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CASE # 1344

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

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

-VS-

M A X C O H E N .

Before:

HON. EDWARD SWANN,

and a jury.
----- x

New York, April 3, 1911.

Indictment filed June 16, 1910.

Indicted for criminally receiving stolen goods.

A P P E A R A N C E S .

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY OSWALD JACOBY.

FOR THE DEFENDANT: MR. HAROLD SPIELBERG.

Peter P. McLoughlin,
Official Stenographer.

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I am receiving and shipping clerk for Austin Baldwin & Company, and was such in March, 1910.

Q Did you receive a certain box about 4 1/2 feet long and one foot square? A I did, yes sir.

Q What date did you receive that box? A The 13th or 14th I am not certain as to the date. The box was marked Wyers Freres, Redditch, England. It also had our stencil Care of Austin Baldwin, New York. I entered that case in our tally book, weighed it, measured it, and put our shipping mark on it. The box was said to contain fishing rods. I saw the box on the 15th of March, about four o'clock in the afternoon on a truck. Mr. McAllister, one of our employees drove that truck. It was to go on the steamer Campania to Liverpool, England.

EDWARD C. STROHM, a witness called on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

I am secretary of the Austin Baldwin Company, and was such in March, 1910. I remember the afternoon of March 15, 1910.

Q Was there a truck load of boxes said to contain various

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articles loaded upon a truck in your presence that afternoon? A Yes, sir.

Q Whose truck? A John McAllister. The driver of the truck was McAllister's son.

Q Was old McAllister there? A Yes, sir, he was there.

Q Can you describe in particular the box said to contain fishing rods? A Yes, sir. I can remember the stencil mark of our own on the top; that is put on after it comes to us.

Q Do you remember the size and shape of the box?
A A box about four feet high and about 11 X 11 inches.

Q So that it was a long narrow box? A Yes, sir.

Q Was there any other box of that shape on that truck?
A No, sir.

Q The other boxes were square? A Yes, sir.

Q You were not present the next morning when Kelly drove off with it from the stable? A No, sir.

J O H N M c A L L I S T E R, a witness called on behalf

of the People, having been duly sworn, testified as follows
DIRECT EXAMINATION BY MR. JACOBY:

I am employed by the Austin Baldwin Company, and

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have been for 35 years. I remember loading a truck on the afternoon of the 15th of March, 1910, at 21 Pearl street, in this city, and county. I can remember ^{one} a case about that high and about that wide (illustrating). It was marked A. B. I could not remember the address that was on it.

Q Was there any other box of that shape and that size?

A No, sir.

Q About how long was that box that you showed us with your hands? A I should say about four feet.

Q Four feet long? A Yes, sir.

Q How wide and thick? A About 11 inches or so.

Q And that box was positively on that truck when it went off that afternoon? A Yes, sir.

Q Did you see that box again -- where did the truck stay over night? A In our stable.

Q Did you see that same box the next morning?

A Yes, sir,-- on the truck

Q Who drove that truck? A Jack Kelly.

Q It was put on this truck? A Yes, sir.

Q The morning of the 16th? A Yes, sir.

Q And the other boxes also? A Yes, sir.

Q What time? A About half past seven on the morning of March 16th.

Q How many boxes were there altogether? A There were

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15 packages that went off my truck on to the other one; boxes, bales and crates.

J O H N K E L L Y, a witness called on behalf of the

People, having been duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. JACOBY:

I work for John McAllister, and have worked for him for five and a half years. I remember the morning of March 16, 1910. I took a load of goods from the stable that morning.

Q How was the load put on your truck? A By Mr. McAllister.

Q Were you present? A Yes, sir.

Q Did you see the load on the truck? A Yes, sir.

Q Did you see McAllister that morning? A Yes, sir.

Q How many boxes were there on the truck? A 17 packages.

Q Among them do you remember any box that you can describe particularly to the jury? A Cotton and watch movements and fishing tackle and fishing poles.

Q Do you remember the box that contained fishing poles?
A Yes, sir.

It was something like one foot by four feet ten, something like that.

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Q What was the length? A Four feet, between four feet ten and five feet.

Q How wide? A 11 or 12 inches.

Q 11 or 12 inches square and something over four feet long? A Yes, sir.

Q Was that the only box of that shape that was on the truck that morning? A Yes, sir.

Q What time did you drive away from the stable?
A About 7.40.

Q Where was the stable? A 31 Perry street; on the west side between 4th and Waverly place.

Q Where did you drive to? A White Star pier.

Q You were too late for the Campania? A Yes, sir.

Q You went to the White Star pier? A Yes, sir, 20th street and the river front. I got off the truck leaving it outside of the pier, and went down on the dock and when I came back the truck was missing. When I next saw the truck it was the 18th of March and the boxes were missing.

H E N R Y C. P A R K E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY;

Q Where do you live? A 114 Christopher street.

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Q Where do you live? A 114 Christopher street.

Q Mr. Parke would you mind telling the jury how old you are? A Nineteen.

Q What is that? A Nineteen.

Q Keep your voice up. Did you live there in March and April, 1910? A Yes, sir.

Q With whom? A My father.

Q Were you working in business with your father at that time? A Yes, sir.

Q What business? A Fishing tackle business.

Q In fishing tackle, did you deal in fishing rods?

A Yes, sir.

Q What was that address again? A 114 Christopher street.

Q You sold fishing rods and tackle at retail?

A Yes, sir.

Q Do you know this defendant Max Cohen? A Yes, sir.

Q When did you first know him come, or when did you make his acquaintance? A Well, that is a little hard; I met him, I think, something about 18 months ago, the first time I seen him.

Q Was it before March, 1910? A Yes, sir.

Q You knew him in March, 1910? A Yes, sir.

Q You had a previous acquaintance with him? A Well, I

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only seen him once before that.

Q Did you ever buy any rods from him before March, 1910? A No, sir.

Q Now, I show you people's Exhibit s 2 and 3 for identification, and ask you whether you have seen them before?

A Yes, sir.

Q Your answer is yes. A Yes, sir.

Q When did you ever have this rod in your possession?

A yes, sir.

Q people's Exhibits 2 and 3 for identification?

A yes, sir.

Q When did it come into your possession? A March 18th I think it was.

Q You think it was? A Yes, sir; I ain't sure of the date.

Q But it was within a few days thereafter, if it was not that day? A yes, sir.

Q Who, if you know gave it to you? A Mr. Max Cohen.

Q Tell us the conversation that you had with him with reference to this rod and other rods like it.

MR. JACOBY: I ask to have this marked in evidence
(Marked people's Exhibits 2 and 3 in evidence.)

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Q Now just tell us everything that happened between you and this defendant up to the time that he gave you People's Exhibits 2 and 3. A Well, he came to our place of business on the 18th I think it was of March, and asked for my father; my father was out; he then said, he asked when he would be in; I told him I expect him in that evening; he was going to leave a memorandum or card and he said he would like to see my father.

Q What is that? A He said he would like to see my father; I asked him what it is in regard to and he said, if I would come around to his place of business he would tell me. I went around to this man's place.

Q Where was his place? A In Greenwich street.

Q Do you remember the number? A No, sir; I am not sure of the number.

Q Between what blocks? A Between 10th and 11th streets.

Q How far was that from your place? A About three blocks.

Q You went around the same day to his place?

A Yes, sir.

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

Q What did you say to him and he to you? A He said he had a lot of these fishing rods he would like to dispose of

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them; wanted to know if we could use them; I asked him where he got them from, and I understood him to say he bought them at auction.

Q Did he say he bought them at auction? A Yes, sir.

Q Sure of that? A Yes, sir.

Q Did he tell you where? A No, sir.

Q Did he tell you how many he had? A About 40 of them.

Q About 40? A Yes, sir.

Q Was this in the evening or afternoon? A This was in the afternoon.

Q Did he show you any of them? A He showed me this one here.

Q What did you say? A I told him I didn't know about them; they were foreign make rod; I would take and find out about them; and he gave me this here rod as a sample and wanted to know about them.

Q Did he name any price that night? A No, sir, he did not; but the next day he named a price, he wanted \$2 a piece for them.

Q When did you see him the next day? A The next day it was in the morning.

Q Where? At his place? A Yes, sir, at our place.

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Q He came to your place the next morning? A Yes, sir.

Q He said he wanted \$2 a piece? A yes, sir.

Q What did you say? A I told him a little too much for the rod as it was a rod we could not use.

Q At the time he gave you this rod, did it have this mark on it?

Objected to.

Q Is the rod People's Exhibit 2 in the same condition now that it was at the time that the defendant gave it to you with the exception of the letters and stenographer's marks? A Yes, sir.

Q It is. A Yes, sir.

Q Now, we have come to the next morning at your place? A Yes, sir.

Q He said he wanted \$2 a piece? A Yes, sir.

Q What did you say? A I told him it was too much for the rod, we would not be able to use them at that price; we could not use them at that price; he said he would let us know if he could do any better;, and I think that evening he came back again.

Q What is that? A He came back that evening and wanted to know what we would give for them; I told him I didn't exactly know and so he came in a couple of days following and was willing to sell them at a dollar a piece, which was

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\$12 a dozen. We told him we would not be able to use them; then he wanted to sell them to us on consignment; we told him then -- I didn't think we would be able to use them as they were a foreign make rod.

Q It was a rod for foreign use? A Yes, sir; and he said he would like to send them in, and see if we could get rid of them for him; he was willing to sell them very low.

Q Did he send them in? A Yes, sir.

Q How many days after the day that you first talked to him? A Well I think about three days after, on a Saturday.

Q How did they come, on a truck or by hand? A By hand.

Q Somebody carried them in? A Yes, sir.

Q Not this defendant? A No, sir.

Q How many were there? A 40.

Q Was he there then? A Yes, sir.

Q While in your store what conversation did you have with him? A He said he was willing to sell them at that price, he wanted to know if we could sell them for him; he came around on Monday and wanted to know would we buy them; he wanted to borrow \$25 on the rods; said he was a little short, any my father told him he would not give him any money

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on the rods.

Q Were you present? A Yes, sir.

Q Go on. A That they were of no use to him; he said he had a friend in Ossining, New York, and wished to sell them for him; he wanted to know if we would sell them for him; he didn't want to sell them direct; my father said he wouldn't do that. Mr. Cohen came around that evening again, and my father told him to take the rods away, we couldn't use them, it was very funny he wanted us to sell the rods when they were his rods.

Q Cohen sent for them the next day? A Mr. Cohen came in, and took the rods with a man on a wagon.

Q While Cohen was present? A Yes, sir.

Q How long were those 40 rods in your place?

A Altogether about three days.

Q This rod, People's Exhibit 2 remained with them?

A Yes, sir.

Q Do you know a police officer named Miller?

A Yes, sir.

Q When did you first see him after the other 40 rods went away? A Well, that I ain't exactly sure of.

Q Was it afterwards? A Yes, sir.

Q It was after that time? A Yes, sir.

Q Did you have a talk with him? A Yes, sir.

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Q Yes or no? A Yes, sir.

Q Did you give him this rod People's Exhibit 2?

A Yes, sir.

Q At that time? A Yes, sir.

CROSS EXAMINATION BY MR. SPIELBERG:

Q What is your full name? A Henry C. Parke.

Q How old are you? A 19.

Q You were about 18 a year ago? A Yes, sir.

Q You and Cohen were not particular friends, were you?

A No, sir.

Q He didn't know you for any length of time?

A No, sir.

Q But you knew Cohen, didn't you? A No, sir, only for a couple of days.

Q A very short time? A Yes, sir.

Q So when you said you knew him 18 months you were mistaken? A I have seen him once; he had a sign made, and that was the only way I knew him.

Q Your father knew Cohen? A Only the time he seen him when he came in to order the sign.

Q Before this particular transaction of these rods took place your father painted a sign for Cohen? A Yes, sir.

Q In Cohen's place of business? A No, sir.

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Q Where? A In our place of business; I delivered it to Cohen.

Q It was a sign Max Cohen? A I don't exactly remember the wording on the sign.

Q It was a sign for Cohen's store? A Yes, sir.

Q Cohen had a store? A Yes, sir.

Q About three blocks from you? A Yes, sir.

Q That is how Max Cohen and your father got to be acquainted? A Yes, sir.

Q When Cohen came to you you knew him to be the same Cohen you had delivered the sign to? A Yes, sir.

Q You knew where his place of business was?

A Yes, sir.

Q You knew the kind of business he was in? A Yes, sir.

Q You had been in his store once before? A Yes, sir.

Q Your father had been in his store? A No, sir.

Q Did your father know in what business Cohen was?

A Yes, sir.

Q Because he painted a sign for him? A Yes, sir.

Q The sign stated his business? A Yes, sir.

Q What was his business? A Junk business.

Q Now, Parke you were in the fishing rod business?

A Yes, sir.

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Q You had a lot of these rods displayed all over the store? A Yes, sir.

Q And in the window? A Yes, sir.

Q When Cohen came to you he said he had some rods he wanted to sell? A Yes, sir.

Q And he asked you to go over to his place and look at them? A Yes, sir.

Q You came to his place, and he showed you this one rod? A Yes, sir.

Q Where was it, in the window? A No, sir.

Q Near the window? A Inside the store.

Q Near the door? A I don't exactly know where he had it at that time.

Q Were there any people around when he spoke to you?

A I believe his wife was there.

Q Anybody else? A That is all.

Q This was in broadday light? A Yes, sir.

Q You took this rod along? A Yes, sir.

Q Gave it to your father? A Yes, sir.

Q Put it in the window, didn't you? A Yes, sir.

Q Didn't Cohen tell you not to put this rod in the window? A No, sir.

Q He didn't say anything of the kind? A No, sir.

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Q Didn't he tell you not to show this rod to anybody?

A No, sir.

Q Warn you to be careful about this particular rod?

A No, sir.

Q Didn't say a word about that? A No, sir.

Q You say he took the other 40 rods? A Yes, sir.

Q Brought them over there? A He sent them there.

Q He sent them in with somebody? A Yes, sir.

Q He followed later? A Yes, sir.

Q Quite a bulky package these 40 rods, weren't they?

A Not so very.

Q Took up as much space as I show you now? A About two feet square.

Q When he brought in these rods what did you do with them? A Just left them there; they were right in the store.

Q When was it that these 40 rods were brought in?

A On a Saturday.

Q What day of the month? A Well that I ain't sure of.

Q Springtime, wasn't it? A Yes, sir.

Q Just the time it is now? A Yes, sir.

Q Wasn't it later than now just about May? A No, sir, in March.

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Q How do you know it was in March? A Because it was the Saturday following the 18th.

Q There are Saturdays every month? A Yes, sir.

Q It was the 18th of March, a Saturday? A No, sir, I ain't sure of that, I think it was a Thursday.

Q The 18th, a Thursday? A Yes, sir.

Q St. Patrick's Day was Wednesday that year?

A I think so.

Q Don't you remember it? A It might have been later; it might have been.

Q You are not sure on what day you took the first rod from Cohen's place? A On the 18th of March.

Q How do you know it was the 18th? A Because I know it was the 18th.

Q How do you know? A Well, that is the only one I was sure of.

Q Who told you it was the 18th? A Well, I done some business that day, and I know the date from that.

Q What business did you do? A I made three poles for a man in Spring street and they were to be done on that day.

Q What day of the week was the 18th? A I told you it was Thursday I think.

Q There is nothing fixed definitely in your mind that it

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was the 18th? A No, sir, not exactly.

Q Not exactly? A No, sir.

Q Do you know when St. Patrick's Day was this year, what date? A I couldn't exactly remember.

Q It was on the 17th of March? A Well, I know it was on the 17th.

Q The 17th of March? A Yes, sir.

Q The same as it is every year? A Yes, sir.

Q What day was it this year, what day of the week was it, Tuesday or Wednesday? A I think it was on Wednesday.

Q This year? A I think so, I am not sure.

Q Then if this year it was on Wednesday then it wasn't last year on Wednesday? A No, sir.

Q Was it? A No, sir.

Q So you don't remember when St. Patrick's Day was a year ago, 1910? A No, sir, I do not.

Q You do not? A No, sir.

Q It might have been a Saturday? A I know it was on the 17th.

Q Of course it is every year. A I am pretty sure it was on a Wednesday or a Tuesday.

Q You don't know what day of the week it was on?

A I ain't sure of that.

Q I ask you to fix it definitely in your own mind --

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what fixes it so definitely in your mind that you bought these rods from Cohen, that you took these rods from Cohen on the 18th of March? A I got that sample off Mr. Cohen on the 18th.

Q What makes you remember it was the 18th? A I remember it was the 18th.

Q You remember? A Yes, sir.

Q No mistake about it? A No, sir.

Q You don't remember what day of the week it was?

A No, sir, I do not.

Q Did you make any memorandum in any book? A No, sir, I did not.

Q Didn't write it anywhere at all? A No, sir.

Q But you are willing to testify positively that you can not be mistaken? A yes, sir.

Q That this was the 18th of March? A Yes, sir.

Q How long after that were the 40 rods delivered at your place? A Two or three days afterwards.

Q Not later? A No, sir; not later.

Q Deliever in broad daylight? A Yes, sir.

Q What did you do with those 40 rods? A I just left them where we got them, in the front of the store.

Q In the front of the store? A Yes, sir.

Q You have a store that faces Christopher street?

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A yes, sir.

Q A busy street over there? A Yes, sir.

Q How long thereafter did Max Cohen come to see you?

A Well, he came right in after the rods came there.

Q The same day? A yes, sir.

Q Daylight? A yes, sir.

Q Were there people in the store when he came in?

A Yes, sir.

Q A lot of them? A I don't know about a lot, one or two anyway.

Q There were several people? A Yes, sir.

Q You and your father? A Yes, sir.

Q And a couple of more gentlemen? A I think so.

Q When Cohen came in what did he say?

A He wanted to know what we would give for them; he said he was willing to sell them for \$2.00 a piece, and he would bring them down to a dollar a piece, if we could use them.

Q Did he speak in the presence of all these people?

A He spoke in the presence of one.

Q Outside of yourself and your father? A yes, sir.

Q An outsider? A yes, sir.

Q What did you or your father say? A My father told him he didn't think we could use them.

Q Did he ask for a check? A Yes, sir; he wanted to borrow \$25 on the rods.

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Q Borrow money from you? A Yes, sir.

Q Was it in payment of these rods? A No, sir.

Q He asked for a check? A For a check, yes, sir.

Q He said, "Can't you give me a check for \$25"?

A Yes, sir.

Q In the presence of these strangers? A Yes, sir.

Q Of these two strangers? A Yes, sir.

Q Who ever was there?

MR. JACOBY: How many were there?

THE WITNESS: Only one.

Q Do you know who he was? A No, sir, I do not exactly remember now.

BY MR. SPIELBERG:

Q Now, Mr. parke, didn't Cohen while he was in your store, while you had these 40 rods, ask you to keep these rods in the back of the store? A No, sir.

Q To keep them out of view so that everybody could see them? A No, sir.

Q Didn't he ask you to keep them out of the window? A No, sir.

Q On the contrary he asked you to try and sell them? A Yes, sir.

Q Display them to the best advantage? A Yes, sir.

Q Put them in the window if you could? A Put them in the window.

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Q He didn't ask you -- A We didn't put them in the window if we didn't buy them.

Q But he made a proposition to you to leave them there on consignment, as you say? A Yes, sir.

Q In other words he said he keep them here if you sell them you will pay me"? A Yes, sir.

Q If you can't sell them you won't pay me, and return them, is that right? A yes, sir.

Q Return them? A Yes, sir.

Q In other words the property was to remain his until you sold or returned them? A yes, sir.

Q Did he say that in the presence of your father, yourself and this stranger? A yes, sir.

Q He told you that they were gotten where? A At auction.

Q Did he say these rods came from auction? A We asked him where he got them and he said he got them at auction.

Q Do you remember particularly whether he said he got them at auction or they were gotten at auction? A Well, I can't exactly remember.

Q He may have said these rods were gotten at auction?
A He might have said that.

Q Now was there any man with him when he came to see you? A No, sir.

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Q At no time? A No, sir, at no time.

Q Even when he came to take them back? A When he came totake them back there was a man with him.

Q Is that Mr. Levinson? A No, sir.

Q What was his name, Clark? A The man he sent was a man named Comiskey, he came on a wagon and took them away.

Q But when he brought them there was nobdy with him?

A No, sir.

Q How many times in all was he in your store?

A About four or five times.

Q Each time he spoke in the presence of anybody that was there? A Yes, sir.

Q Spoke in a liud tone? A Yes, sir.

Q Natural tone of voice? A Yes, sir.

Q Did not call you aide to speak to you? A No, sir.

Q Did not call your father aside to speak ? A No, sir.

Q When he asked for a check your father said he could not give him a check? A Yes, sir.

Q That was all that happened ? A Yes, sir.

Q There is no feeling between yourself and Mr. Cohen?

A No, sir.

Q Between your father and Mr. Cohen? A No, sir.

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Q He paid you for the sign? A Yes, sir.

BY A JUROR:

Q When he brought this rod to you to sell he asked you \$2 for that? A Yes, sir.

Q You said they were too high? A Yes, sir.

Q Are you a dealer in rods? A Yes, sir.

Q You buy rods? A Yes, sir.

Q What was the value of that rod when he asked you \$2 ?

A The value was worth about \$18 a dozen.

Q When he asked you \$2 it was 50 cents more than the rod was worth? A Yes, sir; we didn't say we would buy them; he offered it for a dollar.

A JUROR: Is there anything in the testimony of any witness, so far Mr. Shuler or anyt one else to show what the price was?

THE WITNESS: The exact value is \$21 a dozen.

Q How do you know that? A From the man that made these rods.

Q Is that the retail or wholesale price? A Yes, sir.

Q \$21 a dozen? A Yes, sir.

BY THE FIRST JUROR:

Q You mentioned that you spoke to a police officer about these rods? A Yes, sir.

Q Why did you do that? A Mr. Miller.

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MR. JACOBY: The juror asks a question which I should be very glad to have the witness answer but I consider it is incompetent. If the counsel has no objection the witness may answer it.

MR. SPIELBERG: I haven't any objection to anything that the jury wish.

Q Why did you give the rod to Officer Miller?

A Mr. Miller asked me for it.

Q Asked you for the rod? A yes, sir.

Q He knew you had those rods? A I had that one.

Q You had told him you had these rods here?

A I had that one.

Q You told him? A yes, sir.

Q Why did you tell him? A Well, I don't like to state that. I notified Mr. Miller I had this rod; he said these rods were missing, and that he would like to find out where they were. I notified Mr. Miller.

Q Do you know how he heard there were rods around?

A I notified Mr. Miller.

Q Why did you do that? A Well, because they sent out an order that these rods were stolen.

BY MR. JACOBY:

Q They were searching around among places where rods were for sale and among them your place? A yes, sir.

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Q You told him? A Yes, sir.

BY THE COURT:

Q When you say he sent out an order or a notice that rods had been stolen what sort of a notice was it, printed?

A Yes, sir.

Q A postal card? A Yes, sir.

Q That is what you received from the Detective Bureau, did you? A No, sir, we didn't get this from the Detective Bureau.

Q Did somebody call your attention to it? A Yes, sir, a man named Slevin.

MR. MR. JACOBY:

Q There was an advertisement in the paper, isn't that it? A Yes, sir.

Q You communicated with the Police Department?

A Yes, sir.

Q Is that right? A Yes, sir.

BY MR. SPIELBERG:

Q When did you get notice that the rods were stolen, when you had them in your possession? A Yes, sir.

Q After you saw Cohen? A Yes, sir.

Q How did you happen to keep this ^{one} rod if you didn't buy any? A That was left there waiting for Cohen to take it; that was a sample rod.

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Q Somebody called for those 40 rods? A Yes, sir.

Q Was it Cohen himself? A Yes, sir.

Q Did you give him the 40? A Yes, sir.

Q Did you count them over, all in one bundle?

A I gave him that bundle that was left there.

Q You kept one back? A That rod was a sample,
that was given first as a sample.

Q You kept the sample? A It was there any time he
wanted it.

Q You didn't tell him you would keep one, did you?

A No, sir.

Q You just held it back, didn't you? A Yes, sir, I
just left it there.

Q Now you say that the value of these rods was about
\$1.75 a piece? A Yes, sir.

Q \$21 a dozen? A Yes, sir.

Q Is that right? A Yes, sir.

Q How many of those rods have you seen in your very
life? A How many of them?

Q How many, in a general way? A I haven't seen many
like that; I haven't seen many like that before.

Q How do you know this is worth \$21 a dozen?

A Because the man from Montague City --

Q You don't know anything of your own knowledge?

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A I valued the rod about \$18 a dozen.

Q You valued the rod about \$18 a dozen? A Yes, sir.

Q The wholesale price? A Yes, sir.

Q He was asking \$2 a piece, he was trying to make a little profit on the rod? A Well, I don't know what the wholesale price was.

Q Is that much out of the way, \$2 a piece?

A Only \$6 a dozen, that is all.

Q A dollar a piece isn't much out of the way to buy it for, you being a wholesaler? A That is much less than the wholesale price.

Q It is worth a dollar a piece? A Yes, sir.

Q You could afford to buy that for \$1, and sell it for a dollar and a half? A We couldn't sell them, that's the trouble.

Q You can't sell them in this country, that's the idea? A Yes, sir.

Q Where is your father? A My father is in Philadelphia.

Q He is not here? A No, sir.

Q Mr. Parke, when you took this rod, you took it from Cohen in the store? A Yes, sir.

Q In broad daylight? A Yes, sir.

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Q Did you examine it before you took it?

A No, sir, I did not.

Q Did you examine the 40 rods? A No, sir, I never did look at the other 40.

Q Did you look at any one of the 40? A Only at the box they were in; I never took them out of the box they were in to look at them.

Q Will you tell me whether any of the other rods had that part cut out? A I didn't look at the other rods.

Q Did you notice this part cut out? A Yes, sir.

Q When? A In our place.

Q When? A I can't exactly tell you when.

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

Q You never took notice to it before now? A I noticed it when the detective got it, yes, sir.

Q When the detective had it you noticed it? A When I gave it to them.

Q That is right, when he gave this rod to Miller, you noticed that there was something cut out of it? A Yes, sir.

Q But when you took it from Cohen you didn't notice it? A No, sir.

Q When you brought it to your place, before you made an offer, you and your father looked it over pretty care-

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fully, didn't you? A Yes, sir.

Q At that time you didn't notice that?

(No answer.)

BY MR. JACOBY:

Q Did you ever make an offer for the rods? A No, sir.

BY MR. SPIELBERG:

Q Mr. Parke during the time that Mr. Cohen was in your store -- A Yes, sir.

Q At the time you talked about it to your father?

A Yes, sir.

Q During all the various occasions that you have testified to, four or five times, Cohen came to your place, did you ever notice that this thing was cut out?

A Yes, sir.

Q When was it that you noticed that? A That was a few days after we had it.

Q When you gave it to Miller, the detective? A Yes, sir.

Q That is the time you noticed it? A Yes, sir.

Q You don't know who did the cutting? A No, sir, I do not.

Q This rod was in your store? A Yes, sir.

Q With the great many other things? A Yes, sir.

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Q Didn't you testify in the Magistrate's Court that when it came time to have -- when the time came to take these rods back from you other people called for them and not Cohen? A There was a man named Comiskey called for them, and Mr. Cohen was with him.

Q The two came into your store? A Yes, sir.

Q Didn't you testify that Comiskey came into the store? A Comiskey came inside and Cohen was right there, he stood right by the door.

Q And ordered these rods to be taken away? A Yes, sir.

Q This was also in broad daylight? A Yes, sir; it was in the morning.

Q When you heard these things were stolen from some unknown source did you go to see Cohen? A No, sir.

Q You told Miller about it? A Yes, sir.

Q What did you tell Miller, "Cohen has some rods".

A Yes, sir.

Q Did you tell Miller the whole story that Cohen tried to sell you? A Yes, sir.

Q That he was there on a number of occasions?

A Yes, sir.

Q And the rods were in your possession for all of the time? A Yes, sir.

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Q Still one rod remained in your possession?

A Yes, sir.

Q Cohen was not very anxious to get this one rod back, was he? A I don't know.

Q He did not call for it? A He was there, I guess when I was out.

Q He was there when you were out? A Yes, sir.

Q When he took these rods back, did he count them to see whether they were all there? A No, sir they were delivered in the same bundle they came in.

Q He took them in a bundle? A Yes, sir.

Q He didn't ask you for the original rod he had given you? A No, sir.

Q Never asked you to return it? A No, sir.

Q Cohen never came and asked you for that rod?

A No, sir.

F R E D C U N Z, a witness for the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Cunz, you have been living in New York all your life, haven't you? A Yes, sir.

Q You have pleaded guilty to the crime of criminally re-

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ceiving stolen property, haven't you? A Yes, sir.

Q Were you sentenced to punishment? A Yes, sir.

Q When? A The 25th of June.

Q What punishment did you get? A Six months in the Penitentiary.

Q Blackwell's Island? A Yes, sir.

Q You have served your time? A Yes, sir.

Q Now, do you know a man named Comiskey?

A Yes, sir.

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

Q Did you ever see the defendant together with Comiskey, yes or no? A No, sir.

Q What is that? A No, sir.

Q Were you ever with Comiskey and the defendant there together? A We were down in the junk shop.

Q Now, when was the first time that you and Comiskey and this defendant were in the junk shop together? A The last week in March, 1910.

Q Did you go down there with Comiskey? A yes, sir.

Q Was the defendant there? A Yes, sir; he and his wife.

Q Was there a talk there? A Yes, sir.

Q Tell us everything that was said at that time by you, Comiskey and the defendant? A I and Comiskey went down

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to this man's place, in a junkshop.

Q What did you tell him? A Asked him to buy five watches that had been stolen off a truck.

Q Did you tell him that? A Yes, sir.

Q What did he say? A He said he would take them, go down to the market, and see what their value is, and he would pay us afterwards for them.

Q How many watches did you speak of to him?

A Five; they looked something like automobile clocks.

Q Big things? A Yes, sir; about that big.

(Indicating)

Q Well, was there any conversation about anything else? A Well, he said he was short of money, he has been arrested for the fishing poles.

Q Tell us what he said about the fishing poles?

A He says that he has been arrested for buying fishing poles; that he had cut up the rest of them and burned them in the back of the room.

Q Who said that? A Cohen.

Q Cohen said that? A Yes, sir.

Q Did you know anything about fishing poles? A Well, I knew they had been sold to him about two weeks before that.

Q Did you ever see the fishing poles? A Yes, sir.

Q When did you first see any fishing poles? A St. Pat-

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rick's day; the day after the truck was stolen.

Q Where did you see them? A In 56th street.

Q In what part of 56th street? A Between Second and First avenue.

Q I show you People's Exhibit 2 and ask you whether that is anything like the fishing poles that were stolen from the truck? A Yes, sir; that's them.

isn't it?

Q That is one of them? A Yes, sir.

Q Did you ever see any fishing poles like that in the possession of Cohen? A No, sir; I did not see none in the place.

Q Did he say anything about them except as you have told us? A He said he cut the rest of them up; they only got one for evidence against him.

Q That was when? A That was the last week in March.

Q Had you know Cohen before March, 1910? A No, sir.

Q Had you ever heard of him before? A I heard he was a receiver.

Q You had heard of him? A Yes, sir.

CROSS EXAMINATION BY MR. SPIELBERG:

Q Tell me all about it? A I heard he was a receiver in stolen goods.

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Q Of stolen property? A Yes, sir.

Q That Max Cohen was an old fence? A Yes, sir.

Q For how many years was he a fence? A I don't know.

Q A good many years in New York, wasn't he? A Might have been for all I know.

Q You knew Max Cohen was an old timer; didn't you?
A I don't know, I heard it.

Q You said just now you heard Max Cohen was an old fence?
A Yes, sir; I heard it.

Q Do you know any boys that used to sell to Max, do you? A No, sir.

Q Didn't Comiskey tell you he sold to Max?
A Comiskey? I knew him, and Taylor.

Q They sold a lot of stuff to Max Cohen?
A Yes, sir.

Q What year was that? A 1910.

Q Only then? A That is all I know.

Q Did you hear anything about stolen property in 1907 or 1908? A No, sir.

Q Before 1910, you didn't hear about anything --
so when you said a moment ago you heard he was an old fence,
a man who buys stolen property -- A In 1910.

Q Only in 1910? A Yes, sir.

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Q You heard he became a fence in 1910? A No, sir; I did not; all I know was these people I met said he was a receiver of stolen goods.

Q Now the day when you went in there was the first time that you saw Cohen in your ^{life}? A Yes, sir.

Q He and his wife were standing there? A Yes, sir.

Q What did you say when you came in? A What did I say?

Q Yes. A His wife knew Comiskey, didn't know me,

Q You didn't say anything at all as a matter of fact?
A Well, afterwards I did; I didn't approach her first because she didn't know me; she didn't approach me.

Q Did you say anything? A No, sir, I didn't say anything.

Q So when you testified a moment ago, you asked him wouldn't he buy five watches you were mistaken?

A Comiskey did.

Q I asked you what you said. What did you say to Cohen?

A I didn't say anything to Cohen when I first went in.

Q You didn't say what you were there for? A No, sir.

Q Did Cohen speak to you two people? A Afterwards.

Q He said he had 40 of these rods? A I don't know how many he had.

Q He said he had a lot of these rods? A Yes, sir.

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Q And burned them in the back in the stove over there?

A He sawed them up and burned them up.

Q He destroyed them so that the police couldn't get them

A Yes, sir.

Q How did he come to tell you that? A Because the only --

BY THE COURT:

Q Did he say that he destroyed them so that the police could not get them? A He destroyed them; he told us that they only had one fishing pole for evidence against him.

Q Did he say he destroyed them so the police couldn't get them? A He did.

Q Or say he simply destroyed them? A He destroyed them.

Q What did he say -- counsel is stating something additional to that. He said he cut them up, didn't he?

A Yes, sir.

Q He burned them? A Yes, sir.

Q He didn't tell you why he did that, did he?

A No, sir; he did not tell me why.

BY MR. SPIELBERG: :

Q He also told you he had just been arrested charged with a crime, is that right? A Yes, sir; buying fishing poles.

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Q Fishing rods? A Yes, sir.

Q Did he tell you whom he bought the fishing rods from?

A Yes, sir.

Q Who did he say he bought them from? A Comiskey and Sivirski.

Q Who are they? A Well, they were, I believe, Sivirski was the man that stole the truck.

BY MR. SPIELBERG: :

MR. JACOBY: Comiskey, it has been testified to was the man that took the 40 rods away.

BY MR. SPIEGELBERG:

Q Did you ever appear against him in the Magistrate's Court? A Yes, sir.

Q At that time did you tell the same story then in the Police Court? A I did, yes, sir.

Q The same story you are telling now? A Well, I didn't include about the cutting the fishing poles up.

Q Did you tell in the Police Court also when sworn to tell the truth that Coheb told you that he had bought these fishing pods, but that he had cut them up, and burned them; did you so swear? A No, sir; I said he told me he had bought the fishing rods.

Q That is all you said at that time? A Yes, sir.

Q That was before you were convicted? A Yes, sir, that was before I was convicted, but I had pleaded guilty

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before that.

Q You had pleaded guilty before you testified, did you?

A I made a statement before I went to Jefferson Market to assistant District Attorney Breen.

Q To Assistant District Attorney Breen? A Yes, sir.

Q But you didn't make the statement that you made to day in Jefferson Market? A No, sir; I didn't know about cutting the fishing poles up.

Q Or burning them? A No, sir.

Q You were not informed about that, were you?

A No, sir, I didn't have time to explain that.

Q They held him without asking you any questions?

A Yes, sir.

Q Now you pleaded guilty, that is you were not convicted by a trial jury? A No, sir.
BY MR. JACOBY:

Q You pleaded guilty to receiving this stolen property? A Yes, sir.

Q And disposing of it? A Yes, sir.

Q You took your punishment? A Yes, sir.

Q You have done your time? A Yes, sir.

Q You are not getting anything for this testimony?

A No, sir, not one penny; I am losing something by it;

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I am losing a day's pay by it.

Q You have a job? A Yes, sir.

Q Where are you working? A Burns Brothers.

Q The coal people? A Yes, sir.

Q And have been how long? A For two weeks.

Q You have got your position with them now?

A Yes, sir.

Q In spite of the fact that you have been in prison?

A Yes, sir.

BY THE COURT:

Q What sentence did you serve? A Six months, in the Penitentiary.

MR. JACOBY: I took his plea your Honor.

Q Were you with Comiskey when he stole this horse and truck? A No, sir.

Q How did you come into it? A I knew the boys. I used to work for a man named Keahon: a truckman on Tenth avenue.

Q Speak so that the last jurymen can hear you. When did you work for Keahon? A In 1910.

Q 1910? A Yes, sir; I used to come along these docks, and pick up some of the shipments you know from the other side, and some of these boys used to load the trucks up, and they used to get five or ten cents for that.

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By loading these trucks up I got acquainted with them in that way.

Q When did Comiskey first tell you that he stole the horse and truck? A It was on the night of the 16th.

Q The 16th of March? A Yes, sir.

Q Where were you? A I was on 19th street and Tenth avenue; just came up from the stable.

Q He met you. Did he have the horse and truck then?

A No, sir.

Q Did you go with Comiskey at the time that the goods were delivered to Max Cohen? A Yes, sir.

Q The defendant? A Yes, sir.

Q Did you see Comiskey deliver the goods to Max Cohen?

A Yes, sir.

Q What bargain did he make with Max Cohen? A Well, he didn't give no price; he gave three dollars for those watches.

Q I do not mean the watches, I mean the fishing poles? A No, sir, I was not there.

MR. JACOBY: He said he was not present when the fishing rods were delivered to Max Cohen, but he has testified to a conversation that he heard or that he had with Max Cohen when he made a certain statement.

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MR. SPIELBERG: I ask that all this be stricken out.

THE COURT: Strike it out.

BY THE COURT:

Q You were not with Comiskey at the time Comiskey delivered the fishing rods to Max Cohen? A No, sir.

Q How long had you known Max Cohen before the incident of the watches being delivered to Max Cohen? A I didn't know him at all; that was the first time I ever saw him.

Q The first time you ever saw him? A Yes, sir.

BY THE FIRST JUROR:

Q You swore in answer to a question before by saying that he could not give you any money because he was in some trouble about fishing rods, and you stopped there, explaining why he had cut these up -- you say that he cut them up? A Yes, sir.

Q When you asked him about the watches? A Yes, sir; he said he could not pay us the full value of the watches because he was in trouble on account of fishingpoles.

Q He was going to find out what these watches were worth? A Yes, sir.

Q As I understand you? A Yes, sir.

Q Did he stop there to find out what the watches were worth? A No, sir; three dollars he paid us, and he took

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them to the market.

Q You took the three dollars? A Yes, sir.

Q What sort of watches were they? A Well, I don't know; they were silver, like nickel plated, something like an automobile clock.

Q Big clocks? A Yes, sir.

Q They were automobile clocks? A Yes, sir; something like that.

Q Did Max Cohen ask you where you got the watches?

A He knew where.

Q Did he ask you where you got them? A He did not; Comiskey had told him where the fishing poles came from.

Q You went in there and told him you had five watches stolen from a truck, didn't you, did you tell him that?

A No, sir, I did not.

Q Where did you tell him you got the watches from or the clocks, did he ask you where you got the watches from?

A On that day? Not for the watches he did not.

Q Didn't you say before you told him these watches were stolen off a truck? A Comiskey told him that the fishing poles were stolen.

BY MR. SPIELBERG: :

Q I ask you now didn't you swear a moment ago in reply to questions put to you by this gentleman that they were taken off a truck, didn't you so swear to that? A I don't remember saying that.

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

MR. SPIELBERG: I would ask that the stenographers minutes be read.

BY A JUROR:

Q I understood you to testify that you went in there with five watches, is that right? A Yes, sir.

Q You asked him to buy them? A Yes, sir.

Q You told him they were stolen from a truck, isn't that so -- you so testified?

THE COURT: Let the witness answer.

Q Did you tell Cohen at the time you sold him the watches that they had been stolen from a truck, answer that yes or no. A Well, I don't remember whether I did or not.

Q Did you so testify to it to day, that is what I want to know, if you did why did you?

(No answer.)

BY MR. SPIELBERG:

Q Did you so testify, when you came in you said those watches had been stolen off a truck, didn't you say so today, did you so testify today that when you went in with the watches to Cohen that you told Cohen that these watches were stolen from a truck? A No, sir, I don't remember.

THE COURT: He says he doesn't remember

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having said so.

BY MR. SPIELBERG:

Q Now, if you did say so, you lied, didn't you?

(No answer.)

THE COURT: The witness says he doesn't remember having said so.

(The stenographer reads the testimony.)

THE COURT: That testimony does not ^{so}correctly state that he did.

BY A JUROR:

Q When you told him that did you tell him they were stolen from a truck?

THE COURT: The witness says he did not tell him they were stolen from a truck. The watches were stolen from a truck.

Q Did you tell Max Cohen the watches were stolen from a truck? A They were stolen from a truck.

Q Did you tell him they were stolen from a truck?

A Well, I don't remember saying that, if I did at that time.

THE COURT: He says he does not remember.

All we want is his best recollection. He says that he does not remember having told Cohen they were stolen from a truck.

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BY THE FIRST JUROR:

Q When you said stolen from the same truck as the fishing rods -- A Yes, sir.

Q Were they stolen from that same truck? A Yes, sir.

Q They were stolen from the same truck as the fishing rods were stolen from? A Yes, sir..

BY MR. JACOBY:

Q And the watch movements too? A Yes, sir, 2,000 wathh movements.

Q From the Waltham Watch Company? A Yes, sir.

Q Did you give any of the watch movements to Cohen?

A No, sir.

(Stricken out.)

Q Have you any knowledge whether Cohen got the watch movements? A I heard that Comiskey --

(Stricken out.)

MR. JACOBY: I ask your Honor to instruct the jury that the value of the articles, if any, which might have been criminally received by anybody has no relation to the crime; in other words that the crime of criminally receiving does not depend upon the value of the articles received.

THE COURT: The juror wanted to know the price for the purpose, probably, of ascertaining whether two dollars or a dollar was a high or low

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price.

MR. JACOBY: It is conceded that Officer Miller will testify that this identical rod, People's Exhibit 2 was received from Parke towards the end of March, 1910, and that it remained in his possession continually until delivered to Assistant District Attorney Jacoby. Assistant District Attorney Jacoby will testify, if call, that he received People's Exhibit 2 from Officer Miller on February 24, 1911, and has had it in his possession continuously up to the time of the trial. It is also conceded that Officer Wazansky will testify that he arrested the defendant Cohen.

THE PEOPLE REST.

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MR. SPIELBERG: Now I move that the indictment be dismissed and the defendant discharged from custody on the ground that the people have failed to make out a prima facie case. I will ask your Honor to hear me for one moment. As a matter of fact, I respectfully submit to your Honor that your Honor ought to direct a verdict of not guilty because there is no proof at all that this rod described by Mr. Schuler, who states that he examined it while being manufactured and placed it in the case -- assuming all that to be true there is no proof to connect the defendant with the rod or with knowledge that it was stolen. The other witnesses, McAllister, Kelly and the others testified that some case that looked like thousand of other cases which they had handled and which was only distinguished by the letters "A. B." meaning Austin Baldwin & Company in their minds. There is absolutely nothing to connect this rod with the defendant. I ask that your Honor dismiss the indictment.

THE COURT: No, there is enough to go to the jury. One witness testified to a conversation with the defendant.

MR. JACOBY: Outside of that your Honor, I claim there is ample evidence that this particular rod was part of a lot of rods that Cohen offered to sell to

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Parke, apart from the testimony of the accomplice.

THE COURT: So far as the identification of the rod is concerned Mr. Schuler, my recollection is, that Mr. Schuler testified that he had never manufactured any of this kind of rod before; had never shipped but this one particular lot of rods of this kind to this particular firm.

MR. SPIELBERG: I concede all that and your Honor is undoubtedly correct, but they have not succeeded in proving a larceny of these particular goods; the case falls short of proof that a larceny has been committed on these particular goods.

Motion denied; exception.

MR. SPIELBERG: Defendant rests, and renews his motion. If the District Attorney is not going to sum up I will not sum up.

MR. JACOBY: The People rest in rebuttal. Let us get the record straight.

MR. SPIELBERG: I am willing to let the case go to the jury on his Honor's charge.

MR. JACOBY: I will sum up.

MR. SPIELBERG: Then I am going to put the defendant on the stand if there is going to be an adjournment.

THE COURT: We will have to suspend until tomorrow.

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(The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow April 4, 1911 at 10.30 o'clock.)

New York, April 4, 1911.

PEOPLE vs. COHEN (Continued)

TRIAL RESUMED.

MAX COHEN, the defendant being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SPIRLBERG:

Q Now, Mr. Cohen, what is your full name? A Max Cohen.

Q Where do you live? A Libertyville.

Q Whereabouts is that? A Back of Kingston, on a farm.

Q Kingston, N.Y.? A Yes, sir.

Q What is your business? A Now in the farming business.

Q How long have you been in the farming business?

A Four weeks now.

Q You own your own farm? A Yes, sir.

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

Q Have a family? A Yes, sir.

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Q How many children? A Five.

Q You live with your wife and children? A Yes, sir.

Q Up in Libertyville? A Yes, sir.

Q How old a man are you? A Thirty-nine.

Q How long are you in America? A Since 1897.

Q About 14 years? A Yes, sir.

Q When you came to this country what was your occupation? A Pedler with dry goods and a pushcart.

Q And then? A Then I was in the grocery line at Ossining, N.Y.

Q Where Sing Sing Prison is? A Yes, sir.

Q How long were you at Ossining? A Six years.

Q Grocery business? A Yes, sir.

Q You owned your own property? A Yes, sir.

Q When did you sell that? A About April last April.

Q About a year ago now? A Yes, sir; a year ago this time.

Q Now prior to being six years in Ossining you were in New York City, before you bought the house in Ossining? A Yes, sir.

Q You lived in New York? A Yes, sir; I lived in New York.

Q When did you buy the junkshop in Greenwich street?

A That was somewhere along the 15th of February or in March;

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I started the first of March.

Q How long were you in the junk business in New York City? A A Month.

Q All told one month? A Yes, sir.

Q How long after your arrest, after you were arrested how long did you remain in the business? A After I was arrested about seven or eight days, eight or ten.

Q What did you do then? A I went in the dairy business out in Jersey City.

Q You sold out? A I gave it up entirely.

Q You were there all told about four weeks?

A Yes, sir.

Q Have you ever had a junkshop before or since?

A Yes, sir; I had about eight or nine years ago, eight or nine years ago about six months or seven at that time; about eight or nine years ago.

Q You bought a dairy in Jersey City? A Yes, sir.

Q After you gave up the junkshop in Greenwich street did you go to Jersey? A Yes, sir, I went to Jersey and bought a dairy.

Q Where in Jersey? A Jersey City Heights.

Q How long did you stay in Jersey City? A Till December; from last April until December.

Q What did you do in December? A In december I sold

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this and I bought a farm in Libertyville.

Q You are living there now? A Yes, sir.

Q That was last December? A yes, sir.

Q You still have the farm in Libertyville now?

A Yes, sir.

Q You live up there? A yes, sir.

Q Were you ever arrested or convicted in your life?

A Never in my life; not a day.

Q Now, coming down to the month of March last year did you have this rod in your possession? A Yes, sir.

Q How did you get this rod, tell us distinctly and talk out? A It was on a Friday, a day in March, I can't remember exactly the day, what day it was; I was out, it was the morning about 10 o'clock; I was out to buy a pack of cigarettes in the cigar store next door to me. Meantime I met a fellow who bought cigarettes there and he knows me, he recognized me and said, "I saw you somewhere" he says to me. So I looked at him, and I could not exactly remember, and when I was living at Ossining we had a parade there, once there was a parade, and that man was traveling with some flags and buttons, and that man stayed in my house, but I didn't catch on to him at that time. He reminded me of it, and he said, "You remember I was in your house", I said, "What are you doing now;" I am a pedler still, and I buy in auction all such stuff." And I called

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him into my store, and he had a bundle in his hand, and he started talking to me, and he has said to me that he would like to sell these poles if he could do so, and I told him "It ain't my line, I never handle any poles, but I will tell you, " I know a fellow who painted a sign for the junkshop for me and I saw him hanging some of these things in his place, and I think he is the man will buy them.

Q How long was it before this conversation with this man that you had the sign made? A I should say about eight or nine days, something like that.

Q Where did you have that sign made? A Mr. Parke's place in Christopher street.

Q Had you known Parke's before the day that you had the sign made? A No, sir; never before in my life.

Q How did you come to go to Parke's? A To have him make the sign; it is near the neighborhood; I inquired of the neighbors and they told me the sign painter is right there, the third block.

Q What was Parke's business? A Painting and these poles.

Q Poles? A Yes, sir.

Q Do you mean fishing rods? A Yes, sir, and painting signs.

Q Did he have a store? A Yes, sir.

Q That is all you knew of Parke's? A Yes, sir.

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Q You had never known him before that day?

A No, sir.

Q Now, what did you do with this rod? A So I said, "I will go up to this man and I will inquire" because I didn't think about the pole that there should be anything wrong, the least thing, I didn't think there was anything wrong with it, and I wouldn't have touched it if I knew it was wrong. I made an arrangement to make 10% on them; if I got \$40 I would make \$4 by this transaction; I tried to bring them together, and when he counted the money the man didn't have enough to pay for them.

Q Who didn't have? A Mr. Parke's didn't have money to pay for these poles.

Q Which Mr. Parke's were you talking with? A First talking to the young man and then the old man came, and the rest of the business was done with him; So Mr. Parke's was to send me the money; then he was trying to pay \$24, and he said will you take an ahead check". I said, "No, I couldn't do it; and Monday he said he will pay for it. On Monday he had some little business over in New Jersey, and I suppose he came to New York from there, and he said "I will tell you what I will do, I have \$4 here, you can keep the \$4 for me on account". He went away on Monday and then Tuesday he came again, and when he came I said "That fellow is here for his money". And I did not want

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to have anything to do with it. It was the son told me that, and then he said that he would pay the balance, and that was all I knew about it.

Q Did you take the rods to your place? A No, sir.

Q Who took them back? A I don't know; I didn't see them at all, the only thing he told me was he gave them back again to that man.

Q When you went to parke's did you go alone or did your friend go with you? A I was going one time with him, but other times I was going along.

Q At the beginning you went with your friend?

A Yes, sir.

Q What was this ^{name} man ~~who~~ was peddling these flags ?

A Hyman Levanson.

Q Did he tell you where he lived? A He told me he lives in Attorney street, but I could not exactly remember the number; if I would have remembered it, I would have gone there to find out where he is; he told me the number, but I did not remember it at the time.

Q Did you ever see the witness Cunz in your store?

A Never in my life.

Q Did you ever see a man named Miller? A No, sir.

Q Did a man come in with five big watches, such watches or clocks as you use on automobiles and show them to

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you? A No, sir.

Q And tell you they were stolen? A No, sir.

Q Did you ever tell him that you had the 40 rods that you burned them, broke them to pieces and destroyed them? A No, sir, I never talked with the other people; only Levinson; they never was coming to talk about them poles; the only transaction was done at the time.

Q You didn't get paid for these poles? A No, sir; didn't get two cents for them.

CROSS EXAMINATION BY MR. JACOBY:

Q You moved into this junkshop in Greenwich street in February, 1910? A Yes, sir.

Q Started in business there? A Yes, sir.

Q You had done business as a junk dealer some eight or nine years before? A Yes, sir; nine years before.

Q You have got a brother-in-law named Levine, haven't you? A Yes, sir.

Q You heard the testimony given about a lot of watch movements Waltham watch movements yesterday, didn't you?

A (No answer.)

Q Didn't you hear some testimony about a lot of Waltham Watch movements? A Yes, sir; I heard it.

Q Didn't you, as a matter of fact, receive about

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2,000 watch movements at the same time or about the same time and from the same person that you got this fishing pole from with the information that they were stolen goods, stolen from a truck on March 16th?

MR. SPIELBERG: I object to that. There was nothing brought out on the direct examination about watch movements.

THE COURT: I will allow him to answer it.

Exception.

Q Yes or no. A No, sir.

Q Didn't Comisky, a man named Comisky bring you a whole lot of watch movements? A No, sir.

Q Didn't you give those watch movements or send those very watch movements to your brother-in-law Levine after you were arrested here? A No, sir.

Q Last March? A No, sir.

Q Have you got a brother-in-law named Harry Levine?

A Yes, sir.

Q Did you ever hear that he had 2,000 watch movements or thereabouts?

MR. SPIELBERG: I object to that as entirely irrelevant and foreign to this issue. There hasn't been about a word of testimony introduced A anybody named Levine or any watch movement. The District Attorney might as well ask him about any transaction in his life.

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MR. JACOBY: I can ask him about any wrong act in his life.

THE COURT: He may.

Q What is your answer? A Well what is my answer? I heard of it one day that he was there.

Q Didn't you just answer that you did hear of it?

A Yes, sir.

Q Weren't you the man from whom he got those watch movements, yes or no? A Say that again.

Q Weren't you the man from whom Levine got those watch movements? A No, sir.

Q Last March? A No, sir.

Q Did you ever see the whole lot of 40 poles? A I have seen two bundles of poles.

Q Weren't they all brought to your place? A Yes, sir.

Q Didn't you bring them over or send them over to Parke's place? A Mr. Levinson and his boy carried them over.

Q Where is this man Levinson, you don't know, do you?

A No, sir, I don't know.

Q Never have seen him since? A No, sir.

Q Never saw him except the time he was up there at Ossining at the Hudson Fulton Celebration? A I saw him about eight years ago.

Q Didn't you ask Parke to take these rods and try and sell them for you in Ossining? A No, sir.

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Q Never said that? A No, sir.

Q Did you tell Mr. Parke, this young man that testified yesterday that you had bought these fishing poles at an auction sale? A I didn't tell him anything; I told him that this is.

Q What is that. Did you tell him you had bought the poles at an auction sale? A Not that I had bought them.

Q Did you tell him that anybody had bought them at an auction sale? A Yes, sir, I told him that this man said he bought them in auction.

Q Did you tell your counsel on direct examination that you asked Levinson where he got the poles, and he told you he bought them at an auction sale? A Yes, sir.

Q You mean to say that? A Yes, sir; I said it.

Q If you didn't say it, you mean't it? A Yes, sir, I said it.

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

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

Q Never saw him in your life? A No, sir.

Q Never heard of him since? A I don't know.

Q You do not? A No, sir.

Q Have you ever heard of Comiskey since? A No, sir.

Q You don't know what has become of him? A No, sir.

Q Do you know what has become of him? A I don't.

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know these people.

Q Do you know what has become of your brother-in-law Harry Levine? A Yes, sir.

MR. SPIELBERG: I object to that as immaterial, incompetent and irrelevant. What has become of anybody is not binding in this case. Does the District Attorney want to show that the man's entire family is in Sing Sing and that his grand father is in Siberia in Russia to prejudice this jury. Assume all this to be a fact I object to the statement of counsel, and we desire your Honor's ruling. I think this is a highly improper course.

MR. JACOBY: The question was "Do you know where your brother-in-law, Harry Levine is now", that is the question.

MR. SPIELBERG: Is this in any way material to this case. Isn't it simply done to prejudice the jury. You might as well ask him "Where is your father, isn't he in Siberia?"

MR. JACOBY: I have not said that Harry Levine is anywhere. We only have the statement of defendant's counsel. I have not suggested it.

MR. SPIELBERG: I object to that.

The District Attorney asked if he knows where Levine lives. That question would be proper.

MR. SPIELBERG: I will state to him where Le-

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vine is if he wants to know. I will give it to him in writing. I think this is an improper method of cross-examination.

THE COURT: Has this witness testified that he had any business relations with Levine?

MR. JACOBY: He denies that he gave Levine 2,000 watch movements, that he sold them to him or sent them to him. He has denied that.

MR. SPIELBERG: I respectfully submit, may it please the Court, that to show that Levine is doing time under a sentence would be improper. I don't know whether and he is or is not; I don't care.

THE COURT: I guess we will have to keep that out.

BY A JUROR:

Q You kept a junkshop? A Yes, sir.

Q What kind of a business had you outside of the junkshop or did you only keep a junkshop? A At that time I was only about a month or five weeks in it, and I wasn't thought with Ossining yet.

Q What did you keep besides a junkshop, any other things besides junk? A No, sir, nothing at all.

Q How did you come to buy these fishing poles?

A I didn't buy them; I said I didn't buy them.

Q You kept nothing but junk? A I didn't buy them;

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I thought they were straight because I wanted to make the 10% commission; if I knew that they were wrong --

Q Did you know this man's name? A Yes, sir. Levinson was his name; I thought he is a straight man and that he only wanted me to help him out, and to make \$4 commission, that is all it was; I didn't buy them; I didn't have anything to do with them.

Q Did you destroy 40 poles as stated? A No, sir.

Q Were they returned to your place after they left Parke's place? A Yes, sir.

Q Were they returned to your place? A No, sir; they just came in, and they went right over to him.

Q But they last time they were taken from Parke's place were they taken to your place? A No, sir; no more; from his place I didn't see them any more; I didn't see them any more.

Q You never saw them after that? A No, sir; I did not.

BY MR. SPIELBERG:

Q You heard Parke's testimony, and you testify you were not present when those 40 fishing rods were taken away from Parke's place? A I say now that I was not present.

Q You heard Parke's testify yesterday that you were there when 40 rods were taken away by Comiskey? A Yes, sir; he told me.

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Q Did you hear young Parke's testify yesterday that you were at Parke's place when a man named Comiskey took the 40 poles away. Did you hear Parke's testify to that? A I did not; I don't remember if he said it one way or the other; I was across the street, in the other block at the time he got them.

Q Did you hear Parke's say that you were there -- or you didn't hear him say it? A No, sir.

Q You didn't hear him say so, but if he did say so he was mistaken? A I don't know what it was.

Q If he did say so he was mistaken? A Well, that is the way it was --

BY THE COURT:

Q You may state whether or not you were present?

A No, sir, I was not.

Q Were you present, Witness in Parke's store or near -- by or alongside of Parke's store at the time the man came and took the rods away? A I was not.

Q How do you know that the same man took the rods away that left the rods there? A As I stated before he told me; he spoke to me.

Q He spoke with you? A Yes, sir.

Q The same man who delivered the goods took them away? A Yes, sir.

Q And you were standing right at the door when Comiskey

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took the rods away?

(No answer.)

Q Where were you standing when the man came to Parke's place and took the goods away? A I was in Ossining at that time; I don't know what time he took them.

BY A JUROR:

Q It has been testified that you and a man named Comiskey took the poles to Parke's place. You don't know him? A No, sir.

Q You went there with a man named Levinson? A Yes, sir.

Q You don't know Comiskey at all? A No, sir.

Q Quite sure it was Levinson? A Yes, sir.

Q Quite sure that the man you went with there was named Levinson? A Yes, sir; that is he gave me his name as Levinson, and he tells me I know him from before, that his name was Levinson; it might have been the same man under another name; I know him for the last eight years and his name is Levinson; I didn't see him in over eight years; I saw him eight years ago, and then at the last the Hudson Fulton parade at Ossining I saw him.

Q You remembered his name was Levinson for eight years?

A Yes, sir.

BY THE TENTH JUROR:

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Q You say you got this sample rod from Levinson?

A Yes, sir.

Q He brought those 40 rods to the store store?

A To parke's store.

Q Who took them them there ? A Me and Levinson

Q You and Levinson? A Yes, sir.

Q How did Comiskey come to get them back? A I don't know Comiskey.

THE COURT: The jurors will understand that the testimony upon which the case is to be decided must come from the witness stand.

Q How does Comiskey come to bring them back?

MR. JACOBY: I will explain that in my summing up.

BY MR. JACOBY:

Q Do you know a man named Comiskey? A No, sir.

Q Never seen a man named Comiskey in your life?

(No answer.)

Q Now the witness, Young Parke, testified that you came in and you tried to sell him these poles at \$2.00 a piece? A Yes, sir.

Q That is correct, is it ? A Yes, sir.

Q That he declined to buy them at \$2.00 a piece, as he says, and you came down to \$1.00? A Yes, sir; I was satisfied if he sells them at \$5.00 a piece.

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Q He says that \$2.00 was about 50 cents more than the poles were worth a piece? A Yes, sir.

Q Then you came down to \$1.00? A Yes, sir.

Q That is correct, is it? A Yes, sir.

Q If you didn't think you owned the poles why did you set that price with young Parke? A It wasn't me.

Q The other man set the price? A Yes, sir.

Q And young Parke says that you called more than once there, and then finally you came back, and said to him that you were in need of money, needed \$25, and if he wouldn't buy them to please loan you \$25 on the poles? A No, sir, I don't remember that.

BY A JUNIOR:

Q Did you ask a check for \$25 from Parke's or was it the other man? A The other man asked for \$25.

Q It wasn't you? A No, sir; and maybe I was between -- maybe it just happened between them; maybe I put in a couple of words.

Q The other man did all the talking? A Maybe I was only helping him, he did the talking, but he was the man that had the goods and I was the man who was to make the 10% if they were sold, -- I make it; if they ain't sold I make nothing.

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BY MR. JACOBY:

Q How long were those 40 rods at your place,
how many days? A About 10 minutes.

Q Before you took them to Parke's? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did Comiskey carry them on his back or did you have
a wagon? A When?

Q To take the 40 rods from your place to Parke's
place? A I know he was with a wagon.

Q The 40 rods were at your place first, weren't they?

A They were coming with a wagon, and with the wagon he
went right up to Parke's.

Q Did they bring them into your place from the wagon?

A Yes, sir.

Q How long did you keep them in your place? A About
10 minutes.

Q Then they put them on the wagon again? A Yes, sir.

Q You and a man you call Levinson drove over to
Parke's place, is that what you say? A No, sir;
we carried them, and the wagon was standing there.

Q Didn't you go over first with this man to see
Parke? A Yes, sir; with Levinson.

Q You left the other stuff in your place? A Yes, sir.

Q How will you please describe the man you call Levin-

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son, how old a man was he? A About 40 or 39.

Q 39 or 40? A Yes, sir.

Q Was he short? A No, sir, a good sized build, about your size. (Indicating the District Attorney).

Q Was he thin like me? A No, sir, stouter than you are.

Q What kind of a nose did he have, was it curved or straight?

A Well, I don't know that; I can't understand that.

Q Did he talk English like I do or did he talk with a foreign accent? A I should say he talked English about as good as I can.

Q We talked English like you do? A Yes, sir; not as good as you.

Q Would you take him for a foreigner or for a native?

A For a foreigner.

Q We was not an American? A No, sir.

BY MR. SPIELBERG:

Q Was he a Jew or not Jew? A A Jew like.

BY THE COURT:

Q The young man Gunz says that he was at your place more than once; that he had been there more than once; how about that? A I don't remember.

Q What is that? A I never saw him.

Q You never saw Gunz? A No, sir.

Q Not at all? A No, sir.

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Q Now what sort of a wagon did this man Levinson drive up to your junkshop in? A A top wagon.

Q A top wagon? A Yes, sir.

Q Describe it as near as you can. Go ahead and describe the top wagon which contained these poles?

A The poles he had inside, yes, sir.

Q He had these poles inside the wagon? A yes, sir.

Q Describe the wagon as near as you can? A Well, a top wagon, like a mile wagon.

Q What sort of a horse? A A black horse.

Q Did you say the Levinson slept at your house in Ossining? A Yes, sir; he stopped there for two days.

Q He slept at your house for two days? A Yes, sir; when it was the Hudson-Fulton Celebration.

Q You had known him eight years before that? A I had known him about eight years ago; did not see him in eight years until he came peddling.

Q You knew him before the Hudson-Fulton Parade?

A Yes, sir.

Q You knew him eight years ago? A Yes, sir; I think about two years ago I saw him.

Q You saw him two years before? A Yes, sir.

Q And eight years before that? A Yes, sir.

Q At the Hudson-Fulton Parade he slept two days in your house? A Yes, sir.

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Q Did he eat at your table? A Yes, sir; he ate and paid for it.

Q Ate and paid for his meals? A Yes, sir.

Q He ate at your table? A Yes, sir.

Q Now do you say when you met this man Levinson that day it was when you went out to buy some cigarettes?
A Yes, sir.

Q The man stepped up to you and said -- A He stepped out from --

Q He said to you, "Why I have seen you somewhere before"? A Yes, sir.

Q The man said, "I have seen you somewhere before?"
A Yes, sir.

Q And you looked at him, and said that you thought you had seen him somewhere before? A Yes, sir.

Q You didn't recognize him right off as a man that had been with you for two days? A I knew his face, but I couldn't catch on to it right off; I didn't know his face; I couldn't get on to who it was, but he says to me what his name was and I knew I saw him sometime.

Q Now then he told you-- what was he doing at the time you knew him eight years ago I mean before the Hudson-Fulton parade? A Selling buttons, flags and the like.

Q Selling buttons and flags? A Yes, sir.

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Q Did he tell you anything about changing his business?

A Yes, sir.

Q Selling fishing rods? A No, sir, not at that time.

Q That is last year when he brought these 40 fishing rods to your junk shop? A He told me that he buys them in the auction anything that he can get hold of.

Q He buys at auction anything he gets hold of?

A Yes, sir.

Q How did he say why he came to your junk shop to sell fishing rods? A He didn't come exactly to sell them to me it was just he talking that he came to it.

Q How far is Park's place from your place? A Three blocks.

Q Did he give any reason or do you know any reason why he came to you in the junkshop to help him dispose of fishing rods instead of selling them himself? A Accidentally.

Q He came in accidentally? A To buy cigarettes, near my store and I called him out of the store.

Q He told you that his line was selling fishing rods?

A Yes, sir.

Q Then he offered you 10% of the amount you could get for the fishing rods? A It took half an hour before we came to that talk; we had a conversation.

Q (Question repeated) A Yes, sir.

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Q Although he had told you that he was in that business himself? A He told me, but that is not exactly his business, sometimes he buys dry goods, sometimes clothes, sometimes he peddles whatever he gets hold of to make a dollar; that is what he is doing.

Q Let us get at this. Here is a man who came into you and told you that he was selling fishing rods, among other things as we will put it now? A Yes, sir.

Q Among other things he was selling fishing rods?

A Yes, sir.

Q You were in the junk business? A Yes, sir.

Q He came to your junkshop with a wagon with 40 rods in it? A Yes, sir.

Q And said if you would sell the rods for him he would give you 10%? A Yes, sir.

Q Did that excite your suspicion at all? A Not a bit.

Q Not a bit? A No, sir.

Q It would not excite your suspicion if a man should come in with 40 rods, the rods new or apparently new, and offer you 10% if you could get the cash on them;

that would not excite your suspicion? A The way he said was that he sells them and I told him that there was a place on Christopher street, a man who would buy them; he said, "If that man will buy what you advise him you should

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make 10% on it". That is all.

Q Do you know any reason why the Fred Gunz, the man
had
whom you heard admit on the stand that he aided Comiskey
in stealing fishing rods, why he should come on here
and testify against you? A No, sir, I don't know anything
at all.

Q You never saw the man before? A No, sir; I never
saw the man before.

Q You know of no reason why this man should say that
he had been at your place more than once? A No, sir.

Q With Comiskey to sell the rods to you?
(No answer.)

Q You know of no reason why he should say that Comis-
key sold the rods to you? A No, sir.

Q You don't know why he should put the blame on you?
A No, sir.

Q You have no idea of that? A No, sir.

Q How long have you been a farmer? A Well it is four
months now.

Q Four months? A Yes, sir.

Q Did you ever farm anything? A No, sir; nothing.

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

Q You could not break the ground in December?

A No, sir.

Q At the time you bought the farm? A No, sir.

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Q You are not much of a farmer, are you? A No, sir.

Q You said when you started off, giving your occupation, that you were a farmer? A Well, it is a farm and a boarding house.

Q You are going to run a summer boarding house?

A Yes, sir.

Q Isn't that it? A Yes, sir.

Q As an actual fact you have not struck a plow into the field, have you? A No, sir.

Q How many acres of land have you? A 50 acres.

Q How large a house? A Well, it is a good sized house.

Q How many rooms? A Well about 15, and then besides, there is a small, another little house.

Q A little house adjoining it? A Yes, sir.

Q How much of the time have you lived up there since December? A All the way till the last time I was called here; I also got a livery business.

Q You have a livery business up there too? A Yes, sir; I've got two horses there.

Q A livery? A Yes, sir.

HENRY C. PARKER, a witness called on behalf of the people in rebuttal, testified as follows:

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DIRECT EXAMINATION BY MR. JACOBY:

Q Will you describe the man Comiskey? A Well, I could not exactly describe him.

Q Did he talk English with a foreign accent? A No, sir.

Q Talked like an American? A Yes, sir.

Q Was he a Jew in appearance? A No, sir.

Q A Hebrew? A No, sir.

Q Did he look like an American? A Yes, sir.

Q Was he a tall or a short man? A A short man.

Q Now, the first time that you saw this fishing rod did the defendant come with Comiskey or was he alone?

A He was alone.

Q He was alone? A Yes, sir.

Q How many times did he and Comiskey come together?

A Twice.

Q Both times was the defendant present with him?

A Once.

Q Once with him? A Yes, sir.

Q Was that the first or second time? (No answer).

Q That was the time the rods were taken away? A Yes, sir.

Q At that time who spoke to you about loaning him \$25 on the rods? A Mr. Cohen.

Q Sure of that? A Yes, sir.

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BY MR. SPIELBERG:

Q How do you know this fellow wasn't a Jew?

A Well, I could tell it by his accent.

Q Do I look like a Jew? A I think so.

Q You think the District Attorney does? A No, sir, I don't think so.

Q You don't think so? A No, sir.

Q You are mistaken about the District Attorney then, are you? A Yes, sir.

Q Well he is a Jew; you got wrong about that. It is possible Comiskey was a Jew; you didn't ask him, did you, Mr. Burke? A No, sir, I didn't ask him.

Q Now during all these times that Cohen came to you-- I leave it to your judgment, you are a young man, don't answer the question until the District Attorney has a chance to object to it-- was there anything suspicious or sneaking about the manner in which Cohen dealt with you, yes or no.

A The last occasion there was.

Q On the first occasion? A Well, I don't know about that.

Q When he came to tell you these first? A No, sir, there was nothing sneaky then.

Q He didn't attempt to hide anything? A No, sir.

Q Didn't ask you to keep the poles out of the way?

A No, sir; not then.

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Q Nothing like that? A No, sir.

Q He talked to you right out? A He talked right out.

Q He came to your place and talked in the presence of strangers, didn't he? A Yes, sir.

Q In a general way? A Yes, sir.

BY MR. JACOBY:

Q If he had spoken in a suspicious way you would not have talked to him? A That is the reason why I returned the rods to him right away.

TESTIMONY CLOSED.

(The Court charges the jury.)

(The jury failing to agree upon a verdict were discharged from the further consideration of the case.)

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