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-: I N D E X :-

	Direct	Gross	Re-D.	Re-C
Barnet L. Price	4	18	35	
John T. Waldeyer	37	43		
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Denis Gleason	56	62		
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CASE

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

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

-against- :

MYER LIPKISS, impleaded with
SAMUEL COHEN. :

Before:

HON. THOMAS C. O'SULLIVAN,

and a jury.

-----X
New York, February 7, 1910.

Indictment filed December 21, 1909.

Indicted for grand larceny in the second degree.

APPEARANCES:

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY JOSEPH
H. ADAMS.

FOR THE DEFENDANT: MR. ALEXANDER S. ROSENTHAL.

Peter P. McLoughlin,

Official Stenographer.

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The jurors were examined and sworn.

The Court admonished the jury as follows:

You are admonished that you are not to discuss any matter connected with this case and not to form or express any opinion upon it until it is finally submitted to you. Be in court at half-past ten to morrow.

(The Court then adjourned the further trial of the case until tomorrow, February 8, 1910, at 10.30 o'clock.)

New York, February 9, 1910.

TRIAL RESUMED.

MR. ROSENTHAL: I make a formal motion to exclude from the courtroom all witnesses on both sides until they are called.

THE COURT: Motion granted.

Mr. Adams opened the case on behalf of the People.

MR. ROSENTHAL: I object to counsel stating what happened five miles away in Crosby street.

MR. ADAMS: I intend to prove these facts.

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THE COURT: Any matter related to the alleged transaction would be a proper subject of proof in this case and if Mr. Adams is discussing a matter which he claims is related to this transaction he is within his rights. Proceed.

MR. ROSENTHAL: I do not believe it is fair for the District Attorney to make two summations, one at the opening of his case, entirely relating the entire circumstances of the case and then when he sums up to repeat again. I think that a short synopsis of the case is sufficient.

THE COURT: Perhaps Mr. Adams does not agree with you. His opinion of an opening to a jury may be altogether different from your method of doing it.

MR. ROSENTHAL: I believe everything he said here could be brought out in evidence from the mouths of the witnesses.

THE COURT: If it may be brought out he has a right to outline what he is going to prove. Perhaps it might be well to confine it to the merest skeleton of his case but if Mr. Adams does not please to do that he need not.

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MR. ADAMS: I am trying to do that.

(Mr. Adams completes his opening.)

BARNETT L. PRICE, a witness called on behalf of
the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ADAMS:

Q Where do you live? A 161 West 136th street.

Q Mr. Price, what is your business? A I am a manufacturer of overcoats, and plush lined coats.

Q Where is your place of business? A 24 and 26 Waverly place.

Q Wholesale or retail is your business? A Wholesale.

Q Were you at 24 and 26 Waverly place in the city
and county of New York on the 19th day of November, 1909?

A Yes, sir.

Q Did you see the defendant there at that time?

A Yes, sir.

Q How was he employed there? A Shipping clerk.

Q What were his duties there? A Pack, ship, order
empty cases, order nails and paper, twine, just little
things like that; mostly packing and shipping and taking care
of stock.

Q What was his duty in regard to shipping, was he ex-

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clusively employed in that or otherwise?

MR. ROSENTHAL: Objected to as leading.

Q What were his duties in regard to shipping the goods?

A Well he was to pack them and ship them.

Q Was there anybody else that did that work besides him? A No, sir.

Q He was the only one? A He was the only one with the exception of myself sometimes helping him out.

Q Did you see the defendant Lipkiss there on the 19th day of November, 1909? A Yes, sir.

Q What occurred there in the afternoon, if anything. Just tell the jury in regard to this transaction? A Between half past four and five o'clock our case man, the man whom we used to buy empty cases from came up to the office.

Q What was his name? A Samuel Cohen. He came up to the office and asked for a check, and the young lady in the office --

MR. ROSENTHAL: I object to any conversation between this man Cohen and the young lady not in the presence of this defendant.

THE COURT: The conversation was had in the presence of this defendant?

MR. ADAMS: No, sir, he was not there.

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THE COURT: Strike it out.

MR. ADAMS: He has not given any conversation yet. My friend was afraid he was going to.

MR. ROSENTHAL: I am not afraid of anything. This is merely as to the law.

THE WITNESS: He asked for a check.

MR. ROSENTHAL: I object to that. I ask that the witness be instructed not to make any statement at which this defendant was not present.

THE COURT: Yes. Do not give any conversation. Do you understand that. You are to testify to no conversation of any kind or character unless it was in the hearing of this defendant.

THE WITNESS: When the case maker came up for the check he was told to come --

Q Who came up for a check? A Samuel Cohen, the case man.

Q Who do you mean by the case man? A The man we used to buy empty cases from.

THE COURT: Now you cannot tell anything that was told to him. You were informed and instructed as to that. It may be that you want to tell one kind of a story which might appear to you to be

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the proper thing but it is not.

THE WITNESS: Yes, sir.

THE COURT: But because it appears so to you is not the reason why you should do it. Now I am going to tell you again -- don't tell anything of any conversation that was had when this man was not present. Do you understand that?

THE WITNESS: Yes, sir.

BY MR. ADAMS:

Q Just say what occurred please, without giving any conversations unless the defendant was present. Now that is very plain, isn't it, it is hard for a lay man to understand that, but you must understand it? A There was no conversation at that time by anybody until I saw what was going on in the afternoon.

I went into the shipping room to get some order tickets which we keep in piles in the shipping room, and I took my tickets. As I went in to get my tickets our shipping clerk, Myer Lipkiss, and the case man were standing having a conversation in a low tone of voice. I took my tickets and went back to the office, checked off certain matters which took me about 8 or 10 minutes, and took them back to the shipping room. As soon as I got in the shipping room I saw that case

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man going down through the stairway and about between nine and ten feet apart, the elevator door and the stairway door, the case man goes down the stairway and the shipping clerk, Myer Lipkiss was standing down halfway in the elevator door with a small case, pushing it in quickly, he closes the door and goes down with it.

BY THE COURT:

Q This man whom you call the case man is the man whom you used to buy cases from? A I used to buy cases from him.

Q He was going downstairs? A Yes, sir.

Q And the shipping clerk was sending a case down on the elevator? A Just closed the door, in a hurry, and went down and I waited until he came up. When he came up in about five minutes --

Q When who came up? A The shipping clerk, Myer Lipkiss, the defendant. When he came up I looked at him and I says, "Myer, what have you shipped just now, at this hour of the day". He would not answer me. I insisted upon it again, I sayd "I want to know what you have shipped just now, is it near five o'clock", and he turns around and he says, "I gave a case to the case man to be fixed".

Q Who is the case man? A Samuel Cohen. I says "You gave a case".

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Q The man who had just gone downstairs? A Yes, sir. I said, "You gave a case to be fixed". I says, "Ridiculous". I says, "We are 25 years in business, we never had occasion to give any cases to be fixed to the case man. You know very well if anything is to be fixed in a case you know we do it right here. Furthermore there was nothing to be fixed in this case as they were all in good shape. I have to tell you that the entire transaction is very funny to me". I left the shipping room. I walked in the office and sat down. It made me rather nervous at the time and 10 minutes later he disappeared entirely.

Q Who did? A Our shipping clerk, Myer Lipkiss, the defendant. He disappeared for the day. At 6 o'clock, as usual, we closed up our business and went home. I went home.

Q Where did you first see Cohen, the man you call the case man, the man you bought these cases from, that afternoon, where were you when you first saw him? A Right standing near my office when he came up for the check.

Q That is in the front part of the building?

A Yes, sir.

Q Who was in there at that time? A In the office?

Q Yes, who did he go to? A My bookkeeper.

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Q Who did he go up to? A I was standing near the office.

Q Who did he go up to -- you say he went there to make some inquiry? A He went to the bookkeeper, to ask for a check.

Q Who is the bookkeeper? A Miss Knoch, a young lady.

Q He went up to her first? A Yes, sir.

Q Then you saw him where?

THE COURT: There is no use in repeating the testimony, Mr. Adams.

MR. ADAMS: I wanted to get it clear.

Q Now what did you next do in this transaction?

A About half past 12 or one o'clock at night my telephone rings in my house and I jumped out of bed, went downstairs to answer it, and I asked who it was and they told me who it was.

MR. ROSENTHAL: I object to any conversation over the telephone not in the presence of the defendant.

THE WITNESS: I was told this was Headquarters.

THE COURT: What did I tell you about repeating conversations that were not had in the presence of this defendant.

THE WITNESS: Your Honor, I don't know how to put my ideas. I wanted to state just how it happen-

ed. I am trying to do the best I can.

THE COURT: But you are an intelligent man and if you don't do as I say I shall have to ask the attorney to get the evidence question by question.

BY MR. ADAMS:

Q What did you do in consequence of some message you received over the telephone. Don't say what it was because that is not legal evidence, but what did you do in consequence of the message you received? A I dress myself.

Q Where did you go? A I went down the the Twelfth Precinct, 205 Mulberry street.

Q The station house? A yes, the police station. And when I came into the station house, as I opened the door, the first thing I saw was three coats hanging on the wall and there I says "These is my coats" before I went close to them I called out my lot numbers of them and of course I went nearer, I went over to the coats, looked at them, found my tags and labels on them "Phenix Fur Co"., I says, "There is my coats".

Q Was this in the presence of the defendant? A No, sir.

THE COURT: Why do you tell a conversation which was had outside of his presence when I have told you a half a dozen of times not to.

BY MR. ADAMS:

Q Who did you see there at that time when you saw your three coats hanging up with your labels on them at the twelfth precinct Station House? A Yes, sir, I saw the Officer Gordon and Lieutenant O'Neill I believe it was and I also saw a man by the name of Joseph Iba.

Q Who was Iba if you know? A Well, after I asked Iba who he was he told me.

Q Well, did you ascertain who he was? A No, sir.

Q Who was he? A A man who worked for Samuel Cohen, the case man.

Q The case man is this man you say who was at your place? A Yes, sir.

Q What occurred next in this transaction. Did you go to the station house the next morning? A Yes, sir.

Q Then you went to your home, did you? A Yes, sir; then I went home.

Q Did you go to your place of business the next morning? A Yes, sir, at eight o'clock sharp.

Q What happened at your place of business?

A As I came to my place of business I--

Q Don't give any conversation unless it is in the presence of the defendant? A I went over and counted a

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pile of sample coats which I had fixed up on Friday morning with this defendant, which was 25 coats, and the first thing I done was to count them and I found 17 coats there.

Q How many coats were missing? A Eight coats were missing and about 15 minutes later Officer Gleason and O'Neill came up to ask my shipping clerk. They were standing in the office and I called him in. I told him, I says "There are two gentlemen wish to see you", and he came in and they told him who they were and what they are there for, what they came for. He said "All right". Officer Gleason told him to go and put "your hat and coat on", and he did. He kept his hat and coat behind a partition. I followed him. I said, "Myer, for God's sake what have you done here". He turns around and says, "Don't ask me any questions, you have got me now good and hard and all you can do is to rap me, that is all."

Q He said what? A "All you can do is to rap me now, that is all". I said, "All right". Of course he was taken down and I accompanied them to the station house that morning, Saturday morning.

Q What station house was that? A The Twelfth Precinct, 205 Mulberry street.

Q What occurred when you went there and who did you see there? A When I got to the station house I found Samuel

Cohen, the case man, Joseph Iba, Officer Gordon, Officer Waldyer, and of course Officer Gleason, myself and this defendant. When we got there I saw a case standing in the corner with five coats which I identified, my goods, the same as the three coats I saw during the night.

Q Now, did you see a case there at that time? A Yes, sir.

Q Had you seen that case before? if so, where?

A In my place of business, that is the day before, Friday, in fact, that case was in my place the entire week.

Q When did it go out of your place? A On Friday, November 19th.

Q How? A By the shipping clerk sending it down.

Q Is that the case you say you saw him send down?

A Yes, sir.

Q What was the size of that case? A The case was between 75 and 80 inches, what we call -- between 75 and 80 inch.

Q With respect to this table here how big would it be?

A It would be the length of this table and the width of that, and the depth, just about, well I should judge about 24 inches or something like that.

Q It would be about as high as this table you say?

A Yes, sir.

Q About two inches wide? A Just about the width of this

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table and about the length of this table but the depth of the case would be about (indicating) the depth would be just the same as the size of the width.

Q If it was put on end it would be as high as the table but not as wide? A Yes, sir.

Q What kind of coats were these? A Plush lined coats with fur trimmings.

Q Where was the fur? A The collars and the front.

Q What color were they? A Well, they were different colors, some are black plush, some were brown plush, there were different furs on them.

Q But you say they had all fur collars? A Yes, sir.

Q What color was the body of the coat? A The black, all black kerseys.

Q You say there were how many? A Five in the case, and three hanging on the wall, eight coats.

And the
Q Three hanging on the wall? A Yes, sir.

Q You said Iba was there the night before? A Yes, sir.

Q What was the value of the coats? A They would average about \$16.25 a piece.

Q There were eight of them? A Yes, sir.

Q Did you ever sell any coats to the defendant Lipkin?

A No, sir.

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Q Coats? A No, sir.

Q Did you ever authorize him to send any coats out at that time on that afternoon, the 19th of November?

A No, sir, absolutely not.

Q Have you ever sold any coats to Samuel Cohen?

A No, sir, the box manufacturer? A Never did.

Q At any time? A No, sir.

Q You did not that afternoon? A No, sir.

THE COURT: or to Iba?

BY MR. ADAMS:

Q Did you ever sell any coats to Joseph Iba? A No, sir, never knew him at all until I saw him in the station house.

Q Did you sell any coats to anybody connected with Cohen's place? A No, sir, absolutely not.

Q Do you know where Cohen's place is? A 57 Crosby street.

BY THE COURT:

Q Do you know whether or not those eight particular coats which you saw at the station house had been sold by you to anybody? A No, sir.

Q Do you know? A Absolutely, your Honor.

Q They were not? A No, sir, they were not.

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CROSS EXAMINATION BY MR. ROSENTHAL:

Q What is the lot number of the particular fur lined coat, I am talking about the blue plush and the brown plush coat? A They were different lot numbers.

Q What is the lot number of the blue plush lined coat that I am talking about?

MR. ADAMS: Objected to. There is no blue plush coat.

Q Brown plush -- isn't that what you said? A Some were brown.

Q Just the lot number of the plush lined coats with fur trimmings on the collars? A They were 690 and 698 was made with brown plush -- 69 and 698.

Q The black? A The black they were 658 and 670.

Q The coats that you saw hanging on the wall in the police station, the three coats what lot numbers were they? A I can't remember just now with the exception of 658 I remember.

Q Didn't you a moment ago say that before you saw those coats, as soon as you walked in the police station you said before you got close to the coats you told the officers the lot numbers of those coats? A Yes, sir.

Q What lot numbers did you say they were? A I called out "658."

Q 658? A Yes, sir.

Q 658, what is that, the brown plush? A That is a black.

Q And the lot numbers run between 655 and 670, is that right? A There is no 655.

Q Didn't you say 655 to 670? A No, sir.

Q What lot numbers did you say of the black? A 658 and 670.

Q Those three coats were all of one exact pattern, that is 658? A 658, yes, sir.

Q But there were three coats on the wall? A Three coats on the wall.

Q What were the lot numbers on the other two?

A It was either 690 or 698, I could not remember now, it was three months ago that is when I looked at the coats.

Q How many different patterns have you of that particular kind of coat, that is to say, fur collars, black and brown plush coats? A Well quite a few numbers.

Q How many? A Brown plush -- 672 we make the brown plush, and also 690.

Q Of the brown plush? A Yes, sir, and 698 was the brown plush. It all depends upon what collars there were at that time -- if I see the collar I can tell what lot number it is.

Q This coat is a staple article? A Well the same

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coats are being changed around sometimes in different furs.

Q Now there are a number of firms that make coats quite similar to these? A I believe there is.

Q From the first look of the coat -- there are other firms who make exactly the same coats? A That I don't know what others are making.

Q As a matter of fact that is not your own original design, is it? A Well, I wouldn't call it my own original design, no, sir.

Q It is a copied design, you have seen a coat made by somebody else and made a duplicate of it and sold it as stock? A Yes, sir, that is our make and that is the way we make our coats.

Q Other people make the same kind of coats? A That I don't know; I believe there are.

Q Do you travel on the road? A No, sir.

Q You sell the city trade? A Yes, sir.

Q A number of city customers? A No, sir, none whatever; we don't sell nobody in the city.

Q You sell to buyers, is that it? A Yes, sir.

Q There are other people making the same kind of coat isn't there, just at the first look of the coat itself?

(No answer.)

Q How long have you been in this business?

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A We are making these coats for about three years.

Q How long have you been in the business as a business man? A 25 years.

Q You know that other people make coats quite similar to yours? A I believe there are, I believe they do.

Q You sell a great many of them, don't you, to Simpson-Crawford's and Henry Siegel? A Oh, we sell a few of them.

Q About how many have you sold during the last season, that is around the winter season, November, October and September? A Very few.

Q 500 coats? A No, sir.

Q To people here in the city? A No, sir; I don't think we sold them --

Q How many coats have you made of that particular design, that is 690 to 698? A Oh, we made quite a few of them.

Q About? A I can't tell about, there may be 200, there may be 300, I can't tell which.

Q You are in the office? A I am all over.

Q You know every thread in that office that comes in, that is bought and sold? A I don't attend to the office work.

Q You are in the stock room? A Yes, sir.

Q You know every thread that is in the stock room?

A Of course I do.

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Q You know every lining, do you not? A Yes, sir.

Q You know every lot number? A Yes, sir.

Q You know everything that is being made up in the place, don't you? A Yes, sir.

Q That is true? A Yes, sir.

Q You know as a matter of fact, just how many coats you have made up during the season? A I would have to look up my records; I can't remember now; these are not the only coats we are making, this is only a side issue, we are making other goods.

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Q Now, on the day of November 19th, I think that is the date, you did not see this boy, the defendant, put any coats or anything in that case that you saw him send downstairs, isn't that true? A He was packing all day, he was packing different cases.

Q But in the case that you say you saw going into the elevator you didn't see him put anything in there, did you?

A No, sir.

Q You are positive of that? A Positively, I did not see that.

Q Because if you did you naturally would have gone down and looked at the case? A I guess I would, yes, sir.

Q There is not any question in your mind but what you would have done so? A I don't think I would -- a man we trusted, as an honest man, in my course of three years.

Q You had enough of inquisitiveness about you to ask him where that case was going and he told you it was going back to be repaired and then you felt very sick going into your office? A Yes, sir.

Q You naturally would have gone downstairs to see if anything was wrong about that case? A Perhaps I would.

Q You didn't do it? A I didn't think there was any occasion for me to do it.

Q You didn't think there was anything wrong there at all?

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A Well, at the moment no. I thought perhaps the man is shipping some express shipment at that time -- it goes out around that time.

Q There is an elevator there, isn't there? A Yes, sir.

Q You would have rung the elevator bell and it would have brought the elevator back, wouldn't it? A I believe I did ring the bell but I had to wait.

Q But you could have gone downstairs as fast as your elevator goes? A I could have jumped through the window if I wanted to, if I thought it was necessary, if I thought the goods were stolen I would have jumped through the window; I would have run the stairs, I would have done anything did I know that it was stolen.

Q What floor are you on? A The second floor.

Q Now this young man was arrested the following day, was he not? A Yes, sir.

Q Who is Mr. Grossman? A Mr. Who?

Q Mr. Grossman? A Mr. Grossman -- I have a son-in-law by that name.

Q He is an attorney, isn't he? A Yes, sir.

Q He was the prompter in the police court, wasn't he?

Objected to. Objection sustained.

Q Mr. Grossman had a talk with Mr. Ida? A No, sir; he never saw the man.

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Q Did you see him in the police court? A No, sir.

Q Wasn't Iba in the police court? A Yes, sir.

Q What court was it in, what court? A The Jefferson Market Court.

Q Mr. Grossman was in the Jefferson Market Court, wasn't he? A He was there a week later.

Q At the time he was there a week later Iba was there, wasn't he? A I believe he was.

Q You know he was, don't you? A Yes, sir.

Q All the defendants were there? A They were there, that is right.

Q Now they are all inside of that rail, isn't that so?

A Yes, sir.

Q Between where the audience or the witnesses sit and the prison pen? A I really could not tell you that, I don't know, I don't remember.

Q But at the time the testimony was given Mr. Grossman was there, wasn't he, on the adjourned day, I mean?

A No, sir.

Q He was there on the adjourned day, wasn't he?

A No, sir; he was there once when nothing was done that day and after that the gentleman wasn't there at all. My attorney, Abe Levy, took charge of that.

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Q What is that? A My attorney, Abe Levy, took charge of that.

Q He is interested in this case too? A Certainly.

Q Very much interested, Mr. Abe Levy is in this case?

A He is taking charge of my business.

THE COURT: You have enough of that sort of evidence.

Q Now, did the young lady in the office -- did she see Myer Lipkiss, the defendant, this young man here take out any goods that day? A No, sir.

Q She couldn't see it? A She is in the office.

Q She goes back to give orders to the shipping clerk from the office, doesn't she? A The shipping clerk comes in the office to get orders, very seldom she goes back, she goes in to give him orders.

Q That very seldom she does go back to the shipping clerk?

A Very seldom.

Q You used to pack goods once in a while, didn't you, Mr. Price? A To help him along, yes, sir.

Q You have had order slips at various times, haven't you, for orders for different goods in your charge and checked them off as you put them in the case? A Yes, sir; by helping him along.

Q You have packed goods yourself, haven't you, at times?

A Yes, sir.

Q In other words you take the order slips and complete the order yourself by packing it and shipping it out?

A yes, sir; sometimes.

Q During the 25 years as a business man haven't you made a mistake in putting goods in the wrong case?

Objected to.

A Not as I recall, as far as packing the case is concerned.

Q You have had, in the course of your business, received ~~any~~ claims from customers saying a shortage? A Yes, sir; we did since that man came in our employ.

Q This is the man. Then, before that in 22 years before he came there did you ever get any claim from a customer saying a shortage? A Not as I can remember.

Q Did you ever make a claim to a railroad company for shortage? A I can't answer that.

Q During the 22 years up to the three years before the defendant came there? A Sometimes we will get a letter from a customer stating a case came in a broken condition.

Q That is in the ordinary course of practice? A yes, sir; there may be something short and we will make a claim or the people make a claim.

Q How many claims have you had made from customers for the three years since this young man came into your employ?

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A I would have to look up the record to tell you exactly.

Q But you don't know how many? A I couldn't say.

Q It isn't so many that you were suspicious in any way?

A Well, I don't know, I don't know how I can answer that.

Q You don't know how you can answer it? A We were out to a certain extent, we didn't know what happened here.

Q You never accused him of anything, did you, before this particular day? A I wouldn't dare to.

Q The 19th of November? A I wouldn't dare to -- no, sir, I did not.

Q You arrested him -- that is, he was arrested in your presence the following day? A Yes, sir.

Q That is the 20th day of November? A Yes, sir.

Q You didn't think that that was unusual when he said to you "What have you done, had me arrested" or words to that effect "What are you going to rap me now. Go ahead and rap me"? A I asked the man "For God's sake tell me what have you done here".

Q What did he say? A Thinking perhaps the man would open up. He said "Don't ask me no questions now, I am arrested now, you have got me good and hard and all you can do is rap me, rap me, that is all" as tough as he could make it, and that was enough for me.

Q Didn't you have a conversation with him? A I did

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in the station house.

Q At the station house what did you tell him? A What I told him? I told him nothing; he told me everything.

Q Didn't you promise him that you would see that nothing happened to him if he prosecuted Myer Lipkiss? A Ridiculous. Never anything like it in all my life.

Q Did your lawyer, Mr. Grossman, promise him anything? A Never saw the man in his life.

Q Sure about that? A Absolutely.

Q Did you make an offer to him of \$100 if he would prosecute this boy? A Ridiculous. Never in my life.

Q Yes or no? A No, sir.

MR. ADAMS: An offer to who?

MR. ROSENTHAL: To Iba.

Q You are not mad just now? A Certainly I am. It makes me feel awful bad for you to make such a remark.

MR. ADAMS: Don't get mad. Just keep quiet.

Q Do you customarily get mad during the course of your business where things don't go exactly right? A Well, I sometimes, in a general way, I am only human, I do get mad when I know, if it is right.

Q If it is right you get mad? A Yes, sir.

Q Now, the day that you saw these goods, this package go out, this little case, -how many empty cases do you buy

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during the course of a month -- you have looked up your bills with Mr. Cohen? A I have got some bills, yes, sir.

Q How many do you buy during the course of a month. You know, you are 25 years in business, and a business man can tell just about how many cases go out every month? A They vary; it all depends; every month is not alike.

Q About how many a month do you buy from Mr. Cohen? You check off these bills? A I don't check them at all.

Q You pay them, don't you? A I don't; my bookkeeper checks the bills off according to the statements of the shipping clerk.

Q How many empty cases -- that is a simple question -- do you get during the course of a month's business, about? A Possibly 100.

Q That means you only send out three cases of goods a day? A Well, shipping isn't done every day exactly, sometimes one day will go out one case and the next day will go out five, sometimes for three days nothing will go out. It all depends on how the business runs, how the goods comes in ready.

Q Now, these cases that you are talking about, these 75 by 80, as we call them, that is a standard box, isn't it, a box used in your business, that is correct? A Well, maybe there is quite a few of them, I believe, according to the bills; I don't order these cases; that was his work.

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Q How long have you seen that particular box that you are talking about in your place of business? A It was in my place of business about a week.

Q Had you bought any cases that you know of during that week? A I don't think so.

Q Of the same size? A No, sir.

Q Now, what particular marks were on that particular case that you say that this young man put on the elevator that day, that makes you know positively that you identified that box when you saw it in the police station?

A While there were no marks, I saw the case in the place, because I had a few more of the same size.

Q You had a few more exactly 75 by 80 in your place at the same time? A Somewhere around those sizes.

Q As far as you know there are millions of those cases in existence in this country? A I don't know, maybe.

Q A hundred thousand ~~or~~ or so in New York City that you can buy on a telephone call? A That also I don't know.

Q You can get 75 by 80 from any box maker in New York at a moment's notice by telephone? A I don't know.

Q Isn't that a standard sized box? A I don't know, sir.

Q You ought to know you are 30 years in the business?

A I am not buying cases since I am in the business, I didn't bother about the cases.

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Q What price case was that? A What price? I really couldn't tell you, I don't know.

Q Fifty cents? A Unless I looked the bills up.

Q Sixty cents? A I could not tell you, sir, this is the man who made the price with the case man and we believed whatever is done in that regard --

Q You never looked at a bill in 25 years in business, never looked at one of those bills? A Looked at the bills sometimes, but never paid any attention to it, it is such a small item.

Q Now the only reason that you accuse this boy, this defendant, of this crime is because of that little suspicious occurrence on that particular day, isn't that all, yes or no? A Why, of course.

Q That is all? A Until I saw the goods afterwards in the station house and that put me wise.

Q How many do you employ in your place in all, on your payroll, including everybody and yourself? A We have nothing at all to do with the factory. As far as our place is concerned there is a shipping clerk and two or three cutters, I don't remember how many cutters I had there at that time, there is five, the girl is six -- about eight.

Q How many have you got in the factory where they manufacture these very cents? A I really couldn't tell you.

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Q Who gets the payroll of that factory? A Well, we have got two managers there that run the factory.

Q How many hands do you have there? A I really couldn't tell you.

Q Did you ever go there in your life? A Yes, sir.

Q How often do you go there? A I will go in there twice a day or six times a day.

Q How many machines do you own in that factory?

A We own every machine there about.

Q How many machines are there there? A I am not sure whether 18 or 20.

Q Every machine was working, wasn't it, around that time?

A I couldn't answer you that, sir.

Q Weren't there 10 or 15 hands in there around that time? A I don't believe they were working at all because they stopped at four o'clock or half past four; I am positive they were working --

Q I mean during the month of November how many men on an average were working there making fur lined coats?

A We are not running the factory, I cannot answer you that question.

Q But you are right there and you cannot answer that question? A No, sir.

Q How big a payroll did you have in November?

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A We don't make no payroll.

Q You make a check for the people around there at the factory, don't you? A Well, they run the factory themselves, on their own account, and we charge them when they send in 500 coats we charge them 500 coats at \$1.50 a coat.

Q How often do you send for 500 coats? A That is the way, what we are doing ~~is~~ right along.

Q You have got three cutters? A Yes, sir.

Q How many coats does each cutter cut a day?

A They work altogether.

Q How many do the three cut a day? A It all depends upon what kind of work it is; if it is heavy work to cut of course a few less.

Q Can't you give me the figures? A Between 800 and 1,000 a week; it all depends upon what kind of work it is.

Q You sell them all yourself? A No, sir.

Q Who sells them? A We have got some salesmen.

Q You ship them yourself, don't you? A Through the shipping clerk.

Q The shipping clerk does? A Yes, sir.

Q You send out, as a natural consequence of what you have just say about 800 to 1,000 coats a week? A No, sir; we don't ship them every week that way, the goods are always

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piled up waiting for other goods, different kind of business.

REDIRECT EXAMINATION BY MR. ADAMS:

Q These coats you saw at the police station, these three coats you saw the night that you saw the case put on this elevator by the defendant had on them what -- what labels did they have on? A Phoenix Fur Coat Company.

Q Is that the name of your company? A Yes, sir.

MR. ROSENTHAL: Objected to on the ground that this man didn't know of any coats going out that night at all. He says a case went down on the elevator.

Q How did you happen to buy boxes of Cohen?

Objected to.

Q Who recommended him?

Objected to. Objection sustained.

Q You were asked about different people packing cases. Who had charge of the packing that afternoon of the 19th of November, 1909? A Myer Lipkiss, our shipping clerk.

Q Anybody else? A No, sir.

BY MR. ROSENTHAL:

Q During the three years at various times it is true that Lipkiss stepped out for a moment, isn't that true?

Objection to. Question withdrawn.

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Q Who would do the packing in case Mr. Lipkiss, the defendant, was not there? A We would let the packing wait until he is there, until the following day.

Q Isn't it true that at various times you packed the goods yourself if he was not there, and sent them away?

A If I was compelled to I suppose I done it, but if not I would leave it until he is there, he was getting paid for it.

Q Everybody that got paid from you had to do work for it?

A Well, I guess they ought to do some work, of course.

BY MR. ADAMS:

Q Did you pack these goods and send them away on the afternoon of the 19th of November which you saw in the police station?

A No, sir.

BY MR. ROSENTHAL:

Q Do you know if Myer Lipkiss packed these goods and sent them away of your own personal knowledge? A Not seeing him.

Q Of your own personal knowledge do you know that this defendant packed these coats that you are talking about and sent them away? A I did not see him pack the coats but I saw him ship that case.

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

DIRECT EXAMINATION BY MR. ADAMS:

Q What precinct? A Twelfth Precinct. I live
1652 Amsterdam avenue.

Q You are a police officer of the city of New York?

A Yes, sir.

Q And was such on the 19th day of November, 1909?

A yes, sir.

Q Were you at or near 57 Crosby street in the city of
New York on the 19th day of November, 1909, in the evening?

A Yes, sir.

Q State what occurred there, officer to his Honor and
and the jury? A About 7.45 p.m., on the 19th, I was
standing in front of 59 Crosby street, and I saw a man.

MR. ROSENTHAL: I object to all this unless
the defendant was there.

Objection overruled. Exception.

THE WITNESS: (Continuing) I saw a man
coming from a store, the doorway of a vacant store
with a bundle under his arm. He looked up and down
the street and he saw me looking at him.

MR. ROSENTHAL: I object to that and move to

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strike out the answer as a conclusion.

THE COURT: Yes. Strike it out.

Q Tell what he did? A He looked up and down Crosby street.

MR. ROSENTHAL: I move to strike out the answer as a conclusion, if your Honor please.

THE COURT: Objection overruled.

Exception.

THE WITNESS: (Continuing) And he had a bundle under his arm, a large bundle. When I started after him he returned to this vacant store. I followed him in.

MR. ROSENTHAL: I renew my objection, if your Honor please, to all the testimony of this officer inreference to anything that anybody else did not in the presence of this defendant. It is not binding upon this defendat.

Objection overruled. Exception.

THE WITNESS: (Continuing) I followed him into the vacant store and caught him just as he was going out of the hallway which adjoins the store. I asked him what he had in the bundle.

THE COURT: No conversation please. Strike that out. You ought to know, as an officer, that you

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are not to testify to any conversation had outside of the presence of this defendant. State what you did.

BY MR. ADAMS:

Q What did you do? A After I caught him I returned to the rear of the hallway, found this bundle which he had dropped on the floor, containing three overcoats, plush lined overcoats with fur collars.

Q What did you do with him and the clothes? A I brought the coats back into the store, called Officer Gallo, and searched the premises next door, which was a packing box yard and after I could not find any more coats --

MR. ROSENTHAL: I object to that.

Q Then what did you do? A I returned, and took the coats and the prisoner to the station house. I had placed him under arrest.

Q This packing box yard which was next to this vacant store -- by whom was that packing box establishment occupied, if you know? A Samuel Cohen.

Q Samuel Cohen? A Yes, sir.

Q What was the name of this man that you arrested there with these three coats, if you know? A Joseph Eiber.

Q Who was he employed by, if you know? A Samuel Cohen.

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Q He was employed by Samuel Cohen? A Yes, sir.

Q What was his business? A Packing box manufacturer; second hand packing boxes.

Q What was the number, if you know, of his place of business? A 57 Crosby street.

Q Where did you take this prisoner to, this Eiber?
A To the Twelfth Precinct Station House, 205 Mulberry street.

Q What did you have with you at that time? A Three coats.

Q Who did you see there at the station house? A Lieutenant Stahl.

Q Who else? A That is all.

Q When did you next go to the station house?

A The man was locked up and I remained there.

Q The man was locked up? A yes, sir.

Q When did you next go to the station house or Headquarters, or whatever place you did go? A The following morning I went to Headquarters with Joseph Eiber and Myer Lipkiss and Samuel Cohen, whom we later arrested.

Q Did you see anybody at the station house before that time; was anybody there in the presence of this man Eiber?

A Not while I was there.

Q You went out? A I went in reserve; I went up to sleep until two o'clock then went on patrol from two until

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eight o'clock in the morning.

Q Did you go to Headquarters? A The following day, on the 20th.

Q Who were at Headquarters at the same time that you were there with Eiber? A Myer Lipkiss and Samuel Cohen and officer Gordon.

Q Who is Myer Lipkiss? A This defendant.

Q And Samuel Cohen? A Yes, sir.

Q Who is he? A The packing box manufacturer.

Q Of 57 Crosby street? A Yes, sir.

Q Who else was there? A Officers Gordon and Gleason.

Q Who else? A Well, all the Detective Bureau, all the ones of the Detective Bureau there at that time, after the photographs were taken-- they were lined up, they were brought upstairs and lined up with prisoners, then brought up to the photograph gallery and their pictures were taken, and then they were brought them down in the patrol wagon, and from Police Headquarters we conveyed them to the Jefferson Market.

Q Was there anything said by any of those witnesses or by the defendant after that time? A Yes, sir.

Q When? A In the patrol wagon, right outside of Police Headquarters.

Q What did he say and to whom was he talking? A He

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said to Joseph Eiber "You son a bitch if it was not for you I would not be here".

Q Who said that? A Myer Lipkiss.

Q The defendant? A Yes, sir.

BY THE COURT:

Q Eiber is the man you had arrested with the coats?

A Yes, sir.

BY MR. ADAMS:

Q Did you have any conversation with Eiber in the presence of the defendant here? A No, sir.

Q You did not? A No, sir.

Q Did you have any conversation, or did you hear Samuel Cohen, the box manufacturer, say anything in the presence of this defendant here, or was anything said to him? A There was a conversation in Jewish which I did not understand.

Q At the Police Station, did you hear any conversation with Cohen? A No, sir.

Q You did not? A No, sir.

Q Were you there when the box was there at any time?

A Yes, sir.

Q Did you see what was in the box? A No, sir.

Q Who was there when the box was there, when you saw the box there who was there? A Why the box was standing

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in the Station House fully a week and a half or two weeks after it came in.

Q I know but I mean the night that you took in Eiber, did you see the box there at that time? A No, sir.

Q Do you know whether the box came in later or whether it was in at that time? A Well, I know it wasn't there then and it was there the following day.

Q Did you hear Cohen say anything in the presence of the defendant at any time in regard to this box? A No, sir.

Q You did not? A No, sir.

Q And Eiber you say did not? A No, sir.

Q You have told us what the defendant said? A Yes, sir.

CROSS-EXAMINATION BY MR. ROSENTHAL:

Q You say that this boy said to Eiber -- he said something to him, didn't he? A Yes, sir.

Q Say what he said? A He said, "You son of a bitch if it was not for you I would not be here."

Q That was not an unusual remark under the circumstances, was it?

MR. ADAMS: I object to that.

Q Wouldn't you yourself say that if a man had had you arrested?

A I don't know, that is rather a hard question for me

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to answer.

Q You have said that, haven't you said as much as that for a smaller thing than being arrested?

Objected to; objection sustained.

Q You have heard that statement before, haven't you?

A Yes, sir.

Q From other people? A Yes, sir.

Q Have you ever made that statement yourself?

Objected to; objection sustained. Exception.

Q You did not see this boy do anything -- the defendant here did you, at all? A No, sir.

Q Did you arrest him? A No, sir.

Q Who did? A Officer Gleason.

Q Did he say anything to Gleason in your presence?

A No, sir; not that I heard.

Q Did he confess? A Only that one conversation--

Q That one statement? A Yes, sir.

Q Did you hear him confess to anybody at all?

A No, sir.

Q Did you hear him admit that he did anything wrong at all? A No, sir.

Q You have said that this young man was put in the patrol wagon, taken to the police station, taken to the picture

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gallery and there mugged or photographed. Now that is not anything unusual, anybody could have the same thing occur, that is anybody who is arrested, isn't that so, anybody that is arrested for a felony has the same thing happen to him about, doesn't he? A Yes, sir.

Q That is what they call the usual course of business in police business? A Yes, sir.

BY MR. ADAMS:

Q Who was your prisoner here. You say that Cohen was there? A Joseph Eiber.

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

Q Another officer arrested him? A Yes, sir.

Q Who was the officer? A Officer Gleason.

Q You had nothing to do with the case of the defendant except to arrest Eiber, is that all? A That is all.

Q What became of Eiber, do you know? A He was on trial and after the trial was on --

MR. ROSENTHAL: I object to that as not binding upon the defendant and the District Attorney knows that he has no right to ask that question.

MR. ADAMS: I think it is perfectly proper.

MR. ROSENTHAL: This man is presumed to be innocent until the contrary is proven beyond a reasonable doubt.

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Objection sustained.

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

DIRECT EXAMINATION BY MR. ADAMS:

Q Your address? A 534 East 84th street.

Q You are a police officer of the city of New York and were such on the 19th day of November, 1909? A Yes, sir.

Q Now did you go to 57 Crosby street? A Yes, sir.

Q On that day -- when did you get there? A The 20th.

Q At what time? A I went there on the morning of the 20th around before 8 o'clock, around 8 o'clock.

Q Who did you see there? A Mr. Cohen.

Q Where did you go at that time? A Well, I locked Mr. Cohen up.

Q I know you did. Where did you go? A From there to the station house.

Q But when you got to Cohen's place, where did you go in Cohen's place? A 57 Crosby street.

Q What was there? A A box place, a dealer in boxes, and he had a little office there, and he was in the office.

Q How big was this office? A Very small.

MR. ROSENTHAL: I object to that.

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THE COURT: Objection overruled. Exception.

THE WITNESS: (Continuing) Small, a very small office.

Q About how many feet? A Probably 3X4.

Q What was in that office? A There was a desk and I think there was a chair and a box and some papers.

Q How big was this box, officer? A About three or four feet high and about a foot and a half long.

Q How big was it compared with that table? A Well, something about that size, not as high as that table, about as long as that but not as high-- about a foot and a half.

Q Did you question him about this box? A yes, sir.

Q What did he say. Now don't answer. If your Honor please this defendant is a co-defendant with the defendant.

THE COURT: I won't allow that. I am going to instruct the witness not to answer because there has not been enough of evidence in this case to lay the foundation for any such question. I will not allow him to testify to any conversation that he had with this man outside of the presence of the defendant.

BY MR. ADAMS:

Q What did you do to Cohen? A I arrested him.

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Q You say he was in this office at that time?

A Yes, sir.

Q And this box was in the office? A Yes, sir.

Q What was in the rest of the place there outside of that? A A chair and a desk and some papers around, I think that is all I noticed.

Q What does the place consist of, there, the whole place? A It was a big empty yard, the whole place is probably about 100 feet deep, probably 30 feet wide; he has got a lot of empty cases in there, a place to make cases or mend cases, and he has a small office there for his business, for his writing.

Q What did you do when you arrested him -- what else was taken there, if anything? A I took that box away with me that was in the office.

Q How did you get that around to the station house?

A On a wagon, on his wagon, his driver drove it around on his wagon.

Q Where did you go to? A To the station house, 205 Mulberry street

Q Who was there when you got to the station house?

A Nobody was there -- the lieutenant was there.

Q Who? A Lieutenant Farrell.

Q Lieutenat Farrell? A Yes, sir.

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Q What did you do then with the box and what did you do with Cohen? A I made the driver carry the box in from the wagon into the station house.

Q The box was taken in -- what was done with the box?

A It was brought into the station house.

Q Then what was done with it? A I opened it.

Q What did you find in it, if anything? A I found five coats.

Q What kind of coats were they? A They were black coats with plush collars, fur collars.

Q Then what was done with those coats? A They were left right there.

Q Then what was done with the defendant? A His record was taken, his pedigree was taken.

Q You are talking about Cohen now, are you? A Yes, sir, I am talking about Mr. Cohen.

Q Samuel Cohen, the box maker? A Yes, sir.

Q He came from 57 Crosby street? A Yes, sir.

Q His record was taken? A Yes, sir, his record was pedigree.

Q He was taken downstairs? A No, sir, he was left standing there in the meantime and after that was all over why this defendant came in.

Q This defendant came in? A Yes, sir.

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Q Now tell us who came in after that while Cohen was there? A Officer Gleason, Mr. Price and the defendant.

Q Talk up. A They came in.

Q What was said or done in there? A The officer brought in this man and somebody else -- Officer Gleason, Mr. Price and the defendant came in, the defendant was a prisoner, Officer Gleason had him as a prisoner.

Q What was said or done by anybody in his presence?

A "Here is the shipping clerk", that is what Officer Gleason said, and so he was taken up to the desk and his pedigree was taken by Officer Gleason.

Q Was there anything else said about him, or anything done in his presence? A No, sir.

Q By anybody? A No, sir, not that I know of.

Q Did Mr. Price say anything to him? A No, sir.

Q Or he to price? A No, sir.

Q What did price do? A I asked Mr. price "Are these his goods", and he said, "Yes"; he identified these goods.

Q In this man's presence? A Yes, sir; he was there at the time time.

Q What goods were those? A Five coats was in the box.

Q Were there any other coats there? A Three hanging on the wall.

Q You said Eiber was there too, didn't you? A Yes, sir;

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Eiber.

Q Was anything said by Cohen in the presence of Eiber and in the presence of the defendant here? A No, sir.

Q Nothing at all? A No, sir.

Q That you heard? A No, sir.

Q Was there anything said by --

THE COURT: He said there was nothing said any why go over that time and again.

MR. ADAMS: Why I want to refresh his memory if I can.

Q Then what was done with these men? A They were all put in the patrol wagon, taken to Headquarters, their pictures were taken and from there they were taken to the Jefferson Market Court.

(The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until two o'clock.)

AFTER RECESS.

DAVID GORDON, a witness for the people, resumes the stand.

BY MR. ADAMS:

Q Now, you accompanied them to court? A Yes, sir.

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Q Who was your prisoner? A Cohen was my prisoner.

Q The box man? A Yes, sir.

Q Did you see that box in the station house? A Yes, sir.

Q Did you see Mr. Price there at that time? A yes, sir.

Q What did Mr. Price do in regard to the coats, if any-
and
thing? A I asked him if they were his coats he identified
them.

Q How? A By looking at them. I pulled one out of
the box and he said, "Yes, that's my coat".

Q Was there anything on the coats? A Tags and a mark
on the back.

Q Do you remember what was on the tags? A "The Phoenix
Fur Company", I believe it is.

Q How many coats were there? A Five in the box.

Q Any others there? A Three hanging on the wall,
I didn't have those; they came in the night before, those
were the ones when Eiber was arrested he had those three in
his possession.

Q In the box was how many? A Five.

CROSS-EXAMINATION BY MR. ROSENTHAL:

Q You haven't got these coats here now, have you?

A No, sir.

Q Do you know where they are? A Yes, sir.

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Q Where? A Police Headquarters.

Q You didn't bring them down here at all? A No, sir.

Q Why not? A I was to be advised whether I should or not.

Q What is that? A I was to be told whether to bring them down or not.

MR. ADAMS: I didn't think they were necessary.
If you want them here we will have them here.

MR. ROSENTHAL: This is cross-examination.

THE WITNESS: I told the witness that I did not think it was necessary to bring them all down here.
If my friend wants them we will have them here.
I don't want the jury to have any false impression.

THE COURT: Let us continue in an orderly manner.

MR. ADAMS: I make that offer. Do you want them?
If you do we will bring those coats.

MR. ROSENTHAL: It was not for that purpose I asked.

MR. ADAMS: Do you wish me to bring the coats?

MR. ROSENTHAL: I said no, Mr. Adams.

MR. ADAMS: If you want them we will have them here.

MR. ROSENTHAL: I think it is a fair question

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I am asking this witness.

MR. ADAMS: If you want them we will have them here.

BY MR. ROSENTHAL:

Q Did this defendant here, Lipkiss, make any statement to you personally? A No, sir.

Q Do you know anything, so far as he is concerned, about this case? A Not personally, no, sir; he said nothing to me.

Q You found no property on him, did you? A No, sir.

Q You don't think that any officer found any property on him, do you, stolen property?

MR. ADAMS: There was no other claim except as to stolen overcoats.

MR. ROSENTHAL: I will withdraw the question, some

Q You made a statement, I think, about a 3X4 office of Mr. Cohen, the box man, is that true? A To the best of my knowledge.

Q You meant nothing serious about that except that that box manufacturer has a little 3X4 office? A No, sir, I didn't mean that at all, I thought it was an exceedingly small office to my way of thinking.

Q You didn't think there was anything criminal to have

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a small office? A No, sir, it didn't strike me that way at all, I didn't pay any attention to that at all.

Q As far as the coats are concerned they were on the wall. Did you put them on the wall in the station house?

A No, sir.

Q The three coats? A No, sir.

Q Do you know who put them there? A From hearsay, yes, sir.

Q Some brother officer? A Yes, sir.

Q Is that it? A Yes, sir.

Q Now were you there at the time Mr. Price came in to identify those coats? A Yes, sir.

Q What if anything did Mr. price say? A He said they were his coats.

Q Did he go over and examine them first? A No, sir; as soon as he came in the door -- I am speaking of the night before now -- those three coats -- he came to the station house about one or two o'clock in the morning, and he saw these coats and he said, "There is my coats right here?" Then he went over and looked at them and saw the tags "The Phoenix Fur Co." on them, marked on them, I think that is the name.

Q As far as this defendant is concerned you know nothing against him ?

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Objected to.

Q Personally? A Personally.

MR. ADAMS: I object to the question.

THE COURT: I will allow the question.

A I never -- I don't know him, never saw him until he was arrested charged with having these coats.

Q You did not arrest him? A No, sir.

Q You saw nothing on him at all that was stolen as far as you know? A No, sir.

MR. ADAMS: I object to that. There is no claim that he had anything on him at all, no claim here.

THE COURT: What difference does it make. We are losing more time objecting than we are of doing anything that is of importance.

DENIS GLEASON, a witness for the People, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. ADAMS:

Q Your precinct? A Twelfth Precinct. I live at 1160 Jackson avenue, Bronx.

Q You are a police officer of the city of New York?

A Yes, sir.

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Q Were you on November 9, 1909? A I was.

Q Where did you first see the defendant here?

A I saw him between 8 and half-past 8 on November 20th, in 24 and 26 Waverly place.

Q Whose place was that? A Mr. Price's place.

Q Who is Mr. Price? A Mr. Price is the proprietor of this overcoat place in 24 and 26 Waverly place.

Q What occurred there. Tell his Honor and the jury what occurred at that time, what you said and what the defendant said? A I went up to his place of business. I went into the office in company with Lieutenant O'Neill and I asked for his shipping clerk and he went in the rear and brought him out.

Q You asked who? A Mr. Price for his shipping clerk. He went in the rear of the office and brought the shipping clerk out.

Q Who was the shipping clerk? A Myer Lipkiss.

Q The defendant? A Yes, sir. I said to Myer Lipkiss "Have you got a hat and coat", he said, "Yes". I said, "Do you know me", he said, "Yes" and nodded. So I said, "You better get it", and he went back with Mr. Price to the rear again and I remained where I was. He came out with his hat and coat on. I took him outside where the elevator landing was, and I said "You better come up now",

I says, "We have got you good, you better come up".

Q What did you mean by coming up? A Tell what he knew about it. "We have a man in the station house" I said, "He has squealed and told everything". I took him down.

Q Who is the man you referred to? A Mr. Eiber.

BY THE COURT:

Q This was said to the defendant? A Yes, sir.

BY MR. ADAMS:

Q What did the defendant say? A He said, "Wait awhile".

MR. ROSENTHAL: I object to that on this ground that if the statement that some one in the station house had squealed was true it is all right. But if the officer knew it was not true at that time that he said it then I object to the question and answer.

Objection overruled. Exception.

THE WITNESS: He said "wait awhile". I said, "You better state everything, I might make the case easy for him." I said, "You better come up, I might make the case easy for you" with that he would not come up, and I took him down to the station house.

Q By coming up -- he wouldn't tell anything?

A Yes, sir, I took him down to the station house, Mr. Price and I went with him to the station house. As we reached the

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station house Officer Gordon stuck in his hand to a box there and pulled out an overcoat which Mr. Price identified as his. We arraigned him at the desk and took his pedigree and from there to Headquarters and from there to court.

Q Who was there at the time that you took the defendant to the station house? A There was Officer Gordon, Lieutenant Farrell and Mr. Price and I and Eiber and Cohen.

Q What else was there at that time? A There was a box there alongside of the desk.

Q How big was this box, Officer? A Well, I could not really say.

Q As near as you can judge? A About that width and that length and about this height (illustrating)

Q Talk so that I can hear you? A About that length.

Q How long would you say that was? A About three and a half feet or four feet, about that width, 18 inches, and that height.

Q What was in that box? A Overcoats.

Q How many? A Well, I could not say how many.

But Officer Gordon dipped his hand in and pulled out one which Mr. Price identified as his.

Q What was on the overcoat, if anything? A A plush overcoat.

Q What were the colors? A Well dark overcoats.

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Q What kind of collars did they have? A Plush collars, kind of fur.

Q Fur? A Yes, sir.

Q Was there anything on them to identify them by?

A There was a tag.

Q What was on that tag? A I don't know; I did not look at it.

Q You did not examine that? A No, sir.

Q You say Mr. price did? A Yes, sir.
other

Q Were there any overcoats there at that time? A There was three I think behind the desk hung up.

Q What were they like? A The same as the ones we had in the box.

Q Was this box in plain view as you came into the station house? A Yes, sir. A big room a desk and right in front of the desk there is the box.

Q A desk something like the one his Honor is sitting at? A Yes, sir.

Q Where was the box in relation to that? A Right at the end.

Q Where did you enter the room? A Right from the street.

Q The first thing you would see was that box? A Yes,

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sir.

Q Was it on end? A yes, sir.

Q About that high? A About that high (illustrating).

Q Did you hear the defendant say anything with regard to the -- was he asked by anybody as to these coats, or what he had done with any coats or what he had done with a box. Do you remember anything of that sort? A No, sir, I do not.

Q You don't? A No, sir, Mr. Price made the charge against him and his pedigree was taken.

Q You say Cohen was there? A Yes, sir.

Q Who is Cohen? A The fellow who was convicted, the box manufacturer.

Q The box manufacturers? A Yes, sir.

Q Did he say anything there in the presence of this defendant as to where the box came from? A No, sir, not to my memory; he might have used some words before I came in.

Q Was Eiber there? A He was.

Q This man? A Yes, sir.

Q Did you hear him say anything? A No, sir.

Q Could he speak English, do you know whether he could or not? A Very, very little, I think he could speak.

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Q What was done with him after that? A We took him up to Headquarters and had pictures taken, and took them from there to the Jefferson Market Court.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q When you say some one dipped into the box and took out a coat and asked Mr. Price if that was his, who was that? A Officer Gordon.

Q Gordon? A Yes, sir.

Q Sure about that? A Yes, sir.

Q When did you find that out? A Why I found it out when I was right there.

Q Your memory is just as good today as it was last week? A My memory about that is perfect.

Q In the last case, in the case of the people against Samuel Cohen, were you asked this question, page 53 "Q. In what condition was the box when you got there? A. It was open on the top and some one dipped down and showed a coat to Mr. Price, and asked him if it was his -- "

Q Some one lifted up a coat? A Yes; Officer Gordon lifted up a coat.

Q When did you find that Gordon lifted up the coat? A I found out at the time I was there at the station house with the prisoner.

Q Why didn't you say so in the last case? A I was

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not asked that question.

THE COURT: There is no question there which would lay a foundation for any such question as this. I mean there is no answer in what you have read to make a foundation for that question.

MR. ROSENTHAL: I take exception to your Honor's remark.

Q This young man, when you said to him to own up, he didn't say anything to you? A No, sir.

Q Just kept quiet? A No, sir, he said, "Wait awhile, wait awhile."

Q He probably was a little afraid of you five men? Objected to.

A I was the only one, I was alone with him.

Q In whose presence did he say that? A To myself waiting for the elevator to go down?

Q Wasn't Price with you? A He was inside in his office with Lieutenant O'Neill.

Q How many of you went in there originally? A Two.

Q On your direct examination how many did you say went to the place? A On my examination there was two of us went, Lieutenant O'Neill and I went there alone.

Q You found no property, stolen property, in the pos-

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session of this young man? A No, sir.

BY MR. ADAMS:

Q You didn't find any overcoat on him like this?

A No, sir.

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J O S E P H E I B A ^g, a witness called on behalf of the people,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ADAMS:

(Through Mr. Samuel Feldman as interpreter).

BY THE COURT:

Q Ask him whether he has been talking with anybody
recently about the evidence he is going to give here to-day?

A I spoke to nobody.

Q Where does he live? A 178 Orchard Street.

Q I want to ask him if he recalls that he has already
given testimony under oath about the matter connected with this
case? A Yes, sir, I do.

BY MR. ADAMS:

Q You are now under conviction awaiting the disposition
of your case? A Yes, sir.

Q In November, 1909, whom were you working for?

A Mr. Samuel Cohen.

Q You were working for him on the night you were
arrested, the 19th day of November, 1909? A Yes, sir.

Q Where was that? A In 75 Crosby Street.

Q What was Samuel Cohen's business? A Second hand
packing boxes, manufacturer of second hand packing boxes.

Q Now, what did you have with you when you were arrested
that night? A I had three coats; I was carrying three coats.

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Q Where did you get them? A In Cohen's office.

Q Where did you find those in Cohen's office?

MR. ROSENTHAL: Objected to.

Objection overruled. Exception.

A Between the wall and the table.

Q What else was in Cohen's office? A A box.

MR. ROSENTHAL: I object to that question as leading.

Q What else was in Cohen's office?

THE COURT: That certainly is not leading.

MR. ROSENTHAL: I object to the question.

THE COURT: A leading question is one which may be answered by yes or no.

Exception.

Q (Question repeated). A A telephone was there and a couple of tables and a box was there standing.

Q How big was this box? A The size of this table.

Q How big was Mr. Cohen's office? A A very small office.

Q How big? A I can't describe it exactly.

Q Describe it in connection with this place here, this little enclosure?

THE COURT: You have had evidence about the size of that office already.

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Q What did you see in respect to that box, if anything?

MR. ROSENTHAL: I object to the question.

Q If you saw anything? A I saw how the overcoats were taken out of the box and looked over.

Q When was that? A Friday night.

Q The same night you were arrested? A Yes, sir.

Q Who opened the box and took the coats out and looked at them? A Mr. Samuel Cohen and Myer Lipkiss.

Q Samuel Cohen and Myer Lipkiss? A Yes, sir.

Q This defendant here? A Yes, sir.

Q And Mr. Samuel Cohen is the proprietor there?

A yes, sir.

Q Then, what did you do?

MR. ROSENTHAL: I object to the question as leading.

Q What did they do, if anything? A They were examining it, afterwards they made a bundle out of it and put it under the table.

Q What was done with the box, if anything? A They nailed it up.

Q Who nailed it up? A Cohen.

Q Now, who is Cohen? A The man for whom I was working, my boss.

BY THE COURT:

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Q The man who occupied the office? A Yes, sir.

BY MR. ADAMS:

Q Then what did you do? A I was working --

Q Where were you when you saw this? A In the shop.

Q In the shop? A In the yard and shop.

Q What time of day was this? A About five or six
or later.

Q Where is this shop in respect to this office -- where
is the yard in respect to this office? A Crosby Street.

Q But where is the office, in the front part, or in the
yard back the other way? A In front.

Q Where were you? A I take all the cases, take
them out.

Q But when you saw Samuel Cohen and the defendant opening
this box where were you, what part of the yard? A I told
you I was working, going up and down to the street and from the
street.

Q Where were you when you saw them opening the box?
A In the shop at the time.

Q Where is that in connection with the office?

A The office is one side and the shop is further to the west.

Q How did you see them? A Through the window.

Q Was it light or dark in the office? A Light.

Q From what did the ~~light~~ light come? A Electric light.

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Q Was the electric light lighted or not? A Yes, sir.

Q When did you see that box again? A I didn't see that again.

Q Were you taken to the station house? A Yes, sir.

Q The coats were taken with you? A Yes, sir.

Q Who did you see at the station house? A A policeman.

Q Who else? A Nobody.

Q Nobody else? A No, sir.

Q Was there no time at the police station that you saw anybody but the policeman? A No, sir.

BY THE COURT:

Q After he had seen, as he says, the defendant and Cohen handling coats at the box what next did he see the defendant and Cohen do, did they go any place? A They looked up the shop and went away.

Q What did he do? A Then I went around the new building, the empty new building, and the windows lead to the yard, and I went into the yard and I took out three overcoats.

Q Does he know whether those coats were some of the coats which he says that he saw the defendant and Cohen handling?

A Yes, sir.

Q After he took them what happened? A I was arrested; a policeman came up and arrested me.

Q Did he have the coats with him when he was arrested?

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A Yes, sir.

BY MR. ADAMS:

Q Then what happened? A I was arrested; that is all.

Q Where did they bring him to? A They took me from Crosby Street to the police station.

Q What happened there? A There I was asked where I took the coats from.

Q Who asked you? A Some one who walked around there in uniform spoke in German.

Q Where did they put the coats, what was done with them? A I don't know where they put them.

Q When did you see the coats again? A I didn't see them again.

Q Weren't you taken back there again? A In the middle of the night, two o'clock in the morning.

Q Who did you see there then? A I saw Mr. Price and two other men with him.

Q Who else did you see there? A Yes, sir.

Q Who else, if anybody, did you see there besides Mr. Price? A A few policemen and there was Mr. Price and two other civilians.

Q Where were you taken from there? A From there in the morning I was taken to headquarters.

Q How? A In the patrol wagon.

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Q Who was taken with you in the patrol wagon, if anybody?

A Cohen and Lipkiss was taken along.

Q If they were taken in the patrol wagon weren't they in the police station with you at that time?

Objected to as leading.

THE COURT: It is quite evident that this man needs at least a little jogging of his memory with regard to this matter and that is all the District Attorney is doing.

A No, sir, I was taken all alone from the station house to police headquarters and there Lipkiss and Cohen were brought.

Q Who was at police headquarters when you were brought there, who did you see at police headquarters when you were brought there? A I saw Cohen.

Q Who did you know there, anybody that you knew?

A I didn't see any man whom I knew.

Q Ask him if he was in the patrol wagon at any time with this defendant? A When I was taken from police headquarters to Jefferson Market I was taken with them together.

Q What if anything did he say to the defendant or did the defendant say to him? A Nothing was said.

Q Nothing was said by anybody at all? A Lipkiss spoke to Cohen.

Q What did he say to him? A I don't know; they spoke

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in English.

Q Did anybody speak to you at all there in the patrol wagon? A No, sir.

Q When you got to headquarters what did you see there? A I was photographed and measured.

Q What did you see there, I ask you? A What shall I say? I didn't see anything.

THE COURT: What difference does it make?

MR. ADAMS: I am trying to direct his attention to the coats.

THE COURT: There is no necessity wasting all this time.

Q Did you see ^{the} box there at police headquarters?

A No, sir.

Q You didn't see it? A No, sir.

Q Did you see the defendant Lipkiss at any time previous to November 19th, 1909, in Cohen's shop with any coats?

A Yes, sir.

Q When was that? A Eight or two weeks before, I don't remember exactly.

Q What kind of coats were they that he had at that time?

A The same coats as I was arrested for, the same kind of coats.

Q What kind of coats were they? A Black coats.

MR. ROSENTHAL: I object to that as not binding

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upon the defendant.

Objection overruled. Exception.

BY THE COURT:

Q Were they the same sort, that is to say the clothes that you had when you were arrested were they of the same sort-- what kind were they, -- what kind of coats were they which you had when you were arrested? A Black coats.

BY MR. ADAMS:

Q Describe them, if you can? A Black coats with fur collars.

Q What was done with those coats two weeks before that Lipkiss had in Cohen's place?

Objected to. Objection sustained.

Q Did Lipkiss ask you to do anything in respect to those coats?

Objected to.

THE COURT: What coats?

MR. ADAMS: The coats of two weeks before.

I want to prove a similar instance.

THE WITNESS: He gave me the coats that I saw to carry away to a place in Canal Street, corner of Canal and I don't remember the other street, he gave me a quarter and made a bundle and told me to carry it to a place.

Q What place? A Canal, I don't remember the other

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name of the street.

Q What sort of a place was that? A A clothing store.

BY THE COURT:

Q Does he know where he got the bundle which he gave to him? A That I don't know.

THE COURT: Strike it out. There is no similarity about this transaction. I direct the jury to disregard that testimony absolutely. In arriving at your conclusion, gentlemen, you are to pay no attention to this matter of the bundle which he says he was directed to take to a certain place by this defendant. It has no bearing whatsoever upon this case.

BY MR. ADAMS:

Q You were on trial for your case? A Yes, sir.

MR. ROSENTHAL: I object to that as not binding upon the issue here and as irrelevant and immaterial.

Objection sustained.

Q You testified when you were on trial in a certain way, did you not? A Yes, sir.

Q The next day you pleaded guilty, did you not?

Objected to. Objection sustained.

Q Was the testimony that you gave the first day the truth or not the truth when you testified?

MR. ROSENTHAL: Objected to.

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Objection overruled. Exception.

A It was the first day when I was asked on my own trial.

Q The first day I asked on his own trial whether that was the truth or not the truth? A (No answer).

Q When he was tried himself and pleaded guilty the second day was that the truth or not the truth on his trial?

Objected to; Objection sustained.

Q Are you telling the truth now or not?

Objected to. Objection overruled. Exception.

A Yes, sir, now I am telling the truth.

Q When you were up for trial on your own trial when you testified the first day did you tell the truth or not the truth?

Objected to. Objection overruled. Exception.

A At that time I did not tell the truth; at that time I was told to so testify different because I believed I could defend myself.

Q The last time he testified at Cohen's trial did you tell the truth?

Objected to. Objection overruled. Exception.

A Yes, sir; I then told the truth.

Q You had no reason to tell anything else -- you were convicted?

Objected to. Objection sustained.

Q I have asked you questions and you gave me the same

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answers you have here?

Objected to. Objection sustained.

Q Did I ask you questions?

Objected to. Objection overruled. Exception.

A Yes, sir. You asked me and I answered you.

Q When? A To-day and two weeks ago you also asked me.

Q Were you made any promise by me when I asked you those questions? A No, sir, never.

Q By anybody at any time? A No, sir; I wasn't promised by anybody.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q In the case of the People against Joseph Iba was the question put to you "Have you done this before for Myer?

A. No, never". At the time you testified in that case, your own case, did you tell the truth?

MR. ADAMS: If your Honor please, I don't understand that question.

THE COURT: Are you reading from the record. If so, indicate what page so that the District Attorney can follow it.

MR. ROSENTHAL: Page 14 about the tenth line.

THE COURT: He admits he did not tell the truth

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upon the first trial.

Q "Have you done that before for Myer? A. No, never".

(Mr. Adams reads from page 14 of the trial of Samuel Cohen).

BY MR. ROSENTHAL:

Q You meant by that question and answer as to the carrying of the bundle, wasn't it? A I do not understand you.

Q You testified that you had done this previously, didn't you, that you had carried bundles for the defendant?

THE COURT: If you are going to ask him on a previous question give us the question from the record and then put your question to him.

MR. ROSENTHAL: He testified to-day that two weeks before he had carried a bundle.

THE COURT: He admits that his testimony on the first trial was a falsehood.

MR. ROSENTHAL: That is all.

BY MR. ADAMS:

Q The testimony on the first trial you say was not true? A No, sir.

Q What you say now is true? A Yes, sir; I have no reason, no cause for to tell not the truth.

BY MR. ROSENTHAL:

Q Were you offered \$100 by Grossman, an attorney, a

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relative of Mr. Price at any time for testifying in this case?

A I was promised but nothing was given to me.

BY MR. ADAMS:

Q Who promised you that? A A man on the night I was arrested promised me \$100, I don't know the man.

Q Where? A I should tell where the goods were ^{stolen} stole.

Q You should tell where the goods were sold? A Yes, sir; I should show him where, the place where it was sold. I was promised \$100 but I knew this promise was no promise.

BY THE COURT:

Q That was before your first trial? A That was right there in the police station.

BY MR. ADAMS:

Q Now, what goods are you referring to, the goods two weeks before this time when you were arrested? A On the same night when I was arrested Mr. Price and two other men, one man he claimed was a son-in-law of Mr. Price, promised \$100 I should tell and show the place where the goods were sold.

Q Sold by whom and where? A I should tell where I sold, but this thing I didn't know anything at all about.

Q When did you sell any goods? A No, sir; not that I sold but I should tell how Cohen and Lipkiss sold the goods.

Q When did Cohen and Lipkiss sell any goods?

A I didn't see them selling any goods.

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Q So you couldn't give the information they were willing to pay for, is that right? A They promised me \$100 that I should tell maybe I know where they sold these goods.

Q If you knew and would give them the information they said they would give you \$100, is that right? A Yes, sir.

Q Is that all there was about that \$100? A Yes, sir.

BY MR. ROSENTHAL:

Q Mr. Iba, did anybody promise you that they would let you go or be easy with you if you testified against this defendant to-day? A When?

Q Anybody at any time since your arrest? A When, at what time?

BY THE COURT:

Q Put that question to him, anybody at any time?

A No, sir; the whole time nothing was promised to me.

BY MR. ROSENTHAL:

Q You say that you had to climb through a window to get out for that bundle of goods that you are talking about?

A Yes, sir.

Q Why didn't you go out -- you say you went out through the empty building? A Yes, sir.

BY MR. ADAMS:

Q Where was this empty building? A The empty building

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was 59 Crosby Street, where I was was No. 57 and the wall -- there was an empty building going into the yard of 57.

Q How did you get in from the empty building to the yard of Cohen, your employer? A The window goes into the yard, goes right into the yard, the window of the empty building.

Q You got in that way? A Yes, sir.

THE PEOPLE REST.

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MYER LIPKISS, the defendant being duly sworn in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Where do you live? A 111 and 115 East 110th street.

Q Now, what is your name? A Myer Lipkiss.

Q Where do you live? A 111 and 115 East 110th street.

Q Who do you live with? A Wife and family.

Q How big is the family? A Two children.

Q Did you work for Barnet Price? A I worked for Barnet L. Price & Company.

Q How long? A Three and a half years.

Q Before that where did you work? A I worked for A. L. Werner & Company.

Q What line? A Pants line.

Q How long? A A week and a half.

Q Before that where did you work? A Stern Bros. 23rd street, in the receiving department.

Q Dry goods people? A Yes, sir.

Q How long? A A short while; I don't exactly remember.

Q Where else have you worked? A Bayer, Lissman, and a pants house, for about two years before that I had been

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working for H. B. Rosenthal & Co. for about three years.

Q You were shipping clerk for Barnet L. Price, 24 and 26 Waverly place in the County of New York? A Yes, sir.

Q Do you remember the 19th day of November last year?
A Yes, sir.

Q Do you remember the 20th day of November? A Yes, sir.

Q Do you remember the 19th day of November about 4 o'clock Mr. Price said you were sending or had sent back a box of some kind to Cohen? A It was not at 4 o'clock.

Q What time was it? A About 3 o'clock. I saw the driver about two o'clock, I believe, when the driver of Cohen's place came up and delivered four cases to me, four empty cases, and I believe I took and told the elevator man, or signaled that I wanted for him to come up and take three cases for return. When the four cases came up I took them and I asked the elevator man where the driver is and he told me downstairs, I should the cases down. I went and took these three empty cases, put them on the elevator and sent them down and the driver took them off the elevator.

Q Was Mr. Cohen there? A No, sir.

Q Was Mr. price there? A No, sir.

Q Why did you send them back to Cohen? A For exchange because they were the wrong ones.

Q You had done that before? A Very often.

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MR. ADAMS: Q I object to his leading the witness.

Q Is that when you order boxes of a certain kind and they send a different kind, do you send them back? A Yes, sir; if they send me the wrong ones I send them back.

Q How many boxes did you order 75X80? A I don't know what sizes, because I know they were about 65 inches, I returned them three cases; if they were 75 inch I would have used them, I would never return them.

Q How much goods do you ship out of there every week? A Well it is according to the season, according to what part, what time of the month it is.

Q Did you take any of Mr. Price's goods at all?

A What do you mean?

Q Steal them.

(No answer.)

Q Did you steal any of Mr. Price's goods? A No, sir.

Q Do you know how these goods got to Mr. Cohen's place?

A No, sir.

Q Were you at Cohen's place at the time this self confessed witness ?

MR. ADAMS: I object to that way of putting the question.

THE COURT: There is no necessity for your

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piling on the epithet in that way.

Q This man Iba -- were you there at the time he says you were at Cohen's place? A No, sir.

Q Did you tell him to carry any bundles for you? A No, sir.

Q Did you bundle up any goods for him in Mr. Cohen's place? A No, sir.

Q Did you send any goods there in a case or anything else? A No, sir.

Q Do you know anything about it? A No, sir.

Q Did you report for work the following morning? A Yes, sir.

Q At what time? A At the usual time between 7.30 and 8 o'clock.

Q Now, as far as the shipping is concerned -- are you the shipping clerk? A Yes, sir.

Q When you were busy who helped you? A Mr. Price.

Q As a matter of fact at times did he ship an entire lot of goods himself?

MR. ADAMS: I object to that.

THE WITNESS: Yes, without me knowing it.

MR. ADAMS: I object to it as leading.

Q Was Mr. Price helping you at any time, did he ever help you? A He certainly did.

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Q Was he in the shipping room there at all times or various times? A Well he was very often there, he was there.

BY THE COURT:

Q Not at all times? A No, sir.

BY MR. ROSENTHAL:

Q Were you ever arrested before? A No, sir.

CROSS EXAMINATION BY MR. ADAMS:

Q Do you deny everything about this?

(No answer.)

Q You deny the whole thing? A I certainly do.

Q Yes, of course.

MR. ROSENTHAL: I object to the remark.

THE COURT: Yes, make no comments on the evidence.

Q But you do deny everything about this?

THE COURT: He says he does.

THE WITNESS: I said I did.

Q What time do you say you sent out these boxes on the 19th? A About two o'clock.

Q On the 19th? A Yes, sir, on the 19th.

Q How many cases did you send out? A Three.

Q When did they come in? A When did they come in?

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Q Did any cases come in that afternoon? A Four cases.

Q Four cases came in? A Yes, sir.

Q What was the size of those four cases? A I can't remember that. Mr. Price has the bill for them and the case maker got a receipt for it.

Q Do you remember? A No, sir, I don't remember that.

Q What was the size you sent out? A About 65 inch I returned.

Q What did you return them for? A Too small.

Q Is that the only reason you returned them? A Well, there wasn't much room in the place, and the place of business there -- I didn't need these cases just then, I had plenty of the same size in stock, I didn't use these, that is why I returned them.

Q How many cases do you have there at a time?

A According to the size, sometimes I could take and put 10 cases where I have the room and sometimes I could put 30.

Q You had occasion to use this same size again, didn't you? A I certainly did.

Q Now when did those cases come in and who brought them up? A Well that case maker brought them up.

Q Who is the case maker? A The case maker's driver.

Q Which was it, the case maker Cohen? A The case maker's driver delivered those cases to me before.

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Q When did he do that? A I believe it was the day before, about the 18th I believe.

Q Delivered those cases to you? A Delivered a lot of cases and delivered those three among them.

Q He delivered them to you on the 18th? A Yes, sir.

Q Did he? A I believe it was.

Q You took them, did you? A I accepted them.

Q You were right there, were you? A Yes, sir.

Q Where did you receive them? A Right in the shipping room.

Q You could see what the size of the cases were, couldn't you? A I was too busy, I didn't get a chance to look at them, I just counted the amount of cases and signed the receipt.

Q You counted them? A Yes, sir, I counted them and signed the amount.

Q How big were those boxes? A I don't remember the sizes, I don't remember the whole bill, I can't give you a recollection of what sizes.

Q You say they were too small for you to pack? A Not at that moment -- too small.

Q You saw them? A Yes, sir, after the driver was gone when I had the chance to put the cases away.

BY THE COURT:

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Q When did you say you noticed they were too small?

A As soon as I got a chance to put them away.

Q Hadn't you seen them before you got a chance to put them away? A I had seen the cases there, but just counted the amount.

Q Haven't you already testified that the difference in the size was so great that it would attract your attention immediately? A Yes, sir.

BY MR. ADAMS:

Q And the first time didn't you notice it at that time?

A No, sir, I didn't look at the bill for the sizes of the cases all I saw was the quantity.

Q You saw the boxes? A Yes, sir; I counted the quantity and signed the receipt, so many cases, and put the bill in my pocket.

Q Didn't you see there was a difference and you wanted to have a larger case? A 10 inches difference after I went to check the bill off.

Q That is a very appreciable difference of course?

A Yes, sir.

Q Anybody could see it. You are accustomed to the handling of cases? A Yes, sir.

Q You had these boxes from Cohen? A Yes, sir.

BY THE COURT:

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Q When was Cohen in your shipping room? A He was there on the 18th of November, that is Thursday, he was there.

Q Talked with you in the shipping room? A I saw him in the office and I says to him, "When you get through, I want to see you."

Q What did you say that for? A Because I wanted to give him an order, I was just about going to telephone to telephone an order for some cases when I saw him there and I says to him, "Come back to me and I will give you an order."

Q Another order? A For them cases --

Q What did you want to say to him? A I just wanted to give him the order.

Q What was the order to contain? A Four cases.

Q What were you to say in the order?

MR. ROSENTHAL: I object to that.

A Just tell him to send me those four cases.

Q "Send me those four cases"? A Yes, sir, and I handed him a slip of paper with the sizes.

Q Send me those four cases"? A Yes, sir.

Q What did you say to him in the office? A I says "I want to see you after you get through in the office."

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Q Which was the longer message the one you gave him in the office or the one you gave him in the shipping room?

A I didn't have the order made out.

Objected to; objection overruled; exception.

BY MR. ADAMS:

Q How did you usually give your messages to him?

A Telephone.

Q Did you ever have him come to the shipping before to give him a message? A Well, whenever I saw him there.

Q Did you ever have him come to the shipping room before to give him an order for boxes? A Well, sometimes when I --

Q Will you answer that question please. Had you ever done that before? A Yes, sir.

Q When? A Well once in a while, whenever I seen him there, I was ready for an order and I needed some cases.

Q Did you frequently do that or not? A Well, he seldom came around, I seldom gave it to him that way.

Q He was in the shipping room talking to you there, was he? A When?

Q On the 19th? A No, sir.

Q Of November? A No, sir.

Q He wasn't there on the 19th day of November?

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A No, sir.

Q He wasn't there at all, you didn't see him downstairs?

A No, sir, I didn't see him on the 19th of November.

Q You were down there in the office, were you?

A I was in the shipping room, not in the office, no, sir.

Q I thought you said you went to the office and saw him there? A No, sir, I said on the 18th, not on the 19th.

MR. ROSENTHAL: I take an exception to Mr.

Adams putting the questions too fast.

Q Did you go to the office in the front of the building there? A On the 18th, yes, sir.

Q You did not go there on the 19th? A Well, I went every day, I didn't see Mr. Cohen there.

Q Mr. Cohen wasn't there at all on the 19th? A Not at the time I was in the office.

Q So you say.

MR. ROSENTHAL: I object to the comment.

THE COURT: Strike it out.

I would not comment on the evidence.

Q When did you go to the office, what time was it?

A What day?

Q When you saw Mr. Cohen the last time he came there boxes before you were arrested? A He came there with boxes

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before I was arrested? Mr. Cohen never came there with boxes before I was arrested, he never delivered any cases, he was in the office, but he wasn't there with any boxes.

Q No boxes came at that time? A On the 18th,

MR. ROSENTHAL object to that as a misinterpretation of the evidence.

Q At what time? A You are asking me a question of time.

Q No boxes came on the 18th? A With him? I believe some boxes came on the 18th.

Q Was Cohen there when the boxes came? A No, sir.

Q What time was Cohen there? A I don't remember.

Q You said you saw him on the 18th? A Yes, sir, but I don't exactly take no memorandum of the time that he is there.

Q I thought you said a little while ago it was two o'clock the boxes came? A You are talking about the 18th.

Q I am talking about the 19th. You said you did not see him on the 19th at all? A No, sir, I didn't see him on the 19th, that is what I am talking about, the 18th.

Q You put it as the 18th.

(No answer.)

Q You put it on the 18th. What time on the 18th was he there? A I don't remember, I can't exactly tell you the

time.

Q What time did the boxes come on the 18th?

A In the morning.

Q What time? A Early.

Q Early in the morning? A Yes, sir; it was early in the morning, I think it was between 10 and 11, or between 11 and 12, I don't remember.

Q Who brought the boxes? A The driver.

Q Whose driver? A Mr. Cohen's.

Q What is his name? A Well, I believe it is Blumstein.

Q Had you seen him in Cohen's place? A No, sir.

Q Is he a witness here? A I don't know whether he is a witness but I would like to get him down as a witness.

Q Why didn't you?

MR. ROSENTHAL: I may say he is here now or

I expect him to be. He was here.

Q What time do you say they came in the morning?

A The cases came in the morning of the 18th.

Q Those four boxes? A I ain't talking about those four boxes; you are talking about a different affair -- the four boxes came on the 19th at two o'clock when I returned the other cases.

Q (Repeated). A Yes, sir, when I returned those three

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cases.

Q How many came in on the 18th? A I don't remember.

Q Did any come in on the 18th? A I believe there were--

Q I thought you said the boxes came in the day before?

A Not those four boxes, there was another order delivered on the day before. I gave the order for the four boxes on the 18th to deliver.

Q Had you sent out any boxes on the 19th? A Yes, sir.

Q What boxes? A I sent -- well I have done shipping and then when the cases came I returned the three cases, the three boxes I returned.

Q When was that? A At two o'clock in the afternoon, about two.

Q So you did send out cases on the 19th, the day before you were arrested? A Yes, sir.

Q On Friday? A Yes, sir.

Q Those you sent to Cohen, did you? A Yes, sir, three cases, I gave them to the driver to return to Mr. Cohen

Q Now was it very unusual to send cases back that way?

A Well, I done that once in a while, whenever he sent me the wrong sizes, or whenever I had some broken cases that I was not able to use, I returned to him and he used to stick them up.

Q You sent cases there to be repaired? A Sometimes

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to be repaired; sometimes to be exchanged.

Q Sent them back to be repaired? A Repaired or exchanged.

Q If they needed nailing up, you didn't do it?

A No, sir, the nailing up I had done myself. I only sent back cases I was not able to use.

Q What do you mean by repairing? A By repairing I mean the cases I was not able to use, so smashed up it would take me an hour or two --

Q He used to send you smashed up cases? A No, sir, he didn't send me cases like that. I got those off the woolen mills or off the cotton houses.

Q And you got back cases from Cohen? A Such cases as I needed, but when cases came in from the woolen mill if I was able to use them, I used them and I didn't have to buy them.

Q Otherwise you sent them back to be repaired by Cohen? A Those three cases, I returned to exchange.

Q Cases you got from the woolen mills? A If they were mashed or in bad shape and we could not use them to pack or they couldn't be cut in half I did send them to Cohen.

Q To repair the old boxes you received? A Yes, sir for repairs -- I received from the woolen mills those cases.

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Q That was a very unusual thing, wasn't it?

MR. ROSENTHAL: I object to that question.

Objection overruled. Exception.

Q To send him cases --

MR. ROSENTHAL: I object to the question as being too indefinite.

THE COURT: Answer the question.

THE WITNESS: Well every time I had them, I can't exactly remember how often I had them.

Q You can't remember how often you had them? A No, sir.

Q Very seldom, wasn't it? A Yes, sir;
you

Q "Very seldom indeed", sent those cases back?

A Very seldom; I can't say "very seldom indeed" but very seldom.

Q Didn't you say at the last trial "very seldom indeed"?

A No, sir, I said very seldom, I believe I said very seldom.

Q Now how did you send those cases that you say you sent?

MR. ROSENTHAL: I object to the question as not being definite enough. This man shipped goods in a thousand ways.

THE COURT: I think it has been answered.

Q Did you put them on the elevator or go down with them?

A I put them on the elevator.

MR. ROSENTHAL: I object to that unless he

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specifies when.

Q Those three cases on the 19th, what time was it?

A Two o'clock I sent them down.

Q At two o'clock? A Yes, sir.

Q How did they go down? A By the elevator.

Q Put them on the elevator? A Yes, sir, put them down on the elevator, the driver was downstairs, the driver took them off the elevator, put them on the wagon and went off with them.

Q Did you see the driver downstairs? A Seen the driver take them off.

Q Did you see the driver that day? A Downstairs when he sent the cases up -- when I went down I met the driver.

Q You went down and saw the driver downstairs?

A Yes, sir, by the elevator door he was waiting for the cases.

Q You say his name is Blumstein? A I believe it is.

Q He took them from you? A Yes, sir; he took them off the elevator and put them on the wagon.

Q Put them on the wagon? A Yes, sir.

Q Mr. Cohen you remember was not there at all that day?

A Positively I have not seen him.

Q But you did see him the day before, you say? A I did.

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Q At what time? A I don't remember, I don't remember.

Q Well why don't you remember? A I don't remember because I took no record of any time when he came around.

Q You say it is unusual for him to come in the shipping room? A Any time he came in for a check it was a habit for him to come back and see me, whether I needed something.

Q He always came back to see you when you needed something? A Yes, sir, whenever he went up for a check, whenever he went to get his bill paid at the end of the month.

Q Now you said that that sending for boxes was very unusual, didn't you? A It was seldom.

Q I ask you if you remember this testimony at the last trial: Q. "You say sending back boxes after they had been received from Mr. Cohen was very seldom done? A Yes.

Q. Very unusual?"

A I says very seldom.

Q "Very unusual"? A. Yes."

A I said seldom.

Q Do you want to see it. (Referring to the minutes of the trial of Cohen) Do you mean to say it is wrong. There it is, isn't it? Do you mean to say it is wrong?

(No answer.)

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Q Is that right or wrong. Are you trying to tell the truth or not? A Yes, sir; I am trying to tell the truth.

Q Now, when you see a box you know the size of it, do you? A I do, I can just about guess.

Q Were you asked this and did you so answer --

MR. ROSENTHAL: I object. The witness should be allowed to answer the question.

Q (Repeated). A I do, I can just about guess an inch or two.

Q You can guess about an inch or two? A Yes, sir.

Q Yet you didn't notice this difference of a foot?

A Because I didn't look at the sizes; I didn't examine the cases, what sizes they were, and I didn't put them away until I got the chance, I was too busy that morning.

Q Is that your whole business, to examine things that come in? A It is my business to say I accept so many cases, but I can't take ^{a yard stick} and go over each and every case at the time, I am busy, I put them aside and wait until I get a chance. When I get a chance that is the time I do that

Q Didn't you say you could tell by looking at it within an inch or two and this is 10 inches? A That's all right. I didn't look at the receipt for the size of the cases he sent me; I just looked the quantity up. I counted the amount of cases and signed a receipt for so many cases;

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I don't sign for no sizes; I put the slip in my pocket and wait until I get a chance to check the bill off, to see whether I got the right sizes or not.

Q When did you order these boxes that came in the day before, you say? A What boxes are you talking about?

Q Did you say some boxes came in the day before that you sent back?

MR. ROSENTHAL: Objected to. What is he talking about "the day before".

Q The day before you were arrested? A The 18th.

Q The 18th? A What is that question again please?

Q You say that these boxes that came in on the 18th and you sent out on the 19th were 10 inches too small?

A There was about 10 inches difference.

Q When had you ordered those boxes that came in on the 18th? A Well, that must have been a day ahead.

Q You ordered them the day before? A Yes, sir; the 17th.

Q You ordered specific sizes? A Certain sizes.

Q You knew what sizes you intended to order?

A Yes, sir, I did know the sizes, so much of this and so many of that size.

Q You saw them and counted them, didn't you? A I say I counted the cases, I counted the quality.

Q You could tell within an inch what sizes they were? A But I didn't check off, I could if I looked at the bill tell what sizes they were.

Q Would you have to look at the bill? A I want to see what they are charging me for, what cases I am being charged for.

Q You looked at the bill to see? A The quantity, not the size, because I didn't have time to look at the sizes.

Q But you looked at it and saw how many cases and the sizes in the same place? A Well, the sizes, -- I looked at the amount of cases and signed for so many cases and let the man off.

Q Now, how many cases were there? A I don't remember.

Q You don't know how many came in the day before?

A No, sir.

Q Didn't you say four came in on the 18th?

A I did not.

Q You didn't say four came in? A No, sir.

Q How many did come in? A I don't remember; I said on four cases came in on the 19th, not the 18th.

Q How do you remember so well the 19th and don't remember the 18th? A Because I remember according to the way I was arrested. I was arrested on the 20th, and I remember

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the cases going up the day before.

Q You don't remember anything that occurred the day before that? A No, sir.

Q Now how many cases did come in on the 18th? A On the 18th I don't remember.

Q Give us an estimate of it? A I cannot tell you.

Q Did a hundred cases come in? A I don't know, there is a bill for them.

Q Do you know whether a hundred came in? A No, sir, not one hundred; I didn't order more than on the average about 15 at a time, at the highest.

Q Did you order 15 at a time? A I don't know.

Q Did 15 come in? A I don't remember how many cases come in.

Q You cannot recall or give us the slightest idea in the world? A No, sir; there is a bill for that; I had too much to do to remember that.

Q You had too much to do to remember that? A Yes, sir.

Q Your business was to see whether you got the right cases in there or not? A Yes, sir.

Q Whether the boxes you received corresponded with the order? A Yes, sir.

Q That was your business? A I did.

Q Yet you didn't pay any attention to it this time at

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all? A Why didn't I? I did when I got a chance, I signed for so many cases and kept the bill until I got a chance to check the bill up and see whether I got the right stuff.

Q Isn't it your business when you receive goods that you have ordered to see whether they correspond not only in number but in quantity, isn't that your business?

A That is my business. to see all that.

Q It is all on my sheet of paper, wasn't it?

A Yes, sir.

Q Instead of seeing whether it was the right kind or not, whether it was the right size of boxes you could tell by looking at them, you simply added up the number and didn't pay any attention to the sizes? A I always done that.

Q You never paid any attention to the sizes? A No, sir, I was doing the same thing I done now. This was no exception. Mr. Price can recollect any time I bought paper if there was any difference in the weight, I didn't weigh it up as soon as I received it, I just signed the receipt and I used to put the paper on the scale and weigh it, and if there was any difference Mr. Price could look his bills over and see the difference, and if there was any difference credit was given to Mr. Price.

Q This is not a question of the weight of paper. This is something you can see, within an inch or two and this is 10

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inches here? A I didn't look according to the sizes, I looked according to the quantity only because I didn't have time to examine the sizes.

Q That is the best explanation you can make? A Yes, sir, that is the best explanation I can make.

BY THE COURT:

Q Did you say anything to anybody about desiring to see Mr. Cohen in the shipping room? A Did I say anything? No, sir.

Q Did you say anything to anybody if Mr. Cohen came in you wanted to see him? A I don't think I did, no, sir, I did not.

Q Sure about that? A Yes, sir.

Q Now what did you say to him when you met him in the office there on the 18th? A I just said, "When you get through here come back to me, I want to give you an order, I want to see you, " that is all.

Q Did he go back? A After he got through with the bookkeeper on the 18th he came back.

Q How long did he remain with you? A I just handed him the slip and I said, "Rush these cases over, I need them" he walked away down the front door and went down.

Q Any other body in the room with you at that time?

A I believe Mr. Price was there on the 18th, I don't exactly

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recollect, but I believe he was there because just at that time of day he is there, at two o'clock, because he is generally there from one --

Q Will you answer the question, was there anybody in the shipping room with you and Cohen when you asked him to come in the shipping room? A I believe Mr. Price was there, I don't remember, your Honor.

BY MR. ADAMS:

Q Now was Mr. Cohen there at all on the afternoon of the 19th? A No, sir.

Q How do you know? A How do I know. Wasn't I in the shipping room all day, I ought to know.

Q How do you know he wasn't in the other part of the building? A I can't tell you what is doing in the other part of the building, I can't see.

Q You won't say he was not there that afternoon?
A I didn't see him there.

Q You claim you didn't see him on the 19th? A I didn't see him on the 19th, no, sir.

Q That is what you claim now? A Yes, sir.

Q Now you have charge of all the shipping of goods there, haven't you? A Yes, sir.

Q The only person who helps you is Mr. Price, isn't it?

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A Yes, sir.

Q There are goods in there ready to be shipped out in quantities in this packing room, the shipping room?

A They have got to be assorted according to lots, and then I have order slips and fill the orders and if the order is complete I pack it in the case and ship it; if not complete I put it away until complete, put it away on tables.

Q Lying on tables around the shipping room? A No, sir not in the shipping room, in the stock room, a different place altogether.

Q You have control of that? A Yes, sir.

Q Now, when the policeman came there what did you say to him and what did he say to you? A Well, when the policeman came in, I didn't know it was a policeman. One of the cutters said, "Mr. Price wants to see you". I walked to the office and I says, "Do you want to see me Mr. Price and he said, "Yes". " This is Myer ", and he showed me a gentleman and he says "Do you know me"; I says "No, sir"; he says, "You don't know me", I said, "No, what can I do for you", he says to me you got a hat and coat, I says yes. I went over and put my hat and coat on. When I went to put the hat and coat on Mr. Gleason was looking at me the way I was taking it up, the hat and the coat. It was right in front

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of where the officer and Mr. Price stood, Price was standing at his desk and the officer was standing just in front of me where my coat was hanging. I put my coat on and went over to him.

Q You didn't ask him at all what it was about?

A I said, "What is the trouble"; he said, "I am a policeman", he says "What were you doing with all those goods you were taking out of here", and I said, "What are you talking about."

Q You didn't know anything about it? A I said, "I don't know what you are talking about."

Q Where did he take you then? A He took me down to the Subway and over to the police station.

Q Who did you meet there? A There I met Mr. Price and I met Mr. Gordon and Mr. Gleason and that officer, the other officer and Mr. Iba and Mr. Cohen, and Mr. Price was there.

Q Cohen and Iba were under arrest? A Yes, sir.

Q You entered a door from the street like that door there behind the jury box, and came into this room, didn't you? A Yes, sir, right there the door was there and the desk was here, right at the desk.

Q Did you see a box there? A I didn't see a box but I saw coats hanging on the wall.

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Q The box was right there? A Because there was officers right in front of me and all around.

Q Hiding the box? A I don't whether they were hiding the box, they were standing right in front of me, I didn't investigate what was in the police station.

Q You didn't pay any attention to the box? A I don't know what I was under arrest for.

Q You didn't know you were under arrest? A I didn't know what I was under arrest for; I knew I was under arrest but I didn't know what it was for.

Q Have you any idea? A No, sir; not yet.

Q When you got there you had no idea? A I seen three coats hanging but I didn't know what it was.

Q Three of Mr. Price's coats? A I seen three coats.

Q You recognized those coats as being Price's coats?
A I recognized them as being coats something like the ones made in the play.

Q Didn't you recognize them as being the coats of Mr. Price? A Other people make them besides Price.

Q Didn't you say before at Cohen's trial that you recognized those as being the coats? A I said -- I believe I said I recognized them as being coats that I made like the coats made in price's place, that is what I said, that

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is what I said.

Q. You didn't pay any attention to the box? A. I didn't see any box there.

Q. How big was this box that you sent out, this box that you sent out? A. About 65 inches.

Q. About as big as that table? A. No, sir.

Q. About as high as that table? A. (Referring to the stenographer's table). Not quite as wide. You see it is according to how the case was made, I don't remember how they were, all I know is about 65 inch cases.

Q. You don't remember how they were made? A. I don't remember how they were shaped.

Q. I thought you said you remembered about these cases because you were arrested the next day? A. I remember three being shipped back.

THE COURT: Let him answer.

THE WITNESS: They were the wrong cases, they were too small.

Q. How big were they? A. 65 inch cases.

Q. Is that as long as that table? A. Well, it is according to how it is made, I may make you a case as big as this, a 75 inch case, as big as this.

Q. Was that case as big as this table? A. What case

are you talking about?

Q The cases you sent out?

MR. ROSENTHAL: What day?

MR. ADAMS: On Friday, the 19th day of November -- the case which I claim was in Cohen's office -- how big was that?

A I don't know which case was in Cohen's office, I don't know when that case got there, I don't know what kind of a case it is.

Q What kind of cases did you send out? A About 65 inch cases.

Q How long was the case? A I don't remember, one was lower and one was higher and one was wider and one was narrower.

Q All different sizes? A The size was measured, one size would be different in length and width, maybe longer and maybe wider, maybe narrower or longer.

Q Any one of them as high as that table that you had on hand? A No, sir, I don't think as high as that table.

Q As high as that table? A No, sir.

Q How high were they? A I believe they were about that high (Indicating).

Q How high? A That high. (Indicating). A difference of about an inch or two below the table.

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Q Pretty near as high as the table? A Yes, sir; something like that.

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

Q You haven't any recollection at all? A No, sir, just remember that they measured about 65 inches, the cases.

Q How do you remember the figure so well and don't remember the sizes? A I returned them for the purpose that I couldn't use that size.

Q What size? A The size that I returned, 65 inch.

Q What size did you want? A Well, I wanted about 75, I believe it was, about 10 inches larger, there was a difference of 10 inches in the cases.

Q You often have occasion to use these cases, the same size that you sent for? A yes, sir, but I had too many so that I sent them, I didn't have much room to keep them.

Q How many did you have of these in stock? A Enough for to keep me going for a couple of days being that Saturday is a slow day, Friday is the end of the week, and there was no business after four o'clock and Saturday there was no business, only sometimes there was too much work came in on Friday and I finished that up Saturday morning, and that was the reason I could not keep the stuff lying around the floor that I could not use and have them stacked up, and let them stay there a couple of days, I didn't have room for them.

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Q How many did you have? A I don't know, I had a lot of cases stored up in the back of the building where my cases were standing, I had plenty of them cases to keep me going for a couple of days.

Q So much that you couldn't have three more cases?

A I didn't have more room for them.

Q You couldn't have several more cases in there?

A I always kept enough in stock that I could use for a couple of days ahead.

Q You had ordered large ones and you didn't have room for the smaller ones?

MR. ROSENTHAL: Objected to.

THE COURT: You may ask him.

A Larger cases?

Q Yet you didn't have room for the smaller ones?

A I didn't say I didn't have room, I had plenty of them in stock and that is why I didn't want to keep them in stock.

Q Didn't you say one reason was because you didn't have room enough and another reason was because you wanted larger ones? A One reason is because --

Q Answer my question. Didn't you say that a moment ago to the jury, that one reason was that you sent them back was because you wanted larger ones and another reason was

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because you didn't have room enough for the smaller ones?

A Yes, sir.

Q Now you knew Iba, didn't you? A I did not.

Q You had never seen him before? A I saw him once delivering, driving a truck, that is about all I seen him-- he was up at the building once delivering some goods.

Q You had seen him in Cohen's? A No, sir.

Q Never have? A No, sir, never saw him in Cohen's.

Q What was he doing at Cohen's anyway? A What do I know? I couldn't say, I don't know his business.

Q You don't know his business at all? A No, sir.

Q Who did you see him then? A I saw him delivering, I believe he delivered cases, I met him once up at the place delivering there and I met him at the stationhouse the time I was arrested.

Q You knew he was connected with Cohen's place, didn't you? A I did not, I only knew the time he delivered me cases, that is the time I knew he was connected with Cohen's place, but not after that.

Q You have been to Cohen's place, haven't? A Seldom, very seldom did I come to Cohen's place.

Q Have you been down at Cohen's place? A I did.

Q You knew where it was? A I did.

Q You had seen Cohen down there I suppose, didn't you?

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A Well sometimes I did and sometimes I didn't.

Q You used to go down there when Cohen was not there?

A Well according to -- I went down there sometime, when I came down there sometimes when I had to come down and tell him--

Q A number of times? A No, sir, seldom.

Q How many times have you been down there? A I can't recollect.

Q A hundred times? A I guess not.

Q 25 times? A I don't remember.

Q Quite a number of times? A I don't remember, seldom, not quite a number of times.

Q Two or three or four times? A Very seldom, when I need something special from him. Sometimes I need something special and I can't telephone him to send me --

Q Why can't you telephone? A Because I got to look at the cases, see what they are, they may be very big ones. We have got a lot, a couple of hundred coats and have got to get them in so many cases, and I got to see what they are, their size and their width and their length to make sure that I can get that amount of goods into the case.

(The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow, February 8, 1910 at 10.30 o'clock)

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New York, February 9, 1910.

TRIAL RESUMED.

MYER LIPKISS, the defendant resumes the stand.

CROSS-EXAMINATION CONTINUED BY MR. ADAMS:

Q Now, how old are you? A 24.

Q 24? A Yes, sir.

Q Now you say these cases came in on the 19th, these four cases, or the 18th? A On the 19th four cases came in.

Q Four cases came in on the 19th? A Yes, sir.

Q Four cases came in on the 19th? A Yes, sir; four cases came in on the 19th.

Q What did you say about the 18th, any cases on the 18th? A I didn't say, I said -- perhaps they did come in on the 18th.

MR. ROSENTHAL: Objected to on the ground that he has gone over these same cases for two hours yesterday.

THE COURT: This is simple a preliminary question this morning. I will allow it.

Q Is that what you say today? A Four cases came in on the 19th, I said, that I did say.

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Q Four cases came in on the 19th? A Yes, sir.

Q Then you sent cases back on the 19th? A Sent those three cases back on the 19th.

Q When did those three cases come in? A They came in with another lot of cases.

Q When? A I believe it was the 18th, I think it is the 18th.

Q Didn't you say positively yesterday it was the 18th?
A I did say positively.

Q Did you say positively? A I don't think I did.

Q When did you say it was? A I cannot say positively because I haven't got the bill, I believe they came in on the 18th, Mr. Price has got the bill.

Q Those were the ones that you accepted, were they?
A What?

Q The ones that came in on the 18th and afterwards sent back, is that right? A A lot cases that came before the 19th they were the three cases which were returned.

Q When did those cases come in -- I understood you to say yesterday that the cases came in on the 18th?

Objected to.

THE COURT: You ask a question and then you make a statement. Ask your question and let

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It stand at that.

Q I understood you to say yesterday that you had received a number of cases on the 18th and sent them back on the 19th, that you had received on the 18th, did you say that or didn't you? A I think I said I don't remember when they came in, whether on the 18th or whether the day before, that is what I believe I said.

Q Those were cases you had ordered which came in on the 18th? A With a lot of more cases they did; them three cases came in.

Q You accepted them? A I accepted them.

Q You said to his Honor, did you not, on the last trial when you appeared as a witness for Cohen --

MR. ROSENTHAL: I object to that.

Q That there was a terrible difference?

MR. ROSENTHAL: I object to that.

THE COURT: You had better direct the witness's attention to the question and the answer.

(Witnesses for the defense were excluded from the room.)

Q Did you say on the last trial "How long had those cases been there? A. I believe they were there from the 18th of the month. Q. The 18th of the month? A. Yes,

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on Thursday, that was the day before this*, that is the 19th when you say you sent out the cases?

A Yes, sir.

Q That is so, is it? A Well, whatever it says there, I said, yes, sir.

Q You say you did receive them Thursday, didn't you?

A I think I did receive them Thursday.

Q You say you didn't notice the size of them? A No, sir

Q That when you counted them the next day, did you say?

A No, sir, the same day when I had the chance as soon as I had the chance to do it.

Q Then you sent them back as quick as you could, did you?

Objected to. Objection overruled. Exception.

A No, sir, as soon as the order came in I went and returned them, that next day, I had another order, that is why I done it.

Q You were not so crowded that you could not keep them for a day or two? A I was crowded.

Q You were very crowded? A Yes, sir.

MR. ROSENTHAL: I object to that as an insinuation.

Objection overruled. Exception.

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Q You returned them at the first opportunity you had, didn't you? A Yes, sir, at the first opportunity.

Q You were so crowded you wanted to get room, is that it?
A I wanted to get all the room.

MR. ROSENTHAL: Objected to as having been gone over at least 20 times. Will you Honor instruct the District Attorney not to ask the same questions over twice.

Objection overruled. Exception.

Q Those were the ones that you say were --
A Were too small, those three cases were after I checked them off.

Q You said there was a terrible lot of difference?
A 10 inches.

Q 10 inches? A Yes, sir.

Q You said at the last trial there was a terrible lot of difference in 10 inches?

MR. ROSENTHAL: I object to that. I insist that he read the record.

MR. ADAMS: "I am going to give it to you.

Q Now you said in your testimony, page 185 in answer to a question asked by his Honor on the last trial -- you said in your testimony that 10 inches in the dimension

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of the boxes?

THE COURT: Direct the witness's attention to the question and answer and then you may ask him if he recalls having testified to that.

MR. ADAMS: This is your honor's question, on page 185.

Q You said in your testimony that "10 inches in the dimensions of the boxes made a terrible lot of difference?"

A Yes.

Q. Do you still insist upon that? A. I

certainly do. Q. What do you mean that it makes a terrible lot of difference because it is the quantity, you can put more goods in a case when it is 10 inches larger? A. It is

easily seen to a man of your experience that there is a difference between one box and another". Did you testify so? A Yes, sir.

Q Now you say that those boxes came in on the 18th?

A I believe they did, yes, sir, on the 18th.

Q Would you have kept on keeping them if you were so crowded? A No, sir, I guess not.

Objected to. Objection overruled. Exception.

Q You certainly would not have kept them a number of days if you were so crowded? A No, sir.

Q You would have sent to Mr. Cohen over the telephone,

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would you? A Yes, sir.

Q Was that the way you usually gave him orders?

A Yes, sir.

Q Over the telephone? A Yes, sir.

Q He has a little office there at 57 Crosby street?

A Yes, sir.

Q You would not have kept those more than a day, would you if you were so crowded? A I never would keep them more than a day -- they might have been returned that same day but I had to go out --

Q You certainly would not keep them longer than that?

A No, sir.

Q Those cases came in on the 19th? A Those cases came in on the 18th.

Q That you sent back on the 19th? A Yes, sir.

Q Now when he sent cases there what memorandum came with them, how did you receipt for them? A With a bill and a duplicate receipt like.

Q And the bill was headed how? A It was kept in the office.

Q Cohen's bill? A Yes, sir, after I checked it off I put it in the office and the receipt I returned to Cohen.

Q You signed a duplicate? A yes, sir.

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Q And the receipt was in the office? A I don't sign it, just look to see whether it is all right, and I put it in the office.

Q You put it in the office? A Yes, sir.

Q Then how does he do, does he make a monthly statement or simply gives these checks? (Showing witness some papers).

A That is all up to the office, that has nothing to do with me.

Q You don't know that? A I don't know nothing about that part.

Q You know the receipts that come to you, don't you?

A I do know the receipts come to me.

Q Now I will ask you if these are the receipts that come -- I show you a paper and ask you if you recognize what it is? A Yes, sir.

Q What is it? A Four cases, eighty cents, that is large cases.

Q When were they received? A On November 19th.

Q Is that from Cohen? A Yes, sir; those are the cases I received when I returned the three.

Q That is the 19th? A Yes, sir.

(Offered in evidence and marked people's

Exhibit 1.)

Q I show you another paper. What is that date?

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A November 13th.

Q Is that a receipt from Mr. Cohen? A Yes, sir, that is a bill from Mr. Cohen.

Q You receipted a duplicate like that? A I believe I did.

Q When? A When I received the cases.

Objected to. Objection overruled. Exception.

(Marked People's Exhibit 2.)

Q I show you three more .

MR. ROSENTHAL: I object to his showing two papers at one time, if they are going to be marked in evidence.

Q These show also the dates that they were brought to you, do you? A They were brought to me -- they were up in the place that day.

Q Do they show -- A That I cannot tell you. These are his regular bills but I can't tell what date they were brought in.

Q You cannot? A No, sir.

Q Those are the dates, are they? A I don't know, whether those are the dates -- those are the dates on there but I don't know whether I got them on that day.

(Another paper marked People's Exhibit 3.)

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MR. ROSENTHAL: I take an exception to the District Attorney handing any papers to the witness unless he marks them for identification.

(Another paper is marked People's Exhibit 4, another People's Exhibit 5.)

Q Is that the receipt that you received from Cohen?
(Referring to people's Exhibit 5) A I can't tell you, I can't remember whether I received it or whether somebody else received the cases when I was out -- and somebody else received them.

Q What is that? A One of Cohen's bills.

Q Dated what? A November 5th.

Q Were bills like that received by you when you received the cases? A Whenever I received cases I received bills like that.

Q You signed receipts? A Whenever I received them I signed the receipt.

Q They show the number of boxes? A The number of cases on the side and the price of each case.

MR. ADAMS: This on November 19th shows that four cases were received.

MR. ROSENTHAL: I consent that they be sent to the jury room and the jury may read that.

MR. ADAMS: The next receipt is on the 13th.

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Objected to. Objection overruled. Exception.

MR. ADAMS: I have none on the 18th. --
the next is the 13th. I propose to show that none
were received between the 13th and the 18th.

THE COURT: If you want to read the exhibits
read them but do not go into any detailed explan-
ation regarding them. Read them for what they repre-
sent themselves to be.

MR. ADAMS: Another one marked in evidence
shows that on November 13, 1909 there were eight
cases received. The next one is dated November 5th,
there were 14 cases received. The next one is
dated November 9th and there were 16 cases re-
ceived, and the next receipt is November 11th,
11 cases received.

MR. ADAMS: I offer this statement of
Cohen in evidence for the month of November.

(Marked People's Exhibit 6).

MR. ADAMS: This statement is dated December
which
1st, and it shows items read as follows. "B. L.
Price, December 1, 1909 to S. Cohen, debtor.
November 5th, \$5.75; November 9th, \$6.20;
November 11th, \$9.40; November 13th, \$8.65;

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November 19th, \$3.20. "

Q So now it appears from this that the last boxes received before the 19th were received on the 13th, does that refresh your memory? A No, sir, the date make me to be sure of it, no, no, sir.

Q This is Cohen's statement? A It is possible.

Q Admitted in evidence? A That's all right, he can have that receipt on his table until he leaves me the goods, I don't know how long it was lying on his table.

Q It says december 1st? A I am talking about the bill.

Q You are absolutely sure now that they came in on the 18th? A Sure they came in on the 18th?

Q A moment ago when I began the examination today you say that they came in on the 18th? A Yes, sir, I did.

Q You are not certain? A Then I said I was sure they came in on the 18th, -- it is a long time ago.

Q You testified yesterday about it? A I testified the same way.

Q And you testified about a week ago? A I thogght they had come in --

Q You knew a week ago? A You have got what I testified to.

Q You did testify a week ago in Cohen's case? A I

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testified in Cohen's case about the cases coming in.

Q At any rate you would not have boxes piled up in your place there you say from the 13th to the 19th, would you?

Objected to; objection sustained.

Q You would have sent them back right away?

Objected to; objection sustained.

MR. ADAMS: Every question is objected to, sir, that I ask, whatever it is.

Q Now you heard of coats being lost from Price's before, didn't you? A I didn't hear of coats being lost.

Q You did hear of things being lost? A Yes, sir, of things being lost.

Q You didn't hear of coats? A No, sir, I didn't hear of coats.

Q You did hear of other things being lost? A Yes, sir.

Q Now you recognized those coats when you got to the Police Station as Mr. Price's coats you said, didn't you? A When I seen them hanging on the wall, there were three coats, I recognized them as being like coats being made in Price's place.

Q You said you recognized the coats as Price's coats, didn't you, on the last trial? A I said the same thing that

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I said now.

MR. ROSENTHAL: I ask that the record be referred to. He is referring to the last trial.

MR. ADAMS: You have the minutes there?

MR. ROSENTHAL: No, not all of them.

MR. ADAMS: I read from page 170:

"Q And you saw the coats there too? A I saw some of the coats that I recognized were from the place of business.

"Q From Mr. Price's place of business?

A. Yes, sir, certainly because I knew the coats well, I knew everything that was in the place,

I knew every coat that was made in that factory".

A I testified I knew every coat in the place.

Q Did you testify as I have read you from the minutes?

A I don't remember what I testified a week ago; I am telling you that the trouble was I could not see --

Q I show you the minutes there.

THE COURT: The proper way is to read the question and answer, and ask him if he so testified.

Q Did you so testify at the trial of Cohen last week?

A I testified that I recognized the coats as being coats that were made in Price's place.

BY THE COURT:

Q Answer the question which Mr. Adams puts you by yes or no.

Q (Question repeated) Did you so testify at the last trial? A I can't remember that.

Q That is true, is it? A That I know the coats, yes.

Q You recognized them as price's, and that is what you testified to in the police station on the morning of the 20th when you saw the coats? A I did not testify nothing.

Q You saw the coats at the police station? A Yes, sir, I saw the coats at the police station.

Q And this testimony is in reference to those coats that you saw at the police station, is that right? A Well, they must be, those are the only coats I saw that was there, those three coats.

Q At the police station? A Yes, sir.

Q Now, on the 18th, you say Mr. Cohen was there, where did you see him first on the 18th? A In the office.

Q In what office? A Just as I was going to the office.

Q Did you speak to him in the office? A I just said I wanted to speak to him as soon as he gets through.

MR. ROSENTHAL: I object to the question.

It has already been answered.

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Objection overruled. Exception.

Q Who brought those boxes that you say came from Cohen on the 19th?

MR. ROSENTHAL: I object to the question.
It has already been answered.

Objection withdrawn.

A Cohen's driver.

Q You say that is Blumstein? A Yes, sir.

Q You knew Blumstein? A I knew him -- no, sir, I didn't know him then.

Q You didn't know he was at all? A I knew he was a driver delivering the cases.

Q He delivered cases frequently to you, didn't he, Blumstein? A No, sir, he ain't with them -- I don't believe he is with Cohen very long.

Q How long have you seen him delivering cases?

MR. ROSENTHAL: I object to the question as already answered.

Objection overruled; exception.

A I believe that is the first time, I ever saw him delivering cases.

Q But you did see him on the 18th, sure of that, are you? A I did see him.

Q Blumstein, the driver of Cohen? A I don't know what driver delivered the cases on the 18th.

Q You did not see the driver on the 18th?

MR. ROSENTHAL: Objected to.

THE COURT: This case is going to be tried no matter what occurs to delay the trial.

MR. ROSENTHAL: May I take an exception to that statement.

Q You did not see him on the 18th? A I never did see the driver when he delivered the cases.

Q You never saw the driver when he delivered the cases?

A No, sir.

Q How did you get the cases? A Sent them up on the elevator, and took them off, handed the elevator man the receipt and the driver went off.

Q But you did see him when you delivered him these three cases back to him, as you state, on the 19th?

A Whenever I would return cases I certainly went down to see that he got the cases.

Q How many times did you return to Blumstein?

A Very seldom.

Q To Blumstein? A This is the first time.

Q Who else drove the wagon of Cohen? A I seen Eiber

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drive once.

Q You saw him drive once? A Yes, sir, once delivering cases.

Q You knew Eiber, didn't you? A He once drove the wagon, I saw him once before.

Q You only saw him once? A Yes, sir, only once before.

Q But you did know him? A I didn't know him, no, sir.

Q On this occasion, the 19th, you went down and delivered these cases yourself to Blumstein, did you? A They went down on the elevator; I went down with them to see that the driver gets them.

Q You delivered them to Blumstein? A Put them on the elevator and as I got down Mr. Blumstein or who ever handled the cases -- I don't know -- I put them on the elevator, I went down with them and went up.

Q You didn't see Blumstein at all? A I seen him there and I said, "There is the three cases".

Q Did you take a receipt from him? A No, sir, I didn't take any receipt because I got the receipts right here.

Q Never took a receipt for boxes sent out? A Never for any boxes sent out, no, sir.

Q But you did see Blumstein on that occasion, you knew who he was, and he knew who you were, didn't he? A I don't know whether he knew who I was, ~~xxx~~, I said "are you Cohen's

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driver, he says, "Yes"; I says, "Here is three cases."

Q You didn't say where those cases were from, what persons those cases were from that you delivered to Blumstein?

A He delivered four cases to me; he knew these these three were coming from us for exchange, I said, "Tell Mr. Cohen I want them exchanged."

Q That is the only time you had ever seen Blumstein?

A Yes, sir, only saw him then.

Q But you have seen him at other times? A Since this case came up I did.

Q Before you have seen him at other times? A Since this case came up, I did.

Q Before that time you had seen him? A No, sir, I don't remember seeing him.

Q Do you know how long he has been with Cohen?

A I don't know, no, sir.

Q But you did see him on that occasion? A That day I saw him, the same as I did Mr. Eiber when he came up to deliver cases, I saw him.

Q That is all you ever saw of any of them?

Objected to. Objection overruled; exception.

Q That is all you ever saw of him? A Who?

Q Blumstein or Eiber? A I say that is all I ever saw of either one of them.

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Q You have been down to Cohen's place, you said?

A I did.

Q You have seen them there? A Seen who there.

Q Eiber and Blumstein we are talking about?

A Whenever I went to Cohen's place -- I went in to see Cohen only, I didn't have anything to do with any of his employees.

Q You didn't see them at all? A No, sir, I haven't seen them.

Q You never saw anybody there but Mr. Cohen, is that right?

A I might have seen people going around but I didn't know who they were or what they were; never paid any attention to them.

Q You didn't recognize them at all? A I didn't look at them.

Objected to.

Q Are you going to have Cohen as a witness for you here to-day?

Objected to.

Objection overruled. Exception.

A I don't know.

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

BY MR. ROSENTHAL:

Q Did the District Attorney call him down from the

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Tombs? A Yes, sir; I met him coming down from my cell.

Q To see Mr. Adams? A I says, "Where are you going and he said, "The District Attorney called me", he says he wants me to tell the truth.

BY MR. ADAMS:

Q Do you know what he said to me? A I don't know what he said to you.

MR. ROSENTHAL: I object to anything Mr. Adams may have said.

MR. ADAMS: I don't want him. You can have him if you want him, and we will see what we will do with him when we get him on the stand. You call him.

MR. ROSENTHAL: I object to the statement made by the District Attorney, if your Honor please.

Q You have been conversing with Mr. Cohen, have you?

THE COURT: Address the Court and do not parley too much among yourselves. Let us go on.

BY MR. ADAMS:

Q You have been talking to Mr. Cohen who is your co-defendant here this morning? A I just saw him going down and I says, "Where are you going Mr. Cohen", that is

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all I said to him.

Q You did talk to him? A That is all I said to him.

Q Where did you see him? A As soon as I was coming down from my cell. I was coming down with a lot of other prisoners and I seen him coming.

Q Haven't you been talking to him over there in the prison

A I just said hello to him, that is about all I said to him.

Q You have seen him, have you? A This morning.

Q You have been talking to him, haven't you? A I said hello to him, that is all.

Q He testified for you, didn't he -- you testified for him, didn't you, on the last trial? A What do you mean I testified for him. I testified to what was right.

Q You testified for him?

MR. ADAMS: I move to strike out the answer as not responsive.

THE COURT: We will let it stand.

Q Right for yourself?

MR. ROSENTHAL: I object to the form of the question, and I ask that your Honor direct a juror be withdrawn if the District Attorney insists upon this form of questions.

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

Q You were talking to him, weren't you, this morning, Cohen, your cedefendant? A I met him coming down, when I went down.

Q Will you answer the question yes or no? A Yes, sir.

Q You testified at his his trial, didn't you?
A I was a witness for his trial.

Q That was last week, wasn't it? A Yes, sir.

Q Your case had not been tried at that time? A No, sir.

Q Had it? A No, sir.

Q And he testified in his own trial, didn't he?

A I don't know, I wasn't there when he testified.

Objected to. Objection sustained.

Q You were not there? A No, sir.

THE COURT: Strike out the answer.

MR. ROSENTHAL: I ask that the jury disregard that statement.

THE COURT: The jury will disregard the statement.

MR. ROSENTHAL: As absolutely not binding upon this case.

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Q Have you asked him to testify for you?

Objected to. Objection overruled. Exception.

A Have I asked him?

Q Yes, asked Cohen to testify for you in your trial?

A No, sir.

Q You have not? A No, sir.

Q But you did testify for him?

Objected to. Objection sustained.

THE COURT: It is already answered.

MR. ADAMS: I think he said that he did,

THE COURT: The objection is sustained.

MR. ROSENTHAL: I don't think the District Attorney has any right to make any comment on that point.

THE COURT: I sustain the objection.

THE COURT: I want it understood that there will be no messengers going back and forth from the courtroom to the corridor. Let the officers attend to that matter.

MR. ROSENTHAL: That is what I am letting them do, and I am calling Mr. Cappel.

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LOUIS CARP E L, a witness called in behalf of the defendant, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Mr. Carpel, where do you live? A 218 Broome street.

Q What is your business, Mr. Carpel? A Clothing manufacturer, men's clothing manufacturer.

Q How long have you been in that business? A Four years for myself.

Q Do you know the defendant? A I know the defendant for about eight years.

Q Do you know people who know the defendant? A Yes, sir, I do, the firm that he was employed by.

Q Did you work with him at one time? A I worked with him about six years ago.

BY THE COURT:

Q Answer the question. Do you know other people who know him? A Yes, sir.

Q Don't volunteer and don't make any statements.

BY MR. ROSENTHAL:

Q Do you know his reputation for truth and veracity?

A Yes, sir.

Q What is his reputation, good or bad?

(No answer.)

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BY THE COURT:

Q What is the trait involved here. Isn't it honesty?

MR. ROSENTHAL: I ask him what it is for truth and veracity.

THE COURT: A man may tell the truth and steal. What is the trait that is involved here?

MR. ROSENTHAL: I was going to confine myself absolutely to the only way that a character witness can be examined.

THE COURT: Your testimony will be no good unless it goes to what is involved in the trial as to the defendant's honesty.

MR. ROSENTHAL: I was going to ask him that.

THE COURT: If it is a question of assault the trait would be his peacefulness.

Q Do you know his reputation for truth? A Yes, sir.

Q What is it good or bad?

Objected to; objection overruled.

Q Do you know his reputation for honesty is it good or bad? A I know he is an honest man.

Q You know as to his honesty, is it good or bad?

A Yes, sir.

Q What is it? A It is good.

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Q Now, would you believe him under oath? A Yes, sir.

Objected to; objection sustained; exception.

BY THE COURT:

Q Do you know other people who know this man? A Yes.

Q Do you know his reputation for honesty? A Yes.

Q What is it, good or bad? A That he was good.

CROSS-EXAMINATION BY MR. ADAMS:

Q How long have you known him? A Well, I was manager for the firm that had hired him and he was under my care.

Q What firm? A Levinson & Aransky, 402 Broadway.

Q How long ago is that? A Six years ago.

Q Have you had business dealings with him since six years ago? A I used to meet him.

Q Used to meet him occasionally? A Yes, sir.

Q You really have had no business dealings with him for six years? A No business dealings.

Q You don't know people who have had business dealings with him for six years? A Not exactly.

Q You don't? A No, sir.

Q All that you know about him is what occurred six years ago? A Yes, sir.

Q Your testimony is directed to that point? A Yes, sir.

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Q Six years ago? A Yes, sir, six years ago I knew him.

MR. ADAMS: I move to strike out the testimony.

BY THE COURT:

Q Do you know where he lived, yes or no? A I know he lives in 110th street.

Q Do you know where he lives? A Yes, sir.

Q Where? A Well, I don't know where he lives now.

Q When did you know where he lived? A I know when he was married when he lived on Rivington street.

Q How long was that ago? A About two years ago.

Q You don't know since then where he lived? A I know he lived in 110th street but I don't remember the address where it is, I was once at his house, visiting him.

Q What people do you know who knew him? A Well, the firm that he was with.

Q What is that? A The firm that he was with.

Q What firm? A Levinson & Aransky.

Q What other people? A Well, I know several business people, I know Adelstein & Greenstein.

Q Another business firm? A Yes, sir, Cloak Manufacturers.

Q What other people do you know who know him? A Well business people.

Q What is that? A Business people; I know that he was an

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ployed by H. B. Rosenthal.

Q What is that? A He was employed by H. B. Rosenthal.

Q Those are business people -- do you know any others that know him? A I don't know anybody else, of course, I know some.

Q You don't know whether he lives in 110th street or Rivington street? A I know he lives in 110th street now.

Q When did you last see him there? A About two years ago I went to visit him.

Q Since then you don't know where he lives? A No, sir.

Q But two years ago you knew he lived at 110th street?

A Yes, sir; when he moved from Rivington street to 110th street.

Q Did you talk to these people about his honesty? A Always did.

Q What is that? A Always did speak to them.

Q What did they say about his honesty? A He was very -- he is an honest man always.

Q When did they say that? A At the time that he was employed, they used to trust him with goods from the stock room, always sent money with him, and with samples on the road.

Q They said he was honest? A Yes, sir.

Q Did they tell you he was honest? A That is what they

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told me.

Q Now who told you that? A That was Levinson & Aransky.

Q When did they tell you that? A That was when he was employed there.

Q What other people told you he was honest? A Adelstein & Greenstein.

Q They said he was honest? A Yes, sir.

Q When was that? A Also about a few years ago.

Q They told you that? A Yes, sir.

Q What did they say about that? A I said he is an honest man, of course.

Q You said he was honest? A Yes, sir.

Q And they said he was honest? A Yes, sir.

Q Now those are two business firms -- the other business firm, what did they say about him? A That he was honest.

Q They said he was honest? A Yes, sir.

Q To whom did they say that? A To me.

Q Why did you go to them to see whether he was honest or not? A Well, I was employed with him at that time.

Q With him? A Yes, sir.

Q You talked to the firm? A Yes, sir, I talked to the firm.

Q About his honesty? A Yes, sir.

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Q They said he was honest? A Yes, sir.

BY MR. ROSENTHAL:

Q Did he have the keys to their place of business?

A Yes, sir; when the firm of Levenson & Aransky kept the place at the Woolen Exchange Building on West Broadway and somewhere in Beach street, if I am not mistaken, where the Greenwich Bank is, in that building.

Q Do you know of his going to bank with money?

A Many times I myself handed that to him.

BY MR. ADAMS:

Q When was it he was with Levenson & Aransky?

THE COURT: I think we have examined him enough.

MR. ADAMS: It is six years ago, if your Honor please.

Q That was all six years ago? A Yes, sir.

Q You haven't heard about his honesty in six years?

A I heard about his honesty with different concerns, coming in contact, spoke about him.

Q Any question about his honesty -- was his honesty doubted by anybody? A There was no doubt about it.

Q Why did you speak so much about it? A It came up in the conversation giving him a line on the road, he would make a good salesman.

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Q He had a job, didn't he? A Yes, sir but a better job.

Q He was trying to get out of that job? A Trying to get a better job.

Q He was trying to get out of that job? A At that time when he was with Levenson & Aransky.

Q Six years ago? A Yes, sir.

Q You don't know much about him for six years?

A I do know about him.

Q What do you know about him? A I know he was employed last after this --

Q He was employed by Adelstein & Greenstein? A He wasn't employed but they knew him.

Q Never employed there? A No, sir, not as far as I know.

Q What do they know about him? A He was supposed to be employed there.

THE COURT: We have had enough of this.

MR. ROSENTHAL: I move to strike it out.

THE COURT: Let it stand. Motion denied.

MR. ROSENTHAL: That closes the defense.

I renew my motion.

MR. ADAMS: I would like to call Mr. Price, if your Honor please, in rebuttal.

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R E B U T T A L.

B A R N E T L. P R I C E, the complainant recalled
in rebuttal, testified as follows.

BY ADAMS:

Q Mr. Price, the defendant has testified that he
sent boxes back to Mr. Cohen on the 19th of November because
the place was crowded he didn't have room for them, will you
state what was the condition as to boxes on the 19th?

A Well on the 19th --

MR. ROSWNTAL: I object to the form of the
question unless he personally knows.

THE COURT: Yes.

Q Well answer it. A He had no cases on Friday,
and four cases came in and two out of the four were shipped
and two cases were left in the entire place.

THE COURT: That is not an answer to the
question. He wants to know what was the condition
of the place.

THE WITNESS: The condition was there was room
enough for 25 or 30 boxes to be put there.

Q Why do you say so? A Because on Saturday morning
after I came back from the station house I was compelled to
ship out a small little order, to Seattle, Washington, and

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I didn't have a case to pack the goods in, and I had to send out a man from the place to get me a case from the neighborhood, and I had to get a case -- and I am sorry I didn't bring the bill down, a small case, to pack that order in, and I got that case in Washington place, right around my neighborhood there, from people we are doing business with.

CROSS-EXAMINATION BY MR. ROSENTHAL:

Q How much goods did you ship, how many cases did you send out that week? A I could not answer that question; I did not ship it.

Q Do you know about? A Possibly 20 or 25.

Q Did you have any cases in the place at the beginning of that week, if you know? A In the beginning of the week I can't say that.

Q Now, Mr. Price, your bills from Mr. Cohen show that you received 45 boxes on the 9, 11 and 13? A Yes, sir.

Q Did you ship out 45 boxes between those four days or three days, five days rather? A I can't answer that question, I would have to look up my shipping book.

Q But you remember that you sent out two on that Friday that you are talking about? A Yes, sir, our shipping clerk shipped some cases on that day, on Friday.

BY THE COURT:

Q Did the boxes which amounted in number to 45 according

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to the question just asked come in during that week or during the week before? A Well, we don't get 45 boxes at one time, your Honor, they came in --

BY THE COURT:

Q I understood the last question asked by the attorney for the defendant was as to the 13th of the month? A Yes, sir.

THE COURT: What is the date of this alleged transaction here?

MR. ADAMS: The 19th.

Q The day on which this box was shipped? A What box?

Q The box which is the subject of this crime?

MR. ADAMS: The 19th.

Q The last day of which he speaks is the 13th that would have brought it into the week before? A Yes, sir.

BY MR. ROSENTHAL:

Q On the 5th you received 14 boxes the week before?

A According to the bills -- I did not receive them.

Q On the 19th you received four boxes according to the bills?

(No answer.)

BY THE COURT:

Q How large a room was that room in which ^{the} boxes were kept? A We have a corner for that particular purpose.

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Q That particular room is how large? A I should judge about 20X10 -- 10X20 and we piled them up one on top of the other.

Q 10X20? A Yes, sir.

BY MR. ROSENTHAL:

Q According to the bills you had 50 cases brought in from the 5th on, is that right? A I can only tell by the bills, I did not receive them and I can't say.

Q Do you know how many you shipped out during that month?

A My shipping book will tell.

MR. ROSENTHAL: I object to his looking through it unless he wants to refer to some particular part of it.

THE COURT: What is that book?

THE WITNESS:

This is a record of the cases shipped by the shipping clerk.

Q Who made those entries? A The shipping clerk.

Q Who is that, the defendant? A Yes, sir.

Q Do you know his handwriting there? A Yes, sir.

Q Is that his handwriting? A Yes, sir, some of his handwriting, and a few of my own handwriting sometimes.

Q Do you know what time those receipts cover?

MR. ROSENTHAL: I am talking about the month of November only -- from the 5th to the 19th.

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MR. ADAMS: These boxes were received from the 5
to the 19th inclusive.

BY THE COURT:

Q Now then you say that is the shipping book, you call
it? A Yes, sir.

Q You want him to go over some dates from the 5th to
the 19th?

MR. ROSENTHAL: Yes, sir.

Q From the 5th to the 19th? A Yes, sir; 71 cases
were shipped during the month from the 5th of November.

Q From the 5th to the 19th? A Yes, sir.

Q 71 cases? A Yes, sir.

BY THE COURT:

Q Do you know how many cases were in on the 5th?

A We always had cases on hand, I can't say how many.

Q You had quite a number on hand? A Yes, sir, all the
time.

BY MR. ROSENTHAL:

Q Now if you had quite a number on hand all the time
as you say -- A Well cases came in besides.

Q All the time -- did you say you had them on hand?

A There were some cases.

Q On the 5th did you have any cases on hand? A I be-
lieve there were some.

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Q Don't you know? A I can't state that.

Q On the 6th do you know if there was any on hand?

A I do not.

Q On the 7th? A I do not.

Q On the 10th? A I didn't take care of these cases.

On

Q The 12th? A I don't know.

Q You don't know how many on the 19th? A We didn't have no cases because we had to order four cases.

(The book referred to is marked in evidence

People's Exhibit 7.)

BY THE TWELFTH JUROR:

Q What is the average weight of a fur coat, the coats that you are speaking of? A A plush lined coat weighed between 8 and 10 pounds.

Q The the eight supposed to be missing would be about 80 ppunds? A Well, the case 20 or 25 -- it depends sometimes on how the weight runs, some heavier and some lighter.

Q When the young man was shipping the case was there any unusual effort on his part to take it down in the elevator, to get it on the elevator? A Nothing unusual, that is the only way you can ship a case.

Q Did it require more effort than an empty case?

(No answer.)

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Q Did it require more effort than an empty case?

(No answer.)

Q I understood that you were present when these cases were shipped by the young man -- you were present with him wasn't that it? A I just came out of the shipping room as he was halfway in the door pushing it right in on a little truck.

Q Did he make any unusual effort? A Right halfway in the elevator door.

Q On a little truck? A Yes, sir.

Q Usually they are shoved in by hand? A Certainly he was just right by the case, going right in, slammed the door, that is all.

Q Was it on a truck? A On a little truck.

BY MR. ROSENTHAL:

Q Did you see that truck come back? A I did.

Q Who brought it back? A Himself.

Q Sure about that? A Absolutely I waited for him until he came up.

Q Did the elevator man see that little truck? A I can't say that, I can't answer for him.

Q He was in the elevator, wasn't he?

THE COURT: He says he can't say.

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H E N R I E T T A E N O C H, a witness called in behalf
of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ADAMS:

Q Where do you live? A 1227 Boston Road.

Q Miss Enoch, were you employed by Mr. Price at 24 and 26
Waverly place, on the 19th day of November, 1909? A I was.

Q Did you see Cohen there at that time, Samuel Cohen?

A I did.

Q Who is Samuel Cohen? A Samuel Cohen is the boxmaker.

Q Where did you see him? A At the office of B. L.
Price & Co.

Q How do you know that was the 19th of November?

A Well, it was on a Friday afternoon and Mr. Cohen came in
and asked me for a check for the cases which had been delivered.
It was late in the afternoon, I was very busy, it was
Friday afternoon, I know because Mr. Cohen came in the office
and asked me for a check.

Q What time Friday afternoon? A Between half-
past four and five o'clock, around that time, around that
time it was, I told him I was very busy, I told him to come
in tomorrow morning, Saturday, I would have a check for him.

Q Then what did he do? A Why he left the office.

Q Did you see where he went? A Why he left the

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office.

Q Did you see where he went? A He went towards the rear. I returned into the office and did not follow him any further.

Q What is in the rear? A The shipping department.

Q Did you see the defendant there at that time, at any time on the 19th with Mr. Cohen? A I did not.

Q He did not come into the office? A No, sir, not in the private office -- I was in the private office and I didn't see him.

Q The office is in the front of the building, as I understand it, and in the shipping room in the back? A Yes, sir.

Q On the same floor? A Yes, sir.

Q With a partition between? A Yes, sir, a partition on a sort of an angle.

BY THE COURT:

Q When you were talking with Cohen on the afternoon of the 19th was there any other body about where you were at that time besides yourself and Cohen? A No, sir.

Q Did you see the defendant come near him at all while he was in your part of the building? A No, sir.

Q What did Cohen say to you? A He said, "I would like to have a check for the money due.

Q What did you say to him? A I said, "Kindly call to-

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morrow morning and I would have it ready. I was too busy just then.

Q Then he left you? A Cohen left me.

Q And went towards the rear of the store? A Yes, sir.

Q Did you see where he went as he went towards the rear?

A I didn't follow him, I returned to the office, I simply saw he went towards the rear.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Now, you have at various times sent Mr. Lipkiss to the bank, haven't you, with money?

Objected to as not in rebuttal.

Objection overruled. Exception.

Q You have at various times sent this defendant, this young man here, Lipkiss, with money, haven't you?

A Not with money, no, sir, with checks.

Q Whatever came in in the course of business you sent him with, didn't you? A Very seldom it happened, yes, sir.

Q You are employed by Mr. Price for four years?

A Yes, sir.

Q You went home with Mr Price yesterday, didn't you?

A No, sir.

Q I mean from the court here? A Returned to the office.

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Q When you were at the office did you speak one word to Mr. Price about this case? A When do you mean?

Q Any time since the arrest of this young man? A Of course I have.

Q Have you gone over the case with him; have you reviewed the evidence with him?

Objected to; objection sustained.

Q Have you gone over the case, that is the facts of the case?

Objected to; objection sustained.

Q Has Mr. Price said what he was going to do in this case at all to you? A No, sir.

Q Have you spoken to anybody else, any member of the firm about this case? A Why, I have said I have spoken of the case, I haven't gone into details or anything.

Q Coming down to the 19th day of November you laid no particular stress as to the moment when Cohen was asked for the check, did you? A I don't understand the question.

Q During the course of business? A I don't quite understand your question.

Q Why you see a lot of people during the course of the day don't you? A Yes, sir.

Q On the 19th of November, you saw a number of people?
A Yes, sir.

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Q As far as this young man is concerned he may have said something to Cohen in the inner office or outer office rather ~~in~~ which you didn't pay any particular attention to?

A Not in my presence, I would have noticed it if he said it in my presence.

BY MR. ADAMS:

Q You didn't see him there? A He wasn't there, not in the office, no, sir.

BY THE COURT:

Q You talked with Mr. Price about this case. Did you tell him what you knew about it? A Why, no, sir, I didn't even know that I would be called as a witness until I was telephoned at the previous trial, I had no idea what I was called for.

Q After his arrest did you talk with Mr. Price about him, what did you say to Mr. Price about the case?

A Why, I said nothing except just as usual matters coming up in the office was spoken of, I really didn't know in what way I was interested in the case at all until I was called by telephone at the previous trial to testify when Cohen was in the office.

Q But since then you have talked to Price about the case, the way it was going on and things like that?

A Well, as the other matters that came into the office.

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Q Yes or no. A Yes, sir.

BY MR. ADAMS:

Q You testified the same on this trial as you did on the Cohen trial?

Objected to; objection sustained.

MR. ADAMS: If your Honor please there is a technical matter which I failed to prove, the co-partnership.

MR. ROSENTHAL: I will consent that he prove it provided I may be allowed to produce three witnesses that I expected to be here before I closed my case.

THE COURT: Yes.

BARNET L. PRICE, recalled.

BY MR. ADAMS:

Q Your firm is a co-partnership? A Yes, sir.

Q Who composed the co-partnership? A I have a cousin Barnet L. Price and Barnet L. Price.

Q What is the name of the co-partnership? A Barnet L. Price Company.

BY THE COURT:

Q To whom did the goods which are the subject matter of

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this indictment belong? A Barnet L. Price Company.

MR. ROSENTHAL: I take an exception to your Honor's question.

Q Where is the place of business of Barnet L. Price Company? A 24 and 26 Waverly place.

Q You may state whether or not what was the occupation, if you know, of the defendant? A Shipping clerk.

Q In the employment of whom? A Barnet L. Price & Company.

Objected to. Motion to strike out.

Motion denied. Exception.

DEFENDANT'S COUNSEL moves that the Court order a mistrial on the ground that the case has been properly closed by both sides and the Court had directed counsel to sum up which he did.

THE COURT: If there is any reason why you want a further summing up you may have it but it is not necessary for the Court to remind you that at any time before the case is submitted to the jury it may be re-opened for any purpose within the discretion of the Court. I will grant your request if you desire to put any other witness on the stand.

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PHILIP BLUMSTEIN, a witness, called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Where do you live? A 20 Norfolk street.

Q You work for Mr. Cohen, the boxmaker? A Yes, sir.

Q On the 19th day of November, did you get any boxes from Mr. Barnet L. Price & Company's place of business?

A Yes, sir.

Q How many boxes were there? A Three boxes.

Q Do you remember the weight of those boxes, were they the ordinary weight of boxes? A No, sir.

Q The weight, you know what the weight is -- how heavy were they? A Well, there were two light boxes and one was a little heavier.

Q Were they empty? A Certainly they were empty.

Q If they weighed 105 pounds one of those boxes would you know it? A No, sir.

Q Is there any difference in lifting a box weighing 25 and 125 pounds? A Yes, sir.

Q Would you notice the difference? A Yes, sir.

Q You did? A Yes, sir.

Q What was the difference? A Well, it was some cases

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I got them mixed up with lumber so therefore I can't tell any difference --

Q Did you notice any particular difference in any of them? A No, sir.

BY THE COURT:

Q Were they closed? A Yes, sir.

Q Closed boxes? A Yes, sir.

BY MR. ROSENTHAL:

Q The boxes that you sent out -- that are sent out from the boxmaker they have covers ^{nailed} on? A Yes, sir.

Q When they return those for any reason at all they are also nailed on? A Yes, sir.

Q There is one nail put on each board? A Yes, sir.

CROSS EXAMINATION BY MR. ADAMS:

Q I asked you some questions the other day, didn't I?
A Yes, sir.

Q Didn't you tell me that sometimes these boxes were quite heavy? A Well, if there is more lumber in them or if the case is larger.

Q They are very heavy -- you couldn't tell whether they were very heavy -- didn't you tell me that? A Yes, sir.

Q Some quite heavy? A Yes, sir, if they are larger.

Q You do not pretend to say that one of the boxes wasn't very much heavier than the other, didn't you tell me that?

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Q You are in the employ of the co-defendant, Samuel Cohen, aren't you? A Yes, sir.

Q You are his partner, aren't you? A I am a partner to the income after the season, but I am not a partner in the business.

Q Aren't you a partner with Samuel Cohen? A No, sir, I am a partner after the season of the profits.

Q You are interested in business with him, aren't you? A Yes, sir.

Q You are still, aren't you? A Yes, sir.

Q You went there on the 19th day of November, 1909?

A I don't remember the 19th or 20th, I know it was a Friday.

Q One of those boxes were much heavier than the other?

A Yes, sir.

BY MR. ROSENTHAL:

Q Was there 80 pounds difference in one of the boxes?

Objected to; objection sustained; exception.

Q Was there 50 pounds difference in any of the boxes?

Objected to; objection sustained; exception.

THE COURT: Are there any additional remarks that you gentlemen want to make, if not I will charge the jury.

(The Court then charged the jury and the jury failing to agree upon a verdict were discharged from the further consideration of the case.)

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