days, before, looking for him.

Q And when was the father arrested? A On the 18th of December.

Q And was his father still in prison up until he was arrested?

A Yes, sir.

Q And did you know the father's address? A No, sir.

Q Where he lived? A Oh, yes; I knew his father's address. He gave it in the station house.

Q And you were searching, looking for this man, in the meanwhile? A Yes, sir.

Q And found him only on the 7th of January of this year?

A Yes, sir.

Q Who was with you when you arrested him? A Bangel.

Q And what did you say to this man? A Well, Bangel and I went down to Orchard street on Saturday night, I think it was, and he was standing with two other men, in their company, and he said, Bangel said, "That is him, standing in the middle," and I went over and arrested him, placed him under arrest, and brought him to the station house.

Q You were looking for him as Pesky, the son of this other Mr. Pesky? A Yes, sir.

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

BY MR. McLAUGHLIN:

Q The father of this Pesky was tried and acquitted, wasn't he? A Yes, sir.

Q And the father, when you arrested him, told you that he could be found at 52 Orchard street, the defendant?

A Yes, sir.

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

BY MR. BYRNE: Q Did he tell you that right away, when you

arrested him? A Yes, sir.

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

BY MR. McLAUGHLIN:

Q He told you as soon as you arrested him; didn't he?

A Well, I asked him in the station house about his son, and he said that he was not living at home, but I could find him at 52 Orchard street; yes, sir.

Q And you looked for him until you arrested him? A Yes, sir.

Q And you eventually arrested him in front of that house?

A Yes, sir.

J O S E P H G O L D S T E I N, being recalled by the District Attorney, testified as follows:

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

BY MR. BYRNE:

Q You know Mr. Pesky for how long? A About two or three years.

Q About two or three years? A Yes, sir.

Q Now, you said here that an expressman came up with four men and these goods on his wagon, and that they were brought into your front room by these four young men, of whom this defendant was one, and that afterwards Bangel came in?

THE COURT: Do not answer that question.

BY MR. BYRNE: Q (Question continued) Bangel says that he

was there -- that he had come to your place about ten or twenty minutes before? A No, sir.

Q Before the goods came?

MR. McLAUGHLIN: I object.

THE COURT: Now, stop. Do not answer the question.

Wait until he finishes his question. I will rule.

BY MR. BYRNE:

Q (Question continued) Does your recollection now continue to be as you testified before?

MR. McLAUGHLIN: I object.

THE COURT: Objection sustained. Do you want to upset all the rules of evidence that have been in force for hundreds of years, and have a new rule?

MR. BYRNE: No; I wouldn't argue that, your Honor.

THE COURT: No; I suppose you would not.

MR. BYRNE: Well, but I thought the question was a fair question to the witness, and a proper investigation of the subject.

THE COURT: No, no. What protection would there be, if a party is permitted to recall a witness, and call his attention to the fact that he and the other witness have differed? The object of examination would be done away with, and the whole system of examination would be done away with, if

that were permitted.

BY MR. BYRNE:

Q Did you know Pesky, the defendant, before that day, Saturday, December 16th? A No, sir.

MR. BYRNE: The People rest.

MR. McLAUGHLIN: I ask your Honor to advise the jury to acquit -- just to get the record all right. I do not claim that these people ought to be corroborated, because they are receivers, and of course the rule in regard to corroboration would not apply.

But I ask your Honor to direct an acquittal, because the story comes in such shape to your Honor and the jury as not to warrant a conviction, under the circumstances.

THE COURT: I think that is a matter that addresses itself properly to the jury. I will deny your motion.

MR. McLAUGHLIN: And I take an exception, with the utmost respect.

THE DEFENSE.

S A M U E L P E S K Y, a witness called on behalf of the defense, being duly sworn, testified as follows:

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

BY MR. McLAUGHLIN:

Q Now, Mr. Pesky, talk out loud enough for these twelve gentlemen to hear you, and all the rest will hear you, Mr. Pesky. You were charged with stealing these goods too; weren't you? A yes, sir.

Q What became of your case? A (No answer)

MR. McLAUGHLIN: You had better help him out, Mr. Interpreter.

(The question is repeated through the Official Interpreter.)

A I was discharged by the jury, found not guilty.

Q Did you have anything to do with burglarizing these premises?

A I am a working man, and had nothing to do with it.

Q What is your business? A I am a presser, a clothes presser and tailor.

Q Bangel and Goldstein say that you were at Goldstein's premises when these goods were sold. A I don't know these men at all.

Q Never had anything to do with them? A Nothing. I am all the time working, and I make my living from that work, and

my son, the defendant, William Pesky, works with me.

Q Now, Mr. Pesky, what day were you arrested? A On Monday.

Q Do you remember the 16th of December of last year?

A (No answer)

Q Do you remember the 16th of December of last year? A I can't exactly state. Was it the 15th or 16th? I can't recollect that.

Q But how long was it before you were arrested? A Two days.

Q Now, where were you the Saturday before the Monday of your arrest? A I was at home.

Q At home? A Yes, sir. I have another son than this son, who is a great deal older, and a baby was born there, and I went there to that son of mine, that older son, to see the baby.

Q Yes. A And I remained there from half-past ten in the morning until three o'clock in the afternoon.

Q Where was your son, this defendant? A He was with me, going with my wife.

Q What time did you leave there? A At three o'clock.

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

BY MR. BYRNE:

Q Do you know where Goldstein lives? A I don't know. I don't know that Goldstein.

Q Do you know where 11 Clinton Street is? A I know where

Clinton Street is. I am fourteen years in this country, and I know where Clinton Street is.

Q Where did you live on the 16th of December? A 163 Essex Street, and I lived there from the month of May of last year.

Q Did they -- where did this son live (indicating the defendant)?

A He lives with me.

Q You told the officer that he didn't live at home. A What policeman?

Q The policeman in this case. A Nobody has arrested me, no officer, and no officer had asked me this question.

Q Weren't you arrested?

THE COURT: What he means by that is that he was not arrested by an officer in uniform.

THE WITNESS: Yes, sir. Three men arrested me.

THE COURT: Yes. They make a distinction in that neighborhood between a detective and an officer in uniform.

BY MR. BYRNE:

Q Well, did you tell one of those three men that your son could be found at 52 Orchard Street? A No, I didn't say that.

Q No, you didn't say that? A No.

Q Did either of these three men ask you where your son could be found? A They -- I was asked, "Where is your son,"

and I said, "My son lives here with me, but sometimes in the evening he goes out."

Q And did you tell them that your son went to 52 Orchard Street? A No. I didn't say that. I only said that once in awhile he goes to play there, when he is off from work.

Q You were examined as a witness on your trial? A Yes, sir.

Q You did not, on your own trial, say that you were at your other son's house, where a baby had been born, on that Saturday, December 16th? A Because I wasn't asked.

Q Because you were not asked? A No, sir.

Q Where did you see your son after December 16, 1899?

A This son?

Q Yes, this son. A In my own house.

Q Where? A 163 Essex Street.

Q 163 Essex Street? A Yes, sir.

Q When? A On Sunday.

Q On Sunday? A Yes, sir.

Q After you were arrested, then, when did you see him? A I was arrested on Monday.

Q When, after Monday, did you see him? A I couldn't see him, because he was in the Tombs.

Q Did you see him in the Tombs? A No.

Q No? A No.

Q How long did you know Fine? He was tried with you.

A What is that?

Q How long did you know Fine? He was tried with you. A Who is Fine?

Q Don't you know that Fine was tried with you?

THE COURT: Tell him a younger man.

A As long as he was sitting with me, near the table, as long I know him.

THE COURT: No. That is not what he said. He said that he knew him as long as he and Fine were in prison together; he did not know him before.

A (Answer continued) In Essex market, in Jefferson Market I saw him for the first time, and then I didn't know him before.

BY MR. BYRNE:

Q When did you see Bangel for the first time? A Who is Bangel?

Q Mr. Bangel. A I have sworn to tell the truth, and I don't know any man by the name of Bangel.

THE COURT: Let him stand up. That is the best way.

BY MR. BYRNE:

Q When did you first see that man (indicating Bangel)?

A When three detectives arrested me and got hold of me, then I saw him.

1587

CAS 207

Q Do you know of any reason why that man would say anything against you? A I don't know.

Q Do you know any reason why he should say anything against your son? A What do I know? He didn't ask me for anything.

Q Now, Goldstein, stand up. How long have you known Goldstein? A I don't know. I saw him in Jefferson market, but I don't know him, and here I see him in court. I saw him before in Jefferson market, and afterwards here.

Q You don't know any reason why he should say anything untrue about you or your son; do you? A Who is that?

Q Goldstein. A He can say whatever he likes. I can bring here the whole shop where I worked to testify that I am a good and honest man.

Q You don't know why he should? A No, sir.

CAS 207

M A X S C H W A R T Z, a witness called on behalf of the Defense, being duly sworn and examined through the same official interpreter, testified as follows:

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

BY MR. McLAUGHLIN:

Q How long do you know the defendant? A Nine or ten years; I know him from home.

Q From the other side of the water? A Yes, sir.

Q And do you know others who know him? A (No answer).

BY MR. BYRNE:

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

BY MR. McLAUGHLIN:

Q And do you know others who know him? A I don't know.

Q Do you understand my question? Do you know others who know him? A No, sir; I don't know him.

Q I want to know from you, do you know other people who know the defendant? A Outside there is a man who knows this boy.

Q And do you know other people who know him up there is Essex street, up there in the shop? A I don't know.

BY THE COURT:

Q What do you do for a living? A He is a presser.

Q No; what is your business? A I am a tailor.

Q And where do you work? A In 4th street, 357.

Q By whom are you employed? A Morgenstern Brothers.

Q Did the defendant work at the same place? A No, he does not.

Q Did you ever work together in the same place? A No.

BY MR. McLAUGHLIN:

Q Is he a good, or a bad boy?

MR. BYRNE: Objected to.

THE COURT: Objection sustained.

Exception.

W I L L I A M P E S K Y, the defendant, being duly sworn,
testified as follows:

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

BY MR. McLAUGHLIN:

Q Now, Pesky, talk out loud enough so that everybody in the room can hear you, and particularly talk to the twelfth gentlemen. Do you know Bangel? A No, sir.

Q Or do you know Mr. Goldstein? A No, sir.

Q Did you steal this property? A No, sir.

Q Did you have anything to do with the stealing of it?

A No, sir.

Q Did you drive up on the express? A I never did.

Q To go to Goldstein's place? A No, sir.

Q Or carry any bundles of stolen property? A I never drove

no express.

Q Now, where were you on this day, Saturday, December 16th, 1899? A At my brother's house.

Q What did you go there for? A My brother's wife had a baby, and there was a party there, and me and my father and mother went there, and we stayed there from half past 10 to about 3 o'clock in the afternoon.

Q And you are positive that you didn't go to this man's place and break in there? A No, sir.

Q And carry off his goods? A No, sir.

Q And try to sell them to Goldstein, Bangel, or anybody else?

A No, sir.

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

BY MR. BYRNE:

Q Now, where did you live when you were arrested? A Home.

Q Where was your home? A 163 Essex street.

Q And where were you working at the time? A At 102 Attorney street.

Q At that time? A Yes, sir; but I didn't work that day.

Q Well, the day before that? A I worked there.

Q Where? A 102 Attorney street.

Q Doing what? A Pressing, ladies' cloaks.

Q With whom? A With my father and brother.

Q On the 15th day of December, last year, you worked with your

father and your brother, pressing clothes? A No, sir;

I was not working that time. We got a certain ----

Q Didn't I ask you where you working the day before, and you said you were working with your father and your brother, pressing clothes? A I don't understand what you meant.

Q You didn't understand? A No, sir.

Q Where did you work the day before the 16th of December?

A No place.

Q No place? A No, sir.

Q Now, how long before the 16th of December was it that you worked? A About a month.

Q About a month? A Yes, sir.

Q And where was it you worked last? A In 102 Attorney street.

Q 102 Attorney street? A Yes, sir; the man what testified to my father's character, at the last trial.

Q And how do you know that? A Well, I was down ^{the} same time as my father, but I didn't get tried, though.

Q And that is the man that testified for your father's character? A Yes, sir.

THE COURT: He was on the calendar at the time, I recollect.

BY MR. BYRNE:

Q And do you know what was testified at your father's trial?

A I don't know all of it. I know just a little that was said.

Q And you know that there was nothing said about this party that was at your brother's house? A I believe he was not asked.

Q But you know that nothing was said there about it?

A No, sir; I was not down here to hear it.

Q You didn't hear that anything of the kind was said?

A No, sir.

Q You knew that your father was accused of being one of those men who took those goods, on December 16th, 1899?

A Yes, sir.

Q Did you tell anybody that you and your father and mother had been at a party in your brother's house? A I was not asked.

Q You didn't think it necessary to tell anybody about it, then? A I didn't think to tell it to anybody.

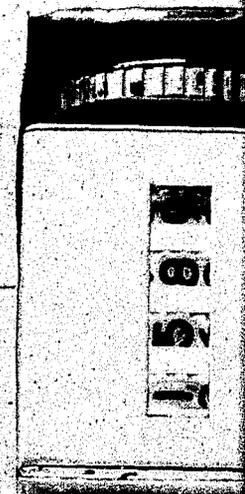
Q No? A No.

Q Where is your brother? A I don't know. He is home, I guess. Maybe he is in court. I don't see him here.

Q No. Did you wear a watch and chain, that time? A No, sir.

Q What time was it that you went to your brother's house?

A About half past 10.



678-207

Q In the morning? A Yes, sir.

Q What time do they generally have parties around there?

A Any time in the day they like.

Q They generally have them in the day-time, parties? A Any time they wish them.

Q Did the party break up before you came away? A Well, I was there until everything was over.

BY THE COURT:

Q What kind of a party was it? A circumcision? A Yes, sir.

BY MR. BYRNE:

Q And they have them in the morning?

THE COURT: Yes; they have them in the morning.

BY MR. BYRNE:

Q What clergyman attended there that day? A I don't know what you mean.

Q Was there a circumcision there that day? Was it a boy, or a girl, that was ---- A A boy.

Q Was there a circumcision that day? A I don't know what you mean by that.

Q What was the party about? A Well, in the Jewish religion, it is a rule that the rabbi comes and cuts his private off, when he is a week old.

Q And did the rabbi come that day? A Yes, sir.

- Q Well, was the rabbi there that day? A Yes, sir.
- Q December 16th? A Yes, sir.
- Q Did he see you? A Why, there was everybody in the room. I think he ought to see me.
- Q Well, now, you are sure that you left there at 3 o'clock?
- A Well, it was a little after 3. I am not sure.
- Q When, before you left there, was it that you saw any clock or watch that would tell you what time it was? A Well, when I left there -- before I left there I looked at the watch, and it was about five minutes to 3, and I stayed there a few minutes after that.
- Q Where was the watch? A It was a clock.
- Q And where was it in the house? A Hanging up there.
- Q And how long did you remain there after you looked at the clock? A About ten or fifteen minutes.
- Q And where was the party? A In Rivington street.
- Q And what number? A Between Essex and Norfolk.
- Q And how far away is that from No. 11 Clinton street?
- A I don't know.
- Q Do you know where Clinton street is? A Certainly I do.
- Q And how long have you lived in that neighborhood? A I didn't live in Clinton street, but ----
- Q And how long have you lived in that neighborhood? A Ever since I am in this country.

Q And how long have you been in this country? A Seven or eight years.

Q And you know where Clinton street is? A Yes, sir.

Q And you know where No. 1 Clinton street is? A No, sir.

Q You don't know where it begins? A No, sir; I don't know whether it begins from that side or the other side. I never went to look at the numbers.

Q You don't know any number in Clinton street? A No, sir.

Q How far is 52 Orchard street from Clinton street? A Clinton street, then comes Orchard, Essex, Ludlow -- no, Orchard, Ludlow, Essex, and then comes Norfolk and Suffolk, and then Clinton.

Q Mr. Bangel, stand up. When did you first see this man, Mr. Bangel? A I seen him that night I got arrested.

Q Did you see him on Spring street or Prince street that same day, in the afternoon, when two young men were with you?

A I never seen him. I don't know him.

Q There were two young men with you, and you were going along the street that day? A No, sir; I was looking for my mother all the time to get bail to get my father, and that is the way they came to arrest me in Orchard street.

Q You were looking for your mother? A No, sir; I was with my mother, to get my father out on bail.

Q Where were you arrested? A In Orchard street.

Q At night-time? A Yes, sir.

Q And was your mother there? A Yes, sir.

Q Weren't there several young men there, who ran away?

A No, sir. I was not standing with any young men. I was standing talking to my mother about the bail for my father, and then Bangel comes over and says, "This is the man," and then the officer comes over.

Q Don't you recollect being in Prince street or Spring street that day? A No, sir.

Q Where were you that day? A I was with my mother, getting bail for my father.

Q All day? A Well, we was in the house until after supper, and then we went out looking for bail.

Q And when did you go out looking for bail first that day?

A About 4 o'clock.

Q And you stayed out looking for bail until when? A Well, I asked one man for bail ----

Q And you stayed out looking for bail until when? A Ten o'clock.

Q Until the time you were arrested? A Yes, sir.

Q When were you arrested? A About 10 o'clock.

Q And your mother was there? A Yes, sir.

Q Where were you all the time? At 56 Orchard street?

A No, sir; with my mother.

1207

Q Just a minute. Have you ever been arrested?

MR. McLAUGHLIN: Oh, my, please, please don't do anything like that.

THE COURT: Now, stop, Mr. McLaughlin. The District Attorney will not ask the question.

MR. BYRNE: No, if he objects to it. I thought we were going into the character of the defendant.

 A B R A H A M L I T T M A N, the complainant, being recalled for further cross-examination by counsel for the Defense, testified as follows:

C r o s s E x a m i n a t i o n, (continued):

BY MR. McLAUGHLIN:

Q What time did you discover this burglary? A Sir?

Q What time did you discover this burglary? A Half past 2.

Q Where is your son? Have you got him here? A No, sir; I have no son.

 J U L I U S L I T T M A N, a witness called on behalf of the Defense, being duly sworn, testified as follows:

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

BY MR. McLAUGHLIN:

Q Where do you live? A 65 Market street.

Q You are some relation to the complainant? A Yes, sir.

152

102

Q Did you have some conversation with Goldstein or Bangel?

A I had some conversation with Mr. Goldstein.

Q Yes. What did he say in regard to Weissman or Fishbein?

A Well, he claimed that they have carried out the goods from the place, after they found out that Mr. Bangel was arrested.

Q Who took the stuff out? A That Fishbein and Pesky -- or whatever those two names that you have just mentioned.

Q Weissman and Fishbein? A Yes, sir; and two more besides that, if I ain't mistaken.

Q Took the property away from his place? A Yes, sir.

C r o s s E x a m i n a t i o n : None.

MR. McLAUGHLIN: The Defense rests. I renew my motion, if your Honor please.

THE COURT: Motion denied.

MR. McLAUGHLIN: And I except.

THE COURT: As I understand the District Attorney, he only desires to go to the jury on the question of receiving stolen goods, knowing them to be stolen?

MR. BYRNE: No, sir; on the burglary and the receiving, under the third count.

THE COURT: The third count is receiving stolen goods?

MR. BYRNE: Yes, sir.

THE COURT: And the burglary?

MR. BYRNE: I will submit it under the three counts.

159

207

and ask particularly as to the third count.

MR. McLAUGHLIN: And I ask your Honor, after the statement of the District Attorney, to take away from the jury burglary and larceny.

THE COURT: No.

MR. McLAUGHLIN: We except.

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

Kindly be in your seats at half past 10 o'clock on Monday morning.

(The trial was then adjourned until Monday morning, March 26th, 1900, at 10.30.)

1597

62-207

TRIAL RESUMED.

March 26th, 1900.

THE COURT: The stenographer will note that I desire to ask a question of the officer, suggested by the sixth juror.

J A M E S A. M U R R A Y, being recalled by the Court, testified as follows:

BY THE COURT:

Q Now, at the time you arrested the defendant, was he in company with his mother? A She was standing right close by.

Q She was standing right close by? A Yes, sir.

THE COURT: I have been asked the following questions by the Sixth juror, and I desire to answer them, before I proceed to charge.

The first question is: "Was the defendant in company with his mother when the detective arrested him?" And the detective answers "Yes."

The second question is: "Did the witness Schwartz give any testimony in regard to the character of the defendant?" He did not, for the reason that, under our law, he could not answer the questions properly. You will recollect that

he was a German, and he did not quite understand the questions, and therefore I ruled that he could not testify as to the character of the defendant.

THE COURT'S CHARGE.

THE COURT: Gentlemen of the jury, this defendant is charged with burglary in the third degree, and receiving stolen property.

I understand that the District Attorney has abandoned the grand larceny count of the indictment.

That there was a burglary committed on the premises in question there seems to be no question, and that the complainant Littman was deprived of his property there seems to be no dispute; and there only question, therefore, for you to determine is: Did the defendant, either alone or acting in concert with others, burglarize the premises in question?

If he did, your verdict ought to be that of guilty as charged in the indictment.

If he did not, but, acting in concert with others, he received the property in question, knowing it to have been stolen at the time he received it, your verdict may be that of guilty of receiving

1937
217

stolen property, knowing it to be stolen, provided you find that the property was in the possession of this defendant, either acting alone or in concert with others.

The only evidence in this case connecting this defendant with either the burglary or the receipt of the stolen property is the evidence of these two men, Bangel and Goldstein. You have, on the other hand, their positive testimony as to the receipt of the property by them through this defendant and others; and you have, on the other hand, the positive denial of this defendant and of the defendant's father, who, it is claimed by Goldstein and Bangel, was in the company of this defendant at the time of the receipt of the property.

In other words, the only testimony in this case tending to connect the defendant is not as to the commission of the burglary itself, but as to the disposition of the stolen property.

The law of our State provides that the possession of stolen property, immediately after the commission of a crime, unless properly explained, is evidence of the defendant's guilt; and, if you believe, from all the circumstances in this case,

159
159
159207
207
207

that the prosecution have made out a case, beyond a reasonable doubt, and that this defendant, either acting alone or in concert with others, committed the crime charged, your verdict ought to be that of guilty as charged in the indictment.

But if you believe that he did not commit the crime of burglary, but did, in conjunction with others, receive the property, knowing it to have been stolen, you may convict him of receiving stolen goods.

I want to impress this upon your minds, that the mere fact that property was stolen is not sufficient to convict a person of receiving stolen property. The prosecution must not only show that the property was stolen, but that the person charged received it, knowing it to have been stolen.

If this defendant was there innocently, or happened to be in the company of others innocently, and did not know that the property was stolen, then of course your verdict ought to be that of not guilty.

Or, if you believe the defendant's story, and that of his witnesses, that he was not upon the

premises in question on that day, and that he was not in the company of these other men, and that he did not know these two witnesses for the People; but that, on that day, he was in the company of his parents, at an entertainment, then, of course, your verdict ought to be that of not guilty.

If there be a reasonable doubt in the case, you must give him the benefit of the doubt, and find a verdict of not guilty.

You have seen the witnesses upon the stand. You have noticed their actions. You have had now three weeks' experience in the jury box, and your own experience in every-day life ought to tell you who is telling the truth.

If you believe, as I said, that the prosecutions witnesses have told the truth, your verdict ought to be that of guilty of either burglary in the third degree or the receiving of stolen property, knowing it to have been stolen. But, if you believe the defendant and his witnesses, your verdict ought to be that of not guilty. You may retire.

(The jury found the defendant guilty of receiving stolen goods, knowing them to have been stolen.)

1051

207