

**START**

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**CASE**

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-: I N D E X :-

	Direct.	Gross.	Re-D.	Re-C.
Benjamin Horn	2	7	31	
George Banks	39	41		
Martin Horn	52	54		

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1957

CASE 77 1095



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-

KEOR*y* MARDIROSIAN.

Before:

HON. THOMAS C. O'SULLIVAN,

and a jury.

-----X

Indictment filed December 29, 1909.

Indicted for assault in the first and second degrees.

New York, February 7, 1910.

A P P E A R A N C E S :

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY ISADORE  
WASSERVOGEL.

FOR THE DEFENDANT: MR. GEORGE S. KEBABIAN.

Peter P. McLoughlin,  
Official Stenographer.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live?   A 417 Grand Street, Manhattan.

Q What is your business?   A One of the marshals of the City of New York..

MR. KEBABIAN: I move that the answer be stricken as not the best evidence.. An officer or any person cannot prove his office or his position by claiming or swearing that he is an officer or that he is a marshal. He must produce his credentials..

THE COURT: You insist upon his producing his official appointment and identifying himself.

MR. KEBABIAN: I think that is necessary.

MR. WASSERVOGEL: I do not think so. The gentleman is under oath and he swears that he was appointed a city marshal by the Mayor of New York.

MR. KEBABIAN: That is only hearsay.

THE COURT: That will be enough. If you have any objection it is overruled.

Exception.

Q When were you appointed a city marshal by the Mayor of New York?   A The 30th day of April, 1909, took oath the

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1st of May, 1909.

Q Since then you have been acting as such? A A bond filed the 3rd day of May, 1909.

Q In what office? A In the City Clerk's office.

Q A bond in what amount? A \$2,000.

Q Now, on the 15th of November, 1909, did you see this defendant at the bar? A I did.

Q Where did you see him? A 355 East 53rd Street.

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

Q Did you have a conversation with him? A I did.

Q Tell the Court and jury what was said by each of you?

MR. KEBABIAN: I object to the conversation as immaterial and incompetent. I object to the question upon the ground that it is not relevant or competent.

THE COURT: Objection overruled.

Exception.

Q Tell us the conversation? A Well, I came to the defendant's place of business and I told him I was a city marshal and I had a judgment against him for \$45, issued out of the Eighth District Court. He told me then that business was very poor, and that he could not pay the money, that the people would not patronize him around there. I told him the amount was \$45 and \$3.25 marshal fees which made it \$48.25.

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I told him I would give him a couple of hours --

Q Whom did you say this to, to the defendant?

A To the defendant -- and if it was necessary to go around and see some friends I would give him that time, put a keeper in and I would not charge him for that. He then told me that he wanted two or three days time to pay this money. I told him the law did not allow me to give him that unless I secured my levy by putting a keeper in charge which would cost \$3 a day and \$3 a night. He got excited and told me the American laws was not the way they ought to be. Then I told him if he had any claim to make against this money, that the money goes to the clerk of the court and he had a right to hire counsel and open the case again. He then told me he had about 34 cents in his pocket and he would never pay it. I then told him I would have to make my levy because I would be responsible if I went out. He got excited. I sent my assistant up to the 51st Street station house to ask for an officer to preserve the peace and also sent for a truck at the same time. The officer came down and in five or 10 minutes afterwards the wagon came. The men came inside and this man still resisted my levy and the officer says "Don't interfere with the marshal, he is here on official business". I went behind the counter and told the express men what to take down. The defendant went into the back room and started

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to shoot, to shoot at me and at the officer and the man that were in the place with me.

Q How many men were in there with you? A There was the driver and two helpers, my assistant, the officer and myself.

Q At that time when you first came in did you tell him who you were? A Yes, sir.

Q Did you wear a badge of office? A I had my shield on the outside of my coat.

Q Showed him any paper? A Showed him the execution.

Q Is this the paper you showed him at that time?

A Yes, sir.

MR. WASSERVOGEL: I offer it in evidence.

(Marked People's Exhibit 1).

Mr. Wasservogel reads Exhibit 1 to the jury.

Q Now, coming to the shooting. You saw him shoot?

A Yes, sir.

Q At you? A Yes, sir.

Q Where was he standing at that time? A In the rear part of the store.

Q How far was that from yourself? A About six or seven feet.

Q How many shots did you see him fire? A I heard the fire one fired.

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Q After the first shot what happened then? A After the first shot I got down and got under the counter.

Q Then what did you do? A Then I heard a couple more shots.

Q Coming from his direction? A Yes, sir, coming from his direction, and the officer hollered to him, he says, "Drop that gun. If you don't I will kill you".

Q Did you see this defendant after that? A I did.

Q Where was he then? A He was on a bed with a bullet wound in his right shoulder.

Q What happened then? A He was taken to the Flower Hospital.

Q Did you or any one else strike this defendant before he shot at you, as you say? A No, sir.

Q Did the officer shoot at him first? A No, sir.

Q Did you see anybody strike this man or in any way give him provocation? A No, sir, we was not there for that purpose.

MR. KEBABIAN: I move that that answer be stricken out.

THE COURT: The last part of the answer.

Q You did not see anybody strike him? A No, sir.

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CROSS EXAMINATION BY MR. KEBABIAN:

Q You were appointed marshal on May 1st, 1909?

A Yes, sir.

Q Your office is on Clinton Street? A Yes, sir;  
155 Clinton Street.

Q On the east side? A Yes, sir.

Q Now, when you went to No. 535 East 53rd Street, a  
grocery store, whom did you find in there? A The defendant.

Q Did you ever see him before? A No, sir, that was  
the first time.

Q He was in charge of the store? A Yes; he was in  
the store.

Q That was his own store? A Yes, sir.

Q Did you know the name of this defendant before you  
went there? A Yes, sir; I seen it on the execution.

Q What was the name on the execution? A George  
Modersoner.

Q How was that name spelled? A Well, if you will give  
me the execution I can tell. M-o-d-e-r-s-o-n-e-r.

Q There is no "i" there? A No, sir.

Q Do you know now what the name of the defendant is?

A Yes, sir.

Q What is it? A Martosan.

Q Do you think that is the name of the defendant?

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A Yes, sir.

Q How do you make that out? A Well, I heard his name in the police court.

Q Heard his name in the police court, what?

A Martosan.

Q Did he write his name there? A I think he did write his name there.

Q Did you see it? A I seen him write and then it was handed to the clerk.

Q Did you ask him his named before you commenced to seize upon his property? A Yes, sir; he handed me his card.

Q Have you got that card withyou? A No, sir; I have not.

Q What did you do with it? A I turned it over to the attorney for the plaintiff, Mr. Rosenberg, in the execution matter.

Q Was it a printed card? A No, sir; it was with a rubber stamp.

Q A rubber stamp? A Yes, sir.

Q You don't know where that card is now, do you?

A No, sir.

MR. WASSERVOGEL: Objected to. I don't think that is material.



THE COURT: I will allow it.

THE WITNESS: I don't know where it is now,  
no, sir.

Q When you went there you seized a great number of papers  
in the store, did you not? A No, sir; the sheriff came there  
after I did.

MR. KEBABIAN: I move that the last part be  
stricken out.

THE COURT: Strike it out.

Q Did you move anything out of that store at all?

A No, sir.

Q After this man was shot and taken to the hospital  
who took possession of the store? A I took possession of  
the store, put a keeper in.

Q Did the defendant request you to put any keeper there?

A No, sir.

Q Before you put a keeper there did you take any  
memorandum of the merchandise or papers in the store?

A I did not.

Q But there were a number of papers and documents  
in the store at the time you levied the execution? A I did  
not see any.

Q There were some cards, billheads? A They were  
not touched by me.

Q But you saw them? A No, sir, I did not.

Q What is that? A I did not.

Q Was the name on this card the same as the name of the person named as the defendant in the execution? A Yes, sir.

Q Was it George Modersoner? A The first name was not spelled out.

Q What was the initial letter? A I think it was "K".

Q The last name, how was it spelled? A The same as my execution.

Q Very sure of that? A I am pretty certain, yes, sir.

Q You paid no attention to it, did you? A Yes, sir, I paid attention to it, sure.

Q Do you think it was of any consequence for you to pay attention? A It certainly was.

Q In your experience you have learned not to levy upon the property of a person who had a different name from the name of the defendant named in the execution? A If I would levy on the wrong person's property I would be liable on my bond.

Q If you levied upon the property of a person other than the one named in the execution papers? A Yes, sir.

Q Did you see any name on the door or window?

A Yes, sir; there was some name on the window.

Q Did you know what that name was? A No, sir, I cannot

recall what the name was but there was some man on the window.

Q Is that the only card that you picked up from the store of this defendant? A No, sir; he showed me some of his papers there, some bills where he bought goods from different people and billed to this defendant.

Q What happened to those papers? A Why, he took those papers.

Q They were in the store? A Yes, sir; he put them back where he took them from.

Q Afterwards you came into possession of the store -- soon after that you came into possession of the store?

A Yes, sir.

Q All these letterheads and papers, whatever they were, with his name on, were left in your charge? A They were.

Q The only paper that you have preserved is that one card which you gave to Mr. Rosenberg, the lawyer for the plaintiff? A Yes, sir.

Q In that case? A Yes, sir.

Q You haven't got it in court now, have you? A No, sir; I have not.

Q Now, you asked this man if he was George Modersoner, didn't you? A Yes, sir.

Q What did he say? A First he denied himself and I sent upstairs to the janitor.



Q What did he say?

MR. KEBABIAN: I object to the answer and move that it be stricken out.

Q Just what did he say? A He said "I owe the bill".

Q What did he say when you asked him if he was George Modersoner? A He asked me what I wanted and I told him what I wanted, that I was a city marshal.

Q Didn't he give you any reply to your question whether or not he was Modersoner? A No, sir; he didn't say nothing about his name.

Q You asked him about his name, didn't you? A I asked him if that was his name and he said "Yes".

Q What was his name? A What he said, George Martosan.

Q You asked him for George Modersoner? A Yes, sir.

Q And he said George Martosan was his name? A Yes, sir; that is what he said.

Q You looked over his papers? A Yes, sir; that he showed me.

Q You said that the names on the paper corresponded to the defendant's name on the execution? A Yes, sir.

Q You say some shots were fired? A Yes, sir.

Q While you were there? A Yes, sir.

Q Did you see anybody fire any? A Yes, sir.

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Q Whom did you see fired it? A This defendant fired.

Q Whereabouts was he standing? A He was in the back of the store, about six or seven feet from where I was standing.

Q The back of the store is partitioned off from the front of the store? A No, sir; it is not partitioned off; there is a little room with a door.

Q Which separates the rear from the front? A This was a room --

Q Then it is partitioned off, isn't it? A Well, it is off partitioned, yes, sir.

Q It is on the north side of the street or the south side?

A It is on the north side of the street.

Q You were behind the counter when the first shot was fired? A Yes, sir.

Q And he was in the rear room? A Yes, sir.

Q You saw him fire? A I did.

Q How did you see him fire? A Well, I stood right alongside of the counter there -- that leads into the rear room.

Q And the rear room had a door? A Yes, sir.

Q Was the door closed or open? A At that time the door was open.

Q And when the first shot was fired how wide was it open?

A The way -- as wide as the door opens.

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Q After that first shot was fired did you hear any more shots? A Yes, sir.

Q See anybody fire? A I seen him fire then.

Q Again? A Yes, sir.

Q You saw him? A Yes, sir; saw the shot come from that room, from the same room where the first shot came from.

Q What is that? A I seen the two other shots come from the same room where the first shot came from.

BY THE COURT:

Q Do you mean to say you saw the shots coming? A No, sir.

Q Why do you say so? A I heard them coming from that direction.

Q You are under oath. You saw the shots coming, is that what you say? A I seen the shots from the same direction as the first shot.

BY MR. KEBABIAN:

Q You followed them with you eye, the shots, as coming out, as they came out? A Did I follow them? No, sir, I did not.

Q How did you know from what direction they came?

A Well, what direction they came?

Q How did you know from what direction they came?

A I know they came from the direction of that room.

Q How did you know that? A Because nobody else did any shooting before that.

Q That is the only way you can tell? A Yes, sir.

Q You heard the report of a shot, is that it?

A Yes, sir.

Q The policeman was there, wasn't he? A Yes, sir.

Q Where was he standing? A Standing on the left hand -- the right hand side of the store near the ice box.

Q After the first shot you ducked under the counter?

A Yes, sir.

Q And still you saw the direction of the other shots, of the subsequent shots? A Yes, sir.

Q You could see it? A I could see from the position that I was in where the other shots came from.

Q Under the counter? A Yes, sir, under the counter then.

Q You ducked down under the counter, under cover, and still saw the shots coming from a certain direction? A Yes, sir.

Q Now, the policeman was standing by the ice box, you say? A Yes, sir.

Q Was it on the left or right hand side as you go in to the store? A The right hand side of the store.

Q As you go in? A Yes, sir.

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Q Now, is that right in front of the door leading to the rear room? A Yes, sir.

Q And the counter is alongside of the ice box?

A No, sir; the counter is on the left hand side of the store.

Q You say that the door was still open when the first shot was fired? A Yes, sir.

Q After the first shot? A Yes, sir.

Q It was again open? A After the first shot, but the defendant got down on his knees.

Q You saw him do that? A I didn't see that; I didn't see that.

Q What portion of your testimony that you have given now is from your personal observation? A All of it.

Q All of it except what you said? A Except the part where he was down on the floor.

Q Except what you testified just a minute ago?

A Yes, sir.

Q As a matter of fact you could not have seen from where you were under the counter? A No, sir.

Q Now, could you have seen the policeman where he was standing? A No, sir; I could not.

Q He had a revolver? A Yes, sir.

Q And he fired too, didn't he? A Yes, sir; he did.

Q When you heard the shot -- you didn't see from whom

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the shot was fired, did you or did you not, did you see who fired the shot? A Whichshot?

Q You heard some shots, didn't you? A Yes, sir.

Q From where you were you could not tell who fired those shots? A Yes, sir, I could tell who fired them because I seen the first shot fired.

Q The policeman had a revolver too? A Yes, sir; he did not have it in his hand ; he had one in his pocket.

Q How could you tell whether he had it in his hand or not when you were under the counter? A Because the officer told him if he did not stop shooting that he would return the fire.

Q That is the only way you knew? A I heard him say that.

Q Now, you heard afterwards this man groaning or showing any indication of being shot? A Yes, sir.

Q Then you dared to come out of your hiding place? A It was not a hiding place; it was just the side of the counter; I came out and the officer and my assistant and myself went in to the back room and rang up for the ambulance.

Q You found this man shot? A Yes, sir.

Q On the right hand side? A Yes, sir; upon the right shoulder.

BY THE COURT:

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Q Where did you ring up the ambulance? A The officer told me to go out and ring up headquarters.

Q Anybody hurt? A Yes, sir; the defendant was shot.

Q Who shot him? A The officer did.

BY MR. KEBABIAN:

Q You were not shot? A No, sir.

Q The officer was not shot? A No, sir.

Q The shots went up in the air some place except the one which the officer fired at the defendant? A Yes, sir.

Q You saw the first shot and the defendant was in a position to shoot? A Yes, sir; the defendant was in a position to shoot.

Q To shoot either you or the officer if he so chose? is that right? A Yes, sir.

Q He was within six or seven feet? A Yes, sir.

Q But neither of you were shot? A No, sir.

Q As a matter of fact when you went in there first didn't this man tell you that his name was Mardirosian, the same name as appears on the indictment here? A He did not.

Q You did not ask him the question then, did you?

A No, sir; I asked him if his name was Martosan and he said yes.

Q I suppose you pronounced it in such a way that nobody could tell what you meant? A No, sir.

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Q You are very careful, pronounce a name very carefully?

A Yes, sir; the same way I pronounce it now, -- Martosan.

Q You said a minute ago that he denied himself?

A Yes, sir; he did.

Q How did he do that? A He said he did not know anybody in the store by that name and then I sent my assistant upstairs to the janitor and asked if she knew anybody by the name of Martosan and he came down and said the janitor says that is the man that owns the grocery store.

Q The defendant then had told you that Martosan is not his name, is that it? A He said his name was Martosan.

Q He told you his name was not Modersoner? A No, sir; he did not; I did not say anything of the kind; I told you his name was Martosan and after my man came down stairs and told me that he was the owner of the store --

Q Which one of your two statements is true, which one do you want the Court to believe, the one in which you testify that the defendant told you that he was not Martosan, is that the true statement? A He told me he was not Martosan.

Q And to show who he was he gave you his card?

A He did not.

Q He gave you his card anyway? A After, yes, sir.

Q There was a name on the card? A Yes, sir.

Q Now, he also told you, as a matter of fact, that he owed

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nothing to this man who was the plaintiff in the case?

A What?

Q He, as a matter of fact, told you that he owed nothing to this man who was named as the plaintiff in the case?

A No, sir, he did not; he told me he gave all the money to him.

Q He did? A Yes, sir.

Q Quite sure of it? A He went out to telephone for him, to the plaintiff, asking him to give him some time.

BY THE COURT:

Q Did he telephone? A No, sir, he did not telephone. He wanted to go out.

Q You say he didn't go to the telephone? A No, sir; I said to him "Go right ahead", I says "If you got one of his bill heads here". He gave me a bill head and marked off with lead pencil what number he should telephone to; it is something in Harlem. Then the officer walked in and he did not go out.

Q So he didn't go out at all? A No, sir.

Q Until he went out to the ambulance? A Yes, sir.

BY MR. KEBABIAN:

Q His first name wasn't George on the card? A No, sir; his first name was not printed on the card.

Q The initial "K"? A Yes, sir.

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Q Did you communicate with the attorney for the plaintiff when you found out that this man, as far as his name was concerned, was not the same as the first name of the person mentioned in that execution? A Did I telephone that to the plaintiff?

Q To his attorney? A No, sir.

Q What did you do? A What did I do? I closed up the store.

Q You did nothing at all? A Put a keeper there.

Q Yes. I know you did that. Did you do anything to ascertain as to whether or not that execution which you had was an execution directed against this man? A Yes, sir.

Q What did you do? A I was paid.

Q You were paid? A Yes, sir.

Q By whom were you paid? A By a jeweler on First Avenue named Heene.

Q Mr. Hahn? A And another gentleman in court now.

Q How much were you paid? A I was paid fifty odd dollars.

Q Did you give this receipt when you were paid, a paper dated November 17th, 1909, bearing the signature "B. Horn, Marshal"? A yes, sir.

Q \$61.43? A (No answer).

MR. KEBABIAN: I offer it in evidence.

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(Marked Defendant's Exhibit A).

MR. WASSERVOGEL: It is absolutely immaterial whether the judgment was paid or not. I want the jury to understand that it makes no difference whether this judgment was subsequently paid or not.

THE COURT: What was the name of the plaintiff in that action? which resulted in this execution?

THE WITNESS: Ephriam Quat.

MR. WASSERVOGEL: It seems to me that this is not material or relevant to this particular issue.

THE COURT: It makes some difference whether or not these men were on the premises of the defendant by legal right and in the enforcement of a judgment. That makes some difference -- or whether they were there without right taking the goods of this man. If they were there without legal right or authority, taking this man's goods out of his place, and he had no other means of defending himself it is a matter to submit to the jury.

MR. KEBABIAN: That is all there is in this case.

THE COURT: I will allow that paper in.  
Defendant's  
(Mr. Kebabian reads Exhibit A to the jury).

BY THE COURT:

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Q Do you know what the date of the encounter with this man was? A I can only tell by my execution; I can't tell anything else.

Q Look at the execution and find out? A The judgment was rendered on the ~~9th~~ 18th day of October, 1909, before Leon Prince.

THE COURT: Now, Mr. Wasservogel, suppose on the 17th day of October there is a receipt in full.

MR. WASERVOGEL: The 17th of November, two days after the execution was issued. This is the 17th of November.

THE WITNESS: This affair took place on the 15th day of November.

Q On the 15th day of November? A Yes, sir.

Q And this receipt is what date? A The 17th day of November, two days after the defendant was in the hospital. His friends came around and asked me to take the money and I told them I could not take it off them, they were not defendants, and they said "We are paying it for the defendant". I had my keeper there.

BY MR. KEBABIAN:

Q You are quite positive you never removed anything whatsoever from that store? A I did not remove anything from the store, no, sir.

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Q Not even a scrap of paper? A No, sir.

Q You testified a minute ago you had removed a certain card? A He gave me that card.

Q You removed that one, anyway? A Why, I took that card with me.

Q You removed nothing else? A No, sir; nothing else.

Q How was it that you received payment of \$61.43 on a judgment where the execution called for \$48 and some odd cents? A The execution called for \$45., \$3.25 marshal fees, and the balance is keeper's fees for Monday, Monday night, Tuesday, Tuesday night and Wednesday -- November 15th was on a Monday.

Q I suppose you, as a marshal, are familiar with the duties of your office? A I am.

Q Did you have any right to charge for keeper's fees?

A Yes, sir.

Q What section of the Code do you refer to?

A Well, I am not an attorney.

BY THE COURT:

Q Where is there anything here to show that the levy was on the 15th? A My book shows I went there on the 15th of November, 1909.

Q You went on the 15th day of November? A Yes, sir. The execution is dated October 26th, when it was issued.

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Q What is the date of that receipt? A November 17th.

Q Judgment was entered the 18th of October according to this?

A Yes, sir.

MR. WASSERVOGEL: I do not think, your Honor, there is any dispute about these dates.

THE COURT: I want that matter clear in my mind as it ought to be clear in the minds of the jury.

Q Did you make any attempt before the 15th to levy on this property? A No, sir; I only received that two days before from the attorney, Mr. Rosenberg, on the 12th or 13th I received the execution, I got it Friday or Saturday and I went there on Monday, and then I put a keeper in charge, and on the 17th I was paid the money by the defendant's friend, Mr. Heene, on First Avenue, and there is the receipt there.

Q You say this judgment was entered on October 18, 1909?

A Yes, sir.

MR. KEBABIAN: I offer in evidence the judgment roll in this case.

MR. WASSERVOGEL: No objection.

(Marked Defendant's Exhibit B).

MR. KEBABIAN: I desire to read such portion of it as may be of use to the jury. The summons in this case was issued on September 13th, 1909, from



the Eighth Municipal Court in which Ephriam Quat was plaintiff and Kasariel Modersoner was defendant, with a statement that the name of the first party, "the first name being fictitious, the real first name of the defendant being unknown to plaintiff".

The summons was for the sum of \$42.42 and was returnable in the court room on the 24th day of September. Attached to the summons is a complaint which is verified by the plaintiff on September 13th. This complaint substantially demands judgment for \$42. upon a previous statement of account for merchandise sold and delivered. Endorsed on the summons is the name of the attorney for the plaintiff "Louis Rosenberg, 220 Broadway", and also that the defendant did not appear in the action.

MR. WASSERVOGEL: Judgment by default.

MR. KEBABIAN: And also an endorsement showing the case was nevertheless adjourned from September 24th, when it was returnable, till October 1st, and from October 1st to October 8th, and from October 8th apparently adjourned again until the 18th when judgment was finally rendered against the defendant by default -- on October 18th, 1909 for \$45 -- originally \$42. and \$2. of cost which would have made

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\$44., but it appears from the record that there has been a mistake made, the original amount demanded in the summons is \$43 instead of \$42, so that made the judgment \$45 instead of \$44.

MR. WASSERVOGEL: This is a document from a court and your Honor will take judicial notice of its correctness. That cannot be gone into here.

THE COURT: You simply may inform the jury of what your exhibit contains, but you cannot go beyond that except by the way of evidence.

MR. KEBABIAN: I am stating that the summons called for \$42.

THE COURT: You cannot explain it. You may read the document.

MR. KEBABIAN: Attached to the judgment roll also is a notice of motion addressed to George Modersoner in which it is claimed that application is to be made to amend so as to change the first name, which was original Kasariel to George and then there is the affidavit of Charles Berlin, who states that he has found out through investigation that the first name of the defendant was not Kasariel, as it was originally in the summons but George.

THE COURT: I do not care to cut you off but

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that is altogether beyond any rule, -- for you to comment on the contents of a document introduced in evidence. Read the document. That is all you can do.

MR. KEBABIAN: I thought I would save the time of the jury but I will follow your Honor's suggestion.

(Mr. Kebabian reads the judgment roll).

Q I show you a piece of paper on which is stamped a certain inscription. Does this recall to your mind the inscription which was upon that card? A Yes, sir.

Q Is that the same? A Yes, sir.

MR. KEBABIAN: I offer it in evidence.

(Marked Defendant's Exhibit C.)

(Mr. Kebabian reads Defendant's Exhibit C to the jury).

Q You saw the stationary stamped with that same stamp?

A No, sir, I did not.

Q You did not care to look for any more? A He didn't show me any more.

Q That was enough, wasn't it? A Yes, sir.

Q That satisfied you it was the same name as the name mentioned in the execution? A It did not.

Q It did not? A No, sir, it did not.

Q What is that? A No, sir, it did not --

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Q Still you went right ahead? A Yes, sir.

Q You asked advice of nobody? A I did.

Q Whom did you ask advice of? A Mr. Rosenberg, the attorney for the plaintiff.

Q When did you ask his advice? A After the store was closed.

Q But before you went ahead and seized the goods of this man you made no effort to find out? A Mr. Rosenberg said he would give me a bond in this case.

Q Who said it? A He said he would give me a bond in this case if I was sued,--that that was the defendant.

Q That was after the case was all over? A yes, sir; that that was the defendant.

Q Well, it wasn't the defendant's name, was it?

A (No answer).

Q It wasn't the defendant's name, was it? A It was the defendant, he might have spelled his name different, it was the man that received those goods.

Q That is your idea of the functions of your office?

A Not out of my office at all, out of the plaintiff's office--

Q You received that advice you said after you had levied done execution and had some shooting or at least had witnessed some shooting? A Yes, sir.

Q At the expense of the defendant?

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MR. WASSERVOGEL: I object to that last part.

Q Where the defendant was shot in his own store -- was shot? A Yes, sir; I got that advice after I levied--

Q You also executed or at least you received the sums of \$60 and a few cents? A \$61. and some cents, yes, sir.

Q Did you receive advice on that score also, on that amount also, as to its being the correct amount? A That is the correct amount, yes, sir; there was \$2 left off, it should have been \$63 and some cents.

Q Why did you leave off \$2? A Well, Mr. Heene asked me to leave it off; he said they didn't have any money, they were paying it out of their own pocket for him, they didn't want to pay any money, I told him my keepers only got paid when they worked, and I asked the keeper would he take less and he said he would take less and there was \$2 deducted from the amount, it should have been \$63.

Q It was a matter of concession? A Yes, sir, a matter of courtesy, that was what it was.

Q How much a day did you pay the keeper? A \$3 a day and \$3 a night.

Q Where do you find your authority for charging any more than the amount of the execution? A That is our disbursements.

Q Where do you find the authority for that? A Well, if you will look up the Code you will find it.

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MR. WASSERVOGEL: I object to that.

MR. KEBABIAN: I will bring that out later.

Q Did you load anything on the wagon at all that you had there? A No, sir.

Q Why didn't you? A Because I couldn't leave the place with anybody else, the defendant was shot, and I had to take possession because I was responsible for it.

Q Before he was shot didn't you attempt to remove on the wagon something? A I was ready to remove the goods, yes, sir, to pack them up.

Q You had a wagon there? A yes, sir.

Q Why didn't you load it up and carry out goods to the value of about \$45? A To carry out \$45 worth? Who would I give the store to? I couldn't leave, the door was open, because I would be responsible for the balance of it; there was other stuff left there.

THE COURT: I don't think you had better go into that any further.

REDIRECT EXAMINATION BY MR. WASSERVOGEL:

Q In your first conversation with this man did you ask him whether he was the defendant in this case? A I did.

Q What did he say? A He said he was.

Q Did you ask him whether he knew this man Quat. You

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asked him whether he knew this man Quat? A Yes, sir; he showed me his bill and told me he was up to see Mr. Quat time and again, and the case has been adjourned for that purpose, for him to come up there and pay him some money on that account.

BY MR. KEBABIAN:

Q Was that what the defendant told you? A Yes, sir.

BY MR. WASSERVOGEL:

Q Now, at the time this first shot was fired did you see a gun in this defendant's hands? A Yes, sir, I did.

Q Was there anybody else in the rear room with him?

A No, sir.

Q He was there alone? A He walked into the rear room, yes, sir.

Q This judgment was not paid until two days after this occurrence? A Yes, sir; two days after the occurrence.

Q Do you know where the first shot went? A Yes, sir.

Q In what direction? A It went through the show window.

Q The plate glass window in the store? A Yes, sir.

Q Out into the street? A Yes, sir, and struck on the other side of the street in 352, on the first floor.

BY THE COURT:

Q How do you know it did that? A The husband came down and wanted to know where the shot came from.

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THE COURT: Strike that out.

MR. WASSERVOGEL: Which part does your Honor strike out. He says one window went through the plate glass window.

THE COURT: Strike it all out.

BY MR. WASSERVOGEL:

Q Do you know of your own knowledge where that shot went? A No, sir; I did not until I was shown.

Q Did you see any part of the plat glass broken?  
A I did.

Q What part was that? A The top part of the plate glass.

Q When was it broken? A After the shot was fired.

Q How do you know? A I looked at the place at the time and I observed what writing was on the window.

Q What name did you see? A There was some fancy teas, advertisements in white letters, some Ceylon teas.  
BY THE COURT:

Q You saw that from your place under the counter?  
A No, sir; that is before I ever entered the store.

Q It was broken? A No, sir, it was broken.

Q When you came out it was broken? A There was a hole in the window.

Q When you came out? A Yes, sir.

Q There was no hole when you went in? A No, sir.

Q Now, that is the way you know that the bullet went

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through that window? A Yes, sir.

THE COURT: Strike it all out.

BY MR. KEBABIAN:

Q You said this judgment was ~~not~~ not paid until November 17th, you mean the judgment in which you had execution--

THE COURT: The statement of the witness that there was no hole in the window when he went in the store and that there was one when he came out may remain on the record.

BY MR. KEBABIAN:

Q How far up in the window was that hole, you say it was in the upper end of the window? A Well, about a foot from the top of the window, the top of the plate glass.

Q It was almost near the ceiling? A A foot below there.

Q A foot below the ceiling? A Yes, sir.

Q It looked like a bullet hole, a small hole?

A Yes, sir.

Q You didn't examine the glass? A No, sir; I didn't examine it.

Q A foot from the ceiling? A I looked at the glass to see what name was on the window.

Q About a foot from the ceiling? A On the outside before I ever went into the store.

Q Did you look up about a foot from the ceiling to be sure

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that there was no hole in there? A Well, there was none there.

Q What is that? A There was no hole there when I went in.

Q You mean to say that you looked about a foot from the ceiling? A Yes, sir;; looked all over the plate glass when I went into the store.

Q You made a very close scrutiny of the entire place?

A No, sir; I didn't scrutinize the place at all.

Q To see whether there were any signs or anything?

A I had no business to scrutinize anything; I was there on the execution.

Q This hole up near the ceiling would not interest you ?

A Not a bit, if it was there it wouldn't have made no difference to me.

Q You are not sure that there was no hole near the ceiling when you went in, is that it? A I know there was no hole in there when I went in.

BY MR. WASSERVOGEL:

Q Do you know in which direction he was firing the first shot, did he point at anybody in that room? A Why, he pointed it out from the room.

Q Point it at you? A Pointed it out towards me, yes, sir.

BY THE COURT:

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Q Now, when the shots were fired you were under the counter? A Not when the first shot was fired, no, sir, I was behind the counter.

Q When the first shot was fired you dodged under the counter? A Yes, sir.

Q What time of day was this? A This was about between half past one and two o'clock.

Q In the afternoon? A Yes, sir.

Q Half past one or two? A Yes, sir.

Q In the afternoon? A Yes, sir.

Q Now, then, how many rooms were there in the place?

A One room besides the store.

Q One ~~big~~ room in the back of the store? A Yes, sir.

Q Now then the counter ran alongside of one of the walls, didn't it? A Yes, sir.

Q Which side of the street is this building on?

A It is on the north side of the street.

Q On the north side of the street? A Yes, sir.

Q The windows facing south? A Yes, sir.

Q Is that right? A Yes, sir.

Q On which side of the room was this counter of which you speak? A On the left hand side.

Q As you go in? A yes, sir; as you go in.

Q That would be on the west side of the building?

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A Yes, sir.

Q On the west side? A Yes, sir.

Q Now, then, where was the door leading into the back room, was it right in the center of the room or at the side? Tell me whether on the side or in the center of the partition?

A Right in the center of the partition.

Q Now, then, where was this defendant, was he on the right or left of that door back of the partition?

A He was on the right side.

Q He was on the right side? A Yes, sir.

Q That would be on the west side? A The right side would make that the east side of it.

Q But looking out on what side of the door was he?

A On the west side looking out.

Q The west side looking out? A Yes, sir.

Q The counter was on the west side? A Yes, sir.

Q He was on the west side of the doorway? A Yes, sir; he was on the west side of the doorway.

Q That is to say that running along the west side of the wall was the counter? A Yes, sir.

Q Then comes the partition, then the door in the middle of the partition? A Yes, sir.

Q And this man was on the west side of that door?

A Yes, sir.

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Q How far from the door is he? A About two or three feet.

Q Two or three feet? A Yes, sir.

Q Two or three feet? A Yes, sir.

Q How far from the side of the room or the wall is the door which enters the partition going into the back room?  
A About four feet.

Q Four feet? A Yes, sir.

Q Further away from the wall than the counter?  
A Further away from the wall, about four feet.

Q The door in the partition leading into the back room is further from the wall than the counter? A Yes, sir.  
BY MR. KEBABIAN:

Q The counter is on the west side? A Yes, sir; the counter is on the west side.

Q And close to the wall? A No, sir; not close to the wall, there is a space to go between, there is shelving on each side of the store and there was an ice box there.

Q Enough room for a man to stand behind the counter?  
A Yes, sir, a good sized man to stand behind the counter.

Q Do you know what is the width of the store?  
A No, sir, I didn't measure it.

Q Can you give us an idea the same way as you gave us an idea about the distance of the door from the wall? A I think

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the store is about 40 feet long or 30 feet.

Q You mean deep? A Yes, sir.

Q Now, how broad or how wide is it in front? A Well, it is --

Q You said there was a door in the middle and this door which was in the middle was four feet from the walls -- how wide was the entire store? A I guess the store was about 40 by 15 feet wide, maybe 18, maybe 20 feet wide, I am not sure, from 15 to 20 feet.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 221 East 66th Street.

Q Talk loud. What is your business? A Truck driver.

Q For whom do you work? A Elkwood Express, express and trucking company.

Q Who are they? A William Haserman.

Q By whom were you employed on the 15th of November, 1909?

A Elkwood Express, William Haserman.

MR. WASSERVOGEL: It is conceded that this house 353 East 53rd Street is in the County of New York?

MR. KEBABIAN: Yes.

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BY MR. WASSERVOGEL:

Q Were you at the defendant's place of business on the 15th of November, 1909? A Yes, sir.

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

Q Who else was with you at the time? A There were two helpers with me.

Q Did you see the City Marshal, Benjamin Horn? A Yes, sir.

Q And two other men you say? A Yes, sir.

Q Did you see the marshal's brother? A Yes, sir.

Q You saw the police officer there, did you? A Yes, sir.

Q Now, tell us what you saw this defendant do, if anything? A Well, I was coming in the door when the shot was fired.

Q By whom? A By the defendant.

Q Did you see a gun in his hands? A Yes, sir.

Q Did you see in which direction he was pointing that gun?

A Pointing towards the counter.

Q Who was at that counter? A The marshal.

Q The marshal was standing there? A yes, sir, behind.

Q Did you see anything else? A Then he fired two more shots and backed into the room.

Q He went in the rear room? A Yes, sir -- when he

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fired the other two shots.

Q Did you see anything else? A No, sir; only the officer then fired a shot back at him.

Q Afterwards the officer fired a shot? A Yes, sir.

Q Did you see anybody strike this man? A No, sir.

Q Did the officer shoot first? A No, sir.

Q This man shot first? A Yes, sir.

Q What did you do after you heard this shooting?

A Stayed there.

Q Right in the rear? A No, sir; in the front, right by the door.

Q Did you go away then? A No, sir; I stood there until it was all over.

Q When it was all over? A Yes, sir.

Q Did you see the defendant after that? A Yes, sir.

Q That was in the rear room? A Yes, sir, lying on the bed.

CROSS EXAMINATION BY MR. KEBABIAN:

Q You were the man that brought the express wagon to remove out the goods? A Yes, sir.

Q From this defendant's store? A Yes, sir.

Q You went there, didn't you? A Yes, sir.

Q When you went in there it was a small store? A Yes,

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sir, a small store, a one window store.

Q What is that? A One window.

Q On the east side or the west side? A The east side.

Q On the easterly side? A Yes, sir.

Q Who were in the store when you went in there, you say?

A The policeman and the marshal and his brother and this defendant.

BY THE COURT:

Q Were you in the store? A I was inside the door, just coming in the door when the shot was fired.

Q Were you outside or inside of the store is the question?

A Inside.

Q How long were you inside? A Just about a minute, just got in the door.

BY MR. KEBABIAN:

Q You were just going in there from the easterly door?

A Yes, sir.

Q And right in front of you was what? A Right in front of me, nothing in front of me, this door going right in, and I seen him standing right by the door.

Q As you go in there was a large ice box right in front of you? A That was near the counter in the back.

Q What is that? A That was near the door in the back on the right hand side as you come in.

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Q How high was that ice box? A I should judge about seven feet.

Q That was also on the easterly side? A That was on the east side.

Q And the door was on the east side? A Yes, sir.

Q You walked in on the east side? A Yes, sir.

Q You heard a shot? A Yes, sir.

Q You didn't know who shot it? A Yes, sir; I do know who shot it.

Q That is, you mean to say you saw? A Yes, sir; I saw him.

Q How did you see it, through the ice box? A No, sir; I could see him right there, his face right at the door. The ice box is not facing the door; it is one side of the door.

Q How broad is the ice box? A About two and a half feet or three feet.

Q Wide? A Yes, sir.

Q Seven feet long? A Yes, sir.

Q I suppose as you went in you were looking expressly to see who was in the rear room with a gun pointing?

A No, sir.

Q You didn't expect it at all? A No, sir.

Q How did you happen to look inside in the rear room?

A You always look in front of you, you don't look back of you.

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Q You always do? A No, sir.

Q You don't mean anybody but you yourself? A Yes, sir.

Q That is your custom? A Yes, sir.

Q That is the way you do? A Yes, sir.

Q You got inside of the store -- did you at first look right into the door of the rear room? A No, sir; I could look in the rear room, I just happened to spy him, just happened to look and see the defendant in his hands fire a shot.

Q Your attention was called to the report of a shot?

A No, sir.

Q What was it? A My attention was drawn to him with the gun in his hands.

Q You stood right there? A Yes, sir; as soon as I came in the door the shot was fired.

Q You came in the door? A Yes, sir; just stepped inside.

Q You saw him before you came inside? A Yes, sir.

Q Before you came inside this door you saw this man with a gun in his hand in the rear room? A No, sir; he was not in the rear room; standing outside the door, right near the counter.

Q Where was the policeman standing? A The policeman right near the ice box.

Q How near to the defendant? A I should judge

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about five feet.

Q How near was he to Mr. Horn, the marshal?

A About seven feet away from him.

Q How do you know it was seven feet? A A step.

Q You measured it? A No, sir; I did not measure it.

Q You know Mr. Horn, do you? A No, sir.

Q Never seen him before? A No, sir; only when he came to engage us, to move the stuff.

Q That is the first time you saw him? A yes, sir; that is the first time I saw him.

Q Since that time you have seen him? A No, sir.

Q You have not? A No, sir.

Q No. A No, sir.

Q Have not been in the office of any person downtown in reference to this case? A No, sir.

Q How do you know it was seven feet? A I just judged it.

Q You say the defendant was seven feet from Mr. Horn?  
A Yes, sir.

Q He was not in the door but he was -- A Standing right outside of it.

Q In the main store? A Yes, sir.

Q Now do you know what direction that shot took?

A Towards the counter, it went through the window.

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Q Went through the window? A Yes, sir; in the right hand corner.

Q How high is the counter? A Well, about three feet I guess.

Q How high up in the window did the shot take effect?  
A About a foot from the top in the right hand corner.

Q What makes you think it was aimed at the counter?  
A Well, that is the way the counter is, on that side.

Q I know, but you say the shot took effect a foot from the ceiling? A Yes, sir.

Q The counter is only three feet high? A Yes, sir.

Q Did you hear any more shots? A I heard two more after that one.

Q What is that? A I heard two more after that one.

Q Two more? A Yes, sir.

Q You don't know where they came from? A Seen it come from the back room, seen the smoke come from the back room.

Q The door was closed then? A No, sir; it was on a jar.

Q How far was it a jar? A About that far open.

Q Indicating about three feet? A About two feet.

Q About two feet? A Yes, sir.

Q You were not present there until the shots began to be fired? A Yes, sir; I was just going in the door; I was

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inside the door when the shot was fired.

Q You don't know what happened before? A No, sir; I don't know what happened before.

Q Did you see the policeman fire? A Yes, sir; he fired after the three shots and hit the man in the right shoulder.

Q He fired two or three shots? A No, sir; after he (the defendant) fired two or three shots the policeman fired one.

Q The policeman fired only one shot? A Yes, sir.

Q That took effect? A Yes, sir.

Q The defendant's two or three shots took effect near the ceiling? A No, sir; I didn't say that.

Q One went in near the ceiling? A No, sir.

Q Is that it -- I say the shot which the defendant fired that took effect near the ceiling? A In the glass.

Q Something like that? A Yes, sir.

Q But he was just as close to either man as the policeman was to the defendant? A Yes, sir.

Q You saw this Benjamin Horn, the man known as Mr. Horn, the witness before you, trying to remove goods from the store, did you not, when you went in? A Just standing there when I came in.

Q What doing? A Doing nothing.

Q What was his brother doing? A Doing nothing; just

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came in with me.

Q What was the policeman doing? A The policeman was standing there.

Q Everybody was standing still? A Yes, sir.

Q Doing nothing? A Yes, sir.

Q That is all you know about it? A Yes, sir.

Q How long did you stay there? A Well, I stayed there until it was all over and the man was taken away in the ambulance.

Q Was he conscious or unconscious? A He was conscious.

Q He was bleeding? A Yes, sir; he was bleeding a little bit.

Q How soon after the first shot was fired by the defendant did the policeman begin to shoot? A No, sir; the policeman said something to him, he fired the shot again, fired two shots in succession and then the policeman fired one.

Q The policeman did no such thing until the three shots were fired? A Yes, sir; then he fired a shot.

Q That is the best you can remember of it?

A Yes, sir.

Q You did not remove any goods from the store?

A No, sir.

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BY THE COURT:

Q What is your work? A Driver.

Q How many people were down there besides you?

A Two of my helpers.

Q What did they do? A Carry the stuff out while I packed the wagon.

Q They carry the stuff out? A yes, sir.

Q What do you do? A Pack the wagon; I got to look what the stuff is.

Q They go into the store, get the stuff and bring it out ~~in~~ and you remain on the wagon and pack it? A Yes, sir.

Q What business did you have in the store? A I had to go in first to see what I got, to make the price, I have to go in first.

Q You came very near getting something that you didn't want, didn't you? A Yes, sir.

Q How many horses have you? A I was just working for a boss.

Q How many do you drive? A Two.

Q You had two at that time? A Yes, sir.

Q You left your horses and went in with the driver and helpers into that place? A Yes, sir.

Q It was your business to take care of the horses, wasn't

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it? A Yes, sir.

Q And to pack? A Yes, sir.

Q Were you taking care of the horses then?

A Well, I have to go in there.

Q You have to? A Yes, sir, to go in and make my price, what to charge him to take it out, to see what I got, estimate it.

Q Where was the officer when the first shot was fired?

A Inside.

Q Where? A Right near the ice box.

Q Where is the ice box? A On the right hand side.

Q Of what? A The store.

Q What store? A The grocery store.

Q On the right hand side of the door? A Yes, sir.

Q Leading into the back room? A Yes, sir -- no, sir, it is on the left side -- yes, the right hand side.

Q As you go in? A Yes, sir.

Q So the officer was near the door? A yes, sir.

Q How far from the door? A About four feet.

Q That is the door leading to the back room? A yes, sir.

Q The officer didn't shoot until the man inside the room blazed away three times? A Yes, sir.

Q Now then where were your two helpers? A They were outside, standing by the door, the door was open.

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Q The door was open? A Yes, sir.

Q You went in? A Yes, sir.

Q How long after you went in before the firing started, how long after that? A Just when I got in the door.

Q How far did you get? A About two feet inside the door when it started off.

Q The moment the first shot was fired what did you do?  
A Stood there.

Q Stood right in front of the doorway where the shots were coming from? A The door is a little to one side, I was right up against the door.

Q You stood there for how long? A I stood there about five minutes.

Q About five minutes? A yes, sir; till the man fell in the room on the bed, I went in and found him by the bed there.

BY MR. KEBABIAN:

Q You mean to say that you saw a man with a revolver pointed towards the front and you were in the front and you stood there? A yes, sir.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 150 Norfolk street.

Q What is your business? A Subpoena server and keeper in charge.

Q You are a brother of Marshal Horn, are you not?

A Yes, sir.

Q Did you go with him to any place on the 15th day of November, 1909? A yes, sir.

Q To this defendant's place of business? A Yes, sir.

Q 355 East 53rd street? A Yes, sir.

Q Did you see the defendant there? A Yes, sir.

Q Were you present when your brother, the Marshal, spoke to the defendant first? A yes, sir.

Q Tell us what he said? A Well, when he came in the Marshal came in the store and said to him, "I got a judgment against you, for George Martoson", and he first denied himself.

Q What did he say? A He said he ain't the man. So after that the Marshal sent me upstairs to the janitor and I asked the janitor "What is that man's name, in the store" and he told me it was George Martoson and I came down and I told him and then afterward he spoke to him and he told him he had no money, he wanted a couple of days time, and the Marshal told

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him he would give him a couple of hours and leave me in charge, to get the money, then he told him that he got no friends in the neighborhood to get the money from. This was about half past one and he said he would give him until six o'clock but it seemed as though he didn't want to do it. Then after that the Marshal said, "You better go around and get an officer."

Q Talk louder? A The Marshal said to me, go around and get an officer at the 51st street station house. I went around and got the officer and ordered the wagon at the same time. When I came back with the wagon the officer had arrived and then the Marshal was behind the counter and told the officer to preserve the peace, he was going to make a levy here, and he said, "All right", and this defendant went to the officer, and the officer says "I am here only to do police duty, to preserve the peace, don't interfere with the Marshal. With that the defendant went in the back room and shot was fired.

Q By whom? A By the defendant.

Q Did you see the gun in his hand? A Yes, sir.

Q Did you see in which direction he was firing?

A yes, sir, firing from the back of the room to the front, towards the counter.

Q Who was at the counter? A The marshal. By that time another shot -- as soon as the first went off another <sup>one</sup> came

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in the same direction.

Q From the same direction? A Yes, sir, from the back of the room, and the officer standing there hollered to him to drop the gun. With that he paid no attention but fired at the officer.

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

THE COURT: Strike out the words, "He paid no attention".

Exception.

Q Go right ahead? A He fired at the officer and by that time the officer had his gun out.

Q What did the officer say if anything? A He told him to drop it. He paid no attention and fired back and the officer caught him in the shoulder and then he dropped, you know, this defendant dropped and we called up an ambulance.

Q Now, did anybody strike this defendant prior to the shooting? A No, sir.

Q Did the officer fire first? A No, sir; he did not.

CROSS EXAMINATION BY MR. KEBABIAN:

Q You are a brother of the Marshal Benjamin Horn?

A Yes, sir.

Q You are in his service? A yes, sir; I work for him.

2018

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Q Were you the keeper? A I was the keeper left in charge afterwards.

Q What did you do as keeper? A Just watched the place and saw that nobody took any goods out.

Q How did you watch? A How did I watch? Stayed there for two days and a night till the thing was settled.

Q Stayed inside the store? A Yes, sir, and stayed around the neighborhood right in front of the door.

Q Slept there nights? A Yes, sir.

Q You were so watchful that you think everything was preserved there, nothing was lost from that store? A Not that I know of; I watched that no goods was taken out.

Q No papers were taken out? A I didn't see any papers, no, sir.

Q This was a very serious case for your brother?

A A very serious case, yes, sir, a shooting, pretty near got me killed.

Q You realized it? A Yes, sir, he near got killed too, -- I said we nearly come getting killed.

Q Now where was the defendant when he fired the first shot? A In the back of the room.

Q In the rear room? A Yes, sir; in the rear of the store

Q In the rear room? A Yes, sir.

Q Was the door open or locked? A He had it just enough to point the gun out.

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Q He was standing inside the room? A Yes, sir.

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

Q Which side? A By the ice box.

Q Right by the officer, by the right hand side of ?  
A yes, sir, coming in the store.

Q The easterly side? A I don,t know, it was on the right handside coming into the store.

Q The ice box was seven foot high, wasn't it?  
A I didn't measure it; I don,t know hhw high it is.

Q It is higher than you? A Yes, sir, it is higher than myself.

Q So you couldn,t see the revolver in the hands of this defendant? A I could see it all right and I ducked too.

Q When did you duck? A When? I ducked, when the revolver was pointed at the officer.

Q What officer? A The officer in charge that I brought from the house.

Q Officer Rogan you mean? A Yes, sir.

Q Where was the defendant when the second shot was fired? A In the same place that he was when he fired the first shot.

Q Where was the policeman? A On the side of the store by the icebox; I was right behind him.

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Q Was the ice box higher or taller than the policeman?

A yes, sir, the ice box was higher than the policeman.

Q The policeman was behind the ice box? A No, sir, on the side.

Q The ice box was in between the rear room and the front of the store, wasn't it? A Yes, sir.

Q And the police officer stood on the side of the ice-box towards the store? A In the back, near the back room.

Q Which side of the ice box, towards the front or towards the rear? A Towards the front of the store, the ice is  
box, in the rear, he was in the front part of it.

Q The ice box was in between the policeman and the rear room? A yes, sir, that is right.

Q You say you did see with your eyes? A yes, sir, I seen with my eyes; I was there and had my eyes wide open.

Q Did you have your eyes open? A Yes, sir, you bet I did.

Q I thought you said you ducked? A I had to duck.

Q Don't you shut your eyes when you duck? A No, sir, I had to see where it was coming from so I don't get hit.

Q When you ducked didn't you shut your eyes? A I just stood like this. (Illustrating).

Q You got down on the floor? A No, sir, not on the floor just stepped aside to let it go past.

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Q Right by the ice box? A yes, sir, right by the ice box.

Q That is right where the policeman was too? A Yes, sir.

Q Now the only thing you know, as a matter of fact, was that a shot was fired? A yes, sir.

Q That is all you know? A I know it was fired at us.

Q Do you know what direction it came from? A yes, sir, from the back of the room, from the defendant.

Q While you were ducking you could tell that the bullet came from the same direction behind the ice box?

A No, sir, from the back of the room where this defendant was, that is where the shot came from.

Q That is your inference? A That is my what?

Q That is your opinion? A Yes, sir, that is my opinion.

Q Now nobody was shot in the store except the defendant?

A That is all.

Q You were not shot? A No, sir, but I came near it; there was no fun to it.

BY A JUROR:

Q How many shots were fired? A Three.

BY MR. KERABIAN:

Q You were so frightened, I presume, you felt that you might possibly have been shot? A Well I took a chance

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at it, you know.

Q You were frightened? A I was standing behind the officer and I watched out to see that I didn't get hit.

Q The officer had a gun in his hand? A At that time, that is when the second shot was fired he had his gun out.

Q When the officer shot his revolver how did he get at the defendant? A He stood on the side, he had to shoot through a door.

Q That is he came out of the ice box? A No, sir, he didn't come out of the ice box; I didn't say that. He stood on the side from where he was standing, about two or three feet away from the ice box, at the back of the room, he could see; the defendant was down at that door, opened just enough to point the gun. The officer hollered "Drop the gun", he wouldn't do it, and he had to shoot through the panel of the door, a little glass.

(The Court admonishes the jury, calling their attention to Section 435 of the Code of Criminal Procedure, and adjourns the further trial of this case until tomorrow, February 8, 1910, at 10.30 o'clock.)

2013

CASE # 1095

COURT OF GENERAL SESSIONS

Part II

----- X  
THE PEOPLE OF THE STATE OF NEW YORK x B efore HON.  
against x THOS. C. O'SULLIVAN  
KEORG MARDIROSIAN, x J.  
Defendant. x  
----- -X

Indictment filed December 29th, 1909.

Indicted for Assault in the first and second degrees.

(The defendant being arraigned for sentence.)

New York, February 10, 1910.

A P P E A R A N C E S

For the People,

Assistant District Attorney, Isadore Wasservogel;

For the Defendant,

George S. Kobabian, Esq.

Peter P. McLoughlin,  
Official Stenographer.

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O. H O U N, a witness being called and examined by the Court:

Q What is your business? A Jeweler.

Q How long have you known the defendant at the bar ?

A About five years.

Q Do you know other people who know him? A Yes, sir.,

Q Do you know what his reputation is / as a quiet, peaceful citizen and a law abiding citizen? A I believe it is.

Q What is that? A I believe he is a very good, honest, quiet fellow. I couldn't say anything different or anything else since I know him.

Q Do you know of this charge against him, *charging* to these officers of the law? A So I hear, I don't know anything about it.

BY DEFENDANT'S COUNSEL:

Q Are you a married man? A Yes, sir.

H. W A R A N A T K Y, a witness called and examined by defendant's counsel:

Q Do you know this defendant at the bar?

A Yes, sir; I know this fellow.

Q Speak a little louder? A Yes, sir.

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Q What is your business? A My business is a grocer, but now I am a working man.

Q Do you know many people who know this defendant?

A Yes, sir.

Q This defendant? A Yes, sir.

Q Do you know others who know him? A Yes, sir.

Q Do you know what his reputation as a quiet, peaceful, law-abiding citizen in this community is; do you know whether his reputation is good or bad? A It is good; I never saw anything wrong. I knew him for three years and I never saw anything about him.

S I M O N W A G E R , a witness, called and examined by defendant's counsel:

Q What is your business? A Tailor.

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

Q How long do you know the defendant at the bar?

A I know him since seven years.

Q Do you know other people that know him?

A Yes, sir; a whole lot of them.

Q Do you know what his reputation is as a law-abiding, peaceful citizen? A Yes, sir.

Q Is it good or bad? A It is good.

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He never had anything to do with anybody.

THE COURT: Six months in the Penitentiary.

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2020

**START**

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**CASE**

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
Charles Smith	2	5	20	
Carlton Shepherd	21	23		
Patrick Curry	24	25		
Albert Thomas	26			
Charles E. Fein	28	40		
Pearl Brott	45	49		
Robert Taylor	53	56	60	
George A. Lesser	61	63		
John W. Tayler	63			
Henry Low	64	66		
Leonard G. Spencer	67	68		
Charles Smith rold.,	69			
Officer Thomas "	70			

-COO-

CASE 1096

2022

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

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

-against-

CHARLES E. FEIN.  
-----X

Before:

HON. THOMAS C. O'SULLIVAN, J.

and a jury.

New York, February 9, 1910.

Indictment filed January 5, 1910.

Indicted for grand larceny in the first degree.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY ISADORE WASSERVOGEL

FOR THE DEFENDANT: MR. JOSEPH GOLDBERG.

Peter P. McLoughlin,  
Official stenographer.

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C H A R L E S   S M I T H,   a witness called on behalf of  
the People being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. WAASSERVOGEL:

Q   Where do you live?   A   Ocean avenue, Amityville,  
Long Island.

Q   Mr. Smith, what is your business?   A   I am connected  
with a jewelry establishment.

Q   What is the jewelry establishment?   A   Black,  
Starr & Frost.

Q   Where are they?   A   5th avenue and 39th street.

Q   How long have you been in their employ?

A   Since 1898.

Q   In what capacity are you employed there?   A   Assist-  
ant credit man.

Q   On December 31, 1909, on the evening of that day,  
where were you?   A   I was in the Transit Cafe that evening.

Q   Where?   A   The Transit Cafe.

Q   Where is that?   A   No. 10 East 42nd street.

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

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

Q   Charles E. Fein?   A   Yes, sir.

Q   Is he employed in the cafe?   A   He was at that time.

Q   In what capacity?   A   As a piano player.

Q   Were you the owner of any jewelry at that time?

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A Yes, sir.

Q That you wore upon your person? A Yes, sir.

Q What was it? A I had a pin with me.

Q Is this the pin (Showing witness a pin)?

A Yes, sir.

MR. WASSERVOGEL: I ask to have it marked for identification.

(The pin referred to is marked People's Exhibit 1 for identification.)

Q Where did you wear that pin? A I had it in my tie.

Q When did you last know that you had it in your tie?

A When I went in; I had it on when I went in there.

Q What time was that? A I should say about a quarter to ten.

Q When did you come to miss it, if at all?

A My attention was attracted by a party who came in there, who I found out afterwards was a detective, he notified me of the loss of it. I was notified about the loss of it by a party coming in there who I found out afterwards was a detective; I would not have know it was gone had I not been told.

Q After this information came to you did you have any conversation with the defendant or did anybody, in your presence have a conversation with the defendant? A I don't

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think I had any conversation with him after that.

Q The police came? A Yes, sir.

Q The detectives came? A Yes, sir.

Q What is the name of the detective who came in?

A I don't know the names; there were two others came in right after this.

Q Are they in court here now? A Yes, sir; they are.

Q (Is Detective Thomas in court). Is that one of them?

A Yes, sir.

Q Who is the other one? A Mr. Curry.

Q Is he the other one? A Yes, sir.

Q Now after they came in did they have a conversation with the defendant in your presence? A Yes, sir.

Q Tell the Court and jury what that conversation was? A Well, they spoke to me first, asked me if I had them the pin; went over and spoke to him about having the pin; he denied having it at first.

Q What did he say?

(No answer.)

Q Was that in your presence? A Yes, sir; I was right close by.

Q Tell us what was said, tell us what the detective said to him and he said to them? A He asked him to give him the pin; he said he didn't have any pin, and then the

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pin was taken, I didn't exactly see the pin taken from his possession, but immediately afterwards the pin was shown to me by one of the detectives that was with him.

Q Was there anything else said? A I don't remember that.

Q Did he say anything to you about remaining in New York any time during that evening? A He said he was going to leave that place that next night.

Q Did he tell you where he was going to? A No, sir, he did not.

Q You didn't see him actually take it out of your tie?  
A No, sir.

CROSS EXAMINATION BY MR. GOLDBERG:

Q You know the defendant for quite sometime, don't you, Mr. Smith? A I knew him about two or three weeks.

Q Prior to this occasion? A Yes, sir.

Q You were frequently a visitor at this Transit Cafe, weren't you? A In the evenings, I wouldn't call it frequent.

Q Five or six weeks before that time? A No, sir.

Q How many weeks before that? A About three weeks at the outside.

Q During all that time you saw the defendant in that cafe?

A Yes, sir.

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Q This cafe is a few doors east of 5th avenue?

A Yes, sir.

Q On the southerly side of 42nd street? A Yes, sir.

Q Have you any higher regard for an oath administered  
the  
to you today than you did have for one administered to you  
in the Magistrate's Court?

Objected to; objection sustained.

Q This defendant was arraigned in the Magistrate's  
Court, wasn't he? A Yes, sir.

Q You were a witness upon that occasion? A Yes, sir.

Q An oath was administered to you, wasn't it, by the  
Magistrate then and there presiding? A Yes, sir.

Q This defendant here made a statement in court,  
didn't he, answer yes or no? A I don't know.

Q Did he make a statement? A I don't know; I don't  
remember.

Q You were present when he said something to the Magis-  
trate? A I was.

Q You were up on the bridge there? A I was.

Q Did you hear any part of or anything  
of what he said to the Magistrate upon that occasion?

A He told the Magistrate at that time that it was done in  
a joke.

Q In addition to that didn't he say you were a good

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friend of his? A I would not call him -- he said that but I would not.

Q Answer yes or no, didn't he beside that say that you were a frequent visitor at that place? A That I don't remember, his saying that.

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

Q That is the best answer you can give? A I don't remember Fein saying it.

Q Do you remember the Magistrate -- do you want time to search your recollection whether he did not make that statement? A I don't.

Q Now just think a moment, bring your memory back to that occasion? A I cannot remember him saying anything else.

Q Can you recollect him saying anything outside of the statement, that you were his friend, and in addition to that you were only joking on that occasion? A I don't recollect anything else.

Q Do you remember the Magistrate asking you whether he was a friend of yours? A I don't think the Magistrate did.

Q Certain of that? A I am not certain, but I don't think he did.

Q Do you remember the Magistrate asking you as to

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whether you wer at that time -- as to whether you were fool-  
ing just before that occasion? A He did not ask me that  
question.

Q Now I will put these questions to you formally and  
ask a yes or no answer from you. Did the Magistrate on  
that occasion , in the presence of this defendant here,  
ask you "Is this young man a friend of yours"? A He did  
not ask me that question.

Q What statement did you make on that occasion?

A I told him the facts the same as I have told here.

Q Do you mean to tell this Court that the Magistrate  
did not ask you -- you recollect distinctly that this boy  
said he was joking, and that you were a friend of his, do  
you mean to say the Magistrate did not ask you whether you  
were a friend of his or not? A I don't think he did.

Q That is the best answer you can make. Did he ask  
you whether you were in that cafe any time prior to that  
occasion? A He did not.

Q Did you in answer to those two questions answer that  
you had never known this boy before that night, and had  
never been in that cafe before that night? A No, sir, never  
made such a statement to that effect.

Q You visited that Transit Cafe almost every night  
at least, didn't you? A Not every night.

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Q How many nights a week did you miss? A Well, two.

Q Two nights a week? A Yes, sir.

Q When was the first occasion upon which you visited the Transit Cafe? A Well, I cannot answer that.

Q About how many weeks -- about three weeks?

A Well, in regard to going to backroom, I have been in there a number of times in the front.

Q I am speaking of the back room or any part of the cafe? A For about three weeks.

Q You were there at least five nights a week on your own statement? A About that.

Q This boy was plaing the piano in the back room all that time? A Yes, sir.

Q You knew him, didn't you, from the very first night that you got into that place? A Well I spoke to him.

Q You did? A Yes, sir.

Q Did you drink with him occasionally? A Yes, sir.

Q You were so friendly with him that you went home and slept with him one night? A No, sir; I did not.

Q That is as true as anything you have testified to in this case? A Yes, sir.

Q Well, on the occasion that you went to this place

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did you have a drink with this defendant or have any conversation with him? A I have had some, yes, sir.

Q You knew several of the people about the place, didn't you? A Only from this defendant.

Q Now was there a single soul who frequented that place that you did not know? A I don't know the names of anybody.

Q I will refresh your recollection on that point, did you know Mr. Lesser, the proprietor of the establishment? A Yes, sir.

Q Did you know Mr. Jack Taylor, one of the waiters? A I knew who they were from being in there.

Q Do you know a Mr. Robert Taylor, that is a brother of this Taylor? A I met him the night -- that New Year's eve.

Q You never saw him before that occasion? A No, sir, I don't think I did.

Q Wasn't Taylor, as a matter of fact, a brother of this one who was introduced to you by this defendant?

A Yes, sir, he was.

Q Was it upon that night or a prior occasion?

A It was that night before the pin disappeared.

Q Did you know a man by the name of Thomas Clifton?

A No, sir; I know a man they call Tom.

Q Do you know that man? (Pointing to a man in the

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court room). A Seen him before, I knew him by the first name only.

Q You knew him by his first name? A Yes, sir.

Q Friendly enough to know him by that name? A Yes, sir.

Q How often did you see him at the Transit Cafe?

A A great many evenings.

Q Did you know a party <sup>named</sup> Miss Brott? A I never knew that was her last name, I knew her first name, that is all.

Q You knew her by the name of Pearl? A I was introduced that way.

Q You saw her there on those occasions too, didn't you?

A Yes, sir.

Q Did you know a man by the name of Jack McAuliffe?

A I met him there, yes, sir.

Q Did you know Jack Kerns? A No, sir.

Q Did you know him by Jack, the name of Jack?

A I don't know whether I saw him or not.

Q Now you were so familiar about that place that the different people about it you knew very well? A I don't know what you mean by knowing them very well.

Q I mean intimately enough to sit about the place and drink with them? That calls for an answer yes or no. That is a simple question and the stenographer will kindly

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repeat to you? A I knew them from going in there.

Q You knew them? A Yes, sir.

Q Besides being employed by Black, Starr & Cross, you are a musical director in a church in Amityville, Long Island? A Yes, sir.

Q Where? A Long Island.

Q You are a musical director, aren't you? A Yes, sir.

Q At a church? A Yes, sir.

Q And you used to spend five of your evenings in the back of this cafe, didn't you, five days of every week?

A Yes, sir.

Q For at least three weeks before this occasion?

A Yes, sir.

Q You didn't sit by yourself in that back cafe, did you? A I used to talk to Mr. Fein and the other people there.

Q He would play songs at your request, wouldn't he?

A Yes, sir.

Q Again I ask you did you go home to sleep with him one evening? A No, sir.

Q Did you stay there so late at that time that you told him you couldn't go back to your people at Amithville, they would suspect something doing in New York, and you would stop

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ASL

at the Hotel Belmont? A I never stopped there.

Q Did you ever stop at any other hotel? A Yes, sir.

Q IN New York? A Yes, sir.

Q During those three weeks? A I certainly did.

Q How did this defendant know that if you didn't tell him?

MR. WASSERVOGEL: There is no proof here that the defendant does know it.

THE COURT: Objection sustained.

Q Now, will that refresh your recollection on the point as to whether you did not tell him you stopped in New York occasionally? A I told him more than once I was going to stay in town.

Q You told him all about your affairs, what you intended to do after you left this cafe? A I don't know as I can say that.

Q To sum it up you were very friendly towards this boy? A I was to a certain extent.

Q To a certain extent? A Yes, sir.

Q Now you were good friends, weren't you? A Well good acquaintances I should say.

Q What is your distinction between acquaintance and a friend? A I think a friend -- I would know where he lived,

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know more about him than I would about the defendant.

Q That is the only distinction you draw, because you did not know where this boy lived, that is the only reason you call him an acquaintance? A I think there is a big difference between a friend and an acquaintance.

Q I know there is a difference. Let us see what your distinction is.

Objected to.

THE COURT: He may answer.

A I don't know how to answer it.

Q You don't know how to answer it? A Yes, sir.

Q You drank with this boy, didn't you frequently?

A Yes, sir.

Q You had certain small calendars that Black, Starr & Frost gave out? A Yes, sir.

Q You distributed them among the various people in the back of that cafe, didn't you? A I gave Mr. Fein some to use through his acquaintances?

Q You gave Fein some? A Yes, sir.

Q In addition to that did you send him or present him with a Christmas card? A No, sir.

Q Or a New Year's card? A No, sir.

THE COURT: Where is all this leading to?

Get off the skirmish line and get in to your case.

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ASE



BY MR. GOLDBERG:

Q Now, on the night that this happened, New Year's eve, wasn't it? A Yes, sir.

Q In the rear of that cafe there were quite a number of people about the place, weren't they? A Quite a few people in there during the evening.

Q You were sitting at a table with the defendant?

A Yes, sir.

Q Who besides you at that table, who was there?

A There was this young lady back here, and Taylor, young Mr. Taylor and somebody else.

Q William McAuliffe? A No, sir; he was not there that night.

Q Was Kerns there? A I don't know the name.

Q Did you know him by the name of Mack? A That was McAuliffe, I don't think he was there that night.

Q The four of you were sitting at that table long before this snatching of the pin incident occurred?

A About two hours.

Q Two hours? A Yes, sir.

Q This occurred -- the defendant was arrested about quarter past one? A Yes, sir; a little later than that.

Q A little later than that? A Yes, sir; I think a little later than that.

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Q You were drinking at that table for at least two hours? A Yes, sir.

Q And the defendant Fein, would get up occasionally in response to a request and play on the piano, wouldn't he?

A He was employed to play there.

Q In response to a request he would leave the table?

A I don't think he was requested any that night to play, any certain piece.

Q He played on the piano? A yes, sir.

Q During those two hours he left the table frequently to play on that piano? A Yes, sir.

Q He had a handkerchief in his possession, didn't he?

A That I don't know.

Q Did you snatch a handkerchief from him about an hour before the time he snatched your pin? A No, sir.

Q Search your memory? A No, sir.

Q Nobody is going to accuse you of larceny?

A No, sir, I never touch anybody's property.

Q Did you snatch a handkerchief from him? A No, sir.

Q Why do you hesitate? A I did not hesitate.

Q Well everybody about the table was fooling with one another? A I didn't see any fooling there at all; we sat there talking; there was no fooling going on.

Q What topics were you discussing there? A That I don't

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remember exactly.

Q Nothing serious was there? A No, sir.

Q Prior to that evening did you used to fool about the place and talk and fool, didn't you, among yourselves?

A Well we sat there and talked in the evenings.

Q On occasions before this New Year's eve? A Yes, sir.

Q Didn't you snatch his handkerchief from him?

A No, sir.

Q Now I will put this question to you -- did he say to you "I will get even with you before the evening is over"?

A Not that I remember.

Q He used to call you by your first name? A Yes, sir he did.

Q You did not see this incident of the snatching of the pin? A No, sir.

Q You had been drinking all night there? A Well, the time I went in there was not very early.

Q The officer in the case first attracted your attention to the fact that your pin was missing? A Yes, sir.

Q How long after Charles Fein left that table for the last time? A That I don't remember.

Q Was it about five minutes? A It wasn't very long.

Q A very short time? A Yes, sir.

Q You don't recollect whether he left the table because

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of a request made of him to go and play on the piano?

A No, sir, I don't remember.

Q When your attention was called to the fact that your pin was missing did you state to the detectives "I don't believe that boy intended to keep my pin, I think he was only fooling"? A Did I say that? I did not say it.

Q Did he say he was a friend of yours? A I don't remember saying that.

Q Is that the best answer you can give? A I am telling you the truth; I don't remember it.

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

Q Did you tell him, when the detectives insisted upon his going along, did you say to him "Don't worry, Charlie I will bail you out"? A No, sir, Mr. Lesser made that remark.

Q Did you say, "I will go along with you, there will be nothing to this", yes or no? A I never made that remark; that was made in the place.

Q Did you accompany the detectives? A I came downtown with them, yes, sir.

Q Did you require any urging to make a complaint against this boy? A No, sir.

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AGE

Q You went voluntarily? A I went down with them.

Q You went to the subway, didn't you? A Yes, sir.

Q Did the detectives separate you from this boy?

A yes, sir.

Q Were you on one side of the train so that you couldn't talk to one another? A I was in the back end of the car and he was in the front.

Q Do you know the father-in-law of this defendant, don't you, Mr. Low? A This man named Low came in -- do you know the wife of the defendant?

Objected to.

Q Do you recollect two days after you had testified in the police court, do you recollect Mr. Low calling at Black, Starr & Frost? A There was a party there that said he was Mr. Low, he called there.

Q Was he accompanied by a young lady whom he introduced to you as his daughter, Miss Low? A Yes, sir.

Q Will you stand up (Addressing Miss Low). A Yes, sir.

Q Is that the lady? A Yes, sir.

Q Now I ask you to answer this question yes or no -- to the question I now put to you -- didn't he go over all to you and say to you that she wants to know about this man that he wants to marry his daughter?

Objected to. Objection sustained.

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Q Did you, on that occasion state to Mr. Low, after he had made a statement to you, that you did not believe the boy intended to keep the pin, and did not intend to steal it? A I never said anything of the kind.

Q Did you state to him to wait until the afternoon, that you wanted to consult somebody to see whether you would withdraw the charge or not -- to get your pin back? A I wouldn't give Mr. Low a decided answer on anything that morning

Q Did you telephone him in the afternoon? A I believe I did.

Q What did you say to him at that time? A Well, that I don't remember exactly.

Q Give us the substance of it? A I think it was --

Q If you can't recollect we will let it go.

RE DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Mr. Low asked you to withdraw this charge?

A Yes, sir.

Q You refused to do so? A I took time to think it over.

Q You did not withdraw the charge? A No, sir.

Q How far is the place of business of Black, Starr & Frost from this Transit Cafe? A From 39th to 42nd street, a few blocks.

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Q You were engaged those three weeks in night work?

A Yes, sir.

Q In the holiday trade? A Yes, sir.

Q Do Black, Starr & Frost do manufacturing?

A No, sir, not manufacturers entirely, retail people.

Q How long would you spend there of an evening?

A Well, it would vary, some nights I wouldn't stay as long as an hour.

Q You would go in there and get a drink, once in a while?

A Sit down

for an hour or so, maybe sometimes longer.

Q Do you know anything about the value of this pin?

A It is worth about \$15.

CARLTON SHEPHERD, a witness called on behalf of the people, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 1118 Washington avenue.

Q In the Bronx? A Yes, sir.

Q Mr. Shepherd, on December 31, 1909, the evening of that day, were you in the Transit Cafe, East 42nd street?

A yes, sir; I was.

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Q Did you see this defendant there, Charles E. Fein?

A Yes, sir.

Q Did you see him do anything with respect to this complainant, Mr. Smith? A Yes, sir.

Q Now tell us what you saw? A As I entered the door there was a table just about from three to five feet from the door and at the table there ~~was~~ three people were seated, a woman and two men, one was the complainant in the case. This defendant stood over the table talking and laughing; the complainant in the case was talking to the woman, with his head turned aside. As I had to pass that table in order to get to a table myself -- just as I passed this man reached over and deliberately took the pin from his tie. I sat down, called for a drink and drank it. In the meanwhile the defendant got up, walked out to the bar. I followed him out and as I did so I saw him look over the pin in this manner (indicating). At that time I was with two lieutenants of police. I left them across the street. I went over and reported the case and they came back and asked the complainant if he had lost any property. At that time he did not know whether he lost any or not and he said, "Yes", he lost his pin -- after he felt for it. The officers went over and accused the piano player and he put his hand in his pocket and handed the pin to the officers.

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in the case.

Q Anything else done or said by anybody? A Why, at first he denied that he had taken it and then he handed it over.

CROSS EXAMINATION BY MR. GOLDBERG:

Q That was a pretty important incident, wasn't it, his refusing to give that pin up the first time. Why didn't you testify to that when Mr. Wasservogel asked you whether anything was said upon that occasion?

Objected to; objection sustained.

Q Why was it when you first testified and told your story you did not mention that this man refused to give this pin up at first, and said he did not take it? A Why

I didn't see any importance of it. I am not the judge of the case, I don't know, I only say what I saw.

Q You were not there at any time prior to the snatching of this pin, you got in there about that time? A Yes, sir, just at that time.

Q As a matter of fact, did not the defendant, Tein, have that pin pinned on the lapel of his coat when the detectives were there? A That I don't know where he brought it from because I stood behind him.

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P A T R I C K C U R R Y, a witness for the People,  
being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 613 East 41st street.

Q You are a police officer of the City of New  
York? A Yes, sir.

Q Attached to what precinct? A The Detective Bureau.

Q How long have you been a police officer? A 19  
years.

Q On December 31, 1909, did you see this defendant,  
Charles E. Fein? A Yes, sir.

Q Where? A No. 10 East 42nd street, in the bar room.

Q The Transit Cafe, is that? A Yes, sir.

Q Did you have any conversation with him there?

A yes, sir, I had some conversation with him.

Q Tell the Court and jury what was said? A I went  
into the cafe, after being informed by Mr. Shepherd that  
the defendant -- or that a man in there, the piano player--

Q After some one had given you certain information  
you talked with him? A Yes, sir.

Q Tell us what was said? A In company with Detective  
Thompson I went to the defendant and asked him what he had  
done with the pin; he said, "What pin?" I said, "That pin  
<sup>which he had</sup>

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you took from that man there". (Pointing to the complaining witness). He said, "I didn't take no pin off him"; I said, "Yes, you have". I reached for the pocket and at the same time he drew the pin from the right hand trousers pocket.

Q Was anything else said? A Then I showed the pin to the complaining witness, he identified it as being in his property, and the pin that had been his tie earlier in the evening.

Q Then you arrested him? A Yes, sir.

CROSS EXAMINATION BY MR. GOLDBERG:

Q Did not the defendant upon that occasion also say that this man Smith, the complainant, was a friend of his?

A He said something about knowing him.

Q Didn't he say that they were fooling that evening?

A He did not say that, no, sir.

Q You are sure of that? A Yes, sir, quite sure, yes, sir.

Q You went down with this defendant to the police court, didn't you, took him with you? A Yes, sir.

Q On his way down did he again tell you that this complainant was a friend of his, that he had known him for quite sometime? A He said the man came in there occasionally.

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Q Didn't he in addition to that show you a calendar and a Christmas card that he had received from him, or a New year's card? A I don't know about that; he showed me several cards, whether they bore the complainant -- anything touching on the complainant, I don't know, I didn't pay much attention to the cards, he was showing me plenty of them.

Q But you took card and kept it? A I did not -- I did not keep anything belonging to him; I looked over it in a kind of an unusual way, kind of looked over it, and seeing there was nothing of any importance I handed them back to him.

Q Sure of that? A Yes, sir.

ALBERT THOMAS, a witness for the people, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are attached to the Detective Bureau?

A Yes, sir, I live at 464 West 41st street.

Q How long have you been connected with the Detective Bureau? A About 15 years.

Q Did you on the 31st day of December, 1909, see this

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defendant, Charles E. Fein? A I did.

Q Where? A In the Transit Cafe, in the rear room of the Transit Cafe, No. 10 East 42d street.

Q Have any conversation with him there? A Yes, sir.

Q Tell us what was said? A I asked him -- I said, "Did you take a pin from this man," pointing to the complaining witness, who was a short distance away; he denied he had taken it. I says, "If you don't give it up pretty quick I will take it out of your pocket myself", and I reached towards his pocket.

Q You reached? A Curry and myself reached. He put his hand in his trousers pocket and as he drew forth his hand I took hold of his wrist, opened the palm of his hand and the pin was there. I showed it to the complaining witness, he identified it as his pin that he had worn in his tie when he entered that cafe.

Q Anything said by anybody? A In riding down in the train this defendant sat alongside of me, in the subway train, on the way to Headquarters, Police Headquarters, and he said that he knew the complainant. I said, "Is he a friend of yours", and he said, "Well, I know him".

Q Did he say anything about this stealing? A He said he took it as a joke.

MR. WASSERVOGEL: The people rest.

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MR. GOLDBERG: I make a formal motion to dismiss the indictment on the ground that the facts proven fail to sustain the charge contained in the indictment.

Motion denied.

Exception.

CHARLES E. FEIN, the defendant being duly sworn in his own behalf, testified as follows.

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 117th street, 147 -- I live now at my wife's house, 191 St. Nicholas avenue.

Q How old are you? A 22, sir.

Q A married man? A Yes, sir.

Q When were you married? A The 23rd of January.

Q This year? A Yes, sir.

Q Now what is your occupation? A Pianist and vocalist.

Q By whom were you employed at the time of your arrest?

A George Lesser.

Q What was his business? A Cafe and restaurant.

Q Where does he conduct his place of business? A No. 10 East 42d street.

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Q How long a time prior to your arrest had you been employed by Mr. Lesser? A About six or seven weeks.

Q Do you know the complainant in this case? A I do, sir.

Q Upon what occasion did you first meet him?

A Well, I was singing a song "My Gal Sal".

Q Give us the approximate time? A Why, I couldn't just say it was about the 4th when I was engaged by Mr. Lesser --

Q At the time of your arrest you had been employed by Mr. Lesser about 6 weeks? A Yes, sir.

Q He came over to you and what did he say to you?

A Why he came over and stood at the swinging door of the barroom and looked in, listening to the song, and then he said, -- "why he asked Mr. Lesser could he come in and speak to me. I believe Mr. Lesser must have given him permission

to because he came over and said, "Excuse me, my man, would you mind singing the chorus again", and I said, "Certainly".

I sang the second verse again and a third chorus to the song and he says, "Man, that's great". I said, "Why--" and at that time he invited me to have a drink. I accepted a cigar.

He sat at the table nearest to the piano. Well, we got into conversation, and he said "Don't think me too familiar by getting acquainted with you. The reason I am interested

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in your singing is this -- I am a choir director, a musical director in a church at Amityville, Long Island." I said, "That's very nice". So he says, "I can harmonize myself, would you mind singing a song." So we sang another song and he harmonized it, and just as we were singing Jack Taylor came over and also joined us in the harmony, making a sort of a trio.

Q That is the first occasion on which he was there?

A Yes, sir.

Q Did you meet him on occasions subsequent to that time?

A Yes, sir. He came in the following night.

Q How often after that time did he come in the transit Cafe? A He came in every night in the week with the exception of Sunday and Saturday.

Q Did you speak to him upon those occasions? A He used to come right up to me.

Q Did you drink at a table? A Yes, sir.

Q Other people at the same table with you? A No, sir, not at that time, I knew him about four nights and I introduced them as they came in.

Q Who did you introduce him to? A To Tom Clifton, Mr. Jack Taylor, to Bob Taylor and McAuliffe, Jack Kerns and Bill Dailey and Joe Eccleson.

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Q You introduced him to people? A Yes, sir.

Q Whenever he called at that place would he speak to you? A Yes, sir, surely, he came right up to the piano.

Q Did you go out with him at any time outside of the cafe? A Yes, sir; he would wait until I got through a few nights, and about the second week we went out together.

Q Upon many occasions did you do that? A About three or four times.

Q During that period of five or six weeks? A Yes, sir.

Q Now, did he ever sleep at your house? A Yes, sir, once.

Q Where were you living at that time? A 147 East 117th street.

Q How long after he knew you did he sleep at your house? A It was in Christmas week.

Q During Christmas week? A Yes, sir.

Q Prior to that time had he given you anything?

A Yes, sir, he gave me one calendar. Then I asked him and to give me a few more and he said he would, my friends asked him for some, I took a few home and distributed them to my family, and then he gave them to different friends that were there, a few to distribute to their friends. And Christmas -- this was on a Thursday he wrote me a card

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and said, "I am sorry old man I can't see you tonight."

Q How did you address one another? A Charlie and Charlie.

Q His first name is Charlie? A Yes, sir.

Q Did you ever play any pranks upon one another in that place? A yes, sir, we did.

Objected to.

Question allowed.

THE WITNESS: (Continuing) There were a few times I went to sing a song called "Where the River Shannon Flows" which was at Tom Clifton's special request. I only had that one song, it being kind of difficult to get, kind of difficult to get so he hid that on me, thought it would be a good joke.

It was my turn -- Mr. Lesser was kind of strict with me and he says, "Listen, Charlie, I want you to be on the job. You can't sit around the tables, be on the job". So this man made this request and he says "Why sing this song, won't you Charlie" just as I went to the piano looking for the song I could not find it. I went through my music, I didn't know where it was, and finally Smith laughed, he sat on the music and he handed it to me.



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Q A feeling of good fellowship always prevailed in the back of that cafe when he was there and you were there --- did a feeling of good fellowship prevail there during the time that he was there? A I thought Mr. Smith such a good fellow- he even promised me a position in the choir on Sundays, being that I didn't work during the week and I thanked him.

Q What? A He promised me a job in the choir and I thanked him and since that time we were friendly, so I thought he was a good man, and a good friend.

Q When did you first see Smith on New Years Eve? A When did I first see him? Well, I was sitting at the piano, at a table there with Bob Taylor, nobody in there at that time.

Q What time was that? A That was about I should say nine o'clock.

Q When he came into the place did he greet you? A Sure, he came over and shook hands with Bob Taylor and myself.

Q He sat down at a table? A Yes, sir, and ordered a drink.

Q Who joined you at that table afterwards? A Mack came in.

Q Who else --- by Mack whom do you mean? A McAuliffe, he came in with his lady friend, Pearl.

Q Pearl Brett --- who was there besides? A Why, after that Jack Kerns came in; they was all there at the table.

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Q Was Taylor there? A Yes, sir, he was there from the beginning.

Q You ordered some drinks. Tell us what happened from the beginning to the time you were placed under arrest?

A Smith came in and asked me and Bob to have a drink, which we accepted. Then he says, "Come on, Charlie, we might as well get busy and practice a few songs, nobody here", which we did. Then of course we sang a few songs and <sup>he</sup> sat at a table close to the piano, he sat there about half an hour. Then we went back to the other table because Mack came over and Pearl came in and they sat down at this table close to the swinging door. Then he invited Mr. Smith and myself and Bob to come over and have a drink with him, which we did. While we were drinking Mr. Jack Kerns came in and we got into conversation, talking of different things. We had agreed upon going out together after work which was to be at one o'clock. So I said to myself I wish I could go out at 12 o'clock so that we could be out and hear the chimes. We got talking and accepting drinks, one treating another, of course I didn't buy any drinks because I was simply an employee there. So we got talking, and, finally, about, I should say about just a quarter of an hour or so when we were sitting at the table Smith started fooling around and he took a rose of this Miss Pearl. Pearl said you better give me back that rose; he said "You don't

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want that rose"; and with that this McAuliffe looked at Pearl as much as to say "That's pretty funny".

BY THE COURT:

Q "As much as to say", did he say what you are going to say? A He said --- he looked at her as much as to say.

Q Did he say it? A No, sir.

Q Then don't you say it. Go ahead. A This Mack was kind of sore about this. Then finally Smith started fooling around by taking a card which Pearl handed to me with a few jokes written on it. I was going to write them off and he snatched it out of my hand, and copied it, said he wanted to copy it first. Then after that we had another round of drinks and this here Mr. Smith grabbed my handkerchief. I said "You don't want that handkerchief, it is soiled". I don't know what he did with it. Anyway he hid it somewhere without me taking notice to what he did with it. I says "Come on, that handkerchief is soiled, you don't want it"; he says "All right, you might get it later on, you be a good fellow"; well, I says "All right, I will get square with you". So in about a good while after that, I should say about an hour after that, about 11 o'clock, why I says to the young ladies, to the room full sitting around there, and a few friends of mine, I says "Now watch, here is where I will get square on Charlie." With that I took the pin and held it up like that (illustrating). I picked it up this way and stuck it in the lapel

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on my left hand side. Then somebody requested me to sing a song, from the other table, some patrons of the place, which I got right up and to make sure I said "It must be near 12 o'clock", and I held the swinging door open, looked through the mirror which is at the bar and saw what time it was reflected in the mirror. With that I closed the door and went to the piano to sing this song. The name of the song was -- I sang the song, about one verse, when two gentlemen came up, one stood on this side and one on the other side and said "You just took a pin". I kept on. As they stood there --- while they looked at me I actually thought that they were there to listen to the song and I kept on singing. One of them caught me and grabbed me by the shoulder and he says "Stop, you are just after taking a pin, didn't you", I said, "Certainly"; he says "Well, where is it"; I says "Here". He says "You are under arrest". I says "Man, this is a mistake here"; he says "Not at all, you are under arrest". "You better come along." I says, "This man is a friend of mine". Then Charlie Smith came over and said "There is a mistake here, this man is a friend of mine, he has been drinking at the tables with us, he is a friend of mine". The detectives were not satisfied with that, they asked me for the pin which I took off him and I handed it to him --- handed it to the detective with the mustache, the tall one, and then they both took me out, the shorter one, the man that testified first

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said "Why, I know you"; I says "I beg pardon, but I don't know you" and he says "Don't try any game like that, you are nothing but a crook from downtown"; I says "You can't know me, you are accusing me wrongly here". He says "Never mind, cut that cheap talk out". With that they yanked me into the cloak room and I got my coat, overcoat and hat, and I walked out with them. Then Charlie patted me on the shoulder, Charlie Smith, and he says "Listen here, Charlie, there is no use in worrying about it now, I will stick by you" and he walked out with me. As we got to the swinging door he said "It will be all right, I am with you, don't act as though you were afraid", which I did, I actually was afraid that I was accused in this way.

Q Now, after that you were taken out of the cafe and you were taken to police headquarters? A Yes, sir; in the subway.

Q You were arraigned the next morning, weren't you?

A Yes, sir.

Q Before the Magistrate? A I don't know what his name I know was, but it was some Magistrate.

Q 54th Street court? A Yes, sir.

Q When you were up before the Magistrate what statement did you make to the Magistrate? A First they asked me to step aside and sign some paper.

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Q Do you know what statement you made before the Magistrate? A The Magistrate told me that I was charged with stealing this man's pin and I said "Your Honor, am I allowed to speak just the way I want to" and your Honor said yes.

Q You mean the Judge said yes? A Yes.

MR. WASSERVOGEL: Is that material?

MR. GOLDBERG: If your Honor please, I desire to show that this complaining witness ---

THE COURT: I do not care what you desire to show. You are not going to show it by this sort of testimony.

MR. GOLDBERG: I have here a certificate from the official stenographer.

THE COURT: He cannot go into a history of this case and what he said in other places.

MR. GOLDBERG: Am I not to be permitted to show that this complaining witness denied having known this boy?

THE COURT: I will not allow you to argue upon it. Proceed. I am going to cut off all these side lights.

MR. GOLDBERG: I will make the formal offer to prove. I offer to prove by the testimony of this witness that a certain statement was made by the com-

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plaining witness before the Magistrate. If objection is taken to the form of the proof I have here a certificate of the stenographer of that court certifying that no minutes of the proceedings had before Magistrate Herman were taken. I said to the District Attorney that I would have the certificate of the stenographer here that he was the only stenographer assigned to that court. If your Honor deems it necessary for me to have the stenographer here to prove that why I will have to subpoena him.

THE COURT: The objection has already been overruled. So proceed with your testimony.

Exception.

Q Did you at that time when those officers came in there, did you state to them that you had no pin? A No, sir.

Q Did you have that pin in your pocket? A No, sir; I had it on my lapel.

Q On your lapel? A Yes, sir.

Q Where it could be seen by everybody? A Well, I had it on the lapel.

Q You say it was on your lapel at that time. When you took that pin from him did you take it with any intention to keep it? A No, sir.

Q What was your intention in that regard?

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Objected to. Question allowed.

A Well,, I said --- I thought to myself he had my handkerchief, fooling me, kidding me, and I said I would keep him worried, make him believe he lost it.

Q Was it your intention subsequently to return it?

A Yes, sir.

Q Where are you employed? A 10 East 42nd Street.

Q At the present time? A Bridge Street, I don't know just the number of it.

Q What street? A Bridge Street, a restaurant.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q What sort of a place is the transit cafe? A Restaurant, and a bar in front.

Q Men and women come in there to drink? A Yes, sir, drink and eat.

Q You are the only piano player, are you? A Yes, sir.

Q You are frequently asked to have a drink by the people who come in there? A Yes, sir.

Q So you are asked to drink by other besides this man Smith? A Yes, sir.

Q On that night in question? A Provided I sang a song for him.

Q You were there to sing songs and play tunes, weren't you? A Yes, sir.

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Q That was what you were employed to do? A Yes, sir.

Q Irrespective of what anybody else asked you to do your employer expected you to play and sing for the patrons? A Yes, sir; at the request of patrons.

Q You drank at other tables that night, didn't you?

A Yes, sir.

Q Is that the only business you were ever engaged in?

A Yes, sir.

Q Where were you employed prior to this? A At the Star Theatre, 445 Central Avenue, New Jersey.

Q Now, as a matter of fact you were not sitting with Smith at that particular time, were you? A When?

Q At the time the pin was taken out of his tie? A Yes, sir, sitting there.

Q At the time you took the pin out you were not sitting down? A No, sir; I got up.

Q You were standing over the table talking to the people sitting there? A No, sir; I got up.

Q You were standing up at the time you took the pin out of the tie? A Yes, sir.

Q Standing right next to the table? A Yes, sir.

Q Talking to this young woman? A Yes, sir.

Q While you were talking to her you put your hand over and took the pin out of the tie? A Yes, sir.



Q He did not know what you were doing at the time?

A Yes, sir.

Q That is correct? A Yes, sir.

Q You said something about a handkerchief he had taken from you? A Yes, sir.

Q Did you ever get that handkerchief back? A No, sir.

Q Didn't ask him for it? A No, sir --- I certainly asked him, yes, sir.

Q When did you ask him for it? A Right when he had taken it.

Q Right away? A Yes, sir.

Q How long was that prior to your taking the pin from him? A Well,, I should say about an hour, of course I can't just say exactly, but that is my best judgment.

Q Then you say he had taken a piece of music from you?

A This was not the same night.

Q He didn't take the music the same night? A No, sir; this was about a week before.

Q You want the jury to believe that the only thing he did take from you that night was a handkerchief? A Yes, sir.

Q You didn't say anything about the handkerchief to the police, did you? A I certainly did.

Q Upon that night? A Yes, sir.

Q Now, wait a minute. Let me ask you this: You say

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you had this pin on your lapel? A Yes, sir.

Q On the left hand side, was it? A This side here.

Q You saw Detective Thomas on the stand? A I don't know the difference between the names.

Q You saw them irrespective of their names? A Yes, sir.

Q You saw them on the stand? A Yes, sir.

Q Heard their testimony? A Yes, sir.

Q You heard these men say that you took that pin out of your pocket? A I did, sir.

Q Do you mean to tell this jury that their testimony is untrue on the subject? A I certainly do, sir. In fact I am very much surprised ---

Q You are positive of that? A I cannot see why these men want to say that when it is not true.

Q Do you mean to tell the jury that the pin was not in your pocket at that time? A I certainly do, sir, I cannot change, I can take an oath to that.

BY MR. GOLDBERG:

Q How many other people were in the place at the time you took the pin? A I couldn't say, the tables were pretty well occupied, about 10 to 15.

Q After you took this pin out did you hold it up? A Not exactly, I just done this like (illustrating). Can I demonstrate? I will say this is his tie, this is Mr. Smith, I was

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standing here, this is his chair,, and I just got up,, and I says "Now watch".

Q Who did you say that to? A To all at the table and as I said this -- this was Mr. Smith's tie, I took it up like this and put it right in here (illustrating).

BY MR. WASSERVOGEL:

Q How long was it after you had taken the pin that the police officers came in? A Right after that.

Q How long was that? A Well,, it was not --- I cannot really say.

Q Was it an hour? A No, sir, it was about three to four minutes.

Q Is that all? A Yes, sir.

Q Still you had time enough to go to the bar? A No, sir,, I did not leave the room.

Q You did not leave the room? A No, sir.

Q You saw Mr. Shepherd on the stand here? A I certainly did.

Q You heard him say that he saw you going into the bar-room? A Yes, sir.

Q You want the jury to believe that Shepherd is also telling an untruth? A I can only stick to the truth.

Q You say Shepherd is telling an untruth? A I certainly do.

Q You don't know him? A No, sir, I don't know him.

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Q You never knew him before? A No, sir.

Q As far as you know he has no reason to say that?

A The first time he has ever been in the place since I was working there.

P E A R L B R O T T, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 238 East 83rd Street.

Q Now, Miss Brett, do you know the defendant in this proceeding? A I certainly do.

Q How long a time do you know him? A Why, I have known him for about three months.

Q Do you know the complaining witness, Mr. Smith? A Yes, sir.

Q How long a time have you known him? A Well, about six weeks, six or seven weeks, I am not sure.

Q Where did you first meet him? A At the cafe, No. 10 East 42nd Street.

Q By whom were you introduced to him? A Mr. Fein, the defendant.

Q Did you see him at that cafe upon other occasions?

A Yes, sir.

Q How frequently? A Why, nearly every night in the week.

Q Did you see him speak to the defendant in this case ---

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or what was his relations to this defendant? A It was very---  
I thought he was a very good friend of his.

Q What led you to think that? A Why, he was very intimate with him.

Q In what way?

MR. WASSERVOGEL: Let us have the facts, if  
your Honor please.

Q What leads you to conclude that? A Why, they used to  
drink together, eat together, and on one occasion I know that  
they went out of there.

Q You needn't tell about that, what you know about one  
occasion..

THE COURT: We don't want a history of your  
life nor his.

BY MR. GOLDBERG:

Q What occasion have you in mind? A Why, he went out  
of there late at night and I supposed they were going to ---

Objected to. Objection sustained.

THE COURT: Get at the facts in this case.

BY MR. GOLDBERG:

Q Do you remember the occasion on which the defendant was  
arrested? A Yes, sir, I do.

Q In this cafe? A Yes, sir.

Q About what time did you go to the Transit Cafe --- were

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you at the Transit Cafe? A I was.

Q What time did you arrive there? A Well, about eight--  
no, about half past eight.

Q How late that evening did the complainant in this case, Mr. Smith, come in? A I think he came in about nine o'clock, at nine o'clock.

Q Did you sit about that table there? A I was at the table all the time after the time --

THE COURT: Ask her what she did.

Q Tell us what transpired that evening? A Well, when I came in --- I don't know how to commence it --- they were all sitting around the table, there was quite a few sitting around.

Q By a few who do you mean? A A few other people there.

Q Do you know them by name? A Jack they call him, and Mr. Taylor, Bob Taylor, and Mr. Fein was sitting at the table when Mr. McAuliffe, my gentleman friend and I came in. Then Mr. Smith came in and we all went over to the other table, he invited us over to his table.

Q Who invited you over? A Mr. Smith and I don't know what occurred after that. It was later that we were drinking, and I don't know, something happened, Mr. Fein said something to me and I turned around.

Q What did he say? A I don't know just what he said and I turned around and Mr. Smith grabbed a rose from my coat,

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in fooling, we were always joking, and I said "Mr. Smith, give me back that rose"; I says "I want it", and he says "What do you want of the rose".

MR. WASSERVOGEL: Objected to.

Q What happened after this rose incident? A Well, about 15 or 20 minutes, or half an hour, I don't know which, he took a handkerchief from Charlie's pocket.

Q By him who do you mean? A Mr. Smith, and Charlie says, "What do you want of that handkerchief, it is soiled, give it back to me".

BY THE COURT:

Q Just the same thing that was said about the rose?

A Yes, sir. We were always joking. And Charlie said "I will get even with you for that", and he went over to the piano and about an hour after that the taking of the pin occurred.

BY MR. GOLDBERG:

Q Tell us what you saw of that incident? A Why, Mr. Fein was sitting at the table and Mr. Smith was talking to me and he was kind of leaned over a little bit, and his head was turned and Charlie said "Now watch, I am going to take his pin" and he took his pin and held it up and he laughed, and he looked at Mr. Taylor, Bob Taylor, when he had it, and then he stuck it in here, I don't know just about where it was, right here in the lapel of his coat, and about two or three minutes after the detectives, I did not know they were detectives, but three

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gentlemen called Mr. Smith over to the table and Mr. Smith came back all nervous and he says to Mr. McAuliffe "I got a wire" and I was eager to find out what it was about, I didn't exactly know what he said, but Mr. McAuliffe told me.

Q Did you see Fein leave that room then? A No, sir, I did not.

Q When he took the pin did he hold it aloft? A Yes, sir, he held it about like that, and I asked him, I turned around and I said "Charlie, will you kindly play something for me" and he went over and played it and I had forgotten it, we all had forgotten about it.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q What is your business? A I am a telephone operator.

Q Where are you employed? A Why, I am not employed just now.

Q When were you employed last as a telephone operator?

A About a year ago in the Independent Telephone Company in Syracuse.

Q In any business since then? A No, sir, I have not.

Q You live at 238-1/2 East 83rd Street? A Yes, sir.

Q Every night you go to this Transit Cafe in East 42nd Street? A Yes, sir.

Q What time do you go there? A About half past eight.

Q Stay there all night? A Well, no, sir.

Q Twelve to one o'clock? A Yes, sir, twelve or one.

Q Sit there and drink with different men? A No, sir, I came in there with Mr. McAuliffe.

Q Always go there with Mr. McAuliffe? A Sometimes I went in there with my sister and her husband.

Q You go there night after night? A Yes, sir.

Q You say you have seen this man there for the first time six weeks ago, is that correct? A Mr. Smith, yes, sir.

Q Sure about that, six weeks ago? A Yes, sir, six weeks, I am not sure it was six weeks.

Q Tell me how long ago is it you first saw this man there? A Why, I couldn't tell you.

Q You testified it was six weeks ago? A It is somewhere near six weeks.

Q It isn't three weeks, is it? A No, sir.

Q More than three? A More than that.

Q If Fein says it is three is he mistaken?

MR. GOLDBERG: Objected to.

A I know it was anywhere from ---

Q If Fein says he met this man at this place six weeks before this occurrence is he mistaken or are you? A I just said that I met him there --

Q Who is this Bob Taylor you told us about? A He is Tom Taylor's brother, the waiter.

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Q What is his business? A Well, he is in the auto business, I am not sure what he does.

Q Who is McAuliffe? A He is a gentleman friend of mine.

Q What is his business? A He is in the American Pipe Foundry Company.

Q Engaged in business in New York? A Yes, sir, a traveling salesman.

Q He travels for them? A Yes, sir.

Q Where is Mr. Taylor's automobile business? A I don't know -- in Tarrytown.

Q Tarrytown, New York? A Yes, sir.

Q Taylor is another man that frequents this place night after night? A No, sir, he did at that time.

Q He came there every night also for six weeks prior to this occurrence? A No, sir, not every night.

Q Upon this night in question how many people were sitting at this table? A There was four.

Q Three men and yourself? A Yes, sir.

Q No other lady in the party? A No, sir.

Q How many other women in the place? A There were about four.

Q How many men in the place? A I don't know.

Q More than 30? A No, sir; there wasn't as many as that.

Q How large a place is it? A Why, it is about as large

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as the room --- about as large as that space there (indicating).

Q About as large as this enclosure here? A Yes, sir.

Q No larger than that? A It may be a little larger.

Q There is a sort of a back room to the bar? A Yes, sir.

Q Right at the rear of the bar? A Yes, sir.

Q How do you get into that place? A By the doorway.

Q The side door? A Yes, sir.

Q You went into that place through this side door every night for six weeks? A Yes, sir.

Q Did you see this man after arrest, Fein? A Yes, sir, in the place.

Q You say you saw him take the pin from Smith? A Yes, sir.

Q Did you go over and tell the detectives what you saw?  
A Why, the detectives ---

Q Did you go over and tell the detectives what you saw?  
A No, sir.

Q Did you go to the station house with this man Fein?  
A No, sir.

Q Did you go to the police court with him? A No, sir.

Q This is the first time you ever came to court or anywhere else to testify for him? A Yes, sir.

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Q Still you saw everything? A Yes, sir.

Q And you are his friend? A Yes, sir.

Q Friendly with him? A Yes, sir.

Q Have you talked with anybody about this case before coming here? A No, sir.

Q Did you talk to this defendant in the Tombs at any time? A No, sir, why we just talked ---

Q Did you talk to anybody else regarding this case?

A Yes, sir.

Q With whom? A With his wife.

Q With his wife? A Yes, sir.

Q Nobody else? A No, sir.

Q Did you talk with his lawyer? A His lawyer questioned me.

ROBERT TAYLOR, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A Clark's Hotel, Tarrytown.

Q By whom are you employed at the present time? A The Maxwell-Briscoe Company.

Q How long have you been employed by the Maxwell Company?

A About a week previous to Christmas.

Q You are in their employ at the present time? A Yes,

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sir.

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

Q How long a time have you known him? A Well, about four days --- about ten days before Christmas.

Q Do you know the complaining witness in this case, Mr. Smith? A Yes, sir.

Q How long a time have you known him? A I met him about a week before Christmas, about seven or eight days before Christmas.

Q By whom were you introduced to him? A Mr. Fein.

Q I direct your attention to the night of the arrest of the defendant, Fein, and I ask you <sup>to</sup> tell the Court what transpired there that evening, if you know? A Well, that evening I came down from Tarrytown and I went in there and sat down and met Mr. Fein and a number of --- Miss Brott, Mr. McAuliffe, Mr. Jack Kerns came in and sat down and we joined each other. We were talking and having a conversation there and this Mr. Smith finally came in and came over and joined us. They were talking about nothing in particular and finally they were carrying on as they generally do.

MR. WASSERVOGEL: I object to that and ask that the witness state just what occurred.

THE COURT: Objection sustained. Get down to the facts in the case.

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THE WITNESS: The first thing I noticed was Mr. Smith taking Mr. Fein's handkerchief. I paid little or no attention to it whatever as Mr. McAuliffe and myself were talking about something entirely different. And about an hour after that I got away from the table to go out, and when I came back Mr. Fein was there, sitting in my chair, so I moved to an adjoining table, and while I was there Mr. Fein went, arose from his chair and stepped over to Mr. Smith, while Mr. Smith was talking to Miss Brott and took his pin, holding it up in the air and then placing it upon his lapel, and he laughed about it. Previous to that he was requested to play a piece and he went --- I can't say directly to the piano or not, but he went to the piano and immediately afterwards started to play, and possibly the time of three or four minutes these two men walked up to him, one on each side, and I don't know what took place there as Mr. McAuliffe called me back to that table again and the first thing I knew there was a kind of a holdup like and that is about all I know.

Q He was placed under arrest? A Yes, sir.

Q When he held that pin up there could everybody in the place have seen it? A Yes, sir.

BY THE COURT:

Q Which transaction do you refer to as the holdup?

A That is when the detectives had Mr. Fein arrested.

Q There were quite a number of people in that place at

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that time? A Yes, sir; there was.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You are employed by the Maxwell Company? A Yes, sir.

Q Where are they? A Tarrytown.

Q What is their business? A Business, manufacturing automobiles.

Q What do you do for them? A I am an automobile tester.

Q What were you doing in the city at that time ---

A In Tarrytown.

Q What were you doing in the city? A Calling on my brother.

Q What is that? A Calling on my brother.

Q How long had you been in the city then? A I came in that evening.

Q You had never seen this complaining witness Smith prior to that night, had you? A No, sir; I come down once a week.

Q Once a week? A Yes, sir.

Q How many times have you seen the complainant Smith?

A I have seen him nearly every time I have been in there.

Q How many times is that, that is the question? A Well, say four or five times.

Q You come down here once a week regularly? A Yes, sir.

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Q Every time you come down you spend your evening in the Transit Cafe? A I spend the evening with my brother.

Q In the Transit Cafe? A Not entirely.

Q You go in there for a couple of hours? A Yes, sir.

Q Every time you come to the city? A Yes, sir.

Q Now, what time did you arrive at the Transit Cafe on December 31st, 1909? A It was early in the evening.

Q About what time, please? A Possibly eight or a little after.

Q How long did you remain there? A I remained there until about 12.

Q Drinking all the time? A I don't drink.

Q You are not a married man? A No, sir.

Q What did you do there if you don't drink? A I came in there merely to listen to the music and talk with the people in there.

Q By the music you mean the piano player? A Yes, sir.

Q He was the only musician in the place? A Yes, sir.

Q How many people were sitting with you at that table when Smith arrived? A When Smith arrived? There was four I believe.

Q Who were they? A Miss Brott, Mr. McAuliffe, Mr. Jack Kerns and myself.

Q You are a very good friend of this man Fein, aren't you? A Yes, sir.

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Q Known him for many years? A No, sir.

Q How long have you known him? A About ten days before Christmas.

Q Still you became very friendly with him at that time?

A Yes, sir.

Q You say you only knew him for ten days before Christmas? A Yes, sir.

Q You had been coming into this place once a week for four or five weeks, had you not? A Yes, sir.

Q Still you want the jury to believe that you had met this man upon at least four different occasions? A Yes, sir.

Q How do you reconcile that statement with the statement that you have only known Fein for ten days prior to Christmas? A I don't quite understand you.

Q Christmas Day is December 25th, 1909? A Yes, sir.

Q Ten days before that brings us to the 15th? A Yes, sir.

Q That is two weeks before New Years? A Yes, sir.

Q You say you would come to New York once a week only? A Yes, sir.

Q Still you say you saw this man Smith upon four different occasions? A Yes, sir.

Q So you did come to that cafe just prior to December 1st, didn't you? A Yes, sir.

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Q You say that you first met Smith there through an introduction given you by Fein? A Yes, sir.

Q You are mistaken about your testimony, aren't you? A No, sir.

Q Not mistaken? A No, sir.

Q Now let us get at this. Where did you first meet Smith? A When did I first meet Smith? It was possibly, as I say, about eight days before Christmas.

Q Eight days before Christmas? A Yes, sir, eight or nine, some time along in there, I can't say definitely.

Q Eight days before Christmas would be December 17th? A Yes, sir.

Q Still you persist that you only came to New York once a week? A Yes, sir.

Q You saw this man upon four different occasions? A I was in New York for a few days before I went to Tarrytown.

Q You were in New York more than one day at a time? A Yes, sir.

Q You were mistaken when you said you only came down for one day a week? A I am in Tarrytown six days a week when I am working.

Q You want the jury to understand that you did come down and stay here for several days at a time? A Yes, sir.

Q Have you spoken to anybody about this case? A Yes, we have consulted about it off and on.

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Q Talked it over? A Yes, sir.

Q Talked over the testimony to be given in court? A No, sir; not exactly.

Q You have spoken to this man's lawyer, haven't you?

A Yes, sir.

Q Now, you saw the detectives go over to Peim and take him in custody, didn't you? A Yes, sir.

Q Did you go over there to speak to the detectives?

A No, sir, I did not.

Q You were his friend, weren't you? A Yes, sir.

Q You saw this occurrence? A Yes, sir.

Q Why didn't you explain it to the detectives? A Well, if Mr. Lesser didn't think it any of his business I didn't think I would have to.

Q You didn't go near the officers? A No, sir.

Q Did you go to the police station? A No, sir.

Q Try to get him bail? A No, sir.

Q Made no effort to help your friend? A No, sir.

Q Did you go to the police court and testify for him?

A No, sir.

Q You did not? A No, sir.

RE-DIRECT EXAMINATION BY MR. GOLDBERG:

Q Did anybody ask you to go to the police court?

Objected to. Objection sustained.

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Q Mr. Lesser was over there speaking to the officers?

A Yes, sir.

G E O R G E A . L E S S E R , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 1590 Amsterdam Avenue.

Q Are you the proprietor of the Transit Cafe? A I am.

Q In East 42nd Street? A Yes, sir.

Q Was the defendant Charles E. Fein in your employ when arrested? A Yes, sir.

Q How long was he employed with you? A Shortly before Thanksgiving.

Q In what capacity was he employed by you? A Singer and piano player.

Q How long was he in your employ at the time of his arrest? A I guess about six weeks or seven.

Q Do you know the complaining witness in this case, Mr. Smith? A Yes, sir.

Q How long a time have you known him? A Since the 1st of September, about the first week in September.

Q Was he a frequent patron of your place? A Constantly, every night.

Q Did you ever observe the complainant, Smith, when he was

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in company of the defendant Fein? A Frequently.

Q What were their relations? A Most intimate social relations there could possibly be.

Q Call to the attention of the Court and jury anything that transpired between Fein and the defendant that you lead you to conclude that they were very intimate? A They were very intimate, called one another by the first name, both Charlie, they drank together, chatted together and left the place together.

THE COURT: I must admonish you again, counsel, to get down to the case.

Q I will bring you to the night of the occurrence in question. Now, do you know of anything that transpired prior to the arrest of the defendant? A No, sir, nothing at all.

Q What was it that first attracted your attention to this incident? A One employee called my attention to something going on in the rear room. I heard the music stop and I went back and I saw the officers who made the arrest and I asked them their authority and they showed it to me. Fein appealed to me and said "Shall I go with these men"; I said "Certainly, they claim to have you, go ahead". Fein told me -- he said, "Will you bail me out" -- and thinking it to be a station house affair I said yes.

Q Did you go to the station house? A No, sir.

Q What did you learn from the policemen? A Nothing,

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simply they said "We got this man taking a pin".

Q You got into the rear of that cafe just as the arrest was being made? A Yes, sir.

Q They were taking him out? A Yes, sir.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q That is all you know about the case? A Yes, sir.

JOHN W. TAYLOR, a witness for the defendant,  
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 221 East 48th Street.

Q Are you in the employ of Mr. Lesser, the witness who preceded you? A I am.

Q How long a time have you been employed by him? A It will be a year ago the 1st of April.

Q Are you a brother of the Taylor who testified here a little while ago? A I am.

Q Do you know anything at all about the transaction regarding the taking of that pin, do you know anything at all about it? A No, sir, not about the taking of the pin because I wasn't there at the time.

MR. GOLDBERG: I simply offer this witness to prove the relationship that existed between the com-

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plainant and defendant.

Q Do you know the complainant in this case? A Yes, sir, I do.

Q Do you know how long a time he has been a patron of your establishment? A I couldn't say exactly but early last fall.

Q He came in there constantly? A Yes, sir.

Q Did you ever see him in company of the defendant in there? (No answer)

Q From what you observed what would you say their relations were?

Objected to. Objection sustained.

BY MR. WASSERVOGEL:

Q Who do you mean by patrons of your establishment, what is meant by that? What interest have you in the establishment?

A I am working there, an employee.

Q An employee of the owner of the Transit Cafe? A Yes, sir.

Q In what capacity are you employed there? A Bartender.

Q You are the bartender there? A Yes, sir; and waiter also.

H E N R Y L O W , a witness called on behalf of the defendant, being duly sworn, testified as follows:

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BY THE COURT:

Q Do you know anything at all about the transaction of the taking of this pin? A No, your Honor.

Q You don't know a thing about it? A No, sir, except I spoke to Smith after the transaction, not before. I am the father-in-law.

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 191 St. Nicholas Avenue.

Q Mr. Low, what is your occupation? A I am a salesman and manager for a furniture store.

Q Do you know the defendant Fein? A Four years or more.

Q Do you know people that know him? A Yes, sir.

Q What is his reputation for honesty and truthfulness?

A The best in the world. He married my daughter on my recommendation ten days after it and that is good proof.

Q He is your son-in-law? A Yes, sir.

Q When did the marriage of your daughter take place?

(No answer)

Q Did you see the complaining witness in this case, Mr. Smith? A Yes, sir.

Q When did you see him? A The morning of January 3rd, Monday morning.

Q Where did you see him? A At Black, Starr & Frost.

Q Did you have any conversation with him on that occasion?

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with reference to this case? A I did.

Q Tell us that conversation? A I asked him if he thought this man was guilty; if I thought the man guilty or anything of the kind and he said no, Mr. Low, this thing seems to me to be a joke. I says "As man to man will you give me your word that this man is not guilty"--- if he was I wouldn't have him marry my daughter.

Q Did he marry your daughter before or after? A No, sir, it was advertised for the 23rd of January and it took place on account of relatives coming from different places.

Q Did he marry your daughter before or after this?

A After this. I asked him and he said "Well, I can't tell you now, Mr. Low, but I will telephone you this afternoon about four o'clock, I have got to consult other people before I can tell you". At four o'clock he rung me up and he said "Mr. Low, ---" and I had my employer listen to the same thing-- he said "Mr. Low, if you get me back my pin I will withdraw the complaint".

Q That was the whole conversation? A Yes, sir, that was all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q At that time the pin was in the hands of the police?

A Yes, sir.

Q You did not have the pin? A No, sir.

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Q Your son-in-law did not have the pin? A No, sir.

Q You knew it was in the hands of the police? A Yes, sir.

Q In the hands of the property clerk? A Yes, sir.

Q Awaiting the disposition of this case? A Yes, sir.

Q That is correct, isn't it? A Yes, sir, I am not versed in law, but I suppose it is.

Q When did you have the first conversation with Smith?

A On Monday morning, January 3rd, following New Years day, following the arrest.

Q You say your daughter's marriage had been advertised prior to that? A Yes, sir.

Q How long before? A Last fall.

Q It would have taken place anyway? A Yes, sir.

LEONARD G. SPENCER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q Where do you live? A 44 West 28th Street.

Q What is your business? A Booking agent.

Q Do you know the defendant Fein? A Very well.

Q How long a time have you known him? A About two and a half up to three years.

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Q How long in your employ? A Through my agency all of that time.

Q You have secured employment for him in other places?

A Yes, sir, various places.

Q Do you know other people that know Fein? A Many of them.

Q Do you know people in the trade or in the profession?

A Yes, sir; he has many friends.

Q What is his reputation among those people for honesty, truthfulness and good character? A Excellent.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say your business is what? A General booking agent.

Q You obtain employment for different people in the theatrical line? A A large number.

Q What sort of employment do you obtain for them, as piano players? A No, sir, as picture talkers, illustrated song vocalists, pianists, dialect, violinists and every kind except dramatic.

Q Whenever you obtain employment for a person you get a commission? A Five per cent.

Q This man was one of your customers? A He was one of my trusted ---

Q Customers? A My customers are my patrons who get my

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people from me.

Q He came to you on several occasions and you obtained employment for him? A He was employed steadily through my agency.

Q You obtained employment for this man Fein on occasions?

A Yes, sir.

Q And you were to receive a commission? A A steady weekly commission.

Q During the time that he was employed? A Yes, sir; saw him almost every day.

BY THE COURT:

Q Did you locate him in this place? A Yes, sir.

Q You got that job for him? A Yes, sir.

Q In this cafe? A Yes, sir.

#### REBUTTAL.

CHARLES SMITH, the complainant, recalled:

BY MR. WASSERVOGEL:

Q Mr. Smith, the defendant and the witness Pearl Brett have testified that you snatched a rose out of her hand, is that true? A No, sir, I don't remember doing so.

Q They also testify that you were taking a handkerchief from this defendant and that you did not return it, is that true? A No, sir, it is not.

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Q Did you upon that night or any other time take a handkerchief from this man? A No, sir.

Q And did not return it? A No, sir.

Q Did you see where this man put the pin, where the defendant put the pin? A No, sir.

Q You didn't see where the detectives took it from?

A No, sir.

BY THE COURT:

Q There is testimony here that he had the pin in his hand, that he pulled the pin from some place in front of your clothing and held it up, did you see him hold it up? A I didn't know it was gone until I was notified of the fact.

Q Did you tell Mr. Low that this was a joke to your mind?

A No, sir.

Q You did not? A No, sir, I gave him no decided answer at the time.

BY MR. WASSERVOGEL:

Q He simply asked you to withdraw this charge against his son-in-law? A Yes, sir.

OFFICER THOMAS, recalled:

BY MR. WASSERVOGEL:

Q The defendant says that at the time when this pin was taken away from him by yourself and your associate, he had it upon the lapel of his coat, is that true? A It is not.

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Q Where was that pin at that time? A In his right hand trousers pocket.

BY MR. GOLDBERG:

Q Both of you tried to get it out of that pocket --- what led you to believe he had that in his right hand trousers pocket? A It was not in sight and so it must be in his pocket.

Q Both of you reached for that pocket at the same time?

A Yes, sir.

MR. WASSERVOGEL: The People rest.

TESTIMONY CLOSED.

THE COURT: Gentlemen of the jury, you are admonished that you must not discuss any matters connected with this trial or form or express any opinion until it is finally submitted to you. Half past ten to-morrow.

(The court then adjourned the further trial of the case until to-morrow, February 10th, 1910 at 10.30 o'clock a. m.

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