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

Part One.

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

vs.

MAX MITTLE BERG.

:
: Before

: HON. WARREN W. FOSTER, J.,

: and a Jury.
----- X

Tried New York, May 8, 1906, etc.

Indicted for Grand Larceny in the second degree.

Indictment filed October 17, 1905.

APPEARANCES.

For the People,

ASSISTANT DISTRICT ATTORNEY HOWE,

For the Defendant,

LEONARD A. SNITKIN, Esq.

James E. Lynch,
Official Stenographer.

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1201

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A jury was duly impaneled and sworn.

S I G M U N D I G E L, called as a witness on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q Now, Mr. Igel, where do you reside? A The factory,
the shop?

Q Well, where do you live, first? A 316 East 83rd
street.

Q What is your business? A Vest manufacturer.

Q Where is your place of business? A 629 East 5th
street.

Q How long have you been down there? A About for the
last fourteen years.

Q The last fourteen years? A Yes, sir.

Q Now, before the 18th day of September last, 1905, you
were manufacturing, you were finishing vests, I understand?

A Manufacturing vests.

Q And on that night of the 17th of September, I believe,
you left your store with a number of vests in it? A Yes,
sir.

Q How many vests were there there? A 232.

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1201

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Q Now, when you came back the next morning, were the vests there? A No, sir.

Q They were not? A No, sir.

Q How many vests were missing? A 232.

Q In fact all the vests that were there that night, every vest in the store was taken away? A Every vest that I had on the tables.

Q Where had you gotten those vests that were missing had you bought the cloth and manufactured them? A No, sir, I took these vests or I got them from wholesalers, manufacturers.

Q Where did you get these vests, these 232? A From four places, from wholesale manufacturers, I got the vests cut.

Q Now, one second, did you ever see any of these vests which you lost, did you ever see them again? A Yes, I saw them once in the Detective Bureau.

Q Now, those vests which you saw in the Detective Bureau, how many were there there? A 77.

Q And from whom did you get those 77 vests? A I didn't get those vests; it was in the Detective Bureau.

Q I mean originally, when they were sent to your store in the first place, who sent them there? A E. L. Blumlein, I Frank & Company, Alsparg Morris & Company and Joseph I.

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Weber.

Q Now, those four names you have mentioned, they were the names of the people who sent you those vests? A The owners of them.

Q Why did they send you those vests; what were you to do with the vests? A I should make them up.

Q Finish the vests? A Finish them.

Q The vests were sent you cut, I understand it, in an unfinished state, you were to finish them?

MR. SNITKIN: I object to leading. He can state what he did.

Question withdrawn.

Q Will you state what you were to do with those vests; state the condition they came to you in? A What I had to do with them?

Q What condition did the vests come into your store as far as the finish went, as far as their being completed went? A Well, the vests come always cut, and I got to make them up.

Q And what does that consist of, making them up, what do you do to them? A Well, sewing by the machine, pressing, making button holes and buttons and so forth.

Q Now, in this lot of 77 vests which you subsequently

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saw in the Detective Bureau in Police Headquarters, who owned those? A The four houses.

Q They represented the vests from the four houses?

A Yes, sir.

Q Now, will you describe rather carefully what marks, if any there were on those vests at the time they were taken from your store, by which you can identify the vests?

A The most of the vests have got lot numbers, tickets.

BY MR. SNITKIN:

Q I cannot hear you? A Most of the vests have got lot numbers and labels and so from every man what makes the vests in my shop, I got a mark.

MR. SNITKIN: I ask that the latter portion of that answer be stricken from the record as not responsive to any question, and on the further ground that the witness is detailing an act committed by some third party.

THE COURT: I will let it stand for the present.

MR. SNITKIN: We respectfully except.

BY MR. HOWE:

Q Now, Mr. Igel, what do you mean by a lot number?

MR. SNITKIN: I object to the witness reading from any paper which is not in evidence.

Q Put the paper away? A The lot number is I got a

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vest and a statement to it; there is coming different kind of goods.

Q You get vests and a statement to them; what do you mean by that? A This is a memorandum how the vest is made; some vests are single stitched, some vests are double stitched, some vests are hand button holed and machined button-holed.

Q It means that you must hand stitch or machine stitch, or sew button holes by machine or by hand?

A Yes, there is different prices; that is the reason the people send the statement.

Q What other marks did you see were on beside the lot numbers, tickets or labels? A And this is my own trade marks.

Q You say that on those vests which were in your store that night were lot numbers of the different manufacturers and your own trade marks? A Not on every one; there was a lot unfinished; there were a lot unfinished.

Q What marks are on the unfinished vests? A Only the small tickets. The small pin tickets here (showing).

Q Now, I show you a vest which I hold in my hand, and ask you if you will look at that and state whether that was one of the vests, whether you can state whether that was one of the vests which was in your store on that night?

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MR. SNITKIN: I respectfully object to the witness reading from a paper.

THE COURT: I sustain that objection.

Mr. Witness, put the paper up. If you have a paper you must not look at it unless it is necessary to refresh your memory. If you state that it is, then we will see whether it is proper for you to look at it.

Q Now, is that one of the vests (showing)?

A Yes. Even when I have got it in my hand I know the vest.

MR. SNITKIN: I ask that the latter part of the answer be stricken out as not responsive to any question.

THE COURT: Read it.

(The stenographer reads).

THE COURT: That may stand.

Q Now, I ask you to look at this piece of cardboard sewed in the lower corner of this vest, and ask you to tell me what that piece of cardboard is?

MR. SNITKIN: I shall object to the witness reading from any paper which is not in evidence.

THE COURT: He may answer the question.

A Well, this is the lot number of the house, and these

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people---

MR. SNITKIN: I renew my motion that the answer be stricken from the record on the ground that the witness is reading from a tag or mark, which tag or mark is not in evidence.

THE COURT: Repeat the question.

Question repeated.

BY THE COURT:

Q Tell us what it is. You need not read it?

A (No answer).

BY MR. HOWE:

Q That one I ask you about on the lower corner here, what is it (indicating)? A This is for the house ticket; that is the size number.

Q What do you call that? A A label.

Q Now, what is this piece of paper or cardboard sewed on in the upper portion of the vest? A That is the pin ticket, we call it.

Q Now, where on that vest is the lot number? A The lot number is here on the body---

MR. SNITKIN: I object to the witness reading from any paper or tag when any such paper or tag is not in evidence.

THE COURT: He is not reading. Go on.

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A (Continuing) That number or pin ticket is mostly on the top, and on the bottom or here is the lot number (indicating).

MR. SNITKIN: I object to that.

THE COURT: Strike out the answer.

BY MR. HOWE:

Q The lot number is on the tag for the ticket?

Objected to.

THE COURT: The tag speaks for itself. If you are going to offer it in evidence, you may do so.

MR. HOWE: I now offer the vest with the tag in evidence.

MR. SNITKIN: Objected to.

BY THE COURT:

Q When that tag was in your store, when that waistcoat was in your store, did it have on it the same tag which is now on it? A Yes, sir.

THE COURT: I will receive it.

MR. SNITKIN: We object to it on the ground that proper foundation has not been laid for the reception of this waistcoat and the various marks and descriptions on the waistcoat in evidence.

THE COURT: I will receive it.

MR. SNITKIN: Exception.

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Marked People's Exhibit 1.

BY MR. HOWE:

Q Now, I show you again People's Exhibit 1, and ask you if either of those tags or tickets was affixed to your vest while in your store?

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

THE COURT: I will receive it.

Exception.

Q (Question repeated). A In my store?

Q Yes. A It was not affixed; it is sewed in my store.

MR. SNITKIN: I ask that that portion of the answer be stricken out as not responsive.

THE COURT: Strike it out.

BY THE COURT:

Q Answer the question. Repeat the question again.

(Question repeated). A Only one ticket is affixed in my store.

BY MR. HOWE:

Q Which one is that? A The bottom.

Q That bottom ticket was put on in your store? A Yes, sir.

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The Court admonished the jury in accordance with
Section 415 of the Code of Criminal Procedure,
and adjourned the further trial of the case until
11 o'clock on Wednesday morning, May 9, 1906.

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New York, May 9, 1906.

TRIAL RESUMED.

S I G M U N D I G E L, a witness for the People, resumes the witness stand:

MR. HOWE: If the Court please, by consent, the examination of this witness is suspended in order to put on a witness who desires to get away.

THE COURT: Very good.

A N D R E W W R I G H T, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q Mr. Wright, what is your occupation? A Agent for the United States Express Company.

Q And where are you employed? A 128 Division street, corner of Orchard.

Q That is an office of the United States Express Com-

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pany? A Yes, sir.

Q And what is the business of that office, it is an ordinary office? A An ordinary office to receive freight, to be transacted, or forwarded to different destinations.

Q And receive express packages? A Yes.

Q How long have you been employed there? A Over seven years.

Q I show you this piece of paper, this form, and ask you if you recognize that, and if that is your handwriting?

A This receipt was made out---

MR. SNITKIN: I object to the witness characterizing any paper that is not in evidence.

THE WITNESS: The receipt was made out by me, and this is my handwriting.

MR. SNITKIN: I object and ask that the answer be stricken out as not responsive to any question.

THE COURT: Strike out "This is a receipt."

THE WITNESS: This is my handwriting.

Q That is your handwriting? A Yes, sir.

Q Did you put the writing on that piece of paper?

A I did.

Q And is that date on this piece of paper the correct date? A I would not certainly put down another date, unless

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it is; it is the correct date.

MR. SNITKIN: I object and ask to strike out the answer.

MR. HOWE: I consent to strike out the answer.

THE COURT: Yes, strike it out.

BY MR. HOWE:

Q When you wrote on this piece of paper-- first of all, what is this? A That is supposed to be a receipt for accepting goods from the shipper.

Q This is a receipt given to the shipper? A Yes, sir.

Q And when you filled out this receipt did you put the correct date on it? A I did, certainly.

Q The date which now appears on it? A Yes.

Q And that date is in your handwriting? A Yes, sir.

Q Now, I show you this handwriting on this express receipt, written diagonally across the face of the printed matter, on the face of this receipt, and ask you if that is in your handwriting? A That was issued---

Q Is that in your handwriting? A No, it is made by the cashier.

Q The rest of the writing on this, aside from this writing diagonally across the face of the printing, is in your

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handwriting and was made out at the time you issued this?

A Yes, sir.

MR. HOWE: I now offer the receipt in evidence.

MR. SNITKIN: Consented to.

marked People's Exhibit 2.

BY MR. HOWE:

Q I now ask you whether you remember the man, whether you know who the man is you handed this receipt to, or to whom you issued this express receipt? A That I can't very well---

Q You do not remember his face? A No, sir; I can't identify him.

No cross examination.

S I G M U N D I G E L, a witness for the People, resumes the stand:

DIRECT EXAMINATION CONTINUED:

BY MR. HOWE:

Q When was it that you saw this lot of vests that were taken from your store again; when did you see them next, or any of them? A About the middle of October. The middle of the month.

Q About the middle of October? A Yes, sir.

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Q Can you fix the date any nearer than that from your memory, as to the date when you saw them again? A I can't say that; I don't remember that date.

Q Well, about the middle of October? A About the 15th or 20th; I can't remember.

Q Was this vest, People's Exhibit 1, among these vests which you then saw? A Well, the Captain there, when I came to the Detective Bureau---

MR. SNITKIN: I object and ask to strike out the answer.

Q Well, do you recognize that vest as one of those vests you saw there at the detective bureau? A Yes, sir.

Q Sometime in October, the middle of October?

A Yes, sir.

Q How many other vests did you recognize there; how many other vests were there in the detective bureau, there in Police Headquarters, which you recognized as having been taken from your store? A From the top I saw about three or four, and after I took out one from the middle, that was a Delaware Lackawanna Railroad vest, and this was what I saw there.

Q And you identify this whole bunch as the vests taken from your store? A Yes.

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Q Now many were there altogether? A 232.

Q Now many did you see in the Detective Bureau?

A 77.

Q 77 out of the two hundred odd vests taken from your store? A Yes.

Q Now, Mr. Igel, will you state the value of the vests which were taken from your store?

MR. SNITKIN: Objected to as immaterial.

BY THE COURT:

Q You are a dealer in those articles, are you?

A I am not a dealer; I am a manufacturer, your Honor.

Q You deal in them, don't you, after you manufacture them, you sell them, don't you? A No, sir; I get them from the wholesale houses, and I got to deliver them finished.

Q Don't you sell them finished? A No, sir.

Q What do you know about their value? A Well, I know that I am responsible for these goods, your Honor, and I got to pay over \$1200.

Q Never mind what you have to pay; that is not it?

THE COURT: Your witness is not qualified as an expert.

BY MR. HOWE:

Q Now long have you been a manufacturer of vests and

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clothing? A The last fourteen years.

Q Have you during that time bought or sold any vests?

A Not for my shop.

Q When you receive vests, do you give any security for their delivery? A No, sir.

MR. SNITKIN: That is objected to.

BY MR. SNITKIN:

Q What was your answer? A No, sir.

MR. SNITKIN: That is all right.

MR. HOWE: I will now read this receipt in evidence: (Reading) The United States Express Company, general offices, 49 Broadway. 128 Division street, New York, September 18, 1905. Received from M. Mittelberg, 64 1/2 Hester street, three bundles said to contain-- there is an abbreviation that cannot be deciphered at present-- valued at dollars marked M. Switzer, Greenfield, S. C. Then follows the printing on the express blank, and it is signed for the Company, "A. Wright."

CROSS EXAMINATION BY MR. SNITKIN:

Q Now, Mr. Igel, had you ever before the time this defendant was arraigned in the Magistrate's Court ever seen him before? A No, sir.

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Q And don't know him? A No, sir.

Q Never saw him in your store or shop? A No, sir.

Q Now, if I understand you correctly, you are a contractor? A Yes.

Q You do work upon goods and merchandise that are sent you by various firms? A Yes, sir.

Q And I understand among those firms is E. L. Blumlein & Company? A Yes.

Q They are a large manufacturer, are they? A Yes, sir.

Q And they manufacture clothing, vests, pants and coats? A Yes, sir.

Q And you do work for a number of other firms besides Blumlein & Company? A Yes, sir.

Q Now, if I understand you correctly, you get these goods in a raw state? A Yes, sir.

Q And then you work on them or your men do?

A Yes.

Q And you receive tags from the company, don't you?

A Yes.

Q These tags are not your own tags? A No, sir.

Q All this tag indicates is that it is from E. L. Blumlein & company, makers, New York? A Yes, sir.

Q The size number and the price and the trade mark?

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A Not price; lot number.

Q Well, there is no lot number. "Young men" is a trade mark with them I presume? A Yes.

Q And those are sent you in large quantities, aren't they? A Yes, sir.

Q The only reason you can say this was sent you is because it has the label of Blumlein & Company on it?

A Oh, no. I have my own trade mark on there.

Q What is your own trade mark? A Mostly it is marked on the back strap; I know from the vests.

Q Is there a trade mark on this back strap here (indicating): just show the jury where your trade mark is on that back strap? A Here (indicating). This is from every man what is in the shop; they have trade marks here on the strap. Now, that is brown.

BY MR. HOWE:

Q You mean that stitching? A Yes, some are in the length here.

BY MR. SNITKIN:

Q Did you personally do the work on that vest I show you now? A Not me. Here, this is my trade mark too, on the breast pocket, stitched across (indicating).

Q You personally did not do any of the work on this

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waistcoat? A Yes, sir.

Q On this particular waistcoat that has been shown
you? A No, sir.

MR. SNITKIN: Then I ask that all the evidence
given by this witness relative to the identification
of this waistcoat be stricken from the record.

MR. HOWE: The witness has testified that
his vests are marked with his trade mark, and he
indicates this trade mark on this vest. He says
that of the two labels that were on that vest, one
of them was affixed in his store, and he identifies
the vest from those trade marks and those labels.
He is a manufacturer.

BY THE COURT:

Q Do you know whether or not the material was such as
you had in your place; do you know whether or not the cloth
in that vest is the same cloth that you had in your place?

A Well, I know about the lot numbers; I can't remember the
cloth.

Q You do not remember the pattern? A No, not the
pattern. I make thousands and thousands of them.

THE COURT: I will deny the motion.

MR. SNITKIN: We respectfully except.

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BY THE SEVENTH JUROR:

Q The samemark on every vest? A Not the same mark.

BY MR. SNITKIN:

Q Is that what you designate a trade mark, this stitching running up and down in a zigzag line? A Every operator has different trade marks.

Q Your working men have different marks? A Yes.

Q How many working men have you? A About 12.

Q Did you see that put on this vest? A Yes, sir.

Q Personally? A Personally.

Q On every vest? A On every vest.

Q Every vest? A Every vest.

Q That was last September? A Last September.

Q And you have had quite a good deal of orders in September, didn't you? A Yes.

Q Quite a good deal in October and so on, isn't that so? A I can't understand.

Q You have had quite a good deal of orders besides those vests since September for various firms? A Yes.

Q This, what you designate trade mark, stitching run up and down, is placed upon every vest of similar kind?

A Not every vest; only from this operator who makes this vest.

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Q Well, is this the only trade mark, this operator used in the month of September on these vests? A Every time he uses that mark.

Q He uses the same mark on different kinds of vests?

A Yes.

Q Now, you could not really tell whether this comes from Blumlein & Company or from your store? A It comes from Blumlein. I make work for Blumlein.

Q You can't say now that this vest, in this condition, made up, that they were not taken from Blumlein's store or yours, can you? A I remember these goods, and this vest, they were taken from my store.

Q You remember the quality of the goods; is that it? A Yes.

Q I thought you said a moment ago, in answer to his Honor's question, that you could not tell? A Not every vest.

Q And next I understand that you say this vest was on the 20th of October-- A I don't remember the time.

Q You cannot say when? A No.

BY THE TWELFTH JUROR:

Q I would like to ask if each one of your workmen has an individual trade mark that he puts on any bit of work he does?

A Yes, sir. If you allow me to say what the trade mark is

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for; now, for instance, an operator spalls by machine an order cut, and damages a vest; then we must know who made that vest, and for that reason every operator has a different marking, and also the presser, there is the breast pocket like a hook in red pencil or yellow pencil, inside breast pocket.

RE DIRECT EXAMINATION BY MR. HOWE:

Q Now, in other words, that is a trade mark on the vest with which you are familiar? A Yes.

Q You can tell by looking at this vest which operator operated on it? A Yes.

Q Now, I asked you if you know who put this stamped number on these tickets, on People's Exhibit 1? A The wholesale house.

Q Now, I ask you if you have, when you get these vests, an invoice or list furnished you by the wholesale house, corresponding with the numbers stamped on these tickets and vests? A I got it in every lot, only I don't know if I got this from this one.

Q You got it with every lot? A Yes.

Q Showing you the numbers here, can you state from these numbers whether this vest here, as labeled, was one of the

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lets which was taken away from your store? A Yes, sir.

Q You know that of your own knowledge?

A Yes, sir.

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M O R R I S S W I T Z E R, being called as a witness on behalf of the People and duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q Mr. Switzer, what is your business? A Clothing.

Q Will you raise your voice so the gentlemen can hear you? A I am in business in clothing, in South Carolina.

Q Louder? A In clothing I am, in South Carolina.

Q Speak louder? A I have been in South Carolina about sixteen years in business there.

Q You have been in the clothing business in South Carolina, about 16 years? A Yes.

Q Where, in South Carolina? A Greenville.

Q Do I pronounce it right, Greenville? A Yes, you pronounce it right, Greenville, South Carolina.

Q Where do you now reside? A My family resides in Brooklyn, 205 Stockton street, and most of the time I am in the country down there.

Q In South Carolina? A Yes.

Q You do, however, in the course of your business, make visits to New York? A Yes, in the market time, in the fall and spring time; in the fall of the year and in the spring time of the year I come up for goods.

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Q You come here to buy goods; is that right?

A Yes.

Q And you have a clothing establishment, a clothing store in Greenville, South Carolina? A Yes.

Q Were you in this city on such business in September of last year? A Yes, sir; I was in September, the whole month I was in New York.

Q You were here all of September? A Yes, and I left just after the holidays.

Q What holidays? A That is what they call the biggest Hebrew holiday we ever have.

Q When you were in New York on that visit in September, did you see this defendant? A Yes, sir.

Q Will you state and tell the jury where it was and when it was that you met this defendant first? A Well, I met him by my brother, in his business, 12 Monroe street.

Q Your brother is in business at 12 Monroe street?

A Yes.

Q What business is your brother in? A Second hand clothing. He has a few tailors and fixes them up and sends them to the country, and that same man, he brought up two or three coats.

Q What name man? A Max.

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Q The defendant? A Yes. Well, I don't remember if he met me over there or I met him over there; I can't say who was first.

Q Who spoke first, is that what you mean? A No, I mean this, if I already found him over there or if he found me over there, I can't say exactly.

Q Well, anyhow, you met him over there? A Yes. I was in the front part of the room checking up goods that I bought the day before, fixing to be sent away in a case, and I heard him trying to sell a few coats, you know.

MR. SNITKIN: I ask to strike that out.

THE COURT: Yes, strike it out.

A (Continuing) Well, he did sell him a few second hand coats.

MR. SNITKIN: I ask to strike it out.

THE COURT: Strike it out.

Q Now, you met him in there, and you had some conversation with the defendant, didn't you? A Not the same minute, not the same time when I met him.

Q You saw the defendant in your brother's store at that time? A Yes.

Q Now, what day was that, as near as you remember? A Well, I don't know. It was about the 15th or 18th of September.

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something like that.

Q Now, on that day that you are describing now, that you met him there, did you talk with the defendant at all, or did he talk to you? A No, the talk was this way: When he got through---

MR. SNITKIN: I object, and ask that the answer given be stricken out. The question calls for yes or no.

BY THE COURT:

Q Answer yes or no. A (No answer).

BY MR. HOWE:

Q Did you at this time when you met him in your brother's store, did you or not speak to this defendant? A Well, he spoke to me the most.

Q Well, you spoke to him too? A And I answered him.

Q What did you say to him and he to you? A Well, he had a vest wrapped up in a newspaper he had in his pocket, and he made an offer to my brother to sell that.

MR. SNITKIN: I ask to strike that out as not within the issue in this case.

BY THE COURT:

Q You are asked now to tell us what the defendant

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said to you, and what you said to him, and that is all?

A He said to me if I want to buy any vests.

BY MR. HOWE:

Q Any vest? A Yes, and I asked him "Let us see", and I looked at it; there was a navy blue vest he had wrapped up in that paper and I looked at it and I says "Are they all alike", and he said, "No." I said, "How do you sell your vests; where do you live", and he told me where he lived.

Q Where? A 64 Hester street, I think he said. And I went along with him, and he had them vests the same like on a little counter or table there.

Q Where did you go with him, to that store? A I went to his store.

Q In Hester street? A Hester street, a basement store, and he picked that paper up and I looked at that stuff, and when I saw them goods was not finished up---

Q What were the goods you saw there that he showed you? A Black vests and a few gray ones and navy blue vests and there was six or seven single men's coats in it, and I says "Why is them goods not finished; I can't do nothing with them". He said he had a fuss with his tailors and he took them away that way. I said, "Well, I don't care

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to buy that stuff anyhow; that is not much benefit to me; I can't do nothing much with them." Then he says "Well, I sell them to you cheap."

Q Sell them to you cheap? A Yes, and I asked him, "What you call cheap", and he asked me 35 cents.

Q 35 cents a piece? A 35 cents apiece, and I started to go and he followed me, him and his partner up to the sidewalk, and he says "How much will give me for it."

Q What was his partner's name, who was the man there you say was his partner? A Well, his name I can't remember, German, I think his partner's name is, and they followed me up on the sidewalk and said, "Well, make us an offer", and I told him I will give him 20 cents. Well, they didn't want it, and they come after me and wated me to take it and I went down and looked them over again, and counted them over, and there was two hundred and four or five, that is what he claimed; I didn't count them all through; I counted about I think 200, and he claimed there was 204 or 6 or something like that, and I told him that I will give him twenty cents and he took me up? I says to him "I want you to send these goods by freight", "if you send them by any other way it is too much expense, it is \$22 from New York."

He says, "All right." I says, "Well, now, you bring me the

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bill of lading, and you find me by my brother in his business in the evening, and I will pay you half the money, and the balance I will send you a check."

Q How much were you going to give him for these?

A \$40.

Q \$40 for the whole lot? A Yes, that is 20 cents apiece, and when he brought me the bill of lading I looked at it, and I thought it didn't look to me like a bill of lading.

MR. SMITH: I ask to strike that out.

THE COURT: Yes, strike it out.

Q Mr. Switzer, will you say whether you know how to read and write in the English language? A No, I can't read or write English; I can sign only my name.

Q You say you can neither read nor write English and can only sign your name? A No, I can sign my own name.

Q Now, go on with your story? A Well, I gave him a check for it, and he brought me---

Q A little louder. A I gave him that check when he brought me that freight bill, and I looked on it, and I says "Look here, Max, that don't look to me like it is a freight bill." I know freight bills is a larger size than an express

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bill, and I called my brother's girl over, and I said "Read that over", and she read it over, and said "That is an express bill", and he started to go, and I stopped him in the hallway and I says "Look here, you sent that stuff by express; that will cost \$15 or \$20." He says, "Well, I will lose that half expense."

Q That is he was going to split the difference with you on that? A Yes, he would lose half the expressage. When I got to Greenville---

Q Now, wait. You told him to send--- A To send that stuff by freight. I even told him the Old Dominion Line.

Q Where did you tell him to send that by freight, to where, what place? A To Greenville, South Carolina.

Q You agreed to pay him the lump sum of forty dollars? A To send him a check for twenty dollars balance in 15 or 20 days, and if I don't pay him, I told him, in 15 or 20 days, he can go to my brother and he will pay him.

Q Now, where was it this bargain was closed? A In 64 Hester street.

Q The defendant's store? A The defendant's place.

Q And did you as a matter of fact give him a check on that day? A I gave the check to that German.

He sent his partner along and I gave him the check.

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Q He sent his partner along and you gave him the check?

A Yes, I gave German the check.

Q And German went with you where? A German got the check.

Q Where did German-- where did you go when you left their store? A To 12 Monroe street.

Q Your Brother's store? A Yes, and I gave him that same check you have in your hand.

Q Now, I show you this piece of paper and ask you if that is your signature on that? A Yes.

Q That is your signature? A That is my signature.

Q Is this the check which you gave to German on that day? A That is the check that I gave German if it is \$20 down there.

MR. HOWE: I offer this check in evidence.

MR. SNITKIN: Well, it is objectionable because of being no connection with the defendant, but I consent that it go in.

Marked People's Exhibit 3.

Q Now, this check you gave to German? A Yes, just half payment.

Q For this purchase which you had made from the defendant here? A Yes, it was just half the money.

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Q And you were to pay the other twenty dollars in 15 or 20 days? A Yes, in 15 or 20 days.

Q Now, who did the writing on the face of this check?

A My brother's girl.

MR. SNITKIN: Objected to as immaterial. The check is in evidence.

MR. HOWE: I will withdraw that question.

Q Did you fill out this check other than signing your name to it? A No, only I signed the name, that is all.

Q You signed the name and nothing else? A That is all, nothing else.

MR. HOWE: I will read the check in evidence, People's Exhibit 3: (Reading) "No..... Brooklyn New York, September, 19, 1905. Merchants Bank of Brooklyn, Broadway and-- the street here is obliterated by the stamping of the check--- Pay to the order of Louis German twenty dollars in figures twenty dollars in writing. Payable through the New York Clearing House. Signed Morris Switzer." The endorsements being "Louis German", and underneath that "Michael Rabinowitz."

There are other endorsements in red stamped letters of the different banks bearing date of September 20,

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1908.

BY MR. HOWE:

Q When did you leave, can you tell us from memory the day on which you gave this check to the defendant?

MR. SNITKIN: Objected to as immaterial. The check is in evidence, and that is the best evidence.

A The same day.

MR. SNITKIN: I ask to strike out the answer.

Motion denied.

Q Can you tell from memory the day on which you gave this check to this defendant?

Objected to.

Objection overruled.

A I remember I gave him that the same day in the evening, the check; the same day I bought the clothes from him I gave him that check.

Q Do you remember what day of the month that was? A No, I can't remember exactly the day.

Q Was it the defendant that brought you the express receipt from which grew this argument as to payment for the express difference, the payment for the express freight?

A They both was together. First one come in and then the other, ten minutes or five minutes later.

Q Who brought you the receipt for the shipment of these

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Q Did he say how he knew that the goods had not reached their destination? A He told me that he received a letter, by which he was informed that the goods did not reach their destination.

Q When he informed you that they had not reached their destination, was that the first that you had heard about their not reaching their destination? A I didn't know anything about it until he informed me.

Q Was Switzer, I mean Mittleberg, the defendant, at your store every day there, working days, in those three weeks?

A Every day he used to come to work.

Q Did the defendant Mittleberg, in those three weeks, at any time, or in the few days before you saw Mr. Switzer, did Mittleberg tell you that the agent of the express company had come to him and said that those goods were lost, and would he come over and identify them? A He did not tell me that.

Q So that what Mr. Switzer said to you, was the first news you had that those goods had gone wrong? A I heard that Switzer told to him that the goods---

Q Told to who? A To Mittleberg, that the goods did not reach their destination.

Q Was that Switzer told Mr. Mittleberg? A Yes, I heard Switzer say it to him.

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Q When you heard that, was that before or after Switzer came to you? A I know it from that because I was standing close by, and Switzer said to him "Where did you send the goods, they did not arrive at their destination." And that gave me the information that the goods did not arrive.

Q You mean to say, when you said a moment ago that Switzer came to you and complained that the goods had not arrived, it was Mittleberg the defendant he was talking to, and that you overheard it? A I didn't understand very well the question before.

Q I will put it in another way. Where was it that you heard, where were you when you heard Switzer tell Mittleberg that the goods had not arrived? A At the door. He was standing at the door.

Q The door of what? A Of my store; he was standing and I was standing and Switzer was standing, and Switzer talking to him, and I was standing close by and heard it.

Q Now, how many times about three weeks after the goods had been shipped, did Switzer come and inform you they had not arrived; how many times, at that time, about three weeks after the goods had been shipped, did Switzer come to your store, and tell you the goods had not arrived? A He only came

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once, and that was all.

Q That is what I want to get at. So the time you heard that the goods had not arrived, was the time that Mittleberg heard the goods had not arrived from Switzer? A I heard it at the same time Switzer was talking to Mittleberg.

Q Now, you say that Switzer came to your store two or three times; is that correct? A Yes.

Q Now, when were those times; please be very accurate? A I couldn't tell you that.

Q You don't know? A I don't remember.

Q Did Switzer come to your store again after he had complained that the goods had not arrived? A Yes, sir, he came again.

Q Well, that makes three times then, doesn't it, the time that he bought the goods, the time that he came first to complain they had not arrived, and the time he came second and complained? A He bought ~~the~~ goods before the last sale where he complained that the goods were not coming; he bought once or twice also before that.

Q So that he has been to your store five or six times, in all, is that correct? A Three times he bought goods.

Q He has bought goods there three times; is that correct? A Yes, sir; three times he bought goods from me, and

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then the last time he came and complained that the goods did not reach their destination. That makes four times.

Q What kind of goods did he buy from you in those four times? A He bought second hand clothes. He bought whole suits, and separate coats, and second hand clothes.

Q Did you ever sell him any new coats or goods? A I never kept new goods.

Q Never kept them very long? A (No answer).

Q When was the first two times that he bought old clothes from you? A I can't exactly say the time.

Q How many clothes did he buy the first time he came there? A The first time I don't remember exactly the amount, but I think it was \$20 or \$25 worth.

Q Did he pay you by check or money? A He gave me a check for the whole amount.

Q Now, the second time he came there to buy goods, did he pay by check or money, and how much did he pay? A The second time he bought about \$70 worth, for the whole amount he gave me a check.

Q How many checks have you received from him altogether; count them up? A Well, I don't remember exactly, two or three; it seems to me three checks.

Q You don't remember the dates when he gave you those checks? A No, I don't remember the date.

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Q Those first two shipments, or those first two purchases that he made with you, what did you do with them; did you send them away for him or did he take them away himself?

A He himself took them away.

Q He took them away himself? A Yes.

MR. SNITKIN: The defendant rests.

MR. HOWE: The People have two or three witnesses to call in rebuttal.

MR. SNITKIN: First let me recall German for a moment.

LOUIS GERMAN, recalled:

BY MR. SNITKIN:

Q Is this the same Switzer that you refer to, who was on the stand here, as having been in your place of business two or three times before this purchase? A Yes, sir.

MORRIS SWITZER, a witness recalled for the People, testified as follows:

BY MR. HOWE:

Q Were you ever in Mr. German's store before you bought these vests? A No, sir.

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Q How many checks have you ever given to German? A One check.

MR. SNITKIN: Objected to as not proper rebuttal.

THE COURT: We will receive it.

Q One check? A One check of twenty dollars.

Q Sure of that? A Sure of that.

Q Is that the check (showing), People's Exhibit 3?

A That is the check \$20.

MR. SNITKIN: No questions.

S I G M U N D I G L E, a witness recalled by the People,
in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q I show you this vest, which was taken from the bundle contained in the package marked People's Exhibit 4, and ask you if that is one of the vests which was taken from your shop on the night of the 17th of September last? A Yes, sir.

Q That is? A Yes, sir.

Q You are sure about that? A Yes, sir.

Q This store of yours, Mr. Igle, where is it? A 629 East 5th street.

Q The store where the goods were taken from? A Yes.

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Q That is in the city and county of New York, isn't it? A Yes, sir.

Q Were there any coats in your store that night? A I got one floor, and one part of the shop I rent out to a coat tailor.

MR. SNITKIN: I object to that to any evidence being offered here outside of what is contained in the indictment.

MR. HOWE: Then I withdraw the question and ask that the answer be stricken out.

THE COURT: Strike it out.

MR. SNITKIN: No questions.

THOMAS BARKLEY, a witness called and duly sworn on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q Where are you employed? A 49 Broadway.

Q Who employs you? A The U. S. Express Company.

Q Now, I ask you what department you are in there?

A The money department.

Q How long have you been in the employ of the U. S.

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Express Company? A About ten years.

Q I ask you if you received two bundles this morning, one of which was wrapped in this paper which was around the bundle marked People's Exhibit 4? A Yes.

Q You did? A Yes.

Q How did you get that; where did you get them, whom did you get them from? A Received them from the messenger that runs between New York and Washington.

Q You received them from whom? A From the messenger.

Q Express messenger? A Yes, that runs between New York and Washington.

Q I show you the outer wrappings of that bundle marked People's Exhibit 4, and ask you if you can tell me whether or not you can find on this any markings which would indicate to you as a man in the expressbusiness where this bundle has been recetly before coming to you this morning? A It looks as if it originated in New York, and went to Greenfield, South Carolina.

Q I call your attention to this paster on this original wrapper, and ask you what that indicates, if you know?

A I don't know.

Q You received those two bundles this morning from the express messenger, from Washington? A Yes.

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CROSS EXAMINATION BY MR. SNITKIN:

Q Now, Mr. Witness, all that you really know about the facts in this case is that you received some bundles from somewhere at your Broadway office; is that right? A I received two bundles.

Q Two bundles at your Broadway office? A Yes.

Q You, of your own knowledge, cannot tell this jury now, where they came from originally? A No.

Q Whether they came from New York, New Jersey or Boston? A No.

Q Is that right? A That is right.

Q And when you said that it looked, in answer to the District Attorney's questions where this parcel came from, while it was objectionable, and I did not object, you said it looked as though it originated in New York; that is your impression, is it? A Yes.

Q You cannot state it as an absolute fact? A No, sir.

Q So that to go to this jury as an absolute fact that it came from New York, you could not say so? A No, sir.

RE DIRECT EXAMINATION BY MR. HOWE:

Q Did you know this morning at the time whether they came in prepaid or collect? A They came in to us, to our general agent, dead head.

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Q Did you receive a way bill with these goods?

A Yes, sir.

Q Let me have it, if you have it with you? A (The witness hands paper).

Q Whom did you receive that way bill from? A From Messenger Shaw, the same one that brought these two parcels.

Q Will you look at that way bill and state where these goods were billed from?

MR. SNITKIN: I object to the witness reading from any paper which is not in evidence.

MR. HOWE: I offer this way bill in evidence.

MR. SNITKIN: Let me see it. No objection.

Marked People's Exhibit 5.

BY MR. HOWE:

Q Will you look at that way bill and tell us if you can from it where those packages were billed from, coming under that way bill? A From Washington, D. C.

Q From where in Washington, D.C. does it say? A Washington, D.C., that is all.

Q I ask you to look at the two letters I point to there, and say what they are? A That is "O. H.", the shipper.

Q Does that mean "On hand"? A Yes.

Q What is the meaning of those two letters? A "O. H." means "On hand."

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Q And what is the meaning of "On hand" in the express business? A It means that goods have been received and through some difficulty they could not be delivered, and were put on hand.

Q That is what I want to know. That is all.

MR. SNITKIN: Now, let us read that in evidence.

BY MR. SNITKIN:

Q How many bundles does that receipt call for? A Two.

Q Not three? A Two bundles.

MR. HOWE: I will read this in evidence:

"United States Express Company. Delivery sheet
No. 1, messengers will check freight here via"---
I think we had better have the witness read this.

MR. SNITKIN: Well, the jury will ask for it,
very likely. That will save time. It is in evidence.

BY MR. HOWE:

Q It is dated May 9, 1906, Washington, D. C., and it is
consigned, as I take it to the money department, New York?

A L. P. Starkweather, Money Department. He is the general
agent in this city.

MR. HOWE: The People rest.

MR. SNITKIN: Now, if your Honor please, the
defendant respectfully renews the motion made at
the close of the People's case, that your Honor take

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from the consideration of this jury the first count in this indictment, charging Grand Larceny in the second degree.

THE COURT: What do you want to do about this case, Mr. District Attorney?

MR. HOWE: I respectfully say to your Honor that we wish to go to the jury on the two counts, grand larceny in the second degree, and criminally receiving stolen property, knowing the same to be stolen.

THE COURT: Assuming your proof to be all that you claim for it, and whether it proves it or not, of course, is a question for the jury, but you have offered evidence tending to show, first, that there was larceny, that goods were stolen, and secondly that the goods were shortly thereafter in the possession of the defendant. Now, what else have you proven tending to establish guilty knowledge on his part?

MR. HOWE: I believe, sir, that I have proven in addition to the fact that the defendant was in possession of these goods on the morning, at 11 o'clock in the morning after they were stolen, that thereafter his explanation as to his possession of these goods at that time, were utterly conflicting, and I will also call your Honor's attention to the fact that I

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have offered in rebuttal---

THE COURT: The only point I wish to know about is, what evidence you claim you have shown as to scienter, guilty knowledge that the goods were stolen, under the second count of the indictment?

MR. HOWE: I offered as proof in that line, the defendant's consistent variation of explanations of how he got these goods into his possession.

THE COURT: Well, I will deny your motion, Mr. Snitkin, and I will let the jury determine.

MR. SNITKIN: I direct your Honor's attention to the fact that there is absolutely no proof of value.

THE COURT: I think you are mistaken about that.

MR. SNITKIN: Your Honor will recall that the complaining witness Igle could not tell the jury nor your Honor, the value of this property. Now, the element as to value your Honor admitted in evidence, was that given by the witness Switzer, as to what goods he purchased were worth to him. Now, that is not an element of value as to the amount taken and charged in this indictment.

THE COURT: Well, the jury may on that evidence find the fact. I think it is sufficient to go to the

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jury on.

MR. SNITKIN: We respectfully except.

Now, I ask your Honor to take from the consideration of this jury the second count charging criminally receiving the stolen property knowing the same to have been stolen.

THE COURT: You may have an exception.

MR. SNITKIN: I respectfully except.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until 11 o'clock, A. M. on Friday, May 11, 1906.

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New York, May 11th, 1906.

TRIAL RESUMED.

After summing up by Counsel for the People, the Court charged the jury.

The Jury found the following verdict:

We find the defendant guilty of the second count in the indictment: Criminally Receiving Stolen Property, knowing it to have been stolen.

MR. SNITKIN: Will your Honor remand until next Friday, reserving my rights to make my motions on that day?

THE COURT: One week, you mean?

MR. SNITKIN: Yes sir.

THE COURT: Friday, May 18th, 1906.

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