

**START**

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**CASE**

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

.....#1357  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JOSEPH BEHR, Impleaded with MIERMAN  
BAUCH.

: Before:

: THOMAS C. O'SULLIVAN,

: Judge,

: and a jury.  
.....

New York, November 23rd, 1910.

Indicted for Grand Larceny, Second Degree (False Pretenses).

Indictment filed December 24, 1909.

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

For the People:      OSWALD N. JACOBY, ESQ., Assistant  
District Attorney.

For the Defendant:   A. A. MAYPER, ESQ.

A jury is duly empanelled and sworn.

The Court now duly admonishes the jury as usual, and  
declares an adjournment until Friday, November 25th, 1910,  
at 10:30 a. m.

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New York, November 25, 1910.

TRIAL RESUMED.

MR. JACOBY: Your Honor, in order to have the record correct, I will state for the record that a juror made a communication to the Court in the presence of counsel for both sides, and counsel for both sides, after hearing the communication, are satisfied to proceed with the jury as at present constituted. Is that correct?

MR. MAYPER: That is correct.

MR. JACOBY: Your Honor, and Gentlemen of the jury ---

MR. MAYPER: One moment. May it please your Honor, in this case the defendant is charged with the crime of grand larceny in the second degree. He is indicted jointly with one Herman Bauch. The indictment charges the commission of the crime of grand larceny in the second degree by Herman Bauch and Joseph Behr, as follows, and then goes on to state just what Herman Bauch did, which under the indictment is alleged to constitute the offense of grand larceny in the second degree.

Now, this indictment says that Herman Bauch was desirous of obtaining a loan of money from a concern

known as J. W. Place & Company ---

THE COURT: Are you reading the first count?

MR. MAYPER: The first paragraph of the indictment --- I am not reading from it, just referring to it --- and that on a certain day ---

THE COURT: Who is the defendant here?

MR. MAYPER: Joseph Behr.

THE COURT: All right, proceed.

MR. MAYPER: And that on a certain day he presented a bill of accounts, a merchandise account, to the firm of J. W. Place & Company.

THE COURT: One moment, please. I have not looked at the indictment yet. Proceed now.

MR. MAYPER: This indictment charges that Herman Bauch presented a certain bill of accounts to the firm of J. W. Place & Company, and represented that that bill of account was valid, was true, that the firm had sold certain goods, wares and merchandise to one Miller and that the amount of the bill was \$148, and that the bill was due -- or was to become due; and the indictment further then sets forth that as a matter of fact that representation was false. Then the indictment goes on to say, "And the said Joseph Behr, late of the Borough and County aforesaid

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was then and there feloniously concerned in the commission of the said larceny by the said Herman Bauch, in the manner and form aforesaid, and ~~and then~~ and there feloniously aid, assist and abet him in the commission of the same, in the manner aforesaid, and did then and there feloniously counsel, command and procure the said Herman Bauch", and so on. Now, my point is, if your Honor please, that this paragraph, which is the only paragraph in this indictment that refers to the defendant on trial, does not set forth any overt act by which he could be charged with aiding and abetting the commission of the offense.

THE COURT: Well, don't you think counselling is an overt act?

MR. MAYPER: Those are only the words of the statute, the statute reads that way. There isn't any overt act of counselling referred to.

THE COURT: You mean it does not set forth the fact to be proved?

MR. MAYPER: It does not set forth any fact by which it could be inferred that he did counsel or aid.

THE COURT: The allegation, it strikes me, is sufficient, without setting forth the ---

MR. MAYPER: May I refer your Honor to one case? Of course, this motion is made on the ground that the indictment does not conform to sections 275 and 276 of the Code of Criminal Procedure, inasmuch as it does not refer to any overt act. In the case of the People against Corbalis, 178 N. Y., the indictment charged the commission of the violation of a certain Act (a certain piece of legislation, I mean) and the defendants were charged with aiding and abetting in the commission of the violation of that particular Act of the legislature.

THE COURT: Yes, but were they charged with counselling?

MR. MAYPER: Yes, sir.

THE COURT: As to your case there?

MR. MAYPER: No, I think I was mistaken about that.

THE COURT: They were charged with aiding and abetting, which are the legal terms.

MR. MAYPER: Charged with aiding and abetting, using the same words that were used in that particular statute.

THE COURT: I think I will deny your motion anyway, and let us proceed.

MR. MAYPER: May I refer to one statement of the Court?

THE COURT: No, I don't care to hear anything further on that. Aiding and abetting to my mind are the legal terms, but whether or not this charge is counselling or advising on the part of this man I do not know.

MR. MAYPER: Your Honor will see that Section 2 of the Penal law reads just that way. It uses the word "counselling" and so on.

THE COURT: Yes, and then and there did feloniously counsel, command, advise --- all of it going to constitute aiding and abetting.

MR. MAYPER: May I call your Honor's attention to Section 2 of the Penal Law which says that "a person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids or abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a 'principal'".

Now, those words are words of the statute and do not refer to any particular overt act. If the indictment had gone on to say that the counsel was given to such and such effect, or advice was given to such and such effect, then the indictment would be good, but where they merely charge the words of

the statute, without any charge of any particular act, the indictment is fatal ---

THE COURT: I know, but because they happen to be English words which are also words of the statute is no reason why they should not be sufficient.

MR. MAYPER: All these words are used.

THE COURT: He is also charged with aiding and abetting, and then they go on further to say how he did aid and abet, but because these words happen to be used in the statute that is no reason why they are statutory words which must be followed by other acts or the description of them. There is sufficient description there of counselling and advising. There was only one way to counsel and only one way to advise. There is only one way to command. Is the word "command" also used there in your statute?

MR. MAYPER: Yes, sir, the exact words of the statute are used in the indictment.

THE COURT: You may have your exception.

MR. MAYPER: In addition, the further ground for a dismissal of this indictment, that the particular paragraph which charges Joseph Behr with aiding and abetting does not contain a plain and concise statement of the acts constituting the crime. There is no complaint or concise statement, it merely uses

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the words of the statute again, and even if the word "counsel" were to be incorporated as an overt act, still you would not know what that meant --- it would be a general term, a mere conclusion of law.

THE COURT: Your motion will be denied.

MR. JACOBY: I will say to the Court, if I may, that under a recent decision of the Appellate Division, in which Judge McLaughlin wrote the opinion, the practice has grown up here in the last few months where the defendant claims that he was not advised of the particulars constituting the crime, for him to make a motion for a bill of particulars. That is about all that the point here is.

THE COURT: We won't discuss that any longer, that is disposed of, and let us go ahead.

MR. MAYPER: I may say that the Court of Appeals does not agree with the Appellate Division now, and the Court of Appeals says the defendant is not bound to make any motion for a bill of particulars, but may rest on the indictment as it stands.

Mr. Jacoby now opens to the jury on behalf of the People as follows: 7

MR. JACOBY: Now, Gentlemen, we have the kind of crime to consider here, if crime it was, where no

violence, unpleasantness, brutality or any other of the things which are related to the crimes of violence, comes to our attention. This is a crime, if crime it is --- it will be for you to decide that, of course, after hearing all the evidence --- this is a crime where artifice, trick, false representations, were used to induce the complaining witness, Mr. J. W. Place, a private banker in the City of New York, to part with some of his money.

The defendant Behr is jointly indicted here with another person named Herman Bauer or Bauch --- I believe the witnesses will pronounce the name Bauch, so we will call him Bauch in future.

Behr was connected in some way in business with Bauch. The witnesses will enable you to judge just what the connection was. He was not a partner, but he was, probably the evidence will tend to establish to your satisfaction, a sort of high employee, a kind of second man. That he was intimately acquainted and connected with all the business transactions of Bauch. Bauch is not here, you do not see him, and it would not be proper for me at this time to tell you anything about him further than that he is jointly indicted with the defendant Behr ---

MR. MAYPER: I except to the remarks of the



District Attorney on that point, with reference to Bauch, that he is not here, and that "it would not do for me to tell you why he is not here".

MR. JACOBY: I did not say that. I said it would not be proper for me to discuss the question of Bauch's absence at this time.

THE COURT: Yes, well, then, let us not discuss it.

MR. MAYPER: That is what the District Attorney should do, not discuss it, when he does not want to discuss it. I take an exception to that remark.

THE COURT: The jurors will pay no attention to any remarks concerning the absence of Bauch, or anything at all, except such matters as may be necessary to a statement of the case, and that is not necessary to it just now.

(Mr. Mayper now addresses Mr. Jacoby in an undertone.)

MR. JACOBY: Your Honor, I believe the counsel has another statement to make in the matter. Does the counsel desire his last statement on the record?

THE COURT: What is your last statement?

MR. MAYPER: I made no statement for the record.

THE COURT: Well, don't make any at all, except

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for the record. Let that be understood.

MR. JACOBY: (Continuing) The defendant Behr, representing Bauch, had had a number of dealings with the banking house of J. W. Place, which dealings were always of this kind: that Bauch, represented by Behr, would raise money from Place by assigning transferring and setting over to Place what are known among merchants as accounts receivable. In other words, supposing I were a merchant who needed five thousand dollars cash, and I had twenty people --- there were twenty persons who owed me various sums, aggregating a little over five thousand dollars. I could go to a banker, and by assigning these claims borrow money on ---

MR. MAYPER: Pardon me, I object to allusions to any other bankers than the banker in this case, and I want to make the point that the District Attorney ought to confine his remarks to the people concerned in this case, and no others.

THE COURT: Your objection is overruled. The District Attorney is simply illustrating what his case is, and thinks he can more properly and concisely do it in the manner in which he is doing it, which is not at all objectionable and a matter of law. You may have your exception. Proceed, Mr. Jacoby.

MR. JACOBY: (Continuing) As I was saying, a system of this sort was practiced by the defendant Behr, acting as the representative of and aiding the defendant Bauch, and a number of loans, at different times were procured -- or moneys were procured from Place prior to the transaction which is charged in this indictment, by means of assigned accounts due Bauch from various persons.

On the occasion of the transaction in question, which was on the 4th of January, 1909, Bauch and Behr had negotiations with Place. One of Place's assistants named Potterton will be a witness as well as Mr. Place himself, in regard to this transaction, and they procured a considerable loan -- over a thousand dollars -- or a sum of money, if you please, from the banker J. W. Place, by assigning to him a number of accounts, among which was an account which Bauch and Behr stated was of one B. C. Miller, and they represented that Miller owed them \$142.08 for goods sold and delivered previously to Miller by the concern of Bauch. So that among the moneys, over a thousand dollars, which was given on that day by certified check to the defendant Bauch, Behr being with him at that time, was included, less the legal discount rate, the money of \$142.08, on account of

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the account of B. C. Miller. This account that Bauch and Behr claimed was a valid and existing obligation from miller to Bauch for goods previously sold and delivered by Bauch to Miller --- and an assignment was executed and delivered to Place & Company, together with their assignment then and there delivered of the money of \$402.08 due as claimed by both Bauch and Behr at that time from Miller to Bauch, and Place & Company parted with this sum of over a thousand dollars partly on the representation made by Bauch and Behr to them that this particular account of B. C. Miller was a good and valid obligation of B. C. Miller to Bauch.

It thereafter appeared and was ascertained, and we will prove to you by the testimony of Mr. Miller himself, that Miller had not at that or any other time purchased any goods from Bauch, or in any manner become indebted to him for any moneys whatsoever in general, and in particular did not at that or at any subsequent time owe to Bauch the sum of \$142.08, as represented by Bauch and Behr at the time they had the said loan from Place & Company.

Now, I hope that I have made that clear to you gentlemen, and if the evidence shall satisfy you that Place & Company parted with this sum of

twelve hundred and odd dollars, or whatever it was, - over a thousand dollars, partly on account of the representation that this account of Miller was a good and valid account in which Miller owed Bauch the \$142 --- if I shall satisfy you of that--- and of course if they did make that representation, that it was a good account, and it was not, why Place must have been induced partly by that representation to part with his twelve hundred dollars, then I shall ask you at the close of the case to render a verdict that this defendant by being a participant with knowledge of all the facts, the true facts, in this fraudulent transaction, if we prove there was such a transaction, did commit the crime charged against him in this indictment, - which is a mere accusation --- the indictment, of course, is a mere accusation, like the complaint in a civil case --- I shall ask you by your verdict to find that Behr did commit the crime charged against him in this indictment, namely, aiding, abetting, counselling, commanding and assisting Behr to procure this money from Place & Company, partly by the use of this false claim that Miller owed him \$142.08.

I will call Mr. Potterton as the first witness for the People.

ALFRED B. POTTERTON, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

MR. MAYPER: I wish to move for a dismissal on the ground that in the opening of the District Attorney he has not stated any facts committed by the defendant on trial which would show any kind of an action or complaint against the defendant. In other words, he has not referred to any overt act on the part of the defendant on one count or another.

(Motion denied. Exception).

MR. MAYPER: And I renew the motions which I made heretofore.

THE COURT: You have your exception.

MR. MAYPER: Exception.

DIRECT EXAMINATION BY MR. JACOBY:

Q What is your business? A Banking.

Q Are you a resident of the City and County? A No, I am a resident of Connecticut.

Q And your business is banking? A Yes.

Q Are you connected with the banking house of J. W. Place? A Yes.

Q How long have you been connected with that concern?

A About six or seven years.

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Q Where ~~is~~ has the banking business of J. W. Place & Company been located during the last three years? A 67 Wall Street, New York.

Q Has it been there all the time you have been with it?  
A Yes, sir.

Q And in what capacity were you connected with that concern during the years of 1908 and 1909? A My duties with the concern were of a general nature, such as Mr. Place himself would perform.

Q Can you characterize yourself by any title? A Not specially. I was an associate.

Q Are you a salaried employe or a partner? A No, sir, I am not a partner, but I have an interest in the profits of the business.

Q What sort of a banking business did J. W. Place do during the time you have been with him? A We do a general banking business. We enter into contracts with concerns who desire to discount their accounts receivable. We also discount commission paper.

Q Did you know and do you know a man named Herman Bauer or Bauch? A Yes, sir.

Q How do you pronounce his last name? A Bauch.

(Objected to as incompetent, immaterial and irrelevant).

(Objection overruled. Exception).

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Q Did you know a man named Joseph Behr, the defendant in this action, sitting at the Bar? A Yes, sir.

Q When did you first meet Mr. Bauch? A About January --  
(Objected to as incompetent, immaterial and irrelevant).

(Objection overruled. Exception).

A About January, 1906.

Q When did you first meet Mr. Behr, the defendant?

A Prior to that time, a short time prior to that.

Q Under what circumstances did you first meet Mr. Behr?

A Mr. Behr came to our office and discussed the details --

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

Q What did he say at that time in 1906? A He came to ask us to enter into a contract with Bauch to do his business, and all the details connected with entering into the contract was talked by Mr. Behr. Mr. Bauch we did not see.

MR. MAYPER: I move to strike out the answer of the witness on the ground that it is a conclusion and not an answer to the question asked, it is irresponsible, and on the ground that it is irrelevant, immaterial and incompetent, and on the ground that it is too remote -- a matter which happened in 1906, over three years prior to this transaction.

into  
MR. JACOBY: I am not going ~~in~~ the transaction but I am going to show that in the course of dealings



prior to this transaction Mr. Behr acted as the representative of Mr. Bauch.

THE COURT: For that purpose alone.

MR. JACOBY: That is the only purpose. I will come down to the transaction in question in five minutes, if your Honor will let me get to it.

MR. MAYPER: My motion is to strike out the answer on the ground that it is a conclusion.

MR. JACOBY: The very last part of the answer, that they discussed the details, is a conclusion.

THE COURT: Objection overruled, but the direction of the Court to the prosecution is beyond showing the relations between these parties at that time this testimony must not go.

MR. MAYPER: Exception.

Q What kind of business did Mr. Behr want Place & Company to do with Bauch when he first came there? A He wanted us to discount his accounts receivable.

MR. MAYPER: I object to "he wanted us", as a conclusion of the witness.

Q Well, what did he ask you? What did he say he wanted you to do? A He wanted us to enter —

THE COURT: No.

A (Witness continuing) He said that he wanted us to enter into a contract with Herman Bauch to discount his accounts

receivable.

Q Will you explain the transaction in general of discounting accounts receivable, very briefly. What sort of a transaction is that? How is that done? A The person who desires the discount and accounts receivable brings it to our office and represents to us that it ---

MR. MAYPER: That is objected to.

THE COURT: Yes. You have to tell just what the attorney has asked you to tell.

MR. JACOBY: Instead of "represents to us" use the word , "says".

MR. MAYPER: I object to any teaching or coaching by the District Attorney and take an exception to it.

THE COURT: Yes. Now, answer that question.

A A person brings to our office a bill against his customer, representing merchandise sold and delivered to the customer, and requests us to make him an advance of money on that invoice. It is our custom ---

MR. MAYPER: Objected to.

Q Don't tell us your custom. If the request is granted tell us what is done? A If we decide to make them a loan, prior to making them a loan we always ask ---

MR. MAYPER: I object to that. That is not answering the question.

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THE COURT: Objection overruled.

A (Witness continuing) Prior to making such a loan it is our custom to always ask ---

MR. MAYPER: I object to the custom of the business. The answer is irresponsible.

THE COURT: Yes, don't say "we".

A (Witness continuing) Prior to making the loan we always ask the person requesting the loan whether the invoice is a bona fide invoice representing merchandise actually sold and actually delivered to the customer, and upon our approval of the credit of the customer, and upon the statement of the person asking for the loan that it is a bona fide invoice covering goods actually sold and delivered to the customer, we make the loan.

MR. MAYPER: I move to strike out all that on the ground it is irrelevant, immaterial and incompetent.

(Motion denied. Exception).

Q Did you say anything to Mr. Behr when he came to you at that time in 1906 in answer to his request? A Yes, sir.

Q What did you say, to bring Bauch there?

(Objected to as leading. Objection sustained).

Q Well, what did you say?

THE COURT: The Court directed that beyond showing the relation existing at the time between

the parties this testimony should not go, and I believe you are going a little beyond the line indicated by the Court.

MR. JACOBY: I withdraw the question.

Q Did you, beginning in 1906, at various times discount accounts receivable for Bauch? A We did.

Q On those occasions state whether or not Mr. Behr had anything to do with it, and if so, what?

MR. MAYPER: Objected to on the ground that it is irrelevant, immaterial and incompetent, not binding on this defendant and not within the terms of this indictment.

THE COURT: It is rather indefinite there.  
Objection sustained.

MR. JACOBY: I am trying to show that they did business by making loans to them during a period of --

MR. MAYPER: If Mr. Jacoby is going to testify to what the witness cannot testify I think the trial should be stopped now.

THE COURT: There is no necessity for arguing.  
Objection sustained.

MR. MAYPER: I ask your Honor to instruct the District Attorney not to make any statement as to what he intends to prove before the jury.

THE COURT: Proceed.

Q State whether or not at that time you discounted accounts receivable for Bauch?

THE COURT: At what time?

Q In 1906?

MR. MAYPER: Objected to on the ground it is irrelevant, immaterial and incompetent.

THE COURT: Objection sustained.

Q Did you ever discount any accounts for Bauch prior to January 4, 1909?

MR. MAYPER: Objected to as irrelevant, immaterial and incompetent and not within the charge in this indictment.

THE COURT: Objection sustained. You may get at a reasonable time within which this testimony may come, if it affects the charge in the indictment, but we will not permit testimony concerning a charge so far distant as three years.

Q Did you ever discount any accounts for Bauch during the year 1908?

(Objected to as immaterial and irrelevant and incompetent. Objection sustained).

MR. JACOBY: This transaction was on the 4th of January, 1909.

Q Did you ever discount any accounts for Bauch during ---

THE COURT: You may modify that by getting at

some time --- I will allow a question in the nature of a leading question there about 1908. At what time, if at any time, during 1908, did you have transactions, and so on?

Q Did you have any transactions in 1908, and if so, at what time?

(Objected to as incompetent, immaterial and irrelevant).

(Objection overruled. Exception).

A We did, through the entire year of 1908.

Q Did you discount accounts for Bauch? A We did.

Q Did you discount any during the last six months of 1908? A We did.

Q Now, on all these occasions whenever you discounted accounts for Bauch, state what, if anything, Behr did in connection with the transactions?

MR. MAYPER: Objected to as incompetent, immaterial and irrelevant and not within the terms of this indictment.

THE COURT: Objection sustained, for indefiniteness.

Q Well, when was the last transaction that you had with regard to discounting accounts receiveable prior to January 4th, 1909, of Bauch?

(Objected to as incompetent, immaterial and

irrelevant.)

(Objection overruled. Exception).

A I can't give you the exact date because we had so many transactions.

MR. MAYPER: I move to strike out the reason  
of the witness.

Q Give it to me as near as you can?

THE COURT: Yes, strike out the last part of it.

A I can't give you the exact date.

Q I didn't ask you for it, I said as near as you can.  
Can you give me the month? A Well, in December.

Q Now, what did Behr have to do with that transaction,  
if anything?

MR. MAYPER: Objected to as irrelevant, imma-  
terial and incompetent.

THE COURT: What transaction was it first?

MR. MAYPER: That is prior to this one charged  
in the indictment.

(Objection overruled. Exception).

Q What sort of a transaction was it? What kind of a  
transaction was it? A Why, it would be a transaction of  
Mr. --- it was a transaction covered by our contract where  
they brought in ---

MR. MAYPER: I object to any further testimony.

(Objection overruled. Exception).

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A (Witness continuing) It was a transaction covered by our contract. Mr. Behr brought to our office an assignment and a number of accounts receivable and requested a loan thereon, and represented to me ---

MR. MAYPER: Objected to.

THE COURT: Objection sustained. And said ---

A (Witness continuing) And said that the accounts which were covered by the assignment were accounts representing merchandise actually sold and delivered to the customers, and we thereupon made loans upon that assignment.

MR. MAYPER: I move to strike that out as not within this indictment and as irrelevant, immaterial and incompetent.

THE COURT: Motion denied at the present, with leave to renew if it is not connected.

MR. MAYPER: Exception. I further move to strike out the testimony of this witness with relation to any of the assignments of bills of account at all, because he now testifies that all these assignments were subject to the terms of an agreement or a contract between Mr. Bauch and the firm.

(Motion denied. Exception).

Q Have you got the contract you spoke of with you? A I have.

Q Will you produce it? A This was subpoenaed by Mr.



Mayper (handing a paper to Mr. Jacoby).

MR. JACOBY: The witness produces a certain paper.

Q I show you a certain paper which I now hold in my hand and ask you whether this is the paper which you just referred to as the contract between you and Herman Bauch, one of the persons named in this indictment as a defendant.

MR. MAYPER: Objected to as leading, and the District Attorney ought to be cautioned not to describe papers or not to say what he wants to prove.

(Objection overruled. Exception).

A That is the contract that I referred to.

Q The first of the signatures to that contract, can you state of your personal knowledge whose signature it is?

A Yes, sir.

Q Whose signature is it? A Herman Bauch.

Q State the whole transaction at the time this so-called contract was signed, with reference particularly to who was present at the time? A Mr. Place, Mr. Bauch and Mr. Behr and myself.

MR. MAYPER: I object to this testimony on the ground that it is irrelevant, immaterial and incompetent.

(Objection overruled. Exception).

Q And this contract here, there has been no new contract

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made and no new agreement changing, cancelling or modifying this contract up to and including the 4th of January, 1909, between you and Bauch? A No, sir.

MR. JACOBY: I now offer this paper in evidence.

(Paper handed to Mr. Mayper).

MR. MAYPER: Objected to on the ground that there is no connection shown between this contract and the defendant in this case. This contract is signed by Herman Bauch. There is no connection shown between this contract and the defendant in this case. I object to it because it is immaterial, irrelevant and incompetent.

THE COURT: Objection overruled. Is that Herman Bauch the person named in the indictment?

MR. JACOBY: Yes, sir.

THE COURT: Proceed.

MR. MAYPER: Exception. Further objected to on the ground it does not tend to prove any of the allegations of the indictment, and as irrelevant, immaterial and incompetent.

THE COURT: You cannot prove everything at the first stroke. If it is a preliminary to the proof intended to be offered by the prosecution it will be accepted.

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MR. MAYOER: And it is too remote. Exception.

(Received in evidence and marked People's Exhibit 1).

Q About how many discountings of accounts receivable, how many separate transactions of discounting a number of accounts receivable did you have with the defendant Bauch from the time of the making of this contract, People's Exhibit 1, prior to the transaction of January 4, 1909?

MR. MAYPER: Objected to on the ground that it is immaterial, irrelevant and incompetent. Your Honor ruled it out once.

THE COURT: When was the contract made?

MR. JACOBY: January 15th, 1908.

THE COURT: Objection sustained.

Q How many times to your best recollection did Place & Company discount accounts for Bauch during December, 1908?

(Same objection. Objection overruled).

MR. MAYPER: And the further objection that there is nothing to show that this witness knows how many accounts they discounted.

(Objection overruled. Exception).

A I can't answer definitely, but I should say about 100 accounts.

Q On how many separate transactions? A I should say five, one each week.

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Q Can you state about Mr. Behr, what, if anything, he said or did as to any or all of the transactions, in December, 1908?

(Objected to as irrelevant, immaterial and incompetent).

(Objection overruled. Exception).

MR. MAYPER: Not within the issues of the indictment.

(Objection overruled. Exception).

A In relation to the transaction Mr. Behr said that the bills were bona fide bills representing merchandise actually sold and delivered to the customers whose names appeared on the bills, and upon that recommendation we made the loans.

Q What we want to know is, was Behr always present when these transactions were had? A Mr. Behr with every loan we made brought the papers to the office.

MR. MAYPER: I have to object once more to the leading nature of the District Attorney's questions.

THE COURT: Objection sustained.

MR. MAYPER: I move to strike out the District Attorney's remark, and I take exception to it.

THE COURT: Motion granted, and again the Court admonishes the attorneys that there are no remarks to be made except to the Court and to the wit-

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ness and for the record.

Q Now, we will come to the transaction of January 4, 1909. Will you tell us what happened as to anything that you saw and heard in connection with the transaction with Bauch on January 4th, 1909? A Well, Behr brought a number of invoices and assignments of them to the office and requested a loan.

Q What did he say? A He said that —

BY MR. MAYPER:

Q Did he ask you for it? Was he talking to you?

MR. JACOBY: I object to the interruption of counsel.

THE COURT: You must not do that. You will have plenty of time on the re-direct. Your time comes then and nobody knows it better than you.

MR. MAYPER: I object to it on the ground that it has not been shown here that this witness was present at the time when these statements were made, when this transaction was presented.

MR. JACOBY: I asked the witness in my question to tell us what he saw.

THE COURT: I supposed it related to the 4th of January. I was led to believe that from the previous answer, but if you want a more definite answer as to what day or date the alleged statements

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were made. You may ask that, Mr. District Attorney.  
BY MR. JACOBY:

Q I am now talking about the transaction, if any, had  
on the 4th of January. Were you present at that time?

A If that is the transaction in which the B. C. Miller  
invoice --

Q I am referring to the transaction where there is said  
to be a B. C. Miller included? A I was present.

Q Who first came to the office, if any one -- to the  
office of Place & Company, on the 4th of January? A Mr.  
Behr.

Q What time did he get there? A I don't know.

Q Was he there first or were you there first? A I  
was there first.

Q Was it in the morning or afternoon? A I don't know.

Q What? A I don't know.

Q You don't know whether it was morning or afternoon?

A No, sir.

Q Do you know whether it was early in the afternoon or  
late in the afternoon or late in the morning? A I couldn't  
say.

MR. MAYPER: The witness just said he didn't  
know. The District Attorney cannot testify for  
him. I object.

THE COURT: Proceed.

Q Tell us the latest, when it was when Mr. Behr first

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came to the office on the 4th of January?

(Objected to as already answered. Objection overruled).

A It was not after five o'clock and it was not before ten o'clock.

Q It was between ten o'clock and five o'clock? A Yes, sir

Q Tell us what he said and did and everything that happened there and then? A May I describe how it was done?

THE COURT: Yes, tell everything that was done.

A Mr. Behr's custom in coming to our ---

THE COURT: No. Objection sustained.

Q Tell us what he did on this occasion? A He came to our office and presented a number of invoices and an assignment covering them and requested a loan.

MR. MAYPER: Objected to; that is a conclusion.

Q What did he say? Instead of saying, "he requested a loan", what did he say?

MR. MAYPER: I move to strike out the witness's answer.

THE COURT: Strike it out.

Q What did he say? A He asked for a loan.

Q What did he say, I, we, they, or what? A When the checks covering the loans were brought into me to be signed it was my custom ---

Q Don't tell us your custom. A I asked Mr. Behr if

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the invoices covered by that loan were invoices representing merchandise sold and delivered.

Q Did you ask him that on this occasion? A Yes, sir.

Q Sure of that? A Yes, sir.

Q Was he in your room then? A Yes, sir.

Q What did he say? A Yes, they were.

Q Now, have you got any of the papers of that transaction with you? A Yes, sir.

Q Will you produce them? I want all the papers of the transaction of January 4th in which is said to be included the B. C. Miller transaction?

(Witness produces four papers pinned together and hands them to Mr. Jacoby).

Q I show you one of the papers you just handed to me and ask you where and when you got that paper? A On January 4, 1909, from Mr. Behr.

Q Did he hand it to you at that time? A Yes, sir.

Q In whose handwriting, if you know, is all of the writing on that paper? A The body of the paper is in the handwriting of Mr. Behr.

Q You mean the defendant? A Yes, sir. The signature is that of Herman Bauch.

Q So that except for the printed portions of this paper and for the signature Herman Bauch near the top of it, and excepting certain pencil memoranda opposite certain of the

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items of the list of accounts, all the rest of it is in the handwriting of the defendant Behr? A Yes, sir.

MR. JACOBY: I offer this paper in evidence. Of course I offer it in evidence with the exception of such portions of it --

Q These pencil memoranda I referred to, were they on the paper at the time that the defendant gave it to you?

A No, sir.

MR. JACOBY: Then I offer it in evidence except for the pencil memoranda previously referred to.

MR. MAYPER: Objected to. I have no objection, if your Honor please, to the introduction of the account of B. C. Miller which is charged in this indictment, but I do object to any other items in this bill. I haven't any objection to the account in question.

MR. JACOBY: The People feel that it is very important that the whole account should go in, and the reasons will appear later.

(Objection overruled. Exception).

THE COURT: The exhibit, except so far as the exceptions indicated by the prosecution, is admitted.

(Received in evidence and marked People's Exhibit 2).

MR. MAYPER: Exception; and I ask your Honor

to strike out all of that exhibit from this record, excepting the account of B. C. Miller, which is the account upon which this indictment is based.

THE COURT: Let in the whole transaction. The defendant cannot be prejudiced by letting in the whole transaction.

MR. MAYPER: There is only one item charged in this indictment and we have the right to insist that that indictment be the only one admitted in evidence; the others are immaterial, irrelevant and incompetent.

THE COURT: The jury will be charged at the proper time that the items they are to consider are items of a proper character, and only such items are to be considered.

MR. MAYPER: I except to that, if your Honor pleases. I except to the admission of the document, not as to your Honor's statements.

THE COURT: Yes.

Q I show you Exhibit 2 and ask you what it is that you wish to say? A This is the assignment of the accounts upon which we made the loan.

Q On the occasion in question? A Yes, sir.

Q Now, I show you a certain check and ask you whether you had that check in your hands at or shortly after the

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moment that the defendant Behr gave you People's Exhibit 2?

A Yes, sir.

Q What is that check? A That is a check representing the amount of the loan which we made on the assignment of those invoices.

Q Contained in People's Exhibit 2? A Contained in that exhibit.

Q Did you give that check to Behr? A Yes, sir.

Q Did he take it away? A Yes, sir.

Q Was it paid? A Yes, sir.

MR. JACOBY: I offer the check in evidence.

MR. MAYPER: I move to strike out that it was paid.

(Motion denied. Exception).

THE COURT: It is admitted in evidence.

MR. MAYPER: No objection.

(Received in evidence and marked ~~Behr~~ People's Exhibit 3).

Q Now, I show you a certain paper and ask you whether or not the defendant Behr gave you that paper that I now show you at the same time that he handed you People's Exhibit 2? A No, sir.

Q When, if at all, did you receive the paper you now hold in your hand? A These invoices?

Q When did you receive that? A I can't say.

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Q About what time? A Shortly, perhaps three or four days before this loan was made.

Q Is that a paper relating to the loan based upon the moneys due from B. C. Miller referred to in People's Exhibit 2? A Yes, sir.

Q Who gave you that paper? A This was sent to us by Herman Bauch.

MR. MAYPER: I move to strike it out.

Q In the usual course of business? A In the usual course of business.

(Motion denied. Exception).

Q What is the writing on it? Is there any writing on it? A Yes, sir.

BY THE COURT:

Q By whom did you say that was handed to you? A It was sent to us through the mail from Herman Bauch & Company. May I explain the method of the transaction?

Q Yes, you may. A When a bill of goods was sold by Herman Bauch an original and a duplicate invoice covering the merchandise sold --

(Objected to as irrelevant, immaterial and incompetent.)

(Objection overruled. Exception).

A (Witness continuing) Was sent to our office and we mailed the original bill direct to the customer of Bauch and

retained that one in our files. Then when Mr. ---

Q That is, you got two of them? A Yes, sir, we got an original and the duplicate. The original we mailed ourselves to the customer so as to be sure that he received the bill, and the duplicate we keep. Then when they required the loan they brought down the assignment to us and we had the bills there in the office and attached them to the assignment sheet ---

THE COURT: Admitted in evidence.

MR. MAYPER: I move to strike out the testimony of this witness in regard to this paper.

THE COURT: Take your exception.

MR. MAYPER: Not binding on this defendant, and exception. I object to the paper itself on the same grounds.

(Objection overruled. Exception).

(Received in evidence and marked People's Exhibit 4).

Q Do you know in whose handwriting the People's Exhibit 4 is? A Yes, sir, the defendant Behr's.

Q Now, I show you another paper bearing date January 2nd, 1909, and ask you when that came into the possession of J. W. Place & Company? A This is a receipt that covers the delivery of the goods.

THE COURT: That is not what you are asked.

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A (Witness continuing) It came into our possession about two or three days prior to the request for the loan of the B. C. Miller ---

MR. MAYPER: I move to strike out the answer on the ground it is not related to this particular incident charged in the indictment and has no bearing on the case.

BY MR. JACOBY:

Q To what does it relate? A It relates to the invoice of B. C. Miller mentioned and referred to in the indictment.

BY THE COURT:

Q From whom does it come? A It comes from Herman Bauch.

Q Whose handwriting is it, is it in the handwriting of Mr. Behr? A Except the handwriting here (indicating), it is in the handwriting of Mr. Behr.

BY MR. JACOBY:

Q The handwriting accompanying the words "B. C. Miller, 20 Lispenard Street" is in whose handwriting? A In the handwriting of Mr. Behr.

Q And in whose handwriting is the words "two" at the bottom, if you know? A Mr. Behr's.

THE COURT: Admitted in evidence.

(Received in evidence and marked People's Exhibit 5).

(The Court now declares a recess till 2 o'clock p. m., first duly admonishing the jury as usual).

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AFTER RECESS.

Trial Resumed.

ALFRED B. POTTERTON, resumes the stand and further testifies.

DIRECT EXAMINATION BY MR. JACOBY (Continued)

Q I am going to ask you to produce all papers relating to this matter now in your hand here and I will have them marked for identification.

MR. MAYPER: If your Honor please, on behalf of the defendant, I wish to ask that the other witnesses for the People be excluded from the room.

(Witnesses excluded.)

Q Produce them in the order in which you think they ought to go in.

(Witness produces papers.)

Q This is all one paper that you have now produced?

A Yes, sir.

MR. JACOBY: It is four sheets.

Q I show you a certain paper, pinned together, consisting of four sheets, and ask you in whose handwriting the portion in pen on that paper are? A Mr. Behr's.

Q How long subsequent to January 4th, 1909, did this paper that I am holding now in my hand come into your possession, or into that of J. W. Place & Company? A Sometime

2h

during May, 1909.

Q Who handed it to you or to Mr. Place? A Mr. Behr.

Q At whose office? A The office of Graham & L'Amoreaux.

Q Was Judge L'Amoreaux present? A Yes, sir.

Q How many interviews were there at Judge L'Amoreaux's office? A Quite a number.

(The four sheets produced by the witness are now marked for identification People's Exhibit 6.)

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MR. JACOBY: Now, I will call Judge L'Amoreaux out of his order, if your Honor will permit, on account of the fact that Judge L'Amoreaux after adjournment of Court to-day has an engagement in the Appellate Division in Rochester on Monday, has a case on the Day Calendar in Rochester on Monday, and I fear that he cannot be here that day; so that if your Honor will permit I shall call him out of his order now.

MR. MAYPER: What I wish to say is this, that I think I understand your Honor would like to adjourn to-day at 3:30, for very good reasons, and I believe it will take me more than one hour to get through with this witness ---

THE COURT: No, I will continue. I will not attend the exercises at the County Court House. Put your witness on.

J E S S E S. L' A M O R E A U X, called as a witness on behalf of the People, being first duly affirmed, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Are you an attorney and counselor at law? A Yes.

Q And have been practicing your profession in this community for a great many years? A Yes.

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Q Among your clients is J. W. Place & Company one?

A Yes, sir.

Q Did you ever see the defendant Behr before to-day?

A Yes.

Q Where? A At my own office and elsewhere.

Q Did you take part in any conversation with him or in his presence relating to the assignment of an alleged accounts receivable, from one B. C. Miller? A A conversation on that subject I participated in.

Q On the subject of assignment of accounts? A Yes.

Q Who was present at the first of those conversations?

A According to my best memory ---

MR. MAYPER: Objected to unless the time is fixed.

Q When was the first conversation? A I am unfortunate in that, sir. It was in the early part of May, according to my best memory.

Q 1909? A 1909.

Q Who was present at that conversation? A The two gentlemen's names I don't get --- the defendant Behr, and the gentleman with whom business was being done --- what is his name?

Q Do you mean Herman Bauch? A Bauch; those two; I think counsel representing the two, a Mr. Wolf.

Q Mr. Wolf of what firm? A I can't tell you, sir. I

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think he had an office on Wall Street, but I am not sure. He is in the City. 6, I think it is, Wall street. Mr. Place, Mr. Potterton, Mr. Daniel E. Wing, of our office, and myself. I remember no others.

Now, will you tell me anything that you recollect of that first conversation? A May I have a word with the Judge? (Now turning to the Court) This is the first time in fifty-five years' practice that I have ever been called as a witness for a client.

THE COURT: I think you may answer without any compunction whatever.

MR. MAYPER: I understand his relation of the conversation is restricted to the one between Mr. Behr and Judge L'Amoreaux.

MR. JACOBY: I asked what was said by anybody at that first conversation.

MR. MAYPER: Objected to, because what anybody else may have said ---

THE COURT: Objection sustained.

MR. JACOBY: If anything was said in his presence it may or may not be binding upon him; it probably would be.

Q Well, let us see what you remember of anything that the defendant Behr said? A I hardly think it would be just to Mr. Behr, but ---

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MR. MAYPER: I object to it on the ground that it is subsequent to the allegations in the indictment, as to the representations ---

Objection overruled. Exception.

THE COURT: We will hear the answer which the Judge has to give, and that he had started when he was interrupted. You may proceed, Judge.

MR. MAYPER: I would like to examine Judge L'Amoreaux preliminarily as to the reasons why the gathering was had in Judge L'Amoreaux's office.

THE COURT: You may.

BY MR. MAYPER:

Q Judge, did you know Mr. Behr before he came to your office on the first visit? A No, sir.

Q Did he come to your office at your solicitation?

A No, sir.

Q At the first meeting in your office did Mr. Behr have any counsel --- the first meeting? A I think so, yes, sir. I can't recall but two interviews at the office, and I wouldn't say with absolute certainty, but my recollection, or, rather, I should say my strong impression is that there were two interviews at the office.

Q Now, I want to know, Judge, if this interview which you had with Mr. Behr was conducted in the presence of the complaining witness and Mr. Potterton? A Potterton, do you

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mean?

Q The complaining witness, Mr. Place, and Mr. Potterton? A Both were present.

Q Was there any reason why they were present at the time when this conversation took place? A I should say so, yes, sir.

Q When you spoke to Mr. Bauch and Mr. Behr, did you first make any statement to them concerning any statements that would be made in your office? A My recollection is that I made an appointment with somebody, I should presume Mr. Place or Mr. Potterton, I was asked to make an appointment and to meet certain gentlemen. After the opening of the interview, ---

Q Did you say anything to anybody in your office before anybody else said anything to you? A Well, I can't remember that, sir. I couldn't remember who began the conversation. I should presume I may have after greeting them coming into the office, saying, "I am now at your service, Gentlemen", or some casual remark like that, but to give the conversation in order, sir, how it began --- I remember certain features of it

Q Don't you remember there was a matter of quite some importance discussed at your office? A I do.

Q And whether or not you spoke of that first before they talked to you? A Whether that was spoken of first?

Q Yes. A Well, when you say first, you mean at the

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beginning of the material part of the conversation, my recollection would be yes. I made a statement to them later.

Q Before you made a statement to them did you talk to them about taking over the business of Bauch? A I should say not; that was not the first that I carry in my mind as to the subject of conversation. I think that entered into the conversation later, but I do not think it was the first.

Q Don't you remember that the reason why you called a meeting at your office was to arrange the details of the taking over of Bauch's business? A You are absolutely in error.

MR. JACOBY: One minute. This is a question that peculiarly relates to cross examination. The question is something different that your Honor has permitted the learned counsel to interrogate the witness about before the direct examination.

THE COURT: Yes.

Q Well, did you make a particular statement, the one which I think you had learned? A I think I did, sir.

Q Did you say to everybody present that none of the statements "made in my office will ever be used for any purpose whatsoever"?

THE COURT: I want to remark before that question is answered that Judge L'Amoreaux has conveyed to the

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Court the fact that during fifty-five years he has never until to-day taken the stand for a client to give evidence in a case. I say to him now that his record is clear. Even when he leaves the stand he has not taken the stand for a client; he has taken the stand as a witness for the State; and any statement made by him there of statements to be used any place would not bind him here under subpoena by the State to tell what took place at that time and place.

MR. JACOBY: I am willing that the question should be answered, nevertheless, Judge.

THE COURT: Yes.

A I am under the impression that I made that statement, as the latter part of a statement. It is a part of one statement, but that statement embodied that which you ask.

Q Did you make that statement first before anything else was said to you? A Absolutely, as I remember it, no, not first, but I think I did make such a statement. It would be natural to make it, and I have an impression I did so, but it related to something else.

Q Don't you remember saying everything said in your office is absolutely confidential, would be treated as such under any circumstances, and don't you remember saying that because at that time there was pending a proceeding in the

10h

United States Court by which Bauch had been thrown into bankruptcy, and that those very questions which you intended to discuss might there be used? A My impression is that during the interview I made such a statement, not in the beginning; there was something that preceded it.

Q What you mean to say is that these men came to you and made a suggestion to you? A No.

Q (Continuing) Voluntarily, of their own free will, without any suggestion or request on your part? A Well, it is not that sir. There was something besides that that I did state as the beginning of the conversation.

Q Now, Judge L'Amoreaux, did you make that statement before Mr. Behr said anything to you? We are talking about Mr. Behr now? A I should be inclined to think yes, but I am not quite sure of that, sir. I think I made it in his presence, and I think perhaps before he could begin to talk.

MR. MAYPER: That's all.

BY MR. JACOBY:

Q What did you say at the beginning of the meeting, after the gentlemen had been introduced, and had taken chairs?

Objected to as irrelevant, immaterial and incompetent.

Objection overruled. Exception.

A After the subject to be considered was mentioned, to wit, the object of the first ---

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Q Well, what was mentioned as to the object of the meeting?

MR. MAYPER: Objected to as irrelevant, immaterial and incompetent; and the statement, if any was obtained under a promise of immunity.

THE COURT: From whom? Objection overruled.

MR. MAYPER: Exception.

A It was mentioned by some gentleman that the object of the interview was to consider a proposed settlement between Mr. Bauch and J. W. Place & Company.

Q And then as soon as that --- A One moment. Mr. Place or Mr. Potterton then made a statement respecting some information that had come to them that the goods covered by the invoices, or assigned bills, had not been sold.

MR. MAYPER: I move to strike that out as hearsay.

THE COURT: It was said in the presence of the defendant?

MR. MAYPER: They might have conjured that up.

Objection overruled. Exception.

A (Witness continuing) I then said, "It is but fair, Gentlemen, to have you all understand the law as I understand it. There can be no compromise or compounding of a felony; that is a crime in and of itself, and that feature cannot be touched." Now, there was some conversation with Mr. Wolf,

12h

the attorney.

BY MR. MAYPER:

Q That was conversation with Mr. Wolf? A Well, he took part after my making that remark. I think Mr. Wolf said, "Of course, we all understand that whatever our talk is today relates to the personal claim of J. W. Place." Now, it is my recollection that I made the remark, "Very well, Gentlemen, if you clearly understand that we are dealing only with the claim of J. W. Place & Company, I think it is but fair that anything that should be said at this interview should be treated confidentially, and not be used elsewhere." That is my recollection.

BY MR. JACOBY:

Q That was after you told them that nothing could happen or be done at that meeting with a view to compounding a felony? A I think that I stated to them at the same time that it had been my experience in New York in a case of submitting --- where a proposal had been made to compromise personal claim, of submitting it to the District Attorney in advance for his approval.

MR. MAYPER: I move to strike all that out.

Motion denied. Exception.

MR. MAYPER: I also move for the withdrawal of a juror on the ground that any statements which the witness has testified to, which have no bearing on

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this indictment are irrelevant, immaterial and incompetent, and are prejudicial to this defendant.

Motion denied. Exception.

MR. MAYPER: I will ask your Honor to direct the jury to disregard any statements which have not any bearing upon this indictment --- any repetition here of statements.

THE COURT: I have denied your motion, and the Court will certainly not make any direction to the jury after denying your motion. Proceed.

MR. MAYPER: Exception.

Q At that time was there any criminal proceeding to your knowledge, in which your client was the complainant, and this defendant was a defendant, pending?

MR. MAYPER: Objected to on the ground that it is immaterial, irrelevant and incompetent.

Objection overruled. Exception.

A No.

Q Now will you tell us what was said by the defendant Behr with reference to the paper that I show you, marked for Identification People's Exhibit 6, if anything was said by him at the first interview?

MR. MAYPER: Objected to upon the same grounds already urged, if your Honor please.

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THE COURT: Objection sustained. This paper is simply marked for identification.

Q Was that paper which you now hold in your hands, marked People's Exhibit 6 for Identification, produced at that first interview? A I cannot be certain.

Q Was it produced either at the first or the second interview? A A paper, yes; and from the look of this paper I would be ---

MR. MAYPER: I object to that, and move to strike out the statement "and from the look of the paper".

Motion denied. Exception.

MR. JACOBY: If it is not connected we will strike it out later on.

Q That paper appears to you to be a paper that was produced either at the first or the second interview? A This paper, or a paper that impresses me as similar to it, yes.

Q Can you tell from reading some of the individual items whether that is the paper?

MR. MAYPER: I object to his reading any of the paper.

THE COURT: Objection sustained.

A ( You needn't spend much time on that, sir. After the lapse of months it would be an impossibility ---

MR. JACOBY: I fear that my well considered

15h

purpose of calling this witness out of his order will have to ---

THE COURT: If any statement was made it is quite possible, perhaps, to arrive at that statement without the use of this document.

MR. JACOBY: I do not see how I can, but I will try to.

Q Assuming that the document, People's Exhibit 6, for Identification, was given by the defendant, is it the only document that was handed over or used by the defendant there at this interview?

MR. MAYPER: No such testimony in this case at this time, and the case does not warrant any hypothetical question.

THE COURT: Objection sustained.

MR. JACOBY: I fear that my abilities are not sufficiently developed for me to examine this witness against the technical objections at this time to bring out the testimony from him that I desire to adduce.

MR. MAYPER: I object to the remarks of the District Attorney and take exception to them, sir.

THE COURT: It strikes me that the witness is here for a given purpose. Perhaps that purpose may be arrived at and testimony taken without the use of

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that paper. I don't know, but it strikes me that it might be done.

Q Do you remember anything that the defendant Behr said at either the first or second interview, without that paper?

A Oh, yes.

Q And if so, tell us what he said?

MR. MAYPER: Objected to as immaterial, irrelevant and incompetent, and not binding, and not within this indictment.

Objection overruled. Exception.

A At the first interview, as I recall it, a paper was produced purporting to contain a list of either the full or some of the assigned accounts. I said to ---

MR. MAYPER: I move to strike that out on the ground that it is not part of the conversation.

THE COURT: Motion denied.

A (Witness continuing) If you want the exact language it is impossible to give it.

MR. MAYPER: I am sorry, but you are testifying in a case.

THE WITNESS: I am testifying under the solemnity of an oath, and under great embarrassment in being called.

MR. MAYPER: I don't want to embarrass you, but you will have to testify.

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A (Witness continuing) I said to all assembled, more especially directing my attention to the two gentlemen interested, "It will be necessary ---"

MR. MAYPER: I move to strike out "more especially directing my attention".

Motion denied. Exception.

BY MR. JACOBY:

Q What two gentlemen? A I referred to the prisoner, (the defendant), and the other gentleman -- I am bothered by that name.

Q Bauch? A Bauch.

THE COURT: And Behr?

THE WITNESS: Bauch and Behr, yes. Both being present, I said, "Gentlemen, before I can intelligently take up this subject I want a list, and then"--

Q A list of what? A A list of the accounts that they were there to compromise. I wanted to know what was to be embraced in the proposed compromise. It was mentioned by somebody present that some of the accounts were fictitious. I then ---

MR. MAYPER: I move to strike that out as not connected, and without any foundation.

BY THE COURT:

Q In the presence of this defendant? A It was not only in his presence, but his remark followed.



Motion denied. Exception.

A (Witness continuing) I then said, I think addressing myself to Mr. Wolf, "Mr. Wolf, it is for you to determine whether or not you want to give us a list of the accounts that are not collectible." That may not be exactly the expression, but that is the idea. I may have used "the accounts that were fictitious", or "fraudulent", but one of those terms I think I employed. After some minutes, I should say --- and I am under the impression, after an interview between Bauch and Behr --- Mr. Wolf replied, "Yes, we will give it." Then Mr. Behr said, "I will prepare a statement for you and indicate the accounts that are good." The accounts, as I remember it, that were good, that had been actually delivered, and the accounts that were not considered collectible, and the accounts that were fictitious, that is my impression was the conversation at the first interview.

BY MR. JACOBY:

Q That is all you remember of it? A On that first interview.

Q Now, on the second, at the time of the second interview, state whether or not ---

MR. MAYPER: I move to strike out the testimony of this witness on the ground that that statement if any was obtained from Wolf and Behr and Bauch



under a promise of immunity, under a promise not to be used under any circumstances. I further object on the ground that the statement is not a statement of fact, but a statement of possibility.

Objection overruled. Exception.

BY MR. JACOBY:

Q Was there anything else said at that interview, at the first interview, about such of the accounts as were fictitious, if any? A Yes.

Q What was that? A It was that the accounts that were fictitious were to be marked so, so as to enable us to see which accounts were good, and which accounts were fraudulent. I am not sure that that word "fraudulent" was used, but that is the distinction.

Q Either fraudulent or fictitious? A Either good or the accounts that were not good, - those assigned accounts that did not represent goods that had been actually delivered.

Q And was anything said about what mark was to be used to show which accounts were fictitious, that is which accounts were not based upon the actual sale and delivery of goods to by Bauch, the persons supposed to be his debtors? A In the first interview?

Q Yes. A I am not clear; I should think not.

Q At the second interview state whether or not Behr produced and delivered over either to you or Place or Pot-

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terton, a paper containing such a list? A Yes.

Q And do you remember what he said, if anything, about the marks to indicate fictitious accounts?

MR. MAYPER: Do not lead the witness.

A My recollection is that he stated that the accounts that were marked with three "x's" were fraudulent accounts.

MR. MAYPER: I move to strike out the answer of this witness on the ground that it is irresponsive, and that it is not within the indictment.

Motion denied. Exception.

Q Do you remember anything else he said in regard to the fictitious accounts at either the first or the second interview? A Well, when the account was produced, with Mr. Bauch, I began to run through the various accounts, if I have got the marking in my memory right, these accounts that were so marked, and I put the question, "Do you mean to tell me that all these accounts are ---"

BY THE COURT:

Q To whom did you put that question? A To Mr. Bauch, the defendant.

BY MR. JACOBY:

Q To the defendant? A I mean to the defendant. If I said Bauch it is because I get these names confounded. I said, "Do you mean to tell me that all these accounts," the fraudulent or fictitious accounts, "that the goods purporting

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to have been assigned in these accounts were never delivered", and he replied "Yes", or nodding, -- I can't say, but assented to it in such form, and my recollection is he said, "Yes."

MR. MAYPER: I move to strike out "assenting to it in such form".

THE COURT: Yes, "assenting to it in such form" may be stricken out.

BY MR. JACOBY:

Q When you say "nodding" you mean making your head go in the manner we are accustomed ---

MR. MAYPER: I object to this on the part of the District Attorney, it isn't fair.

THE COURT: Strike out all after "yes".

A (Witness continuing) I then began with Mr. Behr and figured up the amount of these accounts, and said to Mr. Behr, "Then we are to deal with whatever the aggregation of the accounts were -- I don't remember whether he made the figuring, or whether we made a quick computation approximating the amount and said, "that is the amount, then, that we are to deal with, that relates to this class of accounts." The words which I employed, as I say, I am not quite clear about. It may have been fictitious, it may have been fraudulent, - one or the other of those words I think I employed, and that was by either the nod of the head, or by the answer "Yes",

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given as the result of my inquiry. Then the conversation related to what could be done and how.

BY MR. MAYPER:

Q Conversation between whom? A Between the defendant and myself, and I should say the conversation was participated in by perhaps the other gentlemen present, because that had been the one thing that I was anxious to know about, and that was ---

MR. MAYPER: I move to strike that out.

THE COURT: Yes, you may strike that out.

A (Witness continuing) My attention was specially directed to ---

MR. MAYPER: I move to strike that out.

THE COURT: Yes, you may strike that out.

BY MR. JACOBY:

Q Did you talk about something in particular? A I talked about the accounts that I had learned ---

MR. MAYPER: I move to strike that out. The witness testified to what he said.

THE COURT: Motion denied.

A (Witness continuing) I talked about the accounts which I was then informed were irregular accounts.

Q Do you remember a particular account was assigned, the account of B. C. Miller? A Speaking from my memory, as I sit here, I don't think I could select any one account.

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Q Do you remember the particular accounts, that at least one of the accounts or two of the accounts were discussed? A Yes, yes.

Q More particularly I mean by name? A I remember the Miller account, but I cannot swear that account as to my talk with Mr. Place, or whether it was with this gentleman.

Q Well, with this gentleman present, meaning the defendant, at any time, at either interview, when the Miller account was discussed? A My memory is not clear enough to answer.

MR. MAYPER: I move to strike out the testimony of this witness on the ground that his testimony does not connect the defendant with the particular charge in this indictment, in view of the fact that the witness is unable to say whether the Miller account was discussed or not in the presence of the defendant.

MR. JACOBY: I will prove by other witnesses ---

MR. MAYPER: That is another matter.

THE COURT: The testimony of other witnesses will not perhaps make valid the testimony where the Judge cannot recall that the item which is here in issue was at that time the subject of conversation, alleged

Q Do you know whether or not the account of one B. C. Miller was one of the accounts upon the paper or list of

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accounts which you say the defendant Behr submitted to you on the second interview? A I remember looking at the paper.

MR. MAYPER: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled for the present.

MR. MAYPER: Exception.

Q Can you answer that yes or no? A Yes.

Q Was it? A Yes, sir.

MR. MAYPER: I move to strike out the testimony on the ground that the witness is unable to say whether or not the Miller account was discussed in the defendant's presence at any time. All he does testify to is that the Miller account was discussed, but he does not say whether it was discussed in the defendant's presence.

Q Is it the best of your recollection that the Miller account was discussed in the presence of this defendant? A I am not clear that I can pick out any one account that was discussed at the one interview. I am clear that the paper which Bauch submitted to them, which I saw later than that interview, had the Miller account on it.

Q When was it submitted to them? A The defendant here.

Q You mean the defendant here? A Yes, sir.

BY MR. MAYPER:

Q You saw that later? A Yes.

Q But at that time you did not discuss it? A At the interview I cannot say that any one -- there was names mentioned, but I cannot remember the name of any creditor, or of any account that was considered. I have no personal memory of the name at the interview.

MR. MAYPER: I renew my motion to strike out.

THE COURT: Motion denied at present with permission to renew it.

MR. MAYPER: Exception.

MR. JACOBY: That's all.

CROSS EXAMINATION BY MR. MAYPER:

Q How long have you represented the firm of J. W. Place & Company? A Oh, I should think from seven to ten years. I might not be accurate, it may be more than ten years.

When you speak of myself, I suppose you refer to my firm, either myself individually or my firm?

Q Well, we will let it go at that. When was the first time you ever saw the defendant, Behr? A My impression is, this first of the two interviews that have been spoken of.

Q Now, did the defendant Behr come down at your solicitation? A Absolutely no.

Q Do you know whether the defendant came down at the solicitation of your clients? A I do not, I have no knowledge on the subject that I now recall.

Q You don't know? A I say I have no knowledge on the

subject.

Q Do you know whether he came down at the solicitation of the defendant Bauch? A I know nothing about it, sir.

Q Did your client tell you on the first day that Mr. Behr was there, and Mr. Bauch --- did your clients tell you that they were coming down? A I can't say. My impression, if you care for that ---

Q Did you expect them? A I should presume I had an appointment with them, but that I don't know.

Q Do you remember discussing any matter with reference to the business of Herman Bauch with them? A I should say during the latter part, or during the first interview, yes.

Q Do you remember discussing the matter of taking over the business of Herman Bauch by J. W. Place & Company, the settlement of the accounts of creditors, of J. W. Place & Company, and a continuance of the business? A At one interview, I can't say which, yes to your question.

Q You remember that there was a conversation to the effect that J. W. Place & Company were to take up the business of Herman Bauch, continue it and allow Mr. Bauch to run it as manager? A No, sir, I don't remember that. I don't remember the way you put it. I do remember conversation on that subject and such a proposition being made on behalf of Mr. Bauch, and the subject taken under advisement.

MR. MAYPER: I move to strike out the answer as not responsive.



THE COURT: Motion granted.

Q Do you remember that your clients, either Mr. Place or Mr. Potterton said in your office that they would take the business over, conduct it, allow Mr. Bauch to manage it and pay off the creditors, and put Mr. Bauch back on his feet practically, so that they could get their money back? A Never heard such a conversation.

Q Never heard such a thing? A I never heard that said.

Q You don't remember that that was the reason they came to your office? A I don't know what they came for other than that which they stated.

Q Do you know or don't you know? A I am answering.

Q Yes or no? A What is the question.

Q Do you know that, or don't you know that, that they came to your office for the purpose of discussing with your clients the taking over of that business? A I don't know the purpose of Bauch and Wolf coming. I know what was said.

Q Then you don't know, is that right?

MR. JACOBY: He says he knows what was said. How can he know what is in a human being's mind?

MR. MAYPER: If he knows he will say so, and if he does not know he will say so, too.

A I do say I don't know what was in the mind of these other men. I do say I know what was said, in substance.

MR. MAYPER: I move to strike out the rest

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of the answer.

MR. JACOBY: I ask that the witness be allowed to say what was said. That would be responsive to the question.

Motion denied.

Q You said a moment ago you thought you probably had an appointment with them? A I was under that impression.

Q Do you mean to say --- A I may be putting that too strong.

Q Do you mean to say they came to your office by an appointment, and you didn't know what they came to discuss with you? A I am not sure that they didn't come as people sometimes do, and come into the office, and my first notice of it being when they came in. I am not sure as to whether that is the condition, or whether I had made an appointment to meet them at Mr. Place's request, I can't tell.

Q Do you remember the first thing you said to them when they appeared at your office, outside of the usual greetings?

A That would be impossible, sir. I couldn't give the order.

Q You don't remember taking up for the first thing the condition of Bauch's business, do you? A I can't be certain of the order, nor could I be certain that I remember the substance of all that was said. Certain things I do remember.

Q Do you remember the use of the word fraudulent at all

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during your first conversation? A I wouldn't be willing, sir, to say that I could reproduce any word that was used as between fraudulent or fictitious or irregular.

MR. MAYPER:-- I move to strike out the answer as irresponsible.

A (Witness continuing) I will answer your question. I cannot be positive that I used that word.

Q Do you remember the use of the word fictitious in that first conversation? A No, not to be certain.

Q Now, don't you know that the word used was uncollectible? A I do remember at one of the two that word was used.

Q Now, why do you use the words fraudulent and fictitious here? A Because another word, to represent another class of accounts, was used. I distinctly remember it.

Q You don't mean to say that any time while they were in your office, engaged with your clients, for a settlement of their claims, that you told them they had produced fraudulent bills, do you? A I do pretend that at one of the two conversations they told me the bills were fraudulent, yes, sir.

Q Who told you that? A The defendant here told me that some of the bills, a certain class of them -- were either irregular or fraudulent, I don't know how he phrased the term.

Q Then you are again not certain whether the word fraudu-

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lent was used by him? A I am not positive, sir, in memory as to the exact word employed to express the idea.

Q It might have been irregular? A Possibly.

Q Why do you insist on using the word fraudulent when you testify here? A Because after the use of the word irregular I at the time stated to the man, "Is it to be understood that this class, this list of accounts, are accounts that have been assigned that never existed?", and put it to him, and he said, "Yes", or nodding. I don't know that he used the term, whether he used the word "crooked", or "irregular".

Q Now, as a lawyer of quite some standing at the Bar, and as a lawyer who has been practice for the time that you have been, I assume that you know when you are asked for the substance of a conversation, or for the conversation, you should repeat the words used so far as possible, word for word. Now, you testified on direct examination, didn't you, Judge L'Amoreaux, that the defendant, or Bauch, or somebody said in your office that the accounts were fraudulent or fictitious? Now, do you mean that they said that or do you mean that they said irregular or uncollectible? A I mean I cannot recall, so as to answer your question positively, what word was used.

Q Now, will you tell me why you are so charmed with the words fraudulent and fictitious in relating the story to the

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jury rather than the other one?

MR. JACOBY: Objected to as flippant.

THE COURT: Objection overruled.

MR. MAYPER: Question withdrawn.

Q I will ask you this question: Do you think that the use of the words fictitious and fraudulent would have a greater effect upon the conscience of this jury than the word uncollectible or irregular? A Is it your suggestion, sir, that my presence here ---

Q I am ~~not~~ suggesting anything. I am asking you what you think, sir? A I think this jury are here to get the facts, and I think whatever word was used would be most impressive on the mind of the jury, if they can get the facts.

MR. MAYPER: I move to strike out the answer as irresponsible.

Motion denied. Exception.

Q Now, the man you were particularly interested in in these negotiations, was Mr. Bauch, wasn't he? He was the man who owed your concern the money? A The man I was most interested in?

Q I mean you were particularly interested in collecting the money for your clients? A For J. W. Place & Company.

Q What you were trying to do was to collect the money for your clients, is that correct? A That's right. That is to say, in a sense, yes.

Q Yes or no. A It is an impossibility. They came to talk to me about a case, and if you ask what my underlying purpose was, it was to get at the facts, and to deal with such questions as they presented to me.

Q Will you answer this question, please? Did they retain you to institute criminal proceedings, or to collect the money? A I cannot swear that I had any retainer for either. As general counsel of the company they come to consult me, I suppose. They came.

Q You know that they requested you to collect that money from Bauch, don't you? A I am not aware of ever having the subject mentioned until the first interview. I don't think I ever knew the parties, or the existence of the claim.

Q Well, at that first interview weren't you to make some arrangement whereby you could collect the amount due to your client from Bauch so as to hold your concern harmless?

A Why, if you ask my purpose ---

Q Weren't you to do that? Wasn't that the instruction?

A I don't think that was talked, no. I think that in discharging my duty ---

Q Excuse me, sir. A Well, sir, if you are just in your questions, I will try and purpose to be.

Q I have no doubt the District Attorney will straighten you out if you have gone --- A Oh, I don't think I will

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resort to the mercy of the District Attorney.

MR. JACOBY: I should be presuming to try to  
straighten out Judge L'Amoreaux.

MR. MAYPER: Perhaps not.

THE WITNESS: Well, go ahead.

Q You testified on direct examination, however, that  
somebody suggested a settlement, some one gentleman suggested  
a settlement? A Yes, sir, that's right.

Q And at that time you were referring in your testimony  
to your client Place and Potterton? A To the claim of  
Place and Potterton?

Q No, you were referring to your clients at that time in  
your testimony? A That they suggested? I didn't mean to  
be understood that way. I meant to be understood that some  
one of the group that were there, made that suggestion.

Q Can you say who it was? A I cannot.

Q Did you make the suggestion? A Oh, I don't think so.

Q Did Bauch make the suggestion? A I can't say.

Q It may have been your client Place? A Possibly.

Q Or Potterton? A Possibly.

Q Now, you testified on direct examination that you  
believe that you said to the defendants that the conver-  
sation or the result of the conference would be confidential  
and would not be used in any proceedings? A During that

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conversation I said to them substantially that, or that we ought to treat this as confidential, and not to go out of the office, words to that effect, yes.

Q Now, you said that was said by you towards the close of the conversation, that is my recollection? A Oh, I didn't mean to say towards the close of the conversation. I mean to say that it followed my statement relating to the criminal aspect of the case, and just what period it occurred after that I cannot say. It may have been close to that statement, or there may have been some talk intervening, and then that statement.

Q At the time you made that statement you believed there was a criminal aspect to this case? A I didn't know ---

Q Didn't you just say --- A Wait a moment.

Q (Question repeated) A I didn't know, but I suspected from what was said then that there might be involved criminalities in the transactions, and that was why I took particular pains to make the statement that I did.

Q That is just what I am saying, too. A Possibly.

Q But you had in your mind at the time that there was perhaps some form of criminality involved in the condition of the accounts when you made that statement? A I had in my mind the possibility of such condition.

Q Didn't you or did you? Did you have that in your

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mind, or didn't you?

THE COURT: He said he had in his mind the possibility of such a development.

MR. JACOBY: Objected to as already answered twice.

THE COURT: The Judge may answer that last question again.

A I can answer it only by saying ---

Q I am sorry, but I will have to ask the Judge for a yes or no answer. I do not think it is fair to make speeches in answering these simple questions.

THE COURT: The Court will instruct the witness he is not obliged to answer in that way.

Q Did you think of that or didn't you? A I can't say that I told the gentlemen that there was criminality, but I scented, or apprehended that possibly criminality might be involved in the question.

Q Then you did apprehend that criminality might be involved? A Might be involved, yes, sir.

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Q Knowing and believing that criminality might be involved in that transaction you then said that the result of this conversation would not be used at any time and would be considered confidential? A You are not stating it —

MR. JACOBY: Objected to on the ground that  
is  
it assumes a fact which, contrary to the testimony  
of the witness.

THE COURT: Objection overruled.

A That is not correct, sir.

Q Didn't you testify -- A I didn't testify as you put the question, as I understand it.

Q You testified that you made this statement? A That is correct.

Q Towards the close of the conversation on that day?

A Well, if I said towards the close I will modify it by saying after the beginning of it some time.

Q Was that after you suspected the possibility of criminality, or was it before? A It was after my statement respecting the compromise or compounding a criminal offence --- it was later than that.

Q You see what I am getting at, you understand what I am driving at and you will see why ---

THE COURT: If you think the Judge does not why don't you tell him what you are driving at?

Q You understand that what I want to know is simply, in

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as few words as possible, did you have in mind the possibility of criminality in one form or another at the time you made the statement at the conference or the conversation that the conference would be considered confidential? A That portion of the remark was stated at the time to relate to Place's civil damages and not to criminality, in so many words.

Q Didn't you say a moment ago that you made that statement when it occurred to you that there was a possibility of criminality? Didn't you say that a moment ago? A If you so understood me and I so answered I surely desire to correct the answer. I don't think I said so.

Q And it was then that you made the statement that the result of the conference would not be used under any circumstances? A It was after the talk with Mr. Wolf.

(At the request of Defendant's Counsel the Stenographer reads the following from his record,  
"Q At the time you made that statement you believed there was a criminal aspect to this case? A I didn't know, but I suspected from what was said then that there might be involved criminality in the transactions, and that was why I took particular pains to make the statement I did.")

Q You heard the Stenographer read that question and answer? A I will stand on that answer literally as ex-

actly correct.

Q So will I. A But your question as you put it does not call as I understand it for an answer which would give a yes or no.

MR. MAYPER: I move to strike out all this talk.

THE COURT: Motion denied.

THE COURT: I would suggest to counsel to conclude this examination as soon as he can without so many repetitions of questions on a matter that has not much materiality. Proceed.

MR. JACOBY: Do I understand that your Honor will sit in order to allow Judge L'Amoreaux to complete his cross examination?

THE COURT: Yes, go ahead. I do not intend to adjourn until four o'clock.

MR. MAYPER: I do not think I can finish with him in ten minutes.

THE COURT: Well, try it.

MR. MAYPER: I think it will take closer to half an hour.

THE COURT: I do not care to limit you to that, but be as expeditious as you can.

MR. MAYPER: I will do the best I can, sir.

THE COURT: Of course, we don't want you to

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be in any way prejudiced in your case in order to expedite this testimony, but expedite it, however, if you can.

Q Did you talk at all to Mr. Bauch during that first conference? A Yes, I should be under the impression I did, in fact I am very clear I did.

Q Did you talk to him about the condition of the accounts, yes or no? A I should say yes.

Q Now, did Mr. Bauch bring a list of names of customers to you? A I wouldn't think so, but possibly he did. I think a list was produced.

Q Didn't Mr. Bauch produce also the list of irregular or uncollected or uncollectible accounts? A The list which was produced on the first hearing, my impression is, did not discriminate between accounts.

Q Well, now, we are talking about the list which did discriminate? A That is the list produced on the second interview.

Q You remember Mr. Bauch produced that? Mr. Bauch? A Did I say Mr. Bauch? If I said that I didn't mean to. I think they were both together, but I think Mr. Behr, this defendant, was the man who actually produced the paper to me, but he was surely the man who went through it with me and explained it.

Q You remember, don't you, Judge L'Amoreaux, that Mr.

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Bauch told you that Mr. Behr was his bookkeeper? A Yes, and there was more conversation on that subject.

Q Now, don't you remember, Judge, that Mr. Bauch and Mr. Behr went out of your private room into your outer office with the list which did not discriminate between the good and the bad accounts and returned shortly with a list which did discriminate? A Now, speaking of the first interview?

Q I am talking about any interview where that happened? A I am under the impression that they did take a list that Mr. Place had and did go over it and did indicate upon that list the good and ---

Q They left your private room, went outside and came back? A I think very likely, but that much of it-I have an indistinct memory that they went out of my room.

Q You remember, don't you, that you said to Mr. Bauch, "Well, suppose you go out and fix up this regular account"? A Possibly.

Q And you remember Mr. Bauch saying to Mr. Behr, "Come out with me, we will go out and fix this up and come back"? A I have an impression that the two<sup>went</sup> from my room at one of the interviews and came back with a statement.

Q Now, you remember when they returned, Mr. Bauch handed you the statement? There were two then, one that contained all the names and one that contained the irregular

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accounts --- do you remember those two? A I don't remember which of the two physically handed me the paper.

Q Were they both handed to you at the time? A Both what?

Q Both lists? A The list that Mr. Place had do you refer to?

Q No, the list that you gave to Mr. Bauch to make up this uncollectible list? A Mr. Bauch prepared, and the paper that was brought back, as I understood it, was one Mr. Behr had prepared from A to Z -- he prepared the entire paper, it is in his handwriting.

Q We have had all that, sir. What I am trying to find out is whether these lists were given to you when they came back into the room? A Well, I think the first time they took Mr. Place's list and they had an interview with in another room, returned to my room, and it was the occasion of the conversation respecting the list that I said to them "Gentlemen, prepare a paper," and Mr. Behr said, "I prefer to go by myself where I can go through these accounts carefully and give you a statement just as the facts are," and it was then agreed to adjourn to a future time.

Q Don't you remember, Judge L'Amoreaux, that a statement was made by Bauch? A My recollection would be the other way, sir. I wouldn't say positively.

Q Don't you remember that you asked Mr. Bauch, who was



the man who owed your concern the money, to go out and fix up this list, and that Mr. Bauch went out with Mr. Behr, don't you remember that? A I remember addressing one or the other --- the two were there and were acting together -- if you want me to state ---

Q Don't you remember also that it was one or the other who made that statement to you? A I think yes, one or the other.

Q And you don't know which one, you couldn't say positively as to which? A I wouldn't say positively. I have a strong impression.

Q Well, you cannot state positively as to which?

A No, sir.

Q Did you ever take any proceedings to collect the account of Miller? A Never.

Q You never instituted suit, did you? A No, sir.

Q Did Miller ever come down to your office? A Yes.

Q Did you present this complaint in this criminal case to the District Attorney? A I accompanied Mr. Place to the District Attorney's office, I think. I meant at the time of the presentation of the complaint.

Q Did you there state to the District Attorney the substance of the conversation had between you and Mr. Bauch and Mr. Behr? A I hardly think so.

Q Who was the man whom you consulted in the District

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Attorney's office? A Well, my impression is it was Mr. Bosler.

Q Don't you remember telling Mr. Bosler that these men had confessed to you? A I haven't a memory of it. I may have said so.

Q Don't you remember, sir, arranging an appointment with Mr. Hooper, and that that was the reason why these people came to your office? A Well, sir, I have no memory of anything of that sort. With some little business on other lines I wouldn't pretend to say that my memory was accurate enough to say how that interview came up, but I have no memory of it unless it was by telephone or by some request. There is nothing to clear up in my mind how the first interview came about.

Q But your memory seems to be pretty clear as to who made statements to you? A As to the things that I was specially looking after and interested in.

Q You will have to pardon me, sir. I would like an answer to my question? A What is that?

Q Your memory seems to be pretty clear as to statements made to you, doesn't it? A It does.

Q Your memory doesn't seem to be pretty clear as to the statements made to you by your clients during this conference? A Wherever my memory is uncertain, sir, I have indicated it by my answers.

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Q You particularly refer to statements made by Bauch and Behr, don't you? A Yes, and I haven't given you all the statements that Mr. Behr has made to me either.

Q Well, I am sure that that was not my fault, sir.

A I have endeavored, sir, to answer your questions.

Q Do you recall any statements made by Mr. Bauch as to the correctness of these accounts? A I am not clear that --- in fact, Mr. Bauch did little of the talking.

Q Do you recall whether he made any statement as to the correctness of these accounts, sir? A I can't answer that, an impression. I can answer as to what was said by one or the other.

BY MR. JACOBY:

Q Were they both present? A Oh, yes.

Q Why not answer then? A Well, answering his questions, I cannot say that Mr. Bauch, not Behr but Bauch, made a statement about the correctness of the accounts. I can say that a statement was made about the correctness of the accounts in a conversation when Mr. Bauch was present and in which conversation he took some part.

BY MR. MAYPER:

Q I won't question your legal ability, sir; I think it is great --- A Well, I thank you for your compliment, which is unnecessary.

Q (Continuing) But you must understand this, and I am

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going to frame my question on this understanding, that any statements made by Bauch are not binding as to the defendant on trial ---

MR. JACOBY: I do not think it is proper for counsel to give instructions on the law to any of us.

THE COURT: Let us get along as quickly as possible. Continue.

Q Now, will you tell me why ~~in~~ the dealings were conducted with Bauch? Why your dealings were conducted with Bauch, if at all?

MR. JACOBY: I do not understand the question, your Honor, and it does not mean anything to me.

MR. MAYPER: We will find out whether the witness understands it. I am sorry for Mr. Jacoby.

MR. JACOBY: I object to the question on the ground that it is incomprehensible.

A My understanding was Mr. Wolf and two gentlemen ---

Q Evidently you understand the question? A Yes. That they came there for that purpose and my object was to meet the conditions as they presented themselves.

Q What I want is this, to know whether or not you were to talk to Mr. Bauch about this particular case? A I do know that I asked Mr. Bauch some question and ~~Mr.~~ Mr. Behr stepped in and said, "Bauch doesn't know much about this",

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and he undertook to answer my question, and that occurred several times during the conversation.

Q Don't you know whether Bauch said anything about that?

A To pick out the particular things said by Bauch, I cannot.

MR. MAYPHER: I move to strike out the other answer as irresponsible.

THE COURT: Motion granted.

Q Now, will you answer this question? A I cannot.

Q Now, did you make any attempt or did you make any efforts to obtain Mr. Behr's services in collecting the accounts that were outstanding at the time -- assigned outstanding accounts at the time of the failure? A I asked Mr. Behr to do it, and he promised to do so. We got a pretty large amount of accounts, and I said to Mr. Behr, "Now, you know more about them" --

Q Don't you know, sir, that a good many of those accounts have been collected?

MR. JACOBY: Objected to as being immaterial, because what is the difference whether a good many of the accounts have been collected.

THE COURT: Objection overruled.

A I knew only what they told me. That is to say, the limit of my information was what they told me.

Q Well, if that is all you know about it I will withdraw that question. A All right.

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Q Do you remember the first time you met Mr. Wolf in this case? A Why, I can't say. I met lawyers in bankruptcy cases, and to separate one from the other, except the things I have answered you about, it is impossible for me.

Q Do you remember whether you met Mr. Wolf at the first conference in your office? A Why, that would be my impression.

Q Do you remember ever having met him before? A Mr. Wolf?

Q Yes. A Oh, I think so. I think I have known Mr. Wolf, I think so.

Q Do you remember calling up Mr. Wolf on the telephone at the request of your client, J. W. Place & Company?

A I think very likely, I don't recall it.

Q Before your first meeting? A I don't recall it; it is possible.

Q And don't you remember then asking Mr. Wolf whether he would come to your office? A Possibly.

Q And isn't that the way the first appointment was made? A I would think not, but it is possible.

Q You haven't any idea then? A Yes, I have an idea. If these gentlemen came?

Q Have you any idea? A That is, you asked if I had an idea and I say I have, and I was about to tell you I

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have.

Q Well, that is the answer. A That is not my answer, sir.

Q Have you ever read the contract between Mr. Bauch and J. W. Place & Company? A I cannot be sure, sir. I suppose I have either read it or similar contracts. I don't know but I have prepared it.

Q Do you know the nature or character of their business?

A Yes.

Q You know that they discount bills of account and notes?

A Sometimes buy commercial paper from banks and individuals and corporations.

Q Aren't they what are known as note shavers? A I never heard the name applied to them. I know that Mr. Place is President of a bank, and I happen to have some connection with another bank --

Q All that may be, sir, and still they may be note shavers --

MR. JACOBY: Is there anything improper in being a note shaver?

MR. MAYPER: Yes, there may be something.

Q Did they ever tell you how much they charged Bauch on these accounts?

MR. JACOBY: I object to that as irrelevant, immaterial and incompetent -- if they had charged

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Mr. Bauch a million dollars.

MR. MAYPER: I simply ask if he ever told him.

THE COURT: I will allow the question.

A I don't remember it.

Q You don't remember their telling you how much they charged? A I have no recollection that the subject was ever considered or spoken about.

Q Did they ever tell you they had a thousand dollars on deposit with them to secure any claims which might not be collected? A It is possible but I do not recall it. I think very likely when I was investigating the facts, I remembered more than I do now.

Q Did they tell you that, sir? A I say I don't remember that they told me that or anything on the subject.

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q The learned counsel for the defendant asked you on cross examination, "Mr. Bauch said Mr. Behr here was his bookkeeper", and you answered, "Yes, and there was some more conversation about it." Now, will you kindly tell us what more was said on the question of Mr. Behr being Mr. Bauch's bookkeeper?

(Objected to. Objection sustained).

MR. MAYPER: Of course, your Honor, if it becomes necessary after the direct examination and

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cross examination of Mr. Potterton, I would like the privilege of recalling Judge L'Amoreaux.

THE WITNESS: I must be in Court in Westchester on Monday. I have a case on the Appellate Division.

MR. MAYPER: You will be back on Tuesday?

THE WITNESS: I should think so. I think we will be reached on Monday.

BY MR. MAYPER:

Q Were you subpoenaed to come here? A I came here at the suggestion of the District Attorney.

Q You were not subpoenaed? A I declined to come and I --

Q You were not subpoenaed? A Well, I had a telegram to come.

Q Were you subpoenaed to come? A A regular subpoena? No, sir.

MR. MAYPER: I move to strike out the other answer.

THE COURT: Yes, strike it out.

(The Court now declares an adjournment to November 28th, 1910, at 10.30 a.m., first duly admonishing the jury, as usual).

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New York November 28, 1910.

TRIAL RESUMED.

ALFRED B. POTTERDON, recalled.

DIRECT EXAMINATION BY MR. JACOBY: (Continued)

Q At 1 o'clock Friday we had just had People's Exhibit 5 marked in evidence---this paper here? A Yes sir.

Q Now as there anything else that you recall that was said between you and Mr. Behr on the day that you gave him the check People's Exhibit 3 for \$1442.03, in addition to what you testified to on Friday?

MR. MAYPER: Objected to on the ground that the witness has already given the full conversation as he stated it the other day.

Objection overruled; exception.

A Nothing bearing on that particular invoice, but a general conversation.

THE COURT: Then the objection will be sustained.

Q Was Mr. Place present at any time during the course of the interview between you and Mr. Behr on January 4, 1909. A I couldn't say.

Q Did Mr. Behr go away? A Yes sir.

Q When next did you see Mr. Behr after January 4th, 1909? A I suppose in the course of the same week, I saw him many times after that.

Q Had you ever up to that time met Mr. B. C. Miller referred to in this account? I mean up to the next time you saw Me. Behr? A No sir.

Q When did you first meet Mr. B. C. Miller, the person whose account is referred to in this indictment? A Some time in the middle of the Summer of 1909.

Q Now in making to the defendant Bauch, by the Banking House of J. W. Place & Company, on January 4th, 1909, the advance or discount of \$1442.03, state what if anything you relied on in doing that?

Objected to; objection overruled; exception.

MR. MAYPER. I object to that on the ground that it is calling for a conclusion.

Objection overruled; exception.

A I relied on Mr. Behr's statement that the invoices covered goods which had been delivered to the customer and that the account was O. K.

Q What invoices did you refer to? A The invoices on the assignment sheet, the loan of January 4th, 1909.

Q The assignment sheet you have reference to being People's Exhibit 2? A Yes sir.

Q And including among the various invoices which invoice? A The invoice of---

MR. MAYPER: One moment. There is only one in-

voice in question in this case, and I object to the form of the question, because it opens the door for any other testimony as to any other invoices. I ask that the witness be confined to the particular invoice in question, if that was one of the invoices mentioned in that paper.

Objection overruled; exception.

A The invoice of B. C. Miller.

Q That is the one referred to in the indictment? A Yes sir.

Q Potterton, were you present at any interviews at the office of Mr. L'Amoreaux, Graham & L'Amoreaux when the defendant Behr was present? A Yes sir.

Q About when was the first of those interviews? A Some time after May 5th, during May 1910.

Q 1910? A 1909.

Q Will you tell us who were present at that interview?

A Judge L'Amoreaux, Mr. Wing, his assistant; Mr. Place and myself, Mr. Behr and Mr. Bauch; and Mr. Wolf, Mr. Behr and Mr. Bauch's attorney.

Q Was there a discussion then in regard to certain accounts receivable that had been submitted by Behr in order to procure loans from Place & Company? A Yes sir.

Q Tell us the conversation, so far as you recollect it?

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MR. MAYPER: I ask your Honor to strike out the witness's statement "Mr. Behr and Mr. Bauch's attorney", after the words "Mr. Wolf".

THE COURT: Motion granted.

MR. JACOBY: If the witness knows I think that should remain.

THE COURT: There is no necessity for it. Proceed. We have lost too much time already, and the Court is going to see that we do not lose any more.

MR. JACOBY: It may prove very important later on, if you show Mr. Wolf's connection.

THE COURT: Strikeout the designation of Wolf as Behr and Bauch's attorney.

Q Was there anything said by any one as to why Mr. Wolf was there? A Not at that time.

Objected to.

THE COURT: I will allow the answer to stand.

Q Now tell us the conversation so far as you recollect it? A Mr. Wolf, the attorney, said--

MR. MAYPER: Objected to, not binding upon this defendant.

Objection overruled. Exception.

MR. MAYPER: No foundation has been laid for it.

THE COURT: Proceed.

A Mr. Wolf, the attorney, said that he had a proposition on behalf of Mr. Bauch and Mr. Behr for us to enable them to continue in business and in that way work out the amount of our losses through the fraudulent accounts.

Q Did he say that in that language? A Yes sir. Judge L'Amoreaux said that before we would listen to any proposition we must have a complete statement of what our losses were and how the fraud had been perpetrated.

BY MR. JACOBY:

Q May I ask here whether you recollect whether Judge L'Amoreaux said anything else at a very early point in the interview? A No sir; I have given you the conversation as---

MR. MAYPER: Objected to.

THE COURT: Well, it is answered.

A (Witness continuing) And Judge L'Amoreaux continued to say that whatever they might state would be at their own risk, that we would not agree to use anything that was said--- we would not agree not to use anything they might say against them if we decided to institute criminal proceedings. Mr. Wolf then asked Judge L'Amoreaux whether we would not agree not to disclose what was said in the bankruptcy proceedings which would be pending---

Q Proceed? A That was all Judge L'Amoreaux said. Mr. Place then said to Mr. Bauch, "I want"---



MR. MAYPER: I must object to all this conversation: they are all self serving declarations.

THE COURT: Are you objecting to what Mr. Bauch said?

MR. MAYPER: What Mr. Place said and what Judge L'Amoreaux said.

THE COURT: Said in the presence of the defendant.

MR. MAYPER: They were not said to him or for his benefit at the time.

Objection overruled; exception.

A Mr. Place said he wanted to know just how this fraud had been done, how long it had been going on, what were the amount of our losses. Mr. Bauch said to Mr. Place, "Mr. Behr is my book-keeper, he knows the details of the account, he will tell you," and Mr. Behr said that the fraud had been going through the entire three years that they were doing business with us, that the amount of our losses the fictitious accounts would be \$10,000., that the amount of our losses from merchandise which they had taken back from the customers and resold and borrowed from us again on would amount to \$5000.. Mr. Behr said he would file a list of all the accounts and mark opposite each name whether it was fictitious or whether it was good or whether it was uncollectable.

Q In other words, they were classified in three ways, good, uncollectable, which were genuine but the people

were N. G. and fictitious. A Yes.

Objected to.

MR. MAYPER: The District Attorney probably knows how to fix his case properly.

THE COURT: Objection sustained. The witness had just made that statement and you get up, Mr. Jacoby, and say "In other words". There is no use in doing that. Now, we are wasting too much time. It is quite important, but time is also of some value.

A (Witness continuing) Mr. Place then asked Mr. Behr particularly about \$1000. worth of invoices which we held against Mr. Behr's two sons and Mr. Behr stated his sons knew nothing about the invoices that had---

MR. MAYPER: Objected to as incompetent, immaterial and irrelevant, not within the indictment.

MR. JACOBY: It is a similar transaction had at about the same time.

MR. MAYPER: Not within the indictment, sir.

THE COURT: Objection sustained. Strike it out.

Q Was there anything said at that interview with regard to the method that was used, if any, in concealing from persons as to whom fictitious accounts had been made.

Objected to as leading.

Objection overruled; exception.

A There was.

Q Who said it? A Mr. Behr:

Q What did he say? A Mr. Behr said they had been able to conceal the matter from us because whenever one of these fictitious accounts were due they would go to the same firm or the man against whom this account was had and get a check from him to the order of Herman Bauch or the order of the name of the Fictitious account and bring that to us and offer it to us as payment for the amount.

Q Exchange checks? A Exchange checks, yes sir.

Q Was there anything said in regard to the invoice or the duplicate assignment that you used to send to the persons whose accounts were assigned? A Yes sir.

Objected to as leading, and as incompetent, irrelevant and immaterial.

Objection overruled; exception.

A Yes sir.

Q Who said it? A Mr. Behr?

Q What did he say? A He said that several of the fictitious accounts had offices in the same room where Mr. Bauch's concern was and that he would take their mail bearing our stamp out of the mail and in that way---

THE COURT: Objection sustained here. Strike all that last remark of the witness from the record.



MR. MAYPER: I now ask that a witness be withdrawn and this case be declared a mistrial.

THE COURT: Motion denied. I am cutting this out simply because I do not want to lengthen the trial by further cross examination.

Exception.

Q How about the B. C. Miller account of the January 4th 1909 invoice?

THE COURT: And I am going to insist on doing this, to try the issue in this case.

A Mr. Behr said nothing to me about that but B. C. Miller said he never received it.

MR. MAYPER: Objected to and I move to strike it out.

THE COURT: Strike it out.

Q Don't tell us anything about B. C. Miller. You say there was a second interview? A There was.

Q About how long after the first? A About a week or so.

Q Who was present at that interview? A Mr. Bauch, Mr. Behr, Judge L'Amoreaux, Mr. Wing, Mr. Place and myself.

Q Was Mr. Wolf there? A Yes sir.

Q Was there anything said about what Mr. Wolf was doing there? A He was there---

Objected to, not binding.

Q Was there anything said? A No sir.

Q I show you this paper here, which I believe it marked People's Exhibit 6 for identification and ask you whether or not at that second interview that paper appeared?  
A It did.

Q Who produced that paper? A Mr. Behr.

Q What did he do with it? A He gave it to Mr. Place.

Q Among the accounts on that paper state whether or not there is an item of B. C. Miller? A Yes sir.

MR. MAYPER: I move to strike that out, the paper is not in evidence.

THE COURT: Motion denied.

MR. JACOBY: I offer the paper in evidence.

THE COURT: As to that one account alone.

MR. JACOBY: I offer the whole paper in evidence.

THE COURT: But as to that one account alone the whole paper goes in evidence.

MR. MAYPER: As to that whole account?

THE COURT: Yes.

MR. JACOBY: There are a number of points I would like to bring out as to other accounts on that paper

MR. MAYPER: Objected to, they are not relevant at this time, no foundation laid for them.

BY MR. JACOBY:

Q When did Behr say if at all that he would mark the fictitious accounts.

MR. MAYPER: Objected to as leading and as irrelevant, immaterial and incompetent and not binding upon this defendant on this charge.

Objection overruled. Exception.

A He gave this paper to Mr. Place and said "I will mark opposite every fictitious account three x marks, and I will mark opposite the other accounts such information as will designate their condition.

Q And how is the B. C. Miller marked? A It is marked with three X's.

Q Are there any others marked with three x's? A Yes sir.

MR. JACOBY: Now I offer that whole paper in evidence

MR. MAYPER: Objected to on the ground that it is not within this indictment, and as immaterial irrelevant and incompetent

Objection overruled; exception.

Received in evidence and marked People's Exhibit 6.

Q State whether or not Behr said anything at any interview in regard to the place where Miller's officer was, yes or no? A No sir.

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THE COURT: I will state to the jury that any item on the exhibit which is now introduced, aside from the Miller item, may not be considered by them as of any proof of the charge in this case against the defendant. I shall instruct them also that in the event of allowing in any previous transactions which are alleged to be fraudulent that they would be allowed in as no proof of this charge against the defendant, but simply to assist you in determining whether or not there was any intent in the Miller transaction.

Q Now, did Mr. Behr say anything in regard to the time when he knew of these accounts being fictitious?

Objected to as incompetent, immaterial and irrelevant.

Objection overruled; exception.

A Not particularly, no.

Q I mean how long before that, if at all?

Objected to as leading.

Objection overruled; exception.

A He never said when he had known of it.

Q Did he say he knew of it at the time he said they were genuine, that is what I want to know?

Objected to; objection sustained.

A He said the accounts were genuine.

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MR. MAYPER: I move to strike that answer out.

THE COURT: Strike it out.

Q On the 4th of January what did he say to you in regard to the B.C. Miller account? A He said the accounts on the assignment sheet on which the B. C. Miller figures, were good accounts, and the merchandise had been delivered to the customers.

Q What if anything did he say at the first or second interview at Judge L'Amoreaux office with regard to his knowledge as to the genuineness or---

THE COURT: If he said anything.

MR. MAYPER: Objected to.

Q What if anything did he say at any interview at Judge L'Amoreaux office as to his knowledge of the fictitious character of the B. C. Miller and other accounts at the time he told you they were genuine.

MR. MAYPER: Objected to on the ground it has already been answered, the witness said he didn't say anything.

Objection overruled; exception.

A He made no special statement to that effect.

CROSS EXAMINATION BY MR. MAYPER:

Q What is your precise position in the firm of J. W.



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Place & Company? A Exactly the position that Mr. Place holds.

Q Please tell me what it is, wont you? A I do exactly---

Q Are you manager of that business? A Practically.

Q Are you a partner in this business? A No sir.

Q You remember testifying before the Grand Jury that you were a member of the firm of J. W. Place & Company? A No sir, I did not.

Q If you said that before the Grand Jury you didn't mean that, that wasn't so? A That wasn't so.

Q Now you testified here as to the transactions with Mr. Behr, during the month of December 1908. Those transactions, I suppose, were all had with you, weren't they? A No sir, all transactions were not had with me.

Q Were any of those transactions had with you personally? A I think so.

Q Which of them? A I can't tell you off hand. I can tell you by reference to the transactions.

Q How many transactions did you have with him during that month? A I couldn't state.

Q Give us an approximate figure as to the number of transactions you had? A I might have had five and I may have had only three or two.

Q Two, three or five. A Yes.

Q You mean transactions with the firm? A Transactions for the firm with Mr. Behr.

Q But you mean personal transactions between you and Mr. Behr for the firm? A Yes sir.

Q Were there any other transaction---those two, three or five during that month? A In my former testimony I stated --

Q Were there or were there not? A (No answer)

Q Now you say whether or not there were other transactions than the two, three or five that you just referred to during the month of December 1908? A There may have been and there may not have been.

Q Then if there were not any, then you attended to all of the transactions with Mr. Behr during the month of December, is that right? A No sir, I didn't say that. I said I may have and I might not have. I can designate them only by reference to the checks I signed.

Q Now you testified that Mr. Behr was at your office at 67 Wall Street during December and that there were about five transactions? A Yes sir, I do.

Q Now if you do not know that Mr. Behr was there and you do not know those transactions with him how do you know that Mr. Behr was there? How do you know somebody else wasn't there? A In my testimony I was asked how many tran-

sactions, about, we had a month with Herman Bauch and I said about, that was my answer.

Q How do you know whether or not Mr. Behr was there for those transactions? A Because Mr. Behr always came to our office.

Q How do you know whether he was there for those particular transactions.

MR. JACOBY: That has been answered twice. Mr. Behr always came at every transaction, he said.

Q How do you know---not the District Attorney---how do you know?

Objected to. Objection sustained.

THE COURT: That was his last answer. You asked him that before and he said Behr was always there.

MR. MAYPER: I move to strike that out because that is not responsive.

THE COURT: Motion granted.

Q How do you know that Behr was there during those particular transactions? A I know that Mr. Behr was there because Mr. Bauch never brought a loan to our office.

Q How do you know? A I know that the transactions were made and I know he always came, always brought them.

MR. MAYPER: I move to strike out the answer of this witness with reference to those questions as irre-

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sponsive.

THE COURT: No, he is telling you. You asked him why and he is telling you why.

Q Well, do you know of your own personal knowledge that Mr. Behr was there in his physical presence at your office during the month of December 1908? A I do.

Q Did you see him there? A I did.

Q How many times? A Every time that he came there.

Q How many times was that? A I should say about five times.

Q Then every time Mr. Behr came in December 1908 you saw him? A Yes sir.

Q And that was five times? A Yes sir.

Q And you transacted business with him? A No sir, I didn't say that.

Q Well, were you near him at the time the business was transacted? A Sometimes.

Q And sometimes you were not? A Yes sir.

Q Now when you were not near him did you hear the conversation between him and the person with whom he did converse? A No sir.

Q Then will you testify that he made the representations that those accounts were good, were not fraudulent, and that the merchandise had been sold and that the money was due,

you didn't know anything about it yourself, did you? A I didn't make that statement. I said that every time I made a loan he made those representations.

Q You said every time he came in December he made them? A No sir I did not.

Q Well, shall I read it to you? I am reading from the transcript of the Stenographer's Minutes of your testimony taken on Friday (Page 28): "Q How many times to your best recollection did Place & Company discount accounts for Bauch during December 1908? A I can't answer definitely, but I should say about one hundred accounts. Q On how many separate transactions? A I should say five, one each week. Q

Can you state about Mr. Behr, what, if anything, he said or did as to any or all of the transactions, in December 1908?

A In relation to the transaction Mr. Behr said that the bills were bona fide bills representing merchandise actually sold and delivered to the customers whose names appeared on the bills, and upon that recommendation we made the loan".

A Yes sir.

Q "Q What we want to know is was Behr always present when these transactions were had ? A Mr. Behr on every loan we made brought the papers to the office".

A Yes sir.

Q Is this testimony correct? A Quite correct, but that does not say that I made every loan.

Q Weren't you asked whether you knew about these things yourself? A Yes sir.

Q Do you remember being asked whether you knew about these things yourself? A Yes sir.

Q Do you remember your answer? A Yes sir.

Q Do you remember that it was "Yes"? A Yes sir, I do --no doubt about that.

Q Do you remember you were asked whether you knew about these representations yourself, about all the testimony that you gave? A Yes, I do know about them all, and that testimony is quite correct.

Q Didn't you just testify you were not present at some of these transactions? A Yes sir.

Q Still you claim you personally knew that those representations were made when you were not present? A Yes sir, I do.

Q Is that the nature of all your testimony in this case? A No sir.

Q Which is the stronger, this or the other? A They

are both correct.

Q Now perhaps we will let you square yourself--

MR. JACOBY: I object to that statement "We will let you square yourself".

THE COURT: I do not think that it is important. That implies that there is something to be squared whereas the jury are the best judges of that. Strike that out.

THE WITNESS: Your Honor--

THE COURT: Do you want to do the thing he suggested?

THE WITNESS: No sir, but I want to correct a mis-statement which he made.

MR. JACOBY: You had better let the counsel ask the questions.

A (Witness continuing) When Mr. Jacoby was examining me last time he was asking me as to the general procedure of our business, the methods of making these loans. He is asking me now about specific transactions.

THE COURT: Well, he has a right to examine you. Proceed.

Q In accordance with the suggestion, you tell us now just what Mr. Behr said to you, and I want you to use his exact words, as far as possible, relative to the transactions in December 1908?

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THE COURT: That is, if you can use them.

THE WITNESS: The transactions, the loans which I made to Mr. Behr?

THE COURT: Yes.

A These are regarding the loans which I personally made to Mr. Behr. Mr. Behr told me that the amounts were bona fide, good accounts, that the merchandise covered by these bills had been delivered to the customers and the credit made the customers was O. K.

Q He said all that, didn't he? A He did.

Q Who is your bookkeeper? Who was your bookkeeper in December 1908? A We have several bookkeepers.

Q Well, name some of them. How many have you? A We have four bookkeepers.

Q Will you name them? A Yes, Mr. Staples, Mr. Mertens, Mr. Rickerts and Mr. Loskamp.

Q How do you spell Loskamp? A L-o-s-k-a-m-p.

Q Is he still in your employ? A Yes sir.

Q Are the others you have mentioned still in your employ? A Yes sir.

Q Do you remember the conversation you had with Mr. Behr, if any, on January 4th, 1909, with regard to the accounts which he presented to you, if at all? A Yes sir, I do.

Q Now give us the exact words--precise words--so far as

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you can remember, in relation to the accounts or with relation to the particular Miller accounts? A He said that the accounts on that assignment--

Q To that particular Miller account, I said. A He said nothing particularly about the Miller account; he handed in an assignment sheet of a number of invoices; among them was the B. C. Miller, and he was asking for a single loan up on all those invoices.

MR. MAYPER: I move to strike out the answer as irresponsible.

THE COURT: Motion denied.

A He said that the accounts were bona fide accounts, that the merchandise--

Q Those were his exact words? A Yes.

Q He said these accounts were bona fide accounts--

MR. JACOBY: How can we tell if you do not let the witness answer?

A I asked him if these accounts were bona fide accounts and whether the merchandise had been delivered to the customers and whether the credit was O. K. and he said they were good accounts.

Q He said they were? A No, he said they were good accounts, that the merchandise had been delivered to the customers and the credit was O. K.

Q Did you go through that performance every time you pre

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sented a bill? A Every time I made a loan to him I went through that performance with him.

Q You went through it at least five times in December?

A No, I didn't say that. I said I didn't know how many times I made him a loan in December.

Q Well, you said it was two, or three or five? A Pardon me. I was asked how many transactions were concerned that were made in December and I said about five. I didn't say I had them with him.

Q Didn't you have any transactions with him in December? A I say I cannot say without reference to the checks. The way I know I had a transaction with him is when I signed the checks.

Q Do you know now as you sit there in the witness stand, without reference to anything, whether or not you had any transactions with him during the month of December? A I can't say without reference to the checks.

MR. MAYPIER: I move to strike out the testimony of the witness with reference to the conversation during December 1908.

Motion denied. Exception.

Q How many transactions, if you remember, did you personally have with the defendant during the month of November 1908? A I can't say without reference to the checks.

Q How many transactions did you have with him during the



month of January 1909? A I can't say without reference to the checks.

Q Do you know approximately how many transactions your concern had with this defendant in January 1909? A I can't say. I can only answer that as I did before--about five.

Q Do you know whether it was more than one? A Yes, it was about five, that is my recollection.

Q During January 1909? A Yes sir, about five every month.

Q You don't know how many of those transactions you attended to personally? A No sir, not without reference to the checks.

Q Have you seen this check, People's Exhibit 3? A Yes sir.

Q Have you looked it over carefully? A Yes sir.

Q You didn't write out the face of that check, did you? A No sir.

Q Was that done by a bookkeeper? A Yes sir.

Q Which one? A I couldn't say without looking at the check.

Q If you look at the hand-writing, will that be able to help you? A I think so.

(Check handed to witness)

A (Witness continuing) Mr. Loskamp.

Q You signed this check, didn't you? A Yes sir.



Q Now you have a private office in that suite, haven't you? A Yes sir.

Q And you are generally in your private room, are you? A Yes sir.

Q Where is Mr. Loskamp's desk with reference to your office, how far away? A In the cashier's enclosure, about ten feet away.

Q How about this enclosure, is it partitioned with glass or a wire screen? A Partitioned with glass.

Q And there is little open space in the glass? A Are you speaking of my office?

Q I am talking Mr. Loskamp's desk. A There is a cashier's opening.

Q And the inner office, that is, the cashier's office, and the private rooms, are divided from an outer office, aren't they, separated from an outer office? A Yes sir.

Q By what, a railing or a partition? A No, by partitions.

Q Now if one wants to see a bookkeeper, Loskamp, for instance, he would go to this open window, to the place in this cashier's window? A Yes sir.

Q And if one wanted to transact his ordinary business with your concern he would go to that window, wouldn't he? A Yes sir.

Q Ordinarily you would not invite anybody into your pri-

vate room to discuss a matter of ordinary routine business with him?

Objected to as too general.

Objection sustained. Exception.

Q Is it your custom to invite people into your private room on regular, routine business with your concern? A If it is necessary.

Q I said is it your custom? A I said if it is necessary it is our custom.

Q Do you find it necessary customarily? A Yes, I do.

Q And you always get them into your private room, do you? A Yes sir.

Q What kind of business do you do besides loan business?

Objected to. Objection overruled.

A We do a general banking business.

Q What do you mean by general banking business? A We purchase commercial paper.

Q You mean you discount commercial paper? A We purchase commercial paper.

Q You purchase for the face value? A No sir.

Q I thought not--

MR. JACOBY: Your Honor, he says "I thought not;" that is not a question.

THE COURT: Proceed.

MR. MAYPER: If the witness's answer--

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THE COURT: Let us have no side discussions.

The Court is going to see that we lose no time.

Q Besides discounting notes what else do you do? A

That is our business.

Q Do you have any deposit accounts? A No sir.

Q Do you have any depositors, any trust depositors with you?

MR. JACOBY: Objected to on the ground that it would not matter what line of business they were in-- it wouldn't have any bearing on this action.

Objection overruled.

A No, we do not.

Q Well, will you tell me then when you said you did a general banking business-- A I mean exactly what I told you.

Q What? A That we finance concerns, we lend money to people, we buy commercial paper; that is a general banking business.

Q Do you finance banks for a discount on their bills of accounts? A No sir, we discount their accounts and we charge them a commission for the collection of those accounts and for keeping their books and supplying their stationery.

Q You keep the books of the concern on which you discount? A Yes, we keep ~~them~~ separate ledgers for every account we have.

Q Did you keep any books for the Bauch account? A Yes sir, we did.

Q During all of the time that you transacted business with them? A Through all of the time that we transacted business with them.

Q You had the account of each customer on those books? A On our books, yes sir.

Q How many concerns did you deal with in that line? A We deal with about fifty concerns.

Q You keep a separate book of account for each? A Separate ledger.

Q Separate ledger, cash books and day books? A No, just a separate ledger.

Q Do you keep any books for notes which you purchase or discount? A Yes sir, we keep our own books.

Q Your own? A Yes sir.

Q You do not keep any for the people who discount those notes with you as a convenience? A No sir, we only keep ledgers with accounts where we do their entire business as we did Mr. Bauch's.

Q There are the letters L. C. 13 on this check? A Yes sir.

Q Will you tell me what that means? A That is the number of the loan.

Q The number of the loan? A The number of the loan,

yes sir. We designate the loans by that number.

Q What does "L" mean? A "Loan."

Q What does "C" mean? A "C13" instead of "A", "B", "13". Instead of "B 13" it is "C13".

Q That means on that day or during that day you had made "C" 13 loans? A That is, it means that was the 13th "C" loan.

What does the "C" stand for? A Just the letter "C".

Q Has it any particular significance with reference to the general account? A No. We simply designate the various loans, we make up letters, it has no special meaning.

Q This check was drawn in the outer office, wasn't it-- cashier's office? A Yes sir.

Q And it was taken into your room, wasn't it? A Yes sir.

Q Was this brought in with any other papers? A Yes sir.

Q What other papers--are they here? A The assignment sheet and the bills and the receipts, they are all in evidence

BY MR. JACOBY:

Q Is this the assignment sheet (indicating)? A Yes sir.

(The paper is handed to Mr. Mayber)

Q There were four papers, weren't there? A Yes sir.

Well, there were more than that. There were other bills and other receipts attached to that loan, with the assignment sheet.

Q What I want to say is there another paper that was attached to this, and where is it? A There is no other paper. There were other invoices.

Q Are you sure there were not any other papers attached to this except invoices? A There were invoices attached to it and receipts.

Q Didn't you get any promissory note with this? A Yes, we got a note too.

Q Where is it? A We have got it with us.

Q Where is it? A We can produce it, it is at the office.

Q Why didn't you bring it with you when you brought these other papers?

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

A We did not consider it a necessary part of the evidence.

MR. JACOBY: We will produce it if you wish.

Q Well, we will find it very necessary. Will you see that you have it here this afternoon? A Yes sir.

Q And you got those notes in double--you got those notes for the same amount, didn't you? A No sir, we did not.

Q You are sure you didn't get two notes on these ac-



counts? A Yes sir, sure.

Q Now how did you testify that there were not any other papers attached to this excepting the duplicates of these papers? A It didn't just occur to me at the time.

Q It never occurred to you that you had gotten a promissory note with these? A No sir, it didn't occur to me.

Q Never thought of it? A Yes sir.

Q You have given this case quite some attention? A A great deal, yes.

Q You appeared before the Grand Jury? A Yes sir.

Q Discussed it in Judge L'Amoreaux's office? A Yes sir.

Q You have been here two days? A Yes sir.

Q You probably went over the case with Judge L'Amoreaux before you came here? A Yes sir.

Q To-day?

BY THE COURT:

Q Can you testify with regard to that other paper from your memory? A No sir. I can testify that it is our cus-

tom-

Q When was it made? A It was made at the same time.

Q The same time as when? A As when the loan was made, January 4th, 1909.

Q Covering everything on that Exhibit? A Yes sir.

Q A promissory note? A Yes sir, a collateral note.

Q Promising to pay the amount set forth on the exhibit which you have here as an aggregate of all the accounts?

A No sir. A note promising to pay 90% of it.

Q 90%? A 90%, yes sir. When we collected the accounts we paid the balance.

Q What was the amount of the whole bill? A I don't know without referring to that transaction?

(Paper handed the witness)

Q What is that whole bill? A \$1602.25.

Q So that it would leave \$160. unpaid? A Yes sir, and we would pay them that when we collected the account.

Q So that even though the promissory notes were discounted properly the proceeds of it would not amount to the aggregate of all the items in that Exhibit? A No sir.

Q Within \$160.? A Yes sir.

BY M. L. WATKINS:

Q In other words, what you mean to tell the Court is that the note which you received together with these papers amounted to \$1440.03? A Yes sir.

Q And you sure those notes were not in duplicate, are you? A Yes sir.

Q Did you ever obtain any duplicates? A None from this concern, no sir.

Q What did you charge Mr. Bauch for making this loan of \$1442.03? A We charged 2% on the face of the invoice



that we discounted.

Q How much? A 2%.

Q For the making of the loan? A No sir. For collecting the accounts, keeping the books, carrying on legal proceedings in case it was necessary for us to sue against any of the accounts--that is what we charged our 2% for.

Q When it was necessary to sue on <sup>these</sup> accounts did you return any part of the 2%? A No sir, we retained it.

Q Now take an item of \$1000., a loan of \$1000.--no, no, I mean a complete account, a face account of \$1000., showing items of bills amounting to \$1000.--for how much would you draw your check? A 90% of that note.

Q You would draw it for \$900. wouldn't you? A Yes sir.

Q And then you add 6% on what? A Add 6% on the amount of money that we advanced to them, \$900.

Q You would charge 6% on the \$900.? A Yes sir, on the amount that we advanced to them.

Q And then you would add 2% for collection? A Yes sir.

Q On what? A On the net amount of the bill.

Q Do you mean the amount of the check? A No, on the net amount of the invoices, the net amount that we collected.

Q You mean the gross amount of the invoices, don't you?

A No sir, I mean on the net amount of the invoices we collect-

ed we charge 2%.

Q On a thousand dollar account on what would you charge, on \$900. or \$1000.? A 6% on \$900. and 2% on the net amount of the bills after all the discounts and everything had been taken off. I mean the net amount less the discount for payment within ten days, a certain number of days.

BY THE COURT:

Q You would first figure the discount at 6% upon the face of the bill? A No sir, we would charge 6% upon the amount of money we loaned and we would charge 2% on the net amount of the invoices when paid with all the deductions and claims the merchants made, for collection and for keeping it—

BY MR. MAYPIER:

Q If you collected \$500. on those invoices would you charge 2% on \$500.? A 2% on \$500.? On the net amount we collected, the net amount of each invoice collected we charged 2% for collection.

Q If you collected a thousand dollars would you charge 2% on that? A Whatever the amount of the invoices were we charged 2% on.

MR. JACOBY: I do not want to delay and object but it has nothing to do with the indictment.

Objection sustained. Proceed.

Q What was your rate of interest and for how long \*

period did you charge? A As long as the account was uncollected.

Q You are sure you did not charge for one hundred days?

A Yes sir. We only charged him for the actual time that the money was out.

Q Suppose the account was out more than one hundred days would you charge more than that? A No sir. We would charge just exactly for the time the account was unpaid.

Q Now I want to be sure about this. If the account was collected in forty days instead of one hundred you would charge a rate of 6% interest for the forty days, 6% per annum for the forty days? A Yes sir, we would only charge him for the time he had the money.

Q Is that right? A We would only charge him for the time he had the money.

Q Please say yes or no.

THE COURT: I will allow him to answer as he has answered.

A (Witness continuing) We charged him only for the time that the money was out, whether it was forty, fifty, sixty or ninety days, whatever the time was.

Q That 2 that you charged was not charged 2% per annum--it was not charged for the particular time the money was out, was it? A It was charged upon the net amount of each invoice collected.

Q It was charged as 2% solid? A Yes sir, 2% on the net amount of each invoice.

Q In a thousand dollar transaction that would amount to Twenty dollars, wouldn't it? A Yes sir.

Q And the interest would amount to about for one hundred days on these accounts, would amount to about Sixteen dollars, wouldn't it? A Yes sir. We will agree to whatever amount it is and I will answer your question, we will agree to an amount.

Q Now if there were any other charges on these accounts, such as for collection, attorney's bills, matters of that kind, how much did you charge for them?

Objected to as immaterial. Objection overruled.

A We only charged whatever the legal disbursements were.

Q What do you mean by legal disbursements? A The actual disbursements in the suit, not the attorney's fees. We engaged our attorney by the year and he attends to all our business, we make no charge for that.

Q Collect all your accounts that are not collectible?

MR. JACOBY: I object to that as flippant.

A Well, that is not quite possible.

BY THE COURT:

Q For instance, if you had to employ an attorney to collect a bill, would you pay the attorney his percentage for

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collection and then add on your 2% for collection? A No sir, we would not. We just simply charged the actual, legal disbursements.

Q You mean by charging 2% for collection, that is a practical notice to the debtor and the return to you of the payment? A Yes sir.

Q And the entry of the payment on your books? A Yes sir.

Q And the close of that transaction? A Yes sir.

Q You call that the collection? A Yes sir.

Q And for that you charge on the net amount 2%? A Yes sir.

Q But if you had to employ a lawyer to collect you simply pay whatever his percentage was for collection? A Yes, we would only charge them the amount of the court disbursements. We engage our lawyer by the year and make no charge for that.

BY MR. MAYBIE:

Q If an account was not paid at the end of one hundred days, did you inform Mr. Bauch that the account had not been paid at the time and that you would want him to make good at once? A Mr. Bauch used to make the notes to cover the longest--

Q Will you please answer my question? Did you or did you not notify Mr. Bauch that the account had not been paid

and that you would require him to make that good at once?

A Not until the note was due. That covered all the accounts.

Q The note was due at one hundred days? A No sir, the accounts were for various times on each loan and the note was made to cover the period of the longest account.

Q Was there a note for each particular account? A No, there was not.

Q There was a note for the total? A A note for the total that came on one assignment sheet.

Q Was it ever for more than one hundred days? A They were made above one hundred days.

Q At the end of that time if the bill had not been collected did you notify Mr. Bauch to make good his account? A Yes, we gave him a notification to either make good the account or come down and make a new note covering the account still uncollected. We always chose the latter, making a new note.

Q You do not mean to say he never paid any checks in that way? A No sir, I do not; he brought many checks, he made all the collections.

MR. JACOBY: This is not cross-examination on the issues in this case.

THE COURT: Yes, we are wandering far from the issue.

MR. MAYPHE: This is important.

THE COURT: Yes, as a method of investigation or as a fishing expedition it may be. Proceed.

MR. MAYPIER: It is not for that purpose, your Honor.

THE COURT: Proceed.

Q Isn't it a fact that when these accounts <sup>be-</sup> came uncollectable before Mr. Bauch was thrown into bankruptcy, Mr. Bauch always did make good? Didn't you get him to make good?

A No sir, he did not.

Q Either in one form or another, by new notes or checks? A By new notes, yes sir.

Q Or by check? A Yes sir.

Q But you did not have to sue on any of those accounts during the three years? A Oh, yes, we did.

Q Didn't you just say that Mr. Bauch did make them good in one way or another? A That is, when the accounts were not made good we had to sue them just the same because we never gave back an account, and it was only the accounts that were good that we permitted him to use again for collateral.

Q You are sure you did have to go to suit on some of those accounts? A Yes sir, on many of them.

Q Prior to January 1st, 1909, how many accounts did you go to suit on?

MR. JACOBY: Your Honor has ruled that he should ask only one more question on matters absolutely ir-



relevant to this issue; he has asked at least twenty-five. I object to this question as irrelevant, incompetent and immaterial.

THE COURT: I think the Court was a little bit unwary when he allowed other questions to be asked, but we will allow this question to be answered.

A I couldn't tell without reference to our books.

Q Can't you name one account, just one, that you had to bring suit during the three years prior to January 1st, 1909?

A Not without reference to our books.

Q But you are certain that there was such an account?

A I think there was.

Q You are not certain any more, are you? A I think there was such accounts.

Q But you are not certain any more like you were before? A I can not be certain without reference to the books.

Q Will you please look at your book at noon to-day and come back here and tell us on what account prior to January 1st 1909 you had to bring suit? A I will.

THE COURT: I don't know that we will allow any further examination as to that, I don't think we will. I am inclined to give you all the latitude that is necessary, but I am not inclined to give you a lot of valuable time which might be devoted to trying cases.



MR. MAYPER: May I suggest this, if your Honor pleases, that the only reason I ask these questions--

THE COURT: I put you now upon notice that the Court will not allow you to go off on collateral matters which are of no importance to the trial of this issue.

MR. MAYPER: Will your Honor let me state why I want to examine this witness on this line?

THE COURT: No.

MR. MAYPER: May I state it for the purpose of the record?

THE COURT: Proceed.

MR. MAYPER: It is for the purpose of the record. This witness charged them 2% for collecting these accounts.

THE COURT: I will allow him to answer that question.

MR. MAYPER: What I wanted to say and what I believe I have shown--

THE COURT: I have told you I would allow him to answer that question.

MR. MAYPER: The witness has already testified to that.

THE COURT: Yes.

Q Now, Mr. Potterton, you state now upon what you relied

when you made this loan-- A Yes sir.

Q On January 4th 1909? A Yes sir.

Q Say it, tell us what you relied on? A I relied on Mr. Behr's statement that the account was a good account and that the merchandise had been delivered to the customer.

Q You know of a contract existing between your concern and Mr. Bauch, don't you? A Yes sir.

Q Did you place any reliance upon the terms of that contract at all? A Yes sir.

Q If the terms of that contract had been complied with would you have made the loan?

MR. JACOBY: Objected to, as being too speculative.

Objection overruled.

A It would depend. We might vary the terms of that contract.

Q This is a written contract, isn't it? A That is a printed contract.

Q Well, it is written in law? A Yes sir.

MR. JACOBY: We will concede that it is a written contract.

MR. MAYPER: Thank you.

Q This contract, People's Exhibit 1, states that these accounts or invoices shall correctly state the merchandise, the nature of the merchandise sold, the amount sold and the amount due upon those invoices, doesn't it? A Yes sir.

Q And to correctly state the terms of the sale to the particular customers, doesn't it? A Yes sir, I believe so.

Q And you have the right under the terms of this contract to investigate the sales and to determine whether or not you desired to make the loan upon those consignments? A We have.

Q And under the terms of the contract you are required to do it, aren't you? A No sir, we are not.

Q You remember this, of course, in the contract, that you obtained a reasonable length of time under the terms of this contract to make these investigations, don't you? A Yes sir.

Q You also at times require a deposit to be made, a deposit of cash to be made with your concern as a guarantee of payment or a surety of payment of these accounts? A No sir.

Q Do you remember this clause in your contract with Mr. Bauch, "The applicant (that is, Mr. Bauch) further agrees to keep on deposit with the bankers at all times during the life of this contract the sum of one thousand dollars, from which sum the banker may reimburse himself for any losses of any description which may be occasioned to the banker through the operation of this contract"? A Yes sir.

Q "Interest at the rate of 6% to be paid ~~xx~~ the applicant on the said sum or any balance thereof of one thousand dollars"? A Yes sir.

Q Do you know now whether or not you require a deposit to be made with your banking house for the security of payment of these accounts? A I say that we do not. That was not put in that contract for that purpose.

Q You will agree of course that it was put in for the purpose for which it was put in? A No sir. It was put in for the purpose of protecting us against returns of merchandise, not to protect us--

Q Why did you protect yourself when you might reimburse yourself for any loss of any description? A Because we tried to make those clauses as strong as possible.

Q You did not mean that, did you? A I meant exactly what I said, that it was put in there to protect us from loss of merchandise.

Q Don't you know that one thousand dollars was there to cover you for any loss? A No, it was also to particularly cover us on the loss of any merchandise returned and we put it in to cover everything.

Q If you had a fraudulent account of five hundred dollars and you had one thousand dollars in your possession belonging to Bauch you would not apply five hundred dollars of that one thousand dollars to cover that account would you?

A No sir, I didn't say that.

Q Would you or wouldn't you apply that? A We might do so but that was not why it was put in the contract.

Q You might also return the one thousand dollars to Bauch? A At our option, yes sir.

Q Do you expect the jury to believe that, don't you? A I hope they will.

Q Your claim of B. C. Miller amounted to 142.08, doesn't it? A I think so.

Q We were talking about this thousand dollar deposit, if you remember. Was a thousand dollars given on that deposit with your firm by Herman Bauch? A I think so.

Q Do you know or don't you know? A No. I couldn't say without reference to the books. I think so.

Q Well, do you mean to say that in spite of all the transactions you have had with regard to this matter, you don't know now whether there is a thousand dollars on deposit? A I said I think so. I am quite positive there is.

Q Well, that is better. You never made any effort to repay it to Mr. Bauch or to anybody else, did you? A No sir.

Q You have made efforts to reimburse yourself for any losses of any description out of that one thousand dollars, haven't you? A No sir. Our total loss in the matter was fifteen thousand dollars and we just simply of course considered that one thousand dollars as--

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

MR. JACOBY: Objected to.

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THE COURT: Motion granted.

MR. JACOBY: It will come out on re-direct examination anyway.

THE COURT: I know, but it is hardly fair to threaten the defendant that way.

MR. MAYPER: I ought to take an exception to it, but I think we will forgive the District Attorney this time.

Q Have you made any efforts to reimburse yourself to any extent? A No sir.

Q For any of the losses of any description out of that one thousand dollars? A No sir.

Q Do you consider that money yours to-day? A Yes sir.

Q Now I will recall one or two of the terms of this contract to your special attention-- A Yes.

Q "And if for any reason any bill or account receivable constitutes part of the security of the bankers under the provisions of this instrument, shall not be paid at maturity, the bankers may forthwith charge the amount of said bill or account against the applicants, and the applicants agree to forthwith pay in cash to the bankers with or without demand on their part the amount of any such unpaid bill or account;" now you do not mean to say that you did not make Mr. Bauch live up to that provision? A We never made a charge a-



gainst an account without the consent of the party.

Q You don't mean to say you never made Mr. Bauch live up to the terms of this? A No sir. We always made him live up to it.

Q You did, yes. Now this term -- the last paragraph of the first page -- "The applicants hereby expressly represent to and with the bankers that the invoices, bills and statements of account to be furnished the bankers by the applicants shall directly state the date of sale and the terms of sale, including the due date, and shall be transmitted to the purchasers in such manner and at such times and shall contain such notices as the bankers may from time to time transmit, to the end that every purchaser from the applicants shall receive notice at or before the delivery to him of any merchandise hypothecated or pledged to the bankers hereunder?"

A Yes sir



Q Now did you rely upon the statements of account here contained in making your loan, in accordance with the terms of your contract? A We relied upon that and upon Mr.--

Q Did you rely upon this (showing witness People's Exhibit 2)? A We relied upon that also.

Q Now, is this what you call an assignment (People's Exhibit 2)? A Yes sir.

Q Now if an assignment were brought to you with the bills of accounts and receipts and notes and handed to you in your private office, and you would draw a check for the amount to be paid upon such an assignment, would you then rely upon the particular terms of this contract as to the correctness of the statement.

Objected to as speculative and hypothetical.

THE COURT: Objection sustained on the grounds assigned by the prosecution.

Exception.

THE COURT: If you get that as a direct question, "Did you", why the Court will allow a question of that kind, but a speculative, hypothetical question of that kind the Court will not permit.

Q Well, did anybody other than Mr. Behr ever come to your office as a representative of Herman Bauch with bills of account? A No sir.

Q You are positive of that? A Positive.

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Q Herman Bauch was never there himself? A He was only there about three times in the three years we did business with him.

Q He was there, was he? A Three times, yes, but he never brought loans.

Q Well, they had been mailed to you? A The invoices were mailed to us, but when the loan was made Mr. Behr always brought it to our office.

Q Isn't it a fact that these accounts, receipt and notes and assignments were frequently mailed to you? A No sir, the bills were always mailed to us.

Q Is it a fact or isn't it a fact? A It is not a fact.

Q Now, will you state positively that Mr. Behr was the only one who brought these accounts to you outside of those three times that you say Mr. Bauch came? A Mr. Bauch never came for loans.

Q And you are positive of this, that Mr. Behr was the only one that came there? A I say to the best of my belief and positively that Mr. Behr was the only person.

Q Well, do you that because you know it? A Because I know it.

Q Of your own personal knowledge? A Yes sir.

Q Are you just as sure that he was there in December 1908 as at the other times? A I am sure that every time a

loan was made it was made to him.

MR. MAYPERR: I move to strike out the answer  
as irresponsible.

THE COURT: Motion granted.

A I am sure that he was there.

Q (Question repeated) A Quite sure.

Q Is your answer "yes"? A Yes.

Q Now what you mean to tell this jury is that Mr. Behr  
on January 4th 1909 came into your private office and said to  
you "These accounts are valid accounts, the merchandise men-  
tioned therein was sold, the amounts due therein are due"--

A I didn't say that.

Q What did you say that he said to you on January 4th  
1909? A I didn't say that Mr. Behr came into my private off-  
ice. I said that Mr. Behr said that these accounts were bona  
fide accounts and that the merchandise covered by these ac-  
counts had been delivered to the customers, and upon that rep-  
resentation I made the loan.

Q You mean that after a course of three years' dealing  
with him he made those statements to you there, after three  
years' dealings? A Whenever I signed a check and made a loan  
to Mr. Behr I asked him that question.

Q Where were you at the time the check was delivered to  
Mr. Behr? A In my private office.

Q Where was Mr. Behr when he made that statement? A

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In my private office.

Q When I asked you before if he made that statement to you in your private office you said you had not testified he was in your private office? A No, I had not testified. You said Mr. Behr came into my office, I didn't testify he came in there.

Q Well, he didn't drop in there from Heaven, did he?

A No.

Q Now going back to this last paragraph in People's Exhibit 1 I want to know whether you placed any reliance upon the validity of this contract as to representations concerning sales? A We placed a partial reliance upon it.

Q Did you confer with Judge L'Amoreaux about your testimony in this case? A Many times.

Q When was the last time you talked to him about it?

A I should say about a week ago.

Q You were told then, weren't you, that if you only partially relied on the terms of this contract as to correctness of accounts and so on that that would be sufficient in this case, weren't you? A No sir, I was not.

Q Was that matter discussed at all? A No sir.

Q You don't remember that? A I know it was not discussed.

Q Wasn't the matter discussed before the Grand Jury when you testified? A Discussed with the District Attorney's

office.

Q When you came to make the complaint in the District Attorney's office first did you bring these papers with you?

A Yes sir.

Q Did you bring the note with you? A No sir.

Q Now you say you had a conference in Judge L'Amoreaux's office. That conversation took place in the early part of May 1909? A Yes sir.

Q Did you take part in any actual discussion? A Yes sir.

Q Did Mr. Place take any part in it? A Yes sir.

Q Did Judge L'Amoreaux? A Yes sir.

Q Do you remember Mr. Bauch and Mr. Behr stepping out of the room, don't you? A No sir.

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

Q Were you present? A Yes sir.

Q At all of the conferences? A At all of them, yes sir.

Q If Judge L'Amoreaux says he had a recollection that they did step out of his room, is he mistaken or are you?

MR. JACOBY: I object to that, supposing Judge L'Amoreaux said something.

THE COURT: Objection overruled. He has a right to direct his attention to that testimony.

A I think he is mistaken.

THE COURT: Strike that part of it out. I am not asking him to criticize it, and I am not permitting it. The first part of the question is alright. You may direct his attention to the testimony of Judge L'Amoreaux.

MR. JACOBY: I thought your Honor did not hear the question when you ruled the objection.

THE COURT: A criticism of his testimony, that is not within the province of any witness at all. Strike out the answer.

Q If Judge L'Amoreaux says he had a recollection that they did step out of his room would that change your opinion as to whether or not Bauch and Behr did step out of the room?

A No sir, it would not.

Q Now, will you again say what Judge L'Amoreaux said to all of you with reference to statements which might be made by anybody present, as to their use against anybody? A Yes sir. He said that any statements that might be made by Mr. Bauch or Mr. Behr in reference to the matter, we would not agree--that it was at their own risk, that we would not agree to use them in a criminal prosecution against them if it was necessary.

Q If Judge L'Amoreaux testified here that he said during that conversation "I said to them substantially that we ought to treat this as confidential and not to go out of the

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office, words to that effect, yes," would that change your opinion or your recollection as to whether or not that had actually been said? A No sir, it would not.

THE COURT: Now, have you any more questions?

MR. MAYPER: I have quite a number of questions to ask this witness which do not appear to be in accordance with the other proofs in this case.

THE COURT: But the Court cannot sit here while you ponder this case. Ask your questions.

Q In the conference at Mr. L'Amoreaux's office do you remember Bauch saying anything? A Yes sir.

Q Do you remember him saying that certain accounts were fictitious? A No sir.

Q Do you remember the use of the words fraudulent or fictitious? A Yes sir.

Q By whom? A Mr. Behr.

Q He used the words fraudulent and fictitious? A No sir, he used the word fictitious.

Q He didn't use the word fraudulent? A No sir.

Q Did he use the word irregular? A I can't remember.

Q Did he use the word uncollectable? A Yes sir.

THE COURT: Any other question?

Q Now, do you remember, Mr. Potterton, whether Mr. Bauch brought two papers into Judge L'Amoreaux's office, one consisting of a long list of customers of Bauch and another,

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a shorter list, of so-called uncollectable accounts? A No sir.

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

Q If Mr. L'Amoreaux testified that those two lists had been handed to him would that refresh your recollection? A Not if he said they were handed to him by Mr. Bauch it wouldn't

Q If he testified that it was handed to him by either one of the defendants, would that refresh your recollection --not as to the short list, as to the long list? A But my recollection does not need refreshing on that point. I testified that such a list was handed--

MR. MAYPER: I move to strike out "My recollection does not need refreshing".

THE COURT: Strike it out.

Q No, I want you to tell us why you did not bring that promissory note to the District Attorney's office when you first came here to make complaint?

MR. JACOBY: He has already told us the reason before.

A It was brought to the District Attorney when we first made the complaint.

Q Didn't you testify when you brought these papers you did not-- A No, you asked me about the Grand Jury, when we first brought the complaint to the District Attorney--

MR. JACOBY: I ask that the witness be allowed

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to answer the question why he did not bring it.

A (Witness continuing) When we first brought our complaint to the District Attorney Mr. Bosler, the Assistant District Attorney, we brought all the papers in the case, all the invoices, their fictitious invoices, every note, every check, every receipt, and showed them to him and he selected the B. C. Miller account as the one best answering the purpose of the District Attorney's office to go before the Grand Jury, and he told us the note was not necessary. That is the reason it is not in evidence.

MR. MAYPER: I move to strike out the statement of Mr. Bosler referred to by the witness.

THE COURT: You asked him why.

MR. MAYPER: I know, but that refers to his personal knowledge.

THE COURT: That is why, and if he went on till to-morrow morning giving his whys for it his answer would be responsive.

MR. MAYPER: I move to strike out Mr. Bosler's statement from this answer.

THE COURT: No, motion denied.

MR. MAYPER: Exception.

THE COURT: It is not any of the Court's concern except as to the use of time and the waste of time here, but attorneys who do not want the witness

to go to far afield should not ask him why at all, because he is apt to give you all the whys you want and more than you want. Now proceed.

MR. MAYPER: I except to the remark of the Court.

THE COURT: Yes.

Q Now, Mr. Potterton, did you have that note before the Grand Jury or didn't you? A I did not.

MR. JACOBY: I move that the cross-examination be declared closed on the ground that the counsel is purposely procrastinating in his examination of the witness.

THE COURT: No, sit down, please. The motion is not at all out of place, but it will not be granted just now.

MR. MAYPER: I except the criticism.

THE COURT: This matter of waiting for so long a time between your questions, to ponder, what in the world can I ask him next, is not at all pleasing to the Court. You are wasting too much time.

MR. MAYPER: There are so many things I would like to ask him about that it is really difficult to take up the matter I want first.

THE COURT: Yes, I know.

Q You testified before the Grand Jury, didn't you, that

Mr. Behr pointed out the Miller account to you when you made that loan? A Yes sir, I did.

Q Did he point out the Miller account to you and say that account was a good one? A Yes sir, he pointed out every account that was marked with the X X mark.

Q Now, will you answer that question? A Yes sir, he did point that account amongst others.

BY MR. MAYPER:

Q You are referring to the time you were in Judge L'Amoreaux's office? A In Judge L'Amoreaux's office, yes sir.

Q I am asking you about January 4, 1909; did he at that time say to you that that account was a good one, that the account of B. C. Miller was a good one? A He didn't refer to that specially.

Q Don't get into an argument with me. A He did amongst other accounts, yes.

Q Did he say that that specific account of B. C. Miller was a good account? A He said that all those accounts were good; that implied that the Miller account was.

MR. MAYPER: I move to strike out the answer as irresponsible.

Motion denied. Exception.

Q As a matter of fact you placed no reliance upon the particular statement as to Miller or as to any one of the oth-

er accounts? A Oh, yes, I did. I wouldn't have made the loan if he had said they were not good.

MR. MAYPER: I move to strike out "I would not have"--

THE COURT: Yes, strike it out.

Q You placed particular reliance, didn't you, upon the fact that under this contract Bauch was to give you correct statements and correct accounts and the fact that you had one thousand dollars in your possession to cover any losses, didn't you? A No sir.

Q You didn't take that into consideration at all? A No sir.

MR. JACOBY: This has been fully covered by cross-examination on the question of the thousand dollars.

(The Court now declares a recess until 2 p. m., first duly admonishing the jury as usual)

AFTER RECESS.

TRIAL RESUMED.

ALFRED B. POTTERTON, resumes the stand and further testifies:

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q The counsel for the defendant requested you to pro-

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duce a certain promissory note. Have you that with you? A  
Yes sir.

Q Will you produce it?

(Witness produces a paper and hands same to Mr.  
Jacoby)

Q Is that the promissory note referred to by the learned  
counsel for the defendant during his cross-examination?

A Yes sir.

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

(Marked for Identification People's Exhibit 7)

MR. JACOBY: Do you desire to examine the promissory note? It is not in evidence but it is marked for identification (handing People's Exhibit Number 7 to Mr. Mayper)

Q Now, on cross-examination the learned counsel asked you, did you repay the thousand dollars, being the deposit made by Herman Bauch with your banking house probably three years before, or at some time before the transaction of January 4, 1909--did you repay the thousand dollars to Mr. Herman Bauch or anybody else? A No sir.

Q And you answered no sir. Now, I am going to ask you to tell the jury why your firm did not repay the thousand dollars to Herman Bauch or anyone else?

MR. MAYPER: Objected to as irrelevant, immate-

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rial and incompetent, not proper re-direct examination.  
tion.

MR. JACOBY: I have considered the question and I think it is proper in view of what counsel elicited on cross-examination.

THE COURT: Suppose his why should relate to some transaction that has nothing to do with this.

MR. JACOBY: We know--

THE COURT: He may answer it subject to a motion to strike it out.

Exception.

Q Answer it briefly. Why didn't you pay the thousand dollars? A Because our losses amounted to fifteen thousand dollars.

Q Your losses on the contract with Herman Bauch? A Yes sir.

MR. MAYPER: I move to strike that answer out, if your Honor please.

Motion denied. Exception.

Q Did you in behalf of your firm send or cause a notice to be sent to B. C. Miller of the assignment by Herman Bauch to your firm of the account of \$142.08?

Objected to; objection overruled; exception.

A A notice was sent.

Q Now have you since the ~~Terrany~~ Luncheon Adjournment



made an examination of checks given for loans during December 1908 by your concern to Herman Bauch? A I have not had time to make a complete examination, but a clerk is making it and I expect him here any moment. I have, however, some checks for transactions--

Q Well, did you?

MR. MAYPICK: I move to strike out the answer as irresponsible.

THE COURT: Strike out the answer.

Q Are you now prepared to say whether personally you had made any loans to Herman Bauch during the month of December 1908? A No sir, I can't say without the checks.

Q By what time will you be able to tell? A I expect him here any moment. Here he is now, he may have them with him.

Q I show you a certain bundle of papers and ask you first to refresh your recollection as to the month of November 1908, what are the first ones there, and tell us whether during the month of November 1908 you personally made any loans in behalf of your firm to Herman Bauch? A I did.

Q How many did you make during November 1908, personally? A Four.

Q To whom did you give the checks representing those discounts?

MR. MAYPICK: Objected to as irrelevant, immate-

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rial and incompetent and not within the Indictment.

Objection overruled. Exception.

A Mr. Behr.

Q Now, during the month of December 1908, after refreshing your recollection, state whether you can tell whether you personally discounted any accounts receivable for the firm of Herman Bauch?

MR. MAYPER: Objected to on the ground that it is improper re-direct examination.

Objection overruled. Exception.

A I did.

Q How many did you personally discount?

Same objection, same ruling and exception.

A Three.

Q On those three occasions can you state who received your checks? A Mr. Behr.

Q Now, during the month of January 1909, did you refresh your recollection and state whether or not you personally attended to the negotiation of any accounts receivable for Herman Bauch outside of the January 4th transaction? A Five.

Q On those occasions who represented Herman Bauch?

MR. MAYPER: Objected to as incompetent, immaterial and irrelevant and subsequent to January 4th.

MR. JACOBY: On the ground that it is subsequent

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to January 4th I withdraw the question.

Q Any transactions prior to January 4th during the month of January? A No.

CROSS-EXAMINATION BY MR. MAYPIER:

Q Will you please hand me those checks which reminded you that you made the loans in December? Just only those which reminded you of the fact that you made loans in December? A In December?

Q December 1908?

(Witness hands a number of papers to defendant's counsel)

Q What is there about these checks that reminds you of that? A The fact that I signed them.

Q That is the only reason? A Yes sir.

Q When you didn't sign these checks, who did? A Mr. Place.

Q Now you have here a check made to the order of Henry R. Loskamp, your bookkeeper? A Yes sir.

Q Do you know your bookkeepers' signature? A Yes sir.

Q Will you look at that signature of Mr. Lockamp's and let me know whether that is the signature of your bookkeeper Loskamp?

MR. JACOBY: I ask to mark this for Identification so we will know what it is you are referring to.

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(Marked for Identification People's Exhibit 8)

A Yes sir.

Q Endorsed on the back of the check? A Yes sir.

Q Did you hand these checks over to Mr. Behr personally?

A Not that one.

Q Didn't you testify on re-direct examination that these three transactions were the ones that you had conducted? A No sir. I said that I had signed those checks.

Q Is the rest of the testimony as correct and as square as that is? A Yes sir.

MR. MAYPERR: That's all.

BENJAMIN C. MILLER, called as a witness  
on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q What is your full name? A Benjamin C. Miller.

Q Are you a business man here in the City of New York?

Q Borough of Manhattan? A Yes sir.

Q And have been for how long? A For nine years.

Q What business have you been in during the last three or four years? A I am a jobber in cotton.

Q Where was your office or place of business during the year 1908? During the last six months of 1908 and the begin-

ning of 1909A 20 Lispenard street.

Q With whom did you have your office? A With Herman Bauch.

Q Do you know the defendant here at the bar, Joseph Behr? A Yes sir.

Q Was he there too? A Yes sir.

Q What sort of business did you do? Did you have a salesroom there? A No, I sold myself.

Q What? A I used to do my selling myself.

Q You simply had a desk there, is that it? A Yes, and a stock-room too.

Q In the same office with Bauch and Behr? A Yes.

Q What did you have there, just samples? A No, piece goods too.

Q You had some piece goods? A Yes.

Q Up to what were you there in occupancy of those offices with Bauch and Behr? A It was up to May 1909.

Q State whether at any time you ever during the time you were there or at any other time up to January 4th 1909 purchased any goods of, from or through Herman Bauch or Joseph Behr? A No sir.

MR. MAYPER: Just a moment.

THE COURT: That is a little indefinite as to the time.

MR. MAYPER: That is the objection. I move to

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strike out the answer.

MR. JACOBY: I want to show it is not merely a mistake in the date.

MR. MAYPER: I submit the District Attorney ought not submit his evidence this way.

BY THE COURT:

Q Did you have any transactions with the defendant? A No sir.

Q With this man here (indicating defendant)? A No sir.

Q Never had any with him at all? A No sir.

THE COURT: Of what use can his evidence be to you?

MR. JACOBY: To me?

THE COURT: Yes.

MR. JACOBY: Why, if your Honor pleases, the defendant represented that this man had about one hundred and forty-two dollars' worth of goods from him.

THE COURT: What is this man's name?

MR. JACOBY: B. C. Miller. Does your Honor realize that that is the most vital testimony in the whole case?

MR. MAYPER: I object to the statement and take an exception to it because there is no such evidence

in this case, that Miller bought any goods from the defendant.

THE COURT: Proceed.

BY MR. JACOBY:

Q I show you a certain paper marked People's Exhibit 4 and call your attention to it. It says "New York, January 2nd"--

MR. MAYBEE: Just a moment.

MR. JACOBY: I am reading a paper which is in evidence to the witness. It is in evidence.

MR. MAYBEE: I beg your pardon.

Q "New York, January 2nd 1909, Mr. B. C. Miller, 20 Lispenard street, bought of Herman Bauch, Mill agent, 20 Lispenard street, terms, net 90 days, payable in New York funds, two bales canvass 865,911, 1776 yards, 8, \$142.08," and other matters printed on it, and ask you first did you purchase the goods referred to in that invoice from Herman Bauch?

Objected to.

THE COURT: Objection sustained for the present, not quite enough foundation laid for that. You have the number of that place and the date of that place and has this man said whether or not he was at that place on that day?

MR. JACOBY: Yes sir.



THE COURT: And at that number?

MR. JACOBY: Yes sir, he has testified to all that.

THE COURT: And that there was no other person of that name in that place than this man?

MR. JACOBY: In the place with Bauch and Behr?

THE COURT: Where this man was supposed to have been.

Q Was there any other B. C. Miller in that place, 20 Dispenard street, on January 1909? A I don't know.

Q What? A Not that I know, except I was there.

Q Was there any other B. C. Miller in the office with Bauch and Behr? A No.

Q How long had you been there before January 2nd 1909? A Five years.

Q Now had there been any other B. C. Miller there? A No.

Q Well, now, I repeat the question, did you purchase the goods referred to in that invoice from Herman Bauch?

IT. HAYDEN: Objected to as irrelevant, immaterial and incompetent, not within this indictment and not binding on this defendant.

Objection overruled. Exception.

A No sir.

Q I show you People's Exhibit 4 and ask you whether at

any time you received a duplicate of that paper that I now show you?

MR. MAYPER: Objected to as irrelevant, immaterial and incompetent, not binding on this defendant.

Objection overruled. Exception.

A No sir.

Q Did you ever have any transactions with defendant Behr in regard to checks? A No sir.

Q Had you up to we will say the first of February 1900 heard through anybody of the assignment of any accounts of yourself by Behr representing Bauch or by Bauch to the banking house of J. W. Place and Company?

MR. MAYPER: Objected to, first because of the form of the question and, second, because it called for a hearsay.

MR. JACOBY: I will withdraw the question. The witness is with you.

MR. MAYPER: I do not think I will cross-examine this witness.

MR. JACOBY: That's all.

J O S I A H W. P L A C E , called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q You are the complaining witness in this case? A I am.

Q What is your business? A Banking.

Q Under what name do you do a bankijg business? A J. W. Place and Company.

Q Where is their bank? A 67 Wall street, New York City.

Q In this county? A Yes.

Q And it has been for how many years? A At that address about six or seven years.

Q Have you a person connected in some way with your business, named Potterton? A I have.

Q (Continuing) Who was a witness in this case also? A Yes.

Q And how long has he been connected with your business? A About six years.

Q What authority, if any, to act for your concern did Mr. Potterton have during the months of November and December 1908 and January 1909, with reference to the discounting of accounts receivable?

MR. HAYDEN: Objected to as immaterial, irrelevant and incompetent, not binding on the defendant, and calling for a conclusion.

BY THE COURT:

Q Do you know whether or not he had any authority?

I do.

THE COURT: You may answer the question.

Exception.

A He had full authority.

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

Motion denied. Exception.

BY MR. JACOBY:

Q Was there any other person besides you and him that ever had authority to discount accounts receivable during those months for J. W. Place and Company?

MR. MAYPER: Same objection.

MR. JACOBY: It is not very material, your Honor.

THE COURT: Objection sustained.

Q Now, Mr. Place, do you know the defendant, Joseph Behr? A I do.

Q Did you ever see him at your place in Wall street?

A Yes.

Q Did you see him there during the last six months of 1908 and during the first two or three months in 1909? A Yes.

Q Did you ever talk with him? A I did.

Q Did he ever tell you what his business was with J. W. Place and Company during the months of October, November and December 1908 or January 1909?

MR. MAYPER: Objected to as too remote.

Objection sustained.

Q Did you ever personally during the months of October, November or December 1908 attend to the discounting of accounts receivable for Herman Bauch?

Objected to. Objection overruled. Exception.

A Yes.

Q Tell us with whom it was that you transacted the business of discounting accounts receivable for Herman Bauch at any of those occasions? A Mr. Behr.

Q Did you ever transact it with Herman Bauch personally during the months of October, November or December 1908? A No.

Q Will you tell us briefly in what way the transactions if they were had in the same way on each occasion--in what way the transactions that you had with Mr. Behr of discounting accounts receivable for Herman Bauch were had during the months of October, November and December 1908?

MR. MAYPER: Objected to on the ground that it is indefinite.

Objection overruled. Exception.

A Mr. Behr would bring to our office a note, an assignment of accounts covering invoices which he had sent previously to our office by mail, or in some cases he would have the invoices with him. Attached to each invoice there would be a ship-



ping receipt or bill of lading. The credit of each customer whose name appeared on the invoice was O. K.'d by Mr. Potterton or myself--

MR. MAYPER: Objected to and I move to strike that out.

THE COURT: Yes.

Q Was it ever O. K.'d by you? A Yes sir.

Q On some occasions it was O. K.'d by you?

Objected to.

THE COURT: On some occasions in those three months.

Q Was it on some occasions in those three months O. K.'d by you? A Yes.

Q Now proceed. A If the credit of the customers passed approval I would then direct the cashier to issue a check payable to Herman Rauch and I would ask Mr. Behr were the accounts genuine, were the receipts genuine, and Mr. Behr would give me an answer in the affirmative, that the accounts were genuine and the receipts were genuine.

Q Did you always ask him that question? A Whenever I signed the check, yes sir.

Q How did he answer you? A He answered yes.

Q Were you personally present at the time of the transaction of January 4 when a discounting amounting to 1400 and odd dollars was paid over to Behr or was said to have been

paid over to Behr amounting to \$1442.03? A I presume that I was.

Objected to. Objection sustained.

THE COURT: The answer is stricken out.

Q When did you first--

THE COURT: The objection is not sustained to the question, but the answer is stricken out.

(Question withdrawn)

Q I show you People's Exhibit 3, being a check representing the proceeds of the discounting of accounts receivable on January 4th 1909 and ask you whether or not you were personally present at the time that this check was given, if it was given, to Mr. Behr, on January 4, 1909? A I have no way of knowing.

Q You have no recollection, have you? A No..

Q One way or the other? A No sir.

Q Were you in the office of Mr. L'Amoreaux, ex-Judge L'Amoreaux, in May 1909 when some conversations are said to have taken place with the defendant and Bauch? A Yes.

Q Were you present on more than one occasion? A Yes.

Q Now taking the first occasion, who were all there?

A Mr. Bauch, Mr. Behr, their lawyer, Wolff, Mr. Potterton--

THE COURT: I don't think we had better go too deeply into that.

MR. MAYPHE: I move to strike that out.



MR. JACOBY: It is my duty to corroborate the story of any person that it is peculiarly within my power to produce.

THE COURT: We are losing too much time with those side issues; it is absolutely immaterial.

MR. JACOBY: There was a declaration made by the defendant.

THE COURT: Yes. You see you are going too far afield on these matters. We have got to finish this trial and at your request we have got to go into the night to do it, perhaps, but I certainly won't grant it if you are wasting time like this.

Q I show you People's Exhibit 6, in evidence, and ask you whether the defendant Behr in your hearing ever said anything about fictitious accounts.

THE COURT: And if so, when.

Q Whether he ever did in reference to that paper? A. Yes sir.

Q Where was it? A At Judge T'Amoreaux's office.

Q On what date? A About May 15.

Q Was that the first or second interview? A Second interview.

Q What did he say in regard to the way the accounts were marked? A He said those marked with three X's represented and were fictitious accounts.

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Q Among those accounts marked with three X's in People's Exhibit 6 state whether or not the B. C. Miller account of \$142.08 is to be found?

Objected to on the ground that the Exhibit speaks for itself.

Objection overruled.

A It is.

Q On what day? A I have it right here, it is numbered 143, I don't know what number the page is.

Q Item number 143, on a page number 95, apparently? A Yes.

MR. JACOBY: The witness is with you, counselor.

CROSS-EXAMINATION BY MR. JACOBY:

Q Do you remember seeing Mr. Behr in your private room, in your office? A At various times.

Q At various times, yes. A Yes.

Q Do you remember seeing him there in the month of December 1908? A No particularly so.

Q Do you remember seeing him in the office at all, any where in your office during that month of December? A Yes.

Q Where did you see him during the month of December?

A I haven't any recollection just where I saw him. I know he was in my office.

Q Now, state ~~where~~ where you saw him. That is how we will find out what you know? A I no doubt saw him at least five times during the month of December in my outside office and in my private office.

Q Did you see Mr. Loskamd hand him any checks? A No sir.

Q None at all? A No sir.

Q Did you see Mr. Staples hand him any checks? A No sir.

Q Did you personally hand him any checks in December 1908? A I believe so.

Q Do you remember on what days you did? A No, but I can look it up.

Q You don't know now, do you? A No.

Q Have you looked at that bundle of checks and papers that was brought here? A No.

Q Do you remember while in Mr. L'Amoreaux's office Mr. Bauch and Mr. Behr walked out of Judge L'Amoreaux's room to make up that list, do you remember that? A They came to the office with that list.

Q Do you remember that or don't you? A What was your question?

Q Do you remember Mr. Behr and Mr. Bauch walking out of Judge L'Amoreaux's room? A I do not.

Q At one of those conferences? A I do not.

Q If Judge L'Amoreaux testified that they did walk out of his room does that refresh your recollection or does that make it clearer to you? A It does not refresh my memory.

MR. JACOBY: Your Honor, the People do now rest.

MR. MAYPER: Now, if your Honor please, I move to strike out the testimony of Judge L'Amoreaux, upon the ground that there is no connection of this defendant with any statements made in the presence of anybody as testified to by Judge L'Amoreaux, who was unable to say whether or not the defendant made any statements, and in view of that I think the testimony should be stricken out.

Motion denied. Exception.

MR. MAYPER: Now I move to strike out the testimony with reference to any admissions made by anybody in Judge L'Amoreaux's office, and any admissions made by Rauch in Judge L'Amoreaux's office.

THE COURT: The co-defendant and this defendant?

MR. MAYPER: The co-defendant, yes sir.

Motion denied. Exception.

MR. MAYPER: I move to strike out the testimony of the witnesses with reference to any statements made by Wolff.

THE COURT: Motion granted.

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MR. MAYPIER: I move to dismiss the indictment in this case on the ground that none of the witnesses in this case have in any way shown by testimony, innuendo, inference, or even logic that the defendant had any knowledge that the accounts when presented on January 4th, 1909, were fictitious or fraudulent; there is nothing in this record to show that he knew at that time that they were fraudulent.

I call your Honor's attention to a case in 14 Hun which I believe is on your desk, page 516, affirmed in 76 New York. I have it right here, sir. In that case the defendant was indicted for a larceny by false pretenses, and the false pretenses were supposed to have been made in January of that year, and the testimony was that in March of that year, three months later, he signed a confession that the statements made by him were false. Now, Judge Potter, of the Appellate Division--or the General Term, at that time--in reversing the conviction said as follows. "The judgment of conviction in this case should be reversed and a new trial had. It is proper, for the purpose of showing the intent of a party charged with criminal transactions, to prove some transaction at or near the date of the transaction on trial. Whether proof of the representations made to Kellogg about

the middle of March would show what intent existed on the second day of January previous, the evidence was received not to show intent but to show knowledge".

THE COURT: The motion will be denied without further argument.

MR. MAYPER: If your Honor please, in support of that statement I would like to refer to the testimony--

THE COURT: I am calling in mind the trials just now closed by the prosecution so I deny your motion and I do not care to argue the matter with you because it would not be fair to your clients. Proceed.

MR. MAYPER: May I refer your Honor to two questions here?

THE COURT: Yes.

MR. MAYPER: A question asked by the District Attorney, where it shows affirmatively that there was no knowledge: "Q Now, did Mr. Behr say anything in regard to the time when he knew of these accounts being fictitious? A Not particularly, no. Q I mean how long before that, if at all? A Never said when he had known of it". Now, that appears affirmatively--

THE COURT: It will be a matter for the jury to determine altogether from the facts in the case. Let

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us proceed. Is there any other motions?

MR. MAYPER: No, I haven't any other motion at this time. I except to your Honor's denial of my motion.

THE COURT: Now let us proceed.

Mr. Mayper now opens to the jury on behalf of the defendants.

J O S E P H B E H R , the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MAYPER:

Q Where do you live? A 518 West 161st street.

Q How long have you lived in the City of New York? A Since 1897--no, 1893.

Q Since the year of the panic? A Yes.

Q Where did you live before that? A On the Pacific Coast.

Q How long have you been in this country? A Since 1863.

Q Were you in business in Nevada? A I was.

Q Did you hold any public office there? A I did.

Q What office did you hold? A School trustee, without pay.

Q Then where did you go from Nevada? A To Arizona.

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Q How long did you stay in Arizona? A About four or five years.

Q Were you in business for yourself there? A I was in the mining business there.

Q Where did you go from Arizona? A I came to New York.

Q That was in 1893? A In 1893.

Q When you came to this city did you go into business for yourself? A When I came to this city I had my interests in silver mines out West and I looked for a position. I went to work for a man named Samuel Wolf as salesman in the woolen business.

Q How long did you remain with him? A About three years.

Q Then what did you do? A Then I associated myself with a man by the name of Pelz. We continued together two years and on account of business not paying we separated. I then went to work or sold goods on half profit with a man by the name of J. Meliner. I continued with him for about three or four years.

Q Then where did you go? A I then started to work for Herman Bauch, that was about seven years ago, or seven years ago I worked with him altogether.

Q What position did you hold at Bauch's place? A The first two years I worked selling goods on commission, selling

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goods for him on commission.

Q The first two years? A The first two years, about.

Q About in 1904 or 1905? A Well, yes, I guess so, yes.

Q Then? A Then I wasn't able to travel around very much and he told me that--

MR. JACOBY: I object to what he told him.

A (Witness continuing) He told me to--

MR. JACOBY: I object to the witness telling what he told him.

A (Witness continuing) I assisted him as bookkeeper.

Q As bookkeeper? A Yes sir.

Q Then you became bookkeeper, is that right? A Yes.

Q Have you held that position all the time until Herman Bauch failed? A Yes.

Q Now did you selling at all in the year 1908 for Herman Bauch? A No.

Q Or in the beginning of 1909? A No.

Q Now, state exactly what your duties were as bookkeeper? A I entered accounts as they were handed to me and went out to adjust claims. This business brings a great deal of -- well, complications, people finding goods is short measure or it tender or is damaged--I could occupy most of my time to go around to just settle claims.

Q But you kept the books? A I kept the books.

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Q From where did you make your entires into the books?

A Generally from slips that were left in case I was not there, but if I was in from dictations of Herman Bauch or one of the salesmen.

Q How many salesmen did you have? A We had at times three or four.

Q Did you have any personal transactions with B. C. Miller? A No sir.

Q Now on behalf of the firm of Herman Bauch I mean? A No, no sir.

Q Did you have any personal knowledge as to the truth or authenticity of the sales as indicated by the slips? A I had implicit confidence--in fact--I positively thought that everything--

MR. JACOBY: I move that the witness answer the question.

Q (Question repeated)

THE COURT: Yes or no.

A Yes, I had.

Q Did you or didn't you? Did you personally? A That they were all right, you mean?

Q That the sales were made? A Certainly, yes, of course I did. I thought they were all right.

Q Did you yourself know that the sales had been made to people? A No, I couldn't tell that, no.

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Q What did you think I said? A Well, I didn't think you asked me that if I knew that when the entries were made if it was all right.

Q Well, now, did you know when the entries were made whether or not these goods had been sold? A No, of course not.

Q Did you know whether any amounts were due? A No.

Q Did you ever have any reason, so far as your particular work was concerned, for inquiring as to whether or not those accounts were good? A I had not.

Q So far as you were concerned what did you rely on in making the entries in those books? A The slips that were left on my desk or in the draw of the desk while I am out, to enter all those slips generally where the credit was passed on by Mr. Bauch and that were put then in the draw. If they are not there after he checked them I would enter them in the book and make out bills accordingly.

Q Did you present the bill of January 4th 1909 to J. W. Place and Company? A I suppose I did.

Q Well, did you or didn't you, do you know? A No, I can't positively say that I did.

Q Was there anybody else presented bills? A Sometimes other parties were sent down.

Q Do you remember whether or not you were serving on juries in this court in December 1908? A I served during

the month of December, yes, up till Christmas day.

Q During the whole of that month you were in Part I?

A I think from the time the term started until Christmas day.

Q That was before Judge Crain? A Judge Crain, Part I.

Q Did you present at any time in December to anybody in J. W. Place's office any of those assignments or slips and bills? A If anybody--

Q Did you or did you not? A If it was on a Saturday I might have done it, but not during the week, I couldn't go down during the week as I attended to the jury. If on a Saturday I might have done it. During the week-days I was in court.

Q Look at this check dated December 1st, 1908, and tell me whether you ever received that check ( People's Exhibit for Identification Number 8)? A I couldn't say if I received that check or not.

Q Look at the name of the payee on that, Henry Loskamp.  
A Yes.

Q Would that recall the transaction to your mind?

MR. JACOBY: I object to the counsel trying to lead his own witness; the witness says he can not remember it.

MR. HAYDEN: I am trying to refresh his recollection, that's all.

THE COURT: Objection overruled.

A I couldn't say, as this kind of checks I very often got in case Mr. Place or Mr. Potterton was not in there Mr. Loskamd would make those checks payable that way, payable to himself and transfer it--make it payable to Herman Bauch.

Q And your best recollection then is that that check was given to you, if at all, by Loskam?

MR. JACOB: Objected to. He said he didn't know who gave it to him. The counsel is trying to put the answer in his mouth.

THE COURT: Yes, objection sustained.

Q Did you talk to Mr. Potterton on January 4th 1909?

A I can't say that, whether I did or not.

Q Wait till I finish. Did you ever talk to him and say that the particular bills here presented are good valid bills of account, that the amounts are due, that the sales were made--did you say that to Mr. Potterton? A That question never was asked me in three years and a half that I went down there.

Q Now, you tell us how the transaction was conducted?

A When I entered the office of Mr. Place, on my left side there was the private office of Mr. Place and Mr. Potterton; on the right hand side was a partition with different windows for each one of them, where bookkeepers were placed. When I

came in I generally had one man to wait on me and this--well, one man, Mr. Leonard, he died, then after this a man by the name of Staples, and sometimes a man by the name of Loskamp took my papers as I gave them to him in that place, checked them off inside--I believe they did; after a while they would have the check, I surmised, made out, with the papers, walked into the inner office and in a minute or two either one of those gentlemen who had those papers returned to me and handed me the check and off I went.

Q Did you have any conversations at those times with either Mr. Staples or Mr. Loskamp? A I never did.

Q All you did was to hand in those papers through the window? A Yes.

Q And they would do what they were supposed to do, check off and draw checks? A Yes.

Q And take it inside in the private office to Mr. Place or Mr. Potterton, have it signed up, bring it out to you--is that correct? A Yes, is correct.

Q And that is your best recollection as to what happened on January 1st, 1932? A Just the same as in there.

Q And you had no oral, verbal declarations of any kind, if I understand you correctly? A At no time.

Q Now, do you remember having any conversations with Mr. Potterton at all? A Well, occasionally, yes.

Q When did you hold the last conversation prior to Jan-



uary 1909? A I can't recall any particular time.

Q About how long before, if you remember? A Well, it might have been two or three months before I quit going down there.

Q How many conversations did you have with him altogether? A Well, I suppose in the course of all those times I might have individual conversations three or four, with Mr. Place or Mr. Potterton.

Q Three or four conversations with both of them? A Yes.

Q Please state the substance of the conversations at those times? A Well, at one time, I believe Mr. Place found fault that we extended too large limits of some of our accounts, and he told me that that has got to quit, and I told him I will report this matter to Herman Bauch, which I think I did, and Mr. Bauch cut them down accordingly.

Q Now, were those two or three conversations which you testified about similar to that, in substance? A It might have been, all of them, but not the same--always about something of that kind--too large a limit.

Q Were those conversations ever about the authenticity or the validity or regularity of any accounts in particular?

A No.

Q Are you married? A Yes sir.

Q Have you any children? A Two sons.

Q How long have you been married? A One of them has been married about three years, the other one is single.

Q How long have you been married? A Oh, I have been married thirty-one years.

Q How old are you, sir? A Sixty-four years.

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

Q Or have you ever been arrested for any offense? A No sir.

Q While you were in the employ of Mr. Bauch what salary did you get?

Objected to. Objection sustained.

Q Did you have any interest in the business? A No sir.

Q Were you there under a salary?

Objected to. Objection overruled.

A Yes sir.

Q Now what was that?

Objected to. Objection sustained.

Q Did you get any money from Mr. Bauch at any time while you were in his employ other than your regular salary?

Objected to. Objection overruled.

A Never, excepting my salary.

Q What? A Excepting my salary I never got from Mr. Bauch anything but one dollars. I took a vacation off once

while I worked for him, that was on Labor Day, from Saturday till Tuesday noon, and when I left the store on Saturday he gave me ten dollars and say "Have a good time".

Q That was the only ~~vacation~~ vacation you had during the six years? A That was the only vacation and the only extra money I had from Herman Bauch all during this time.

Q About how many years ago was that?

THE COURT: Oh, let us not go into that. Proceed.

MR. JACOBY: There don't seem to be any other question.

MR. MAYPER: Just one more question.

THE COURT: Well, ask it then.

Q When did you first find out whether these accounts were good or bad? A In Judge L'Amoreaux's office.

Q You are referring to May 1909? A (No answer)

CROSS-EXAMINATION BY MR. JACOBY:

Q Did you understand the last question that was asked you? A Yes.

Q By your counsel? A Yes.

Q Do you want to tell the judge and jury that it was not until May that you knew that on account of your son's concern, the Bein sample company was a fictitious account?

MR. MAYPER: Objected to as incompetent, imma-

terial and irrelevant and not within the Indictment.

THE COURT: Is that included in your Exhibit?

MR. JACOBY: Yes sir.

THE COURT: Question allowed.

MR. MAYPIER: Your Honor admitted that only for one account.

Question allowed. Exception.

A It was bona fide--

Q Yes or no? A What do you mean?

Q Didn't you know before May 1909 that the account of \$155.50 in the Behr Sample Company, 29 Mercer street, was a fictitious account? A No sir, I didn't know.

Q Wasn't that your son's concern? A Yes.

Q And you thought that Bauch had sold goods to them?

A Yes.

Q Do you mean to tell this Court and jury that? A Yes those boys bought goods of us, yes sir.

Q Now, you told me you were always at the place there at 20 Lispenard street?

MR. MAYPIER: Objected to, that isn't so, he didn't testify to that at all.

Q Didn't you testify that you were always at 20 Lispenard street and never went away for a vacation? A Yes.

Q Do you mean to tell me that it was not until May 1909 that you knew of the account of \$142.08 of B. C. Miller, 20

Lispenard street, was fictitious? A No, I didn't know it.

Q Didn't you steal a copy of the invoice from his desk in January 1909?

Objected to. Objection overruled.

A I done what, stole?

Q Yes sir, didn't you steal it and confess it?

THE COURT: Answer the question.

Q Didn't you steal it, and confess it in Judge L'Amoreaux's office? A I didn't confess to anything.

Q Didn't you steal a copy of this invoice that I now show you, People's Exhibit 4, addressed to this man Miller-- steal it from his desk the day after that date, and confess it, that you had done it, in Judge L'Amoreaux's office to conceal from Miller the fact that you had claimed that a fictitious account had been assigned?

MR. MAYPER: Objected to as already answered.

Objection overruled. Exception.

A I never did.

Q Do you want to tell me that you never knew that that account there was a fictitious account that I am now showing you? A No sir, no sir.

Objected to as already answered. Objection overruled. Exception.

Q Do you claim that this man Miller had made a sale to Miller without your knowledge and that you believed that he

had? A Yes sir.

Q What? A Yes, I believed that the sale was made.

Q And how about Alpers & Fruman, didn't you know that that was a fictitious account before May 1909?

Objected to. Objection overruled. Exception.

Q Didn't you know the Alpers & Fruman account was a fictitious account before May 1909? A No, I didn't.

Q How many times have you discussed this matter with your counsellor, Mr. Frediger?

MR. MAYPER: Objected to, that isn't a fact; I am his adviser.

THE COURT: Objection overruled.

A I never was advised. I engaged Mr. Frediger--or, rather, Mr. Mayper, after the indictment was found. I never knew Mr. Mayper before.

Q I am not talking about Mr. Mayper, I am talking about this gentleman (indicating Mr. Frediger)? A Mr. Frediger? I only met him in Mr. Mayper's office twice or three times I was down there.

Q And didn't somebody tell you that you must swear that you did not know anything about the accounts being fictitious before May 1909? A Nobody, nobody needed to tell me that because I didn't know they were fictitious.

Q You didn't? A No sir.

Q You didn't know that your own son's account was a



fictitious account? A Are not fictitious.

Q You admitted that the Behr Sample Company was a concern that was in existence prior to January 1st 1909? A Yes sir.

Q And that the men in that concern were your two sons? A Yes sir.

Q And you swore to this jury that your two sons were actually indebted to Herman Bauch until May 1909? A I did.

Q Who wrote that signature, Herman Bauch, on this paper, People's Exhibit 3? A Herman Bauch.

Q Did you sometimes endorse some of the checks yourself? A I hardly think I did.

Q Will you say you didn't? A Well, I may, yes.

Q Some of the checks that you got from this concern of J. W. Place & Company you may have endorsed yourself? A I may.

Q The name Herman Bauch? A Yes.

Q So you had authority to do that? A For deposit only.

Q For deposit? A Yes sir.

Q Did you say (showing witness People's Exhibit 6)-- did you tell Judge L'Amoreaux at the first interview at his office that you would make up a list of the accounts that were good, those that were uncollectable although genuine and those that were fictitious? A I did not.



Q What? A I did not make that statement.

Q Did you at the second interview produce this paper People's Exhibit 6 and hand it to Judge L'Amoreaux or to some one else in Judge L'Amoreaux's office? A I never handed it to Judge L'Amoreaux. That paper was in the possession of Herman Bauch at the time.

Q Isn't it all in your handwriting? A Yes sir.

Q Did you prepare it? A In Judge L'Amoreaux's office.

THE COURT: Answer the question yes or no.

THE WITNESS: Yes sir.

Q And those X marks mean that the accounts<sup>that</sup> had three X's opposite them were fictitious, didn't they? A I never knew anything about the X's.

Q Didn't you tell Judge L'Amoreaux yourself that you would mark those that were fictitious with three X's? A No sir, I did not.

MR. MAYPER: No such evidence.

MR. JACOBY: Counsel must not interrupt, your Honor.

BY THE COURT:

Q Who did mark them if anybody? A Well, I would like to explain.

Q Well, you need not answer if you do not want to--

A Mr. Bauch.

BY MR. JACOBY:

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

Q And although the body of the account is yours, Mr.

Bauch marked the X's? A Yes sir.

Q And you didn't know which were the fictitious accounts

A No sir.

Q Not even then? A I knew it then after we got into the office.

Q I show you People's Exhibit 2 and ask you whether all of this, the ink writings there, except the signature of Herman Bauch at the bottom, are in your handwriting? A All mine, yes.

Q You say that you did not deliver that personally to Mr. Potterton on the 1st of January 1909? A Possibly I may.

Q You may have given it to him? A Yes.

Q Did you notice the name of B. C. Miller, 20 Lispenard street, terms 90 days, April 2nd, \$142.08? A Well, I wrote it.

Q Did you notice the items "Behr Sample Company, 29 Mercer street, 90 days, April 2nd, \$153.50"? A I know I wrote it, so I noticed it.

Q And you didn't know that those two were fictitious, or either of them? A Absolutely not.

Q Didn't you at one time in Judge L'Amoreaux's office say that you knew more about these accounts than Mr. Bauch and

that he didn't know anything about them, that you were the one that knew all about them? A I never could have said any such thing.

Q Did you? A I didn't.

MONROE P. STAPLES, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MAYPER:

Q What is your business? A I am employed by J. W. Place & Company, 67 Wall street.

Q You are a bookkeeper for J. W. Place & Company, is that right? A I am a clerk in the office there.

Q How long have you been employed there? A About three years and a half.

Q Do you know Mr. Behr here? A Yes.

Q Did you ever have any dealings with him? A In the course of business, yes.

Q Have you talked to anybody about this case between 2 o'clock and now? A No.

Q Haven't you talked to Mr. Place outside? A Not about this case.

Q Or to Mr. Potterton? A No.

Q Did you tell them you had been subpoenaed to come

here by the defense? A I didn't know who had subpoenaed me.

Q Didn't you tell them you had been subpoenaed? A I told them I was called here, yes.

Q You say you had no conversation? A I was talking to them outside, certainly.

Q About this case?

MR. JACOBY: Objected to. This is not a direct examination; he calls a witness and starts out cross-examining. I ask that he direct his attention to matters germane to the issue, it being his witness.

THE COURT: Proceed, Mr. Mayper, and get down to the issue, please.

Q You say you had dealings with Mr. Behr in the course of business? A Yes.

Q Now what you mean is that--

MR. JACOBY: I object to the counsel leading his own witness. Let him ask him a question.

THE COURT: Proceed.

Q What you mean is that--

THE COURT: You may ask him what he means--

BY THE COURT:

Q What do you mean by that statement? Have you answered the last question? A Well, when he came there to

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make a loan the papers were handed to me.

Q Louder. A When Mr. Behr came there to get an advance, the papers were handed to me to make out the loan for him, which I did.

BY MR. MAYPERR: What else did you do? A I handed them to the cashier to draw a check.

Q Then what did you do with the check? A Nothing at all, didn't have nothing to do with it.

Q Did the cashier have anything to do with it?

MR. JACOBY: Objected to as calling for the witness's conclusion.

THE COURT: Question allowed.

A The cashier drew the check.

Q I mean did he do anything after he drew it? A He took it in.

Q Did he sign it? A No, certainly not.

Q Did he take it in to Mr. Potterton? A Mr. Potterton or Mr. Place.

Q And then brought it back, is that right? A No sir.

Objected to as leading.

THE COURT: Proceed.

Q Did you see it ~~again~~ again after that? Did you see the check again after you gave it to the cashier? A I never saw it at all either before or after, it was no part

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of my business, the checks had nothing to do with me absolutely.

MR. MAYPER: I move to strike that part out, I don't know what he said.

MR. JACOBY: It is his witness, your Honor.

THE COURT: Yes.

MR. MAYPER: That's all.

MR. JACOBY: No questions.

MR. MAYPER: I want to state to the Court that Mr. Loskamp, who is also a bookkeeper or clerk for J. M. Place & Company, was subpoenaed by my office this afternoon. The cashier was subpoenaed this afternoon and according to the officers he is not here.

THE COURT: Call any other witness you may have.

MR. MAYPER: I would like to recall the defendant for a few questions; I overlooked something.

JOSEPH BETH, the defendant, recalled:

MR. JACOBY: Will you produce the person who served Mr. Loskamp with a subpoena?

MR. MAYPER: Certainly.

DIRECT EXAMINATION BY MR. MAYPER:

Q I am referring to the slips which were presented to

Judge L'Amoreaux. How were they prepared?

MR. JACOBY: Do you refer to the paper, People's Exhibit 6?

MR. MAYPER: I have referred to this. That is one of the things I am referring to, and that is another one which you have got there, I think.

Q People's Exhibit 6, how was that prepared, from what did you prepare it? A After the first or second interview Mr. Bauch first invited me to go with him the Judge L'Amoreaux's office, claiming that he is--

MR. JACOBY: Objected to, as to what Mr. Bauch claimed.

THE COURT: Objection sustained. Answer the question.

A (Witness continuing) He invited me to go with him to Judge

THE COURT: No, no, answer the question.

A (Witness continuing) from a list that Mr. Bauch had in his possession.

Q Look at this Exhibit, People's Exhibit Number 6, see what that is (handing paper to witness)? A I must see what it means before I testify. That is a list that I made out in Judge L'Amoreaux's office.

Q Now did you make a list of any irregular accounts in Judge L'Amoreaux's office? A Mr. Bauch--



THE COURT: Answer that question yes or no.

Q Yes or no. A No.

Q Well, where did you make the lists of the regular accounts? A In Judge L'Amoreaux's office, in the private office, with Mr. Herman Bauch.

Q You mean in his private room, or outside? A Mr. L'Amoreaux invited us outside, we should fix up the accounts.

Q Now take your time, please, will you? Did you write out the list? A I did.

Q What were the circumstances under which you wrote that list.

MR. JACOBY: This is not proper re-direct examination.

THE COURT: Objection sustained.

MR. MAYPHE: I stated when I recalled him that that was the very purpose--

THE COURT: Objection sustained.

MR. MAYPHE: I stated when I recalled him that that was the very purpose.

THE COURT: You had him on the stand for direct and you entered into those same things, and there was nothing brought out by Mr. Jacoby's questions which would justify these, not a thing in the world.

MR. MAYPHE: What I want to say is that I failed to ask this through inadvertence.

THE COURT: No, this trial has to come to a conclusion some time, and even if those were proper questions and the time was short the Court would allow them, but there is no propriety in them.

MR. MAYPER: I ask you to permit me to ask that question in view of the fact that the District Attorney has brought this matter out in asking these statements, as to whether he had made them, or whether he presented them to Judge L'Amoreaux.

THE COURT: You are not asking him about statements now, you are asking him about this writing.

MR. MAYPER: Yes sir, what I call a statement which he says he wrote. I asked him what the circumstances of that writing were.

THE COURT: All right, proceed.

Q What were the circumstances under which you wrote that list? A Mr. Bauch told me--

Objected to. Objection sustained.

A (Witness continuing) I prepared that list by dictation of Herman Bauch.

MR. JACOB: Well, I will leave that in.

Q Had you ever seen those items before? A Not before just now. I wrote it.

Q Did you ever see the items that were on that list before that day? Do you mean to say the first time you saw

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those items was in the presence of Judge L'Amoreaux on that day? A (No answer)

Q Will you answer my question? A Well, I am just trying to refresh my recollection.

Q Yes.

BY MR. MAYPER:

Q Do you know what his Honor's question is? A If that was the first time I saw them, in Judge L'Amoreaux's office.

BY THE COURT:

Q You never saw those items before? A I saw them in a book.

Q Exactly, did you see the Miller item in your book?

A Yes.

Q How long before? A Oh, the time I entered them and ever since.

Q How did you come to enter that? Where did you get the Miller item from? A From slips that were handed to me, or dictation by the salesman or by Herman Bauch to make the charge.

Q Had you any notion that there was any false or fictitious or fraudulent items in that whole paper? A No, I had no idea.

Q Were you the bookkeeper? A I was the bookkeeper,

yes sir.

Q Did you know anything at all about the management of affairs in that office under Mr. Bauch? A I knew that--

Q What? A Yes.

Q What did you know? A That Mr. Bauch bought and sold merchandise, that I acted as bookkeeper and that it was conducted as a regular, legitimate, business, like any other sort of house.

Q You never sold anything? A I never sold anything the last four or five years, I sold the first two years.

Q You knew who his customers were? A Well, customers were changing.

Q Did you know who his customers were? A Yes.

Q Did they always come to his place? A No, they were always sold through salesmen.

Q Who opened Mr. Bauch's mail for orders? A Mr. Bauch. Mr. Bauch was generally there himself.

Q You never opened his mail? A I had the authority to open it, yes.

Q Did you ever see an order there from Miller? A No sir.

Q How did you come to set it then in your book if you never saw an order? A Well, the order was ~~given~~ in the regular course of selling, in the course of entering as Mr. Bauch would come up to me, when I come home, or come to the

store, "Mr. Behr, charge" so and so and he would dictate to me at so many pieces or yards.

Q You mean to say if an order came there verbally or a written order from any customer of Mr. Bauch-- A Yes.

Q That Bauch would transcribe that order on to a slip and hand it to you, or would he give you the order? A Well --

Q Would he give you the order or transcribe it on to a slip? A He would give me the order.

Q Did you ever get an order from Miller? A I never did, no.

Q Did he ever hand you an order from Miller? A He may have handed me.

Q Will you answer my question? A He may have dictated to me, I can't--may be, yes, I can't answer that question no more than I could any other account.

Q Where were you when those crosses were set in front of those names? A I was in L'Amoreaux's office with Mr. Bauch.

Q And you wrote down every name that is on those papers? A Yes sir, by his dictation.

Q Where did you get them? A He had a list where he got them.

Q Where did you write them down? A In L'Amoreaux's outer office.

Q Do you mean to say that you prepared in the office and not before you came there? A Yes, I was there a few hours--half a day, I guess.

Q Well, you remember taking that list from the books before, don't you? A This list? No, Mr. Bauch had the list from the books, he took the list himself.

Q When you <sup>brought</sup> ~~wrote~~ down the list of debtors of Mr. Bauch of goods sold and delivered? A I never brought it down, no.

Q You didn't? A You mean to Place's office?

Q Yes. A Oh, I took all those assignments, yes.

Q Where did you get them? A From the book.

Q Can you recall now any one of these items on that list which you copied into the books of your employer from an <sup>order</sup> ~~an~~ A All of them must have been written down in our books.

Q You copied all of them from an order? A From an order either verbal or orally.

Q You know what I mean by an order? A Mr. Bauch would hand me by himself or the salesman, or his salesman handed me the order, I wouldn't enter it until Mr. Bauch would pass on the credit, if he passed on the credit then I would enter it, make out bills, duplicate bills, and may be during the day, five or six or seven--how many charges were made--shipped them down to J. W. Place.

Q How large a store is it, or place, or the business

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conducted by Mr. Bauch? A It is a full-sized loft, I suppose twenty or twenty-five by eighty to one hundred feet deep, with the basement.

Q From twenty to twenty-five feet wide? A Yes sir.

Q And eighty to one hundred feet deep? A Yes sir.

Q Which is it, twenty or twenty-five, or eighty or one hundred? A Well, I can't say, it is very large.

Q What is going on in there, is there more than one floor? A One floor and basement.

Q What have you on that floor and in the basement? A Stock on the floor.

Q What sort of stock? A Merchandise to be sold, woolens, piece goods.

Q What did you deal in, or did your employer deal in principally? A We dealt in piece woolens, double goods, woolen, all kinds of woolens, any piece goods, dry goods, dress goods.

Q Mr. Miller was in that place? A Mr. Miller had an office in there.

Q Did you ever have any conversation with him at all?

A Well, say "How do you do?" Or "How is business?"

Q What business is he in? A He was selling dry goods, dress goods, piece goods.

Q Did you ever know or to purchase anything at your place? A Yes.

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Q When? A When those orders were handed to me I charged up Miller with this merchandise.

Q How many times did you know him to purchase anything there? A Well, I think during the course of the business we have done, I think it must have been fifteen, may be more times, twelve or fifteen times, that I charged Miller with merchandise.

Q How did you charge him up as a rule? A Like any other customer, like anybody else.

Q Would he hand in a written order for goods? A No, it was very seldom they ever had a written order came to our business by a customer.

Q How many times did you say in your recollection this man bought from your store? A Bauch?

Q No, Miller. A Oh, I suppose ten, twelve or fifteen times.

Q During what month or what period of time? A During the years since we started doing business with him.

Q Did he buy anything in December 1906? A I can't remember.

Q Well, just name some time when one of these fifteen purchases was made? A On this slip--

Q Just name one of these times when he made one of his fifteen purchases? A I can not, it is impossible for me-- I might, from the list.

Q Did he make any purchase in 1908, any purchase at all?

A I think so.

Q About what time? A Well, that I can't tell, I haven't got the books in my memory.

Q All you ever did was to write down in the books the items as you were told to write them? A As I was told to or as it was handed to me.

CROSS-EXAMINATION BY MR. JACORY:

Q You mean ten or fifteen times you put down a fictitious sale to Miller, don't you.

Objected to. Objection sustained.

Q You mean that ten or fifteen times you put down a sale to Miller? A Yes.

Q And you mean to tell me that none of those ten or fifteen occasions Miller found out he had been charged with a sale of goods he never bought? A That I don't know. I charged him the same as I would anybody else.

Q Didn't you speak to Miller and say "How are those goods selling this year, old man?" A Miller is a man--

Q Yes or no. A No, I never did.

BY MR. JACORY:

Q What was it that that four-page document was taken on, the items on that, that is, several pages? A This Mr. Fauch must have copied it from his books prior to or at the

time--

Q You mean to say the books kept in the establishment where you were? A Well, they were taken charge of by the receiver.

Q But you say that is your writing. A I know, Mr. Bauch came with the slips there from where he got them from and said to me I should help him in L'Amoreaux's office to straighten out affairs and right, as he claimed he still will employ me as he has arrangements made with Mr. Place to finance him in the future. I went there with the full intention of my own, about as his suggestion to assist him in straightening out matters, and I went there expecting no such trouble as that.

BY MR. JACORY:

Q Expected not to have any criminal proceedings against you, yes or no? A No trouble, because I couldn't see why there is any trouble.

Q Expecting there would be no criminal proceedings taken against you, yes or no?

MR. MAYPIN: Objected to, he said no proceedings.

THE COURT: Objection sustained.

BY THE COURT:

Q Can't you tell me where Bauch got those items that he

gave to you? A No, I can not. He might have got them in J. W. Place's.

Q How did he give it? A He had it on slips or if I ain't mistaken he had a little pad where he had them scribbled down and wanted me to help him straighten that matter out so we can intelligently as he claims fix matters so that Mr. Place "will start me again in business".

M O R R I S P E L D , called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY M. MAYBER:

Q What is your business? A Selling cotton goods.

Q How long have you been in that business? A Oh, thirty years.

Q Where are you located? A 160 Canal street.

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

Q How long have you known him? A About sixteen or seventeen years.

Q Do you know other people who know him? A Well, I know a gentleman named Mr. Katz.

Q Well, you do know other people that know him? A Yes.

Q Do you know his reputation for truth and veracity and

for honesty and integrity? A Yes sir.

Q What is it, good or bad? A Very good

CROSS-EXAMINATION BY MR. JACOBY:

Q Do you know anybody else besides Mr. Katz that knows the defendant Behr here? A Some other gentlemen by name?

Q Do you know anybody else besides Mr. Katz? A Mr. Clemens.

Q Anybody else? A A gentlemen by the name of Mr. Shoeneman.

Q Did you ever speak to him, to Mr. Shoeneman, about Behr? A We did, often, yes, whenever I had met him.

Q Did you ever speak with Mr. Shoeneman about Mr. Behr? A No.

Q Did you ever speak to Mr. Clemens about Mr. Behr? A No.

Q Did you ever speak with Mr. Katz about Mr. Behr? A Yes.

Q Did Mr. Katz ask you to come and testify? A No sir.

Q Did you say that you would be a witness? A Mr. Katz, no sir.

MORRIS KATZ, called as a witness on behalf of defendant, being first duly sworn, testifies as follows:

## DIRECT EXAMINATION BY MR. MAYPIER:

Q What is your business? A Life insurance.

Q Where are you located, your office? A 20 Vesey street.

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

Q Do you know Mr. Behr here, the defendant? A I do.

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

Q Do you know his reputation for truth and veracity and integrity? A Absolutely I do.

Q Is it good or bad? A Absolutely good.

MR. JACOBY: No cross-examination.

## BY THE COURT:

Q To whom have you talked about his reputation? A Nothing in particular, your Honor, with no one in particular.

Q Did you talk to anybody? A No sir.

Q Who was the last witness that was in the chair here, do you know his name? A I do.

Q Did you ever talk to him about it? A No sir.

Q Never in your life? A Oh, yes, I spoke in a general way in the hall--I have met the gentleman as I know him also for years. He said "How did you get in this case?"

Q What are the other men's names that you know that talked about him? A Mr. Baum, Mr. Joseph.

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Q Why did you tell me here in the beginning that you did not talk with the man who preceded you, Mr. Peld? Did you talk with him about it? A Well, in a general way in the hall, because he asked me "How do you come here?" I said "I have been summoned here to testify to Mr. Behr".

Q Who sent for this man that came here to testify before you did? A I presume the defense.

Q Well, I don't know anything at all about it. What did you say about it? A He asked me "How do you come here?" And I told him.

Q What did you say about this man? A Absolutely nothing. You know we know each other for years, this is the truth.

Q How long have you known this man? A Mr. Peld? About ten years.

Q How long have you known the defendant? A About twelve years.

Q What do you know about him? A I know about the man to be an honorable good man, that is what I know about him.

Q Where did he work? A He worked for a gentleman by the name of Mr. Rauch.

Q Where did he work before that? A He was in business for himself, if I am not mistaken.

Q Where? A In the same premises where Mr. Peld was, the witness previous, and I solicited for life insurance.



Q Where was he before that? A I don't remember.

Q Where does he come from? A Me?

Q No, he? Where did he come from to this city? A Who, Mr. Behr?

Q Yes. A I actually can't tell you.

Q You don't know anything at all about that? A But as reasonable as I can remember he came from California, some place. He used to be on visiting terms.

WILLIAM FRANCIS CLEMONS, called as a witness, on behalf of defendant, being first duly sworn, testifies as follows:

— DIRECT EXAMINATION BY THE COURT:

Q What business are you in? A Dry goods.

Q How long have you been in that business? A For over thirty years.

Q Where is your place of business? A 529 Broadway.

Q Do you know Mr. Behr here, the defendant? A I do.

Q How long have you known him? A It must be twenty years.

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

Q Do you know what his reputation is for truth and veracity and honesty and square-dealing? A I do.

Q What is it, good or bad? A Good.

CROSS-EXAMINATION BY MR. JACOBY:

Q Do you know Mr. Peld, yes or no? A I don't think I can hardly answer that, I don't know him, I only seen him outside, just a moment ago.

Q Do you know Mr. Katz? A I just seen him outside of the door.

Q Never knew either of those men before? A No sir.

Q Sure? A Positive.

Q Did you ever talk about this man with anybody else that knows him, ever talked with anybody else about Behr? A Yes sir, within a few days.

Q With whom? A With Morris Freundlich, mr. Richard Davidson and Mr. Louis Toman.

Q And you never knew either Katz or Peld until you saw them in court to-day? A I don't think I ever saw them before.

Q Will you say positively that you didn't know either of those men? A I don't remember seeing either of those two men before to-day.

Q Will you state positively that you never met either of these men before to-day? A I don't remember ever seeing them before.

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

THE COURT: No, that will do. Motion denied.

FRANK MAYBAUM, called as a witness on behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MAYPER:

Q What is your business? A Cotton thread.

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

Q Where are you located? A 336 Canal street.

Q Are you at the same place of business as Mr. Jesca?

A Yes sir.

Q Do you know Mr. Jesca?

MR. JACOBY: Objected to, we are not discussing Mr. Jesca, we are discussing Mr. Behr; I object to it.

THE COURT: Objection sustained. Proceed in the ordinary way.

MR. MAYPER: I just want to ask one question to show why Mr. Jesca is not here.

THE COURT: What was he, a character witness?

MR. MAYPER: Yes sir. Mr. Jesca is the defendant's employer and if I might state--

THE COURT: Oh, there is no necessity for that. Proceed.

Q Is Mr. Jesca in town to-day? A No sir.

Q When do you expect him back? A To-night or to-morrow night.

Q Is Mr. Jesca the defendant's employer? A Yes sir.

Q Do you know the nature of the business that the defendant does for Jesca?

Objected to.

THE COURT: Objection sustained, the proper foundation has not been laid.

Q Do you know other people who know the defendant? A Yes.

Q Do you know the defendant's reputation for truth and veracity and honesty? A Yes.

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

CROSS-EXAMINATION BY MR. JAGORY:

Q Do you know Mr. Katz, in the hall? A Mr. Katz, no sir.

Q Never saw him before? A I don't know him.

Q Did you ever see him before to-day? A I don't know if I saw him to-day or not.

MR. MAYPER: I want to subpoena the clerk of this court to produce the dockets, but it will take a little time to find them. It is for the purpose of showing Mr. Behr's attendance here as a juror.

THE COURT: We are going to continue this case.

until it finishes.

MR. JACOBY: He is referring to the question of the defendant serving as a juror in 1908, and that is of no importance, there is no dispute about that.

MR. MAYPER: Well, I will let it go on the defendant's own testimony.

DEFENDANT RESTS.

MR. JACOBY: I now desire to call your Honor's attention to a statement made by the learned counsel for the defendant, that the witness named Loskamp was subpoenaed by him, and unless the counsel can prove it I deny it.

MR. MAYPER: If your Honor is willing to hold the Court until I can get my clerk here I will do it without any doubt.

THE COURT: I will take your word for it.

MR. JACOBY: I am informed that Mr. Loskamp was not subpoenaed.

THE COURT: What about that, Mr. Mayper? What do you know about it, rather?

MR. MAYPER: I know that I directed my clerk to take two subpoenas, one for Mr. Loskamp and one for the witness we called here.

THE COURT: Did you see the subpoena?

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MR. MAYPHER: No sir.

THE COURT: You didn't see it prepared?

MR. MAYPHER: Personally I did not.

THE COURT: You don't know anything at all about it excepting the information you get?

MR. MAYPHER: Except that one of the men has appeared and he must have been served or he wouldn't have appeared.

MR. JACOBY: I will call Mr. Place for one question in rebuttal and then the People will also rest.

JOSEPH W. PLACE, called in rebuttal by the People, testifies as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q I show you People's Exhibit 4 and ask you whether at either of the interviews at Judge D'Amoreaux's office the defendant said anything in your hearing and presence with regard to a duplicate original of that paper said to have been mailed to R. C. Miller?

MR. MAYPHER: Objected to as not part of the rebuttal.

THE COURT: The form of the question is objectionable. It might be improved by dropping the last



line of the question.

Q I show you People's exhibit 4 and ask you whether at either of the interviews at Judge L'Amoreaux's office the defendant said anything in your hearing and presence with regard to a duplicate original of that paper?

MR. MAYPER: Objected to as irrelevant, incompetent and immaterial.

Objection overruled. Exception.

Q Did he say something? A Yes.

Q I refer to Mr. Behr, the defendant? A He did.

Q What did he say?

MR. MAYPER: Objected to as improper rebuttal.

Objection overruled. Exception.

A He said he removed all invoices mailed to R. C. Miller from Mr. Miller's mail-box--extracted all the bills.

MR. JACOBY: That's all.

MR. MAYPER: That is all. No cross-examination on that. Mr. Behr, will you please take the stand.

People rest in rebuttal.

JOSEPH BEHR, the defendant herein, re-called in rebuttal:

DIRECT EXAMINATION BY MR. MAYPER:

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Q Did you hear what Mr. Place just ~~said~~ testified to?

A Yes sir.

Q Did you make any such statement that you withdrew or extracted letters from Miller's letter box, in L'Amoreaux's office? A Absolutely not. Mr. Miller has had no mail box.

Q Did you or didn't you extract any mail from any mail box? A Certainly not.

Q Did you say so in L'Amoreaux's office? A Why, of course I couldn't say so, there was no mail box.

DEFENDANT RESTS.

Case closed.

THE COURT: Now, that is absolute with both counsel--there won't be any requests to reopen this case in the morning?

MR. MAYBER: I don't believe so.

THE COURT: That is understood then, that it goes to the jury in the morning without any motion to reopen.

(The Court now declares an adjournment to Tuesday November 29th, 1910, at 10:30 a. m., first duly admonishing the jury as usual)

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TRIAL RESUMED.

MR. MAYPERR: I move now at this time that your Honor dismiss the Indictment in this case on the ground that the proof does not suffice--does not cover the charge in the Indictment. The proof in this case is more or less to the effect, if believed by the jury, the statements were made by somebody in Judge L'Amoreaux's office as to the nature of certain accounts. Now, those statements were made in May of 1909, whereas the accounts were presented in January 1909, and there is no evidence directly showing any guilty knowledge at the time the accounts were presented. Under the case which I referred to yesterday in 14 Miscellaneous, referring to 79 N. Y., the General Term and the Court of Appeals, by affirming the opinion, held that where there is no evidence but the evidence of a confession or an admission made three months subsequent to the original transaction that it would not be deemed sufficient to show any knowledge at the time of the commission of the act. Now, this case is not any different from that, as I look at it, because there isn't any evidence showing any knowledge, and, on the contrary, the People's

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chief witness Potterton testified that so far as he knew and so far as any of those conversations at L'Amoreaux's office took place, there was not any statement by the defendant to the effect that at that time in January he had any knowledge as to whether or not those accounts were fictitious or not.

THE COURT: While the Court is not contending, because it is not within the province of the Court to treat of the fact in the case, that there was any criminal knowledge on the part of the defendant at the time of the transaction the Court will charge the jury that they are to determine <sup>from</sup> ~~of~~ all the facts and circumstances in the case whether or not there was such a knowledge on the part of the defendant. For instance, you do not mean to state that the jury could not find from the circumstances of the case, from the relation of the defendant to Mr. Bauch and from the defendant's occupation and from his familiarity with the item <sup>that</sup> ~~not~~ he might have known. These are matters for the jury to consider. It is not necessary that there should be direct proof of his knowledge, but if from the circumstances in the case and all the evidence that has been adduced they can determine that it will be their duty to do so.

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MR. MAYPER: My point is that from the circumstances of this case, which are not any stronger-- in fact they are weaker than the other--the Court as a matter of law held that that was insufficient.

THE COURT: I shall deny your motion.

MR. MAYPER: Exception.

THE COURT: That is just the gist of the case and that is for the jury to determine.

MR. MAYPER: I further move for a dismissal of the Indictment in this case, it being a renewal of the motion I made at the opening of the case--on the ground that the Indictment is insufficient and does not charge any overt act against this defendant, and charges simply the words of the Statute.

THE COURT: If you will remember that in the first count of the Indictment--

MR. MAYPER: The first paragraph.

THE COURT: Well, are not overt acts set forth?

MR. MAYPER: Yes. That refers to Herman Bauch.

THE COURT: Yes, and then the Indictment goes on to say that the said Joseph Behr was then and there feloniously concerned in the commission of the felony and larceny by the said Herman Bauch in the manner and form aforesaid--

MR. MAYPHE: Yes sir.

THE COURT: There can not be any doubt that the manner and form aforesaid set forth all the transactions in the case and then declare that the defendant was feloniously concerned in these transactions, so we will not argue that point further. Your motion there is denied.

MR. MAYPHE: Exception. I further move that your Honor direct the jury to acquit in this case on the ground that the evidence in this case is insufficient as matter of law for consideration by the jury.

Motion denied. Exception.

THE COURT: I shall state to the jury now that the fact that the Court has denied the motions of the attorney for the defendant is a matter with which the jury is not at all concerned, and they are not to be considered in your examination of the facts to determine the guilt or the innocence of this defendant, as they have absolutely no effect upon it and are not for you but for the Court.

MR. MAYPHE: I want to make one general motion and ask your Honor to direct the jury to acquit upon all the grounds moved in this case at the close of the People's case and at the close of the defense.

Denied. Exception.

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Mr. Mayper now closes to the jury on behalf of the defendant.

At about 12:30 p. m. Mr. Jacoby begins his closing address to the jury on behalf of the People.

At five minutes of one Mr. Jacoby asked that adjournment for recess be taken.

Objected to by Mr. Mayper.

THE COURT (Addressing Mr. Mayper): You wanted from a half to three-quarters of an hour and you took considerably over an hour without any objection from anybody.

MR. MAYPER: He can take two hours if he wants to but all I say is that I do not think it is fair to split this up to give the District Attorney additional time to prepare.

THE COURT: If your suggestion is adopted he will close his summing up and the jury will be charged and go into consideration of this case perhaps at about two o'clock.

MR. MAYPER: My idea about it was this: If the jury want any part of the testimony read they always have a right to come in and ask to have it read, and it is not necessary nor fair to the defendant to have

the District Attorney prepare a special synopsis of the testimony for his summing up.

THE COURT: The District Attorney may refer to to any part of the testimony which it seems proper for him to refer and he may repeat it if he likes. Your objection will be overruled in that respect.

Exception.

THE COURT: You ask to continue your summing up after two o'clock?

MR. JACOBY: Yes.

THE COURT: I think that is quite the proper thing to do.

(The Court now declares a recess until two p. m. first duly admonishing the jury as usual)

A F T E R   R E C E S S .

TRIAL RESUMED.

MR. JACOBY now concludes his summation to the jury.

MR. MAYHEW: If your Honor please, I assumed that when you struck out testimony you did not want the District Attorney to comment about it, and that the evidence is out of the case for all purposes. I take an exception to the District Attorney's reference to evidence which your Honor had stricken out of



the case.

MR. JACOBY: I made no reference to any testimony that was stricken out of the case. I dispute the statements of the counsel that I referred in any instance to any evidence that was stricken out.

MR. MAYPER: I am happy to hear that the District Attorney has challenged me because there is a statement right here on page 84 of the testimony which your Honor struck out and which he read to the jury and asked them to take into consideration, as follows:

"Q What I want is this, to know whether or not you were to talk to Mr. Bauch about this particular case? A I do know that I asked Mr. Bauch some question and Mr. Behr stepped in and said, 'Bauch doesn't know much about this,' and he undertook to answer my question, and that occurred several times during the conversation. Q Don't you know whether Bauch said anything about that? A To pick out the particular things said by Bauch, I can not."

MR. MAYPER: I want to strike out the other answer as irresponsive.

"THE COURT: Motion granted".

MR. JACOBY: It is impossible to tell what other answer the counsel referred to.

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THE COURT: What answer do you refer to?

MR. MAYPER: The other answer, the only answer that could be referred to, the answer before the last one.

THE COURT: Well, let us hear what that was.

MR. MAYPER: (Reading) "I do know that I asked Mr. Bauch some question and Mr. Behr stepped in and said, 'Bauch doesn't know much about this,' and he undertook to answer my question, that occurred several times during the conversation."

Your Honor struck that out, the motion was granted, and the District Attorney referred to it and I take exception to that, and I ask for the withdrawal of a juror now and that the case be declared a mistrial.

THE COURT: Motion denied, but I say to you now, gentlemen, that any testimony which was stricken out by the order of the Court comes improperly before you; you have no right to consider it, and the District Attorney, if he reported to you any testimony which was stricken out by the order of the Court, was in error when he did it, and you will be cautioned under your oaths to disregard and to erase from your memory completely any evidence which was stricken out by the order of the Court, or any testimony. Proceed.

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MR. MAYPER: I also except to the District Attorney's statement that Potterton said he didn't remember whether Behr said he had any knowledge in January. The testimony is he never said when he had knowledge of it, and as this goes to the gist of the case I take exception to that.

MR. JACOBY: I deny that I said what the counsellor says I said.

MR. MAYPER: We copied it word for word.

MR. JACOBY: I remember what I said.

MR. MAYPER: I except to the District Attorney's statement, "his friends who have not found him, the defendant, out;" there is no such evidence or any such statement.

I object to the District Attorney's reference continually to Wolf, or reference to whom your Honor struck out yesterday.

MR. JACOBY: I deny I referred to Wolf but once. I never said "I won't refer to Wolf." That is the only time I mentioned the name Wolf.

THE COURT: The same instructions with regard to any testimony stricken from the record apply here, and with regard to other testimony, if the District Attorney misquoted any testimony you are to be the judges, gentlemen, of all the facts in the case and

you are to remember the testimony. The District Attorney has a right to make his comments, he has a right to draw his inferences from the testimony, but whether he is right or whether he is wrong with regard to his inferences they do not supply the law in the case, and as to the facts you are the judges of the facts, and you will know and you will remember whether or not the District Attorney has misquoted the testimony and if he has you will disregard it.

MR. JAYPER: I except to the statement of the District Attorney that J. W. Place & Company was "Fifteen thousand dollars or sixteen thousand dollars in the box", meaning they were probably out that much; there is no evidence to show that they were out that much through fraudulent accounts or any other accounts. There was a reference by Mr. Potterton to Fifteen thousand dollars but it does not show--it may have been uncollectable accounts, and the insinuation by the attorney was that they were fraudulent accounts.

MR. JACOBY: Oh, no, I did not insinuate there were Fifteen thousand dollars worth of fraudulent accounts.

THE COURT: The court will again repeat to the jury that they are the judges of the fact in this

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case, and the testimony is in a peculiar manner in their memory. They are to recall it and if at any time they are in doubt about the testimony all they have to do is to ask the Court to let them hear that testimony again. Now, then, as to any amount named here in this trial you are not to consider these amounts unless it be the amount named in the Indictment charging the defendant with larceny of that amount. The other amount, if it has been listed here at all, is not in issue, and you are to disregard it.

MR. MAYPER: I except to the District Attorney's statement in which he intimated to the Jury that Behr had made the X marks; the only evidence in the case is that Bauch had made them.

THE COURT: Well, it is for the jury to determine who made them.

MR. MAYPER: I except to the District Attorney reading your Honor's statement with regard to Judge D'Ambrosio's testimony in this case, I claim that it has not any place in this record at all and should never have gotten in here.

THE COURT: It was simply a remark to the witness for his own information and it had nothing at all to do with the issue here on trial, and for that reason the jury will not regard it.

MR. MAYPHER: It is a matter which could be explained, if your Honor would allow argument on it, but it is not proper to argue on it, and I except to his statement as to that.

I except to the District Attorney's reference to eight accounts in People's Exhibit 4, when he said there were two duplicate bills for each one of those accounts. Those accounts were not admitted in evidence--the only account admitted in evidence was the B. C. Miller account; I except to his reference to those accounts.

THE COURT: Your exception is well taken if there be no other accounts here in evidence before the jury. If there are other accounts in evidence before the jury, as far as his reference to them goes there is no error in it, and I want to say with regard to this Exhibit Number 2--

MR. MAYPHER: I had reference to Exhibit 2.

THE COURT (Continuing): That you are to regard in that Exhibit only any item which may be charged against the defendant in the Indictment, for instance, the Miller item in this Exhibit is a proper subject for your examination. If there is any other item on that paper of an alleged similar transaction connect-

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ed in any way with the transaction here at issue you will be allowed to consider that under <sup>the</sup> instructions of the Court and you will receive them shortly.

MR. MAYPER: I except to that, if your Honor pleases. I except to the statement of the District Attorney to the jury that we were not allowed to prove other fraudulent accounts, not referring even to that Exhibit.

THE COURT: Yes.

MR. MAYPER: And I ask your Honor to instruct the jury to disregard that statement as not in the case.

MR. JACOBY: I did not say that. I said that we were not allowed to go into other accounts than the Miller account to show--

MR. MAYPER: No evidence there are any.

THE COURT: The Court charges the jury that any reference to any other fraudulent account is not proper and you are to disregard it except it be a fraudulent transaction of a similar nature within a short time either before or after the transaction charged against the defendant such a similar transaction as the one charged against the defendant will be under the instruction of the Court a proper thing for you to consider, but any intimation or any reference to any



other fraudulent transaction than those of a similar nature and connected with this is not proper for you to consider and you will disregard them.

MR. MAYPHER: My exception was to his statements of matters which have not been referred to in the trial at all. I understand that you instruct the jury to disregard that.

THE COURT: The exception is well taken and the Court has charged and repeats its charge that the jury is not to take into consideration any other transaction than the one alleged in the issue, or any similar transaction which may be brought forward for the purpose of proving intent, if there was any intent in any direction.

MR. MAYPHER: Just one word and that is the last. I except to Mr. Jacoby's statement of the law that the mere presentation of these papers was evidence of knowledge that the accounts were false.

MR. JACOBY: I didn't say anything like that. I said that the jury might find without Mr. Potterton's testimony that the mere presentation of People's Exhibit 2 and the accompanying Exhibits with the knowledge that one or either of the items of account therein stated were fictitious would constitute the crime without any oral representations made at the

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time.

MR. MAYPER: That is, if made with knowledge at the time. That is different.

THE COURT: Yes. Your exception to the statement as you have repeated it is well taken, the Court will charge the jury with regard to that and while, as I have said, the District Attorney or the attorney for the defendant were permitted to give you their views of law, nevertheless you take your law from the Court and you are the sole judges of the facts and you will apply the law as the Court directs you to the facts which are under your examination. Is that all, gentlemen?

MR. MAYPER: That is all.

The Court now charges the jury.

The jury now retires to deliberate upon a verdict and upon its return renders a verdict of guilty as charged in the Indictment, with a recommendation of the defendant to the mercy of the Court.

At request of Mr. Mayper the jury is duly polled.

MR. MAYPER: I move that the verdict of the jury be set aside on the ground that it is not supported by the evidence.

Motion denied. Exception.

MR. MAYPER: I further move that the verdict be

set aside on the ground that the evidence fails to show any knowledge or criminal intent on the part of the defendant.

Motion denied. Exception.

MR. MAYPHE: I move in arrest of judgment in this case on the grounds mentioned in the Code of Criminal Procedure, the grounds being the defects in the Indictment.

Motion denied. Exception.

MR. MAYPHE: And I move for a new trial upon the errors in the admission and exclusion of evidence upon the trial.

Motion denied. Exception.

THE COURT: Defendant remanded to Friday morning (December 2nd, 1910), Miss Jossum to investigate. If you care for any further consultation with your client you may have it now.

(Defendant remanded to December 2nd, 1910)

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

PART IV.

.....X  
THE PEOPLE OF THE STATE OF NEW YORK:

-against-

J O S E P H   B E H R .  
.....X

New York, December 2nd, 1910.

I M P O S I T I O N   O F   S E N T E N C E .

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

For People:    Oswald N. Jacoby, Esq., Assistant District  
   Attorney.

For Defendant:    Alexander A. Mayper, Esq.; William  
   Travers Jerome, Esq., of counsel.

The defendant is arraigned for sentence before

HON. THOMAS C. O'SULLIVAN, Judge.

MR. JEROME:    If your Honor pleases, in this  
case of Joseph Behr, we would like first, in order to  
preserve the record, to interpose the motions for a  
new trial upon the ground that the verdict is against

the evidence, against the weight of evidence and upon each objection and exception taken during the course of the trial; and also to move in arrest of judgment in the grounds specified in the proper section of the Code, and on their denial we will take out exception.

Now, sir, we are really here not to question the wisdom of your Honor in submitting this case to the jury, nor are we here at this time--and it would not be proper for us--to question the verdict of the jury. Your Honor must accept that verdict as a finding of the guilt of this defendant unless your Honor is prepared to set that verdict aside as being contrary to the weight of evidence. I shall, therefore, not dwell at all upon the character of the testimony given during the trial, or make any claim that it was of such a character as to show that this defendant was not guilty; that is a closed story so far as the proceedings here to-day are concerned; but what I do want to present to your Honor is the most earnest plea for extreme clemency in the case of this defendant. He is an aged man, that is, he is sixty-four years of age; he was in the employ of the real--from the ethical standpoint, the real culprit in this case, who is a fugitive, at a salary of fifteen dollars a week;

he has a wife living, and children. We will show to your Honor, with your kind permission, beyond all question that until this occurrence he has borne wherever he has lived a reputation of the highest for probity--not only a reputation for probity, something that we could not go further than in a trial, but we will show by those people who are intimately acquainted with him that not only was his repute for probity good but from their personal knowledge of his character that he is and has been in their opinion for many, many years a man of very upright character. Naturally, we would call his present employer. That we are unable to do because his present employer is ill. We have here the affidavit of his physician that he can not come out with safety, and in the absence of the employer we have prepared and present an affidavit which with your Honor's permission I will read:

"City and County of New York. : ss. JOSEPH GERSKY, being duly sworn, deposes and says; that he resides at 695 St. Nicholas Avenue, and that he is the sole proprietor of the Milwaukee Worsted Company of 336 to 340 Canal street, Borough of Manhattan; that the defendant in this action, Joseph Behr, has been

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in my employ for the last twenty months in the capacity of bookkeeper and confidential employe, and as such he has had the handling of large sums of money averaging two thousand dollars weekly; that the said Joseph Behr has proven himself honorable, conscientious and reliable and I would unhesitatingly allow him all the privileges granted to any confidential man.

"Illness necessitates me remaining in bed under a doctor's care, but I have such confidence in this defendant's integrity and honesty that although he has been convicted of a crime I am certain that some mistake must have been made, and if in the discretion of this Court the defendant is paroled and sentence is suspended I am willing and hereby offer to continue him in his present employment so as to give him an opportunity of making his livelihood and continuing him as an honorable member of society.

"I most respectfully pray that your Honor will grant this man's prayers for a suspension of sentence as I feel that more good will be done to society in general by permitting him to have his liberty than by incarcerating him at his age. I would have appeared personally before your Honor to plead in this man's behalf but unfortunately illness prevents me. Joseph Gersky."



Then it is sworn to before a Notary. Now, with your Honor's permission, I would like to introduce some testimony of witnesses:

J O S E P H L . G R E E N B A U M , called as a witness, being duly sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your occupation? A I am the senior member of the firm of Joseph L. Greenbaum & Son.

Q What is your business? A Manufacturers of clothing.

Q Where conducted? A 649 and 651 Broadway.

Q Do you know this defendant Belr? A Yes sir.

Q For how long have you known him? A Four or five years.

Q During that time what opportunities of becoming acquainted with the character and type of man that he is have you had? A Well, I visit him at his home and he visits me, but I don't know what to say, I am so dumbfounded that I hardly know what you say. I think he is the most honorable man I ever met--in fact I don't know what to say being brought into a case of this kind.

Q Well, you have had ample opportunity, have you, of forming an estimate of the character of this man, of his views towards commercial honor and integrity? A I would certainly

vouch for anything that he would do.

Q Well, you have had those opportunities? A Yes, I feel that he is a high-minded and honorable man.

Q And the conclusion which you have reached from your intercourse with him is that he is essentially high-minded?

A I absolutely have. I am the father of five sons and I only said to my wife within--they have an old saying that they hope the son will be an improvement on the father, but I told my wife if my sons turned out to be as good a man as Mr. Behr it would be perfectly satisfactory.

Q Are you connected with him in any way by blood or marriage? A My daughter married his son, yes sir. About three years--this election, three years.

THE COURT: Do you want to ask any questions, Mr. Jacoby?

MR. JACOBY: No sir, I do not intend to ask any questions of any one in this proceeding.

HENRY FRANKENBERG, called as a witness,  
being duly sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your occupation? A Commission merchant.

Q Where do you carry on business? A 876 and 878 Broadway.

Q In what line? A Woolens.

Q Do you know the defendant Behr? A I do.

Q For how long a time have you known him? A Approximately ten years.

Q And during that time have you known him intimately so as to be in a position to judge not only of his reputation but of the character of the man? A I have known him intimately in a business way and he has always impressed me as a very upright man--I have always had that impression.

Q From your relations with him you formed that opinion of him, did you? A I did.

Q And apart from this conviction have you ever heard or known anything that would shake that opinion in any way? A Never.

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

Q Have you heard what they thought of his reputation for honesty? A They have always had the highest regard for him.

M O R R I S P E L D , called as a witness, being duly sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your business? A Selling cotton goods.

Q Where is your place of business? A 160 Canal street.

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

Q For how many years have you known him? A For over sixteen years.

Q During that time have you known him intimately? A Yes sir.

Q Do you know what his reputation among other people who know him is for honesty? A Very good.

Q And in the intercourse that you have had with him what opinion have you formed of his character for truthfulness and integrity? A Excellent.

Q Are you related to him by blood or marriage in any way? A No sir.

Q Have you ever heard anything in derogation of his character for honesty? A No sir.

J O H N J . H A L P I N , called as a witness, being duly sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your occupation? A I am manufacturers' agent, hardware manufacturers' agent.

Q Where is your office? A 62 Reade street.

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

Q For how long have you known him? A <sup>Thirty</sup> Five years.

Q Where did you first know him? A Peosia, Nevada.

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Q During that thirty-five years has your acquaintance with him been continuous? A Yes, met him a great many times since we have been both in New York.

Q And you know others that know him? A Yes sir.

Q During that thirty-five years what has been his reputation for honesty among those people who are acquainted with him? A Out in Nevada we knew him very well. Very charitable, a good business man, in business for himself.

Q Was he looked upon as an honorable and honest man there? A Yes sir.

Q Since he has been in New York have you known his reputation? A Yes, known about the same as out there but not so intimately.

Q Was his reputation here good? A Never heard anything to the contrary.

Q In these long years that you have known him you have had an opportunity, have you not, to get his point of view about business honor and integrity? A Yes.

Q And you have formed some opinion of your own of his character for honorableness and integrity, have you not? A Yes.

Q What is that opinion? A That opinion is that I would be very glad if he was out of employment to-day--I would give it to him.

Q You are not connected with him by blood or marriage

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in any way? A Oh, no, not in any way.

RICHARD A. DAVISON, called as a witness,  
being duly sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your occupation? A Woolens and dress goods  
salesman.

Q How long have you known the defendant? A Fourteen  
years.

Q What during that fourteen years has been his reputa-  
tion for honesty? A Very good.

Q During that fourteen years have you frequently seen  
him and had an opportunity of forming an estimate of his  
character, apart from his reputation? A I have. I met  
him in different customer's, as often as ten or twelve times  
a week.

Q What is your opinion as to his character as to honesty?  
A Very good.

JAMES MUSSON, called as a witness, being duly  
sworn, testifies as follows:

EXAMINED BY MR. JEROME:

Q What is your occupation? A Salesman.

Q Do you know the defendant? A I do.

Q How long have you known him? A Possibly twelve years.

Q Do you know what his reputation for honesty is? A I do.

Q During that time have you seen enough of him to form a judgment of your own in regard to his personal character?

A I have.

Q What is your opinion of his personal character insofar as it respects honesty? A The highest.

MR. JEROME: Your Honor, I think it would be useless to multiply further witnesses of this character. We could do it apparently from what I am apprised interminably. The facts are simple, they rest in your Honor's discretion. I submit, sir, that here is a man whom the proof shows that for very many many years, at least thirty-five, has borne a high repute--not only a high reputation but he has impressed those who knew him as being deserving of that reputation not only in this community but in the community where he has previously resided.

I am not one of those persons who is apt to urge before a Court any remarks about commercial crimes. I am one of those who believe that in a great commercial city the class of crimes which most deserve attention at the hands of the Criminal Courts



are commercial crimes. I do not believe in the point of view that is often taken that prosecutions for commercial crimes are always methods of collecting debts, and that while they often are even though they are I have no sympathy with that class of crime and believe in a great commercial and industrial city like ours, the welfare of every man in it is dependent upon its commercial and industrial success, that commercial crimes are the class of crimes most dangerous to the community; but I do submit, even taking that to be the proper point of view of the Court, that here is an aged man occupying a very humble position with a man upon whom there is no doubt was the controlling mind and factor in this matter, upon whom the burden of guilt, from the ethical standpoint, surely falls heaviest and who has escaped. This poor man remains here, he remains here to bear the burden, and after all these long years of spotless life with the respect of his fellow-man wherever he has been, he stands here at the bar to-day a convicted felon. There is not a scintilla of evidence, as I understand it, or any suggestion that in any way, shape or manner this man derived a personal, pecuniary profit out of what he did, but that it was a case where a man was subordinated to the master mind, and if ever there was a case where

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a man was so subordinated, even assuming there was guilty knowledge on the part of this defendant, this is a case where such subordination existed; and here is a man sixty-four years old, with a wife sixty years of age, and I submit, sir, that under these peculiar circumstances, he being ready at all times to give the people every aid and facilitate in every way within his power to proceed against the man upon whom guilt should really rest, that under those circumstances the interest of even this commercial community<sup>A</sup> do not require the imposition of a sentence here.

The conviction of felony to a man whose life has been a spotless one, your Honor, your Honor feels I know as I do, is itself a heavy enough burden to bear. The very fact that twelve men drawn from the body of the community have said that he has done an act, "so wicked a wrong, is a punishment that through the years that may be left to him will be ever in his mind and must be a burden that you and I and all right-minded men can appreciate, and is, I submit, sir, a sufficient burden in this case, that the interests of justice do not require that this man at his time of life, in view of his connection with this case, receive at the hands of this Court other punishment than the Court has inflicted so far--or at least

has been inflicted upon him by this conviction.

THE COURT: As I recall this case, the transactions which resulted in this crime were, first, an agreement between this man's employer and a certain banking house in the city that upon the assignment by his employer of certain accounts to this banking house as security and protection to them, that certain loans would be advanced to this man's employer who is now a fugitive from justice, as I understand it; and that in order to understand what the security was the papers containing items of indebtedness to the defendant now absent were presented to the bankers and on many an occasion this defendant was sent from his place of employment to the bank and there presented a list of items for goods sold and delivered and assigned them to the banks for the loan then and there requested, and upon these assignments, the trial showed that this man frequently said that these checks were proper items and that they were for goods sold and delivered. That was one item amongst others of an alleged account with one Miller. The alleged indebtedness was something over \$140. but the amount advanced as a loan upon that was something like \$127., as I recall it. The charge in the Indictment was larceny

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by false representation of that \$127.--an item selected from all the other items. It was proved that this man was the accountant, that he thereafter told Judge L'Amoreaux, the attorney for the bankers, that all of the false or fictitious items bore certain marks. It was not by the evidence of Judge L'Amoreaux determined whether or not the defendant knew that the items of which he spoke were fictitious when he presented them. There is some claim that he learned the fraudulent character of these items afterwards and not at the time when they were presented to the bank to the loan, but to offset that the testimony of Mil-  
lot was that he never received any bill, that he never had any such transaction with the defendant who is now absent, and he contradicted flatly the testimony of the defendant at the bar.

An intelligent jury--in fact an unusually intelligent jury--after considering the case found him guilty, but the same intelligent jury rendering their verdict recommended the defendant to the mercy of the court. The Court does not take that simply as sur-  
plusage, a jury of twelve intelligent men. I presume that they had somewhat in mind the direction of the Court in the charge to them that they were not to be influenced by sympathy or sentiment for this man; that

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there was some evidence for them to consider, it was their duty to consider it, and whatever might happen thereafter was none of their concern, it was their duty under their oath to deliver the verdict which they believed to be consistent with the facts and then leave whatever might follow to the Court. During the whole trial that one fact must have been uppermost in the minds of the jury, as it was in the mind of the Court, that the prime mover in this case, the man who benefited by the theft, the man who employed this defendant, had escaped the jurisdiction, had escaped punishment, and that this man was left to bear the burden of the other man's misdeeds--in fact to bear the punishment of the crime which should be administered to the man who fled from justice and who is now a fugitive from justice. But, if Mr. Jerome will recall, the Court and himself at one time had a discussion which ranged about the proposition that it is not necessary that the thief should benefit from his own theft, that it is little consolation to the man who loses his money whether the thief benefited by it or some other person, but that in my mind does play some part here--in fact it plays a great part. The age of the man is something, his splendid character, his splendid reputation up to the date of this offense

stands with him to-day as it ought to stand. I  
I charged  
take it that when the jury that you will do your duty,  
gentlemen, and you ~~will~~ may depend upon the Court to  
do his duty after your verdict, that they must not  
take that into consideration when they find him  
guilty from the facts, and then asked the Court for  
mercy to this defendant. I am inclined to and I will  
suspend sentence in this case. I believe that was  
the intention of the jury when it asked the Court for  
leniency to this man; whether it was or not I do not  
think that justice will suffer in letting this man go  
back to his family and back to those who have confi-  
dence in him and who are willing to trust him with  
the money in the performance of his duty for them.

A suspension of sentence--I am talking now to the  
defendant--does not mean that you are pardoned for  
the offense of which you have been convicted. It  
means that you are going out of this Court with a  
criminal record and leaving in it a suspended sen-  
tence waiting for you any time that your future con-  
duct would suggest to the Court the propriety of im-  
posing the sentence which should be imposed upon you  
to-day. However, there is no necessity of talking to  
a man of your age or moralizing with him. The jury  
found you guilty and of course the Court must believe

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that you are guilty, but the surrounding facts, your good character, the confidence which good people of this community have in you, and the request of the jury that leniency be extended to you work in your behalf to-day, and the Court suspends sentence and ask that you report once a month to Miss Jossam in this case. Sentence suspended.

(Sentence suspended)

Stewart Liddell,

Official Stenographer.

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