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W.R.

COURT OF GENERAL SESSIONS OF THE PEACE.

IN AND FOR THE COUNTY OF NEW YORK.

PART II.

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

-against-

JULIUS ORBACH,

Indicted with ADOLF DAVIDOWITZ.

: Before:-

: HON. THOMAS T.C. GRAIN, J.

: and a jury.  
: -----X

New York, Monday, May 5th, 1913.

THE DEFENDANT IS INDICTED FOR GRAND LARCENY IN THE SECOND  
DEGREE.

INDICTMENT FILED FEBRUARY 20TH, 1913.

A p p e a r a n c e s :-

Morris B. Moskowitz, Esq., Assistant District Attorney,  
for the people.

W. H. Carpenter, Esq., and Charles M. Gould, Esq.,  
for the defendant.

(A jury is duly empanelled and sworn)

(At the request of Mr. Carpenter, all witnesses are  
excluded from the court room)

T H E P E O P L E ' S C A S E .

(Mr. Moskowitz opens the case to the jury on behalf  
of the people)

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B O R I S      L U S E I N, called as a witness on behalf of the people, being first duly sworn and examined through the official interpreter, Edward J. Rosenthal, Esq., testified as follows:-

DIRECT EXAMINATION BY MR. MOSKOWITZ:

Q    What is your business?    A    I am now representing the Hebrew Sheltering Emigrant Aid Society.

Q    On August 29th, 1912, what was your business?

A    I was a teacher in the Montefiori Hebrew free school.

Q    Do you remember the 29th of August, 1912?

A    Yes, sir.

Q    Did you meet the defendant at that time?    A Yes sir.

Q    How did you come to meet him?    A    I read in the morning Journal--

MR. CARPENTER:    Objected to as calling for an operation of his own mind.

THE COURT:    The objection is overruled.

MR. CARPENTER:    I take an exception.

THE COURT:    He read something in the morning paper.    Now, having read it, the best evidence of that would be the paper itself.

THE WITNESS:    Then I went to No. 220 East 81st Street.    I saw a store and a sign on the window was written "Tip-top Polish Manufacturing Company, Paris, London and New York".    I went inside.    I asked who

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had advertised for a partner.

MR. CARPENTER: Objected to.

BY THE COURT:

Q After you got inside, did you see this defendant?  
When you got inside the store, did you see this defendant?  
"yes", or "no"? A Yes, this man and two others.

Q "This man" means the defendant; is that so?

A Yes.

Q You may tell us what you said to the defendant, and what the defendant said to you? A I asked him whether he had advertised for a partner. He said "yes. The business is a very lucrative one. With three hundred dollars one can draw twenty-five dollars a week, because it is an article very easily to be sold"; and then he pointed to two men standing at a desk. He said "Mr. Davis, he is my manager"; and another was sitting at a typewriting machine. He said, "that is my typewriter and book-keeper". I told him I can not go into the business before I know exactly what kind of a business it is. He says, "it is a very profitable business", and he wants three hundred dollars. I told him I would bring him three hundred dollars with the condition that I would not give him the three hundred dollars into his hands, but it should be deposited in the bank.

BY MR. MOSKOWITZ:

Q How deposited? A In both names. He said, "all right, I will do it". I said, "I would like to go to a

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contract made." Mr. Orbach said, "I have no time to go to a lawyer. I will send for a notary here not far away", and he sent Mr. Davis, and in a minute Mr. Davis brought a notary.

Q Was this the 29th or the 30th? A That was on the 30th, after I had brought the money.

THE COURT: We will take a recess now. Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you. The Court takes a recess until two o'clock. The defendant is remanded.

(The Court accordingly took a recess until two P. M.)

A F T E R R E C E S S.

B O R I S L U S K I N, resumes the stand.

DIRECT EXAMINATION (Continued) BY MR. MOSKOWITZ:

Q Mr. Luskin, what conversation did you have with this defendant on the 30th? A I wanted to <sup>to</sup> get a lawyer to make a contract, but he sent Mr. Davis and brought a notary.

MR. CARPENTER: That has already been testified to. I ask it be stricken from the record.

THE COURT: I don't know what the application is. The witness will proceed.

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MR. CARPENTER: I say, he has already given this testimony, and I object to it as the second time it has been given.

THE COURT: I will hear it. Tell us what this defendant said to you, and what you said to him, and talk so you can be heard. When you started to talk to the defendant, what did you say to him, and what did he say to you?

THE WITNESS: I said that I wanted the three hundred dollars to be deposited in a bank in both names. He said, "All right. We will do it." When the Notary came to make the contract, I told the Notary to put it in the contract that the three hundred dollars should be put in the bank in both names.

BY THE COURT:

Q. Was that said to the Notary in the presence of this defendant? "Yes", or "no"? A. Yes. Mr. Orbach said, "It is not necessary to put it into the contract, as we are going right away to the bank to deposit the money." Then I asked the Notary to put into the contract another point, the point being that this money is to be given on trial for thirty days. If after thirty days I shall see that the business is all right, then I would become a partner, otherwise not. Then the contract was made, and the Notary asked "Where is the money?" I took out the money; I put it on the table, and Mr. Orbach took the money and put it in his

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pocket.

BY MR. MOSKOWITZ:

Q What time of day was this? A About dinner time.

Q Can you read English? A I can understand when one talks to me, but I cannot read.

Q Can you write your signature? A Yes.

Q I show you this instrument, this piece of paper, and ask you if your signature appears upon that (handing paper to witness)? A This is my handwriting, my signature.

THE COURT: Mark it for identification, People's Exhibit No. 1.

(Paper marked People's Exhibit No. 1 for Identification, of this date).

Q Another name appears on this. I direct your attention to the name above yours, and ask you if that is the defendant's signature and whether he signed it in your presence?

A Yes, he signed it in my presence.

MR. MOSKOWITZ: I offer it in evidence.

MR. CARPENTER: No objection.

(Received in evidence and marked People's Exhibit No. 1, of this date).

(Mr. Moskowitz reads People's Exhibit No. 1 to the jury).

Q After paying him this money which you said was to be deposited in both your names, what did this defendant do?

A After the Notary had left, I said, "Mr. Orbach let us go

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the bank and deposit the money." He said, "Today it is too late; we will go tomorrow".

Q What did you do? A I sat there a while, and I went home.

Q Did you go back to this place of business? A Not the same day, but the next day.

Q What time the next morning did you go back? A About nine o'clock.

Q And what did you find there when you came? A Mr. Orbach told me that he had discharged his typewriter, that he demanded of him money in the middle of the street, and that is the reason why he discharged him.

Q What happened to the salesman? A Mr. Davis said that he was in a salesman's club the evening before, and he had spent about four dollars and fifty cents, and he had taken orders to be delivered two months later.

BY THE COURT:

Q Now, this is what this defendant said to you? A The manager told this to both of us.

MR. MOSKOWITZ: In the presence of the defendant.

THE COURT: Strike it out. You went at nine o'clock to the place of business in which you had seen this defendant?

A Yes, sir.

Q Now, go ahead and tell us what happened? A Right at the start, Mr. Orbach told me that he had discharged

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the typewriting man, for the reason that he had asked him for money in the middle of the street. Mr. Davis, the manager, told us that the evening before he had spent in the salesmens Club he had taken many orders to be delivered two months later.

Q Who do you mean by "us"? A I and Orbach were sitting there and he wanted that Orbach should pay him money in advance. Then Orbach exclaimed in a loud tone "I am the boss; I cannot give you any money; you can go." Then I said to Mr. Orbach "Let us go and deposit the money in the bank, the three hundred dollars"; so he said to me, "what kind of money?" "what money?" I said, "My three hundred dollars which you have taken from me yesterday." He said, "These three hundred dollars belong to me. They don't belong to you." I said, "What is that? You said to me yesterday that you would deposit it in the bank." He said, "The money belongs to me; you have nothing to do with it; it is my money; it belongs to me".

BY MR. MOSKOWITZ:

Q What time was this? In the morning? A Between nine and ten o'clock in the morning.

Q What did you do then after he told you that? A So I said "What will be now? Where is my money?" He said, "I will tell you; we have to move from here, anyway; it is the 1st, and we have to pay rent; we have to pay the landlord rent here in this store; we would rather move

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to another place and get one month free." He took me along, and he showed me a store on First Avenue between Thirtieth and Thirty-first Streets, and he said he had taken that store from a landlady at a price of twenty dollars a month. And he took an expressman, an acquaintance of his. I don't know him. Then he moved all the furniture there, the desks and tables and bottles to the new place, and I wanted to see what kind of a business that was, and I was sitting there day after day, several days, and Mr. Orbach used to go away and leave me alone there for a whole day. I saw that nobody was coming, nobody was bringing any orders, nobody came to ask any questions. I said to Mr. Orbach, "I see that this business is not for me. I want my money back." He said, "I have no money. If you want, I will give you twenty dollars, this I have, and this you can have." I said, "For three hundred dollars I would not take twenty dollars." He said, "Wait, I will advertise for another partner, and then I will pay you up." I didn't believe him. I saw it was a swindle. I went to a lawyer -

MR. CARPENTER: That is objected to.

THE COURT: Strike out "I saw it was a swindle", and the jury will disregard it.

A (Continuing) - and gave him the case.

Q What sort of stock did you see in that place?

A Empty bottles, a lot of them, small bottles, in boxes of twelve.

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BY THE COURT:

Q What was the address of the first store? In other words, where was the place at which you saw the defendant?

A 220 East 81st Street.

Q What was the address at which, as you say, you gave the defendant money? A In the same place, in the presence of a Notary Public.

BY MR. MOSKOWITZ:

Q Did you demand the return of your money - that is, at 81st Street, New York County? A In New York.

Q Did you demand the return of your money? A Yes, sir.

Q Did he give you the return of it? A No, he said twenty dollars he could give me.

Q Did you take the Jewish Morning Journal with you at the time you saw this defendant? A Yes.

Q Did you direct his attention to the advertisement in the paper? A Yes, I asked him whether it was a profitable business, whether it was right that one could draw \$25 a week.

Q Did this defendant say to you he had inserted this advertisement? A Yes, he said, "I advertised it".

Q I show you this paper, and direct your attention to the marked part, and ask you whether that is the advertisement you had reference to? A Yes, this is the advertisement.

MR. MOSKOWITZ: (To the Interpreter) Did you

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read that?

MR. CARPENTER: I object to that. It has not been admitted in evidence.

THE COURT: The original may be introduced in evidence.

MR. CARPENTER: I object to its being admitted in evidence.

THE COURT: The objection is overruled.

MR. CARPENTER: It has not been shown that Mr. Orbach authorized that to be inserted in the paper.

THE COURT: This witness states, at the time he went to the defendant's place of business he showed him the paper, he showed him the advertisement, and he said he came in response to that advertisement. That is what I understand him to say.

MR. MOSKOWITZ: And he read the advertisement to him.

MR. CARPENTER: I urge my objection upon this ground: That it has not been shown that this defendant understood what was said to him in reference to that paper. It does not appear upon the record that it was so inserted by this gentleman.

THE COURT: It will be marked for identification for the present.

Q In what language did you talk to the defendant?

A In Yiddish. He said he didn't know English.

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Q And did the defendant talk to you in Yiddish? A Yes, half German and half Yiddish. He is a German.

Q Who read the advertisement? You, or this defendant? A I read it, and I asked who advertised, and he said, "I advertised".

Q And you showed him this advertisement at the time? A I came with this paper to the store.

Q And you read it to him at the time?

MR. CARPENTER: Objected to as leading.

THE COURT: Don't lead the witness, Mr. District Attorney.

MR. MOSKOWITZ: Now, I ask that this advertisement be read in evidence.

MR. CARPENTER: No; I object on the further ground it has not been shown that this defendant can read Yiddish.

THE COURT: I am not receiving it as yet.

Q A while ago you said you read the advertisement to him, did you? A When I came into the store I asked, "Who is the boss? Who has inserted this advertisement?"; and he said he did.

Q What did you read? A This here, that a person is wanted for an established business, three hundred dollars, and easily saleable article, can draw twenty five dollars a week.

MR. CARPENTER: Objected to.

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MR. MOSKOWITZ: That is what he said to this defendant at the time.

THE COURT: It is received.

MR. MOSKOWITZ: That is all.

CROSS-EXAMINATION BY MR. CARPENTER:

Q You recall, then, the 30th day of August, 1912? A Yes.

Q Don't you speak English? A A little.

Q You understand English perfectly? A I understand a little what is spoken.

Q Do you recall on the 24th day of October, 1912, appearing at a trial as a plaintiff in the First District Municipal Court of the City of New York, in which this defendant appeared as the defendant to the action? A Yes.

Q And at that time you brought an action and prosecuted the action by a trial against this defendant, trying to recover three hundred dollars, did you not? A Yes, I gave the case to a lawyer, and the lawyer brought an action against him.

Q And your action was discontinued, was it not?

A Naturally; I had no witnesses.

MR. CARPENTER: I ask to have that stricken from the record.

THE COURT: Answer stricken out.

Q (Question read by stenographer, as follows: "And your action was discontinued, was it not?")

THE COURT: "Yes", or "no", now.

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A Yes.

Q You were heard as a witness, were you not, on that occasion? You were called as a witness? A I don't know exactly whether I was a witness, or a complainant.

BY THE COURT:

Q Well, did you give testimony? Were you asked questions, and did you make answers? A Yes, the Judge asked me questions, and I answered them, like this time.  
BY MR. CARPENTER:

Q And at the end of the case the case was decided against you, was it not?

MR. MOSKOWITZ: I object to that.

THE COURT: The objection is sustained. It is not the best evidence.

Q Now, you tell us that you went before a Notary Public, and a Notary Public drew the articles of agreement? A I didn't go before a Notary Public, but Mr. Orbach sent Mr. Davis, and a Notary Public came to the place.

Q A Notary Public drew up these articles of agreement, did he not, referring to People's Exhibit No. 1? A Yes, while sitting in the store he made out the agreement.

Q And the Notary Public read to you the agreement after it was written, did he not? A Yes.

Q And at that time you fully agreed to what you signed your name to in the presence of a Notary Public, did you not? A I was not fully agreed, because I insisted upon the \$300 to be deposited in the bank.

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Q After that paper was written, after the Notary had finished the writing, and before you put your name to it, did the Notary read the paper to you? A Yes, sir.

Q Did you understand what he read? A Yes.

Q Did you read the paper yourself? A No.

Q Did you pay the \$300 after the paper had been read to you? A Right after the paper was read, I took out \$300, and put it on the table, and Mr. Orbach took the money and put it in his pocket.

BY MR. CARPENTER:

Q After this paper was read to you, you signed this instrument, did you not, after it was read you signed it as it was read to you? A I signed, it, but still I insisted that the money should be deposited in the bank, and Mr. Orbach assured me that it would be done the next day.

MR. CARPENTER: That is not responsive.

THE COURT: That is stricken out, all excepting "I signed it." That is allowed to stand. You just answer questions, and nothing else.

Q Now, nothing was read to you by the Notary Public from this paper that any money was to be deposited in the bank, was there? Let me make myself very clear to you, so there will be no confusion. At the time the Notary Public read you this paper, he did not read into it anything whereby it purported or said that certain moneys of the \$300 was to be deposited in the bank, did he, from the instrument

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read to you? A He did not read it, but he told me orally that afternoon I should come back with Mr. Orbach and this could be done.

THE COURT: Beginning with the words "He told me orally", and so on, that is stricken out, and the jury will disregard it.

Q But what was written in this paper you signed your name to? A Yes.

Q And the money was immediately paid over? A Yes, the Notary was still sitting there on the chair.

Q Now, you agreed, by these articles, did you not, that in consideration and for this sum of \$300, that Mr. Orbach, the defendant at the Bar, was to contribute the office furniture and fixtures, is that not so? Is that not part of the agreement entered into between you and Mr. Orbach?

A This I did not think of.

Q It was read to you, was it not? A Yes, he did read it.

Q Read to you from this very instrument? A Yes.

Q Now, further, you agreed with the defendant, Mr. Orbach, that you were to remain as a partner, giving your attention to look after the business and to remain on the premises where the business might be for the term of thirty days; is that not correct? A No, after the thirty days I was to become a partner, but not before.

Q (Question read by stenographer) A No.

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Q Now, do you recall testifying in the First District Magistrate's Court on the 24th day of October, 1912?

Do you recall that, on the witness stand? A Yes.

Q Do you recall being asked this question: "You were to look after the office?", and your answer was, "yes"?

A I cannot remember such a question.

Q Then, in other words, you don't know whether you made that answer, or not? A I cannot remember.

Q Now, you agreed in these articles of partnership, did you not, "And it is agreed by and between the parties to these presents that at all times during the continuance of their co-partnership that they and each of them will give their attendance and do their and each of their best endeavors and to the utmost of their skill and power exert themselves for their joint interests, profit and benefit and advantage." Did you not agree to that? A I said that, before the expiration of thirty days, I would not say anything at all. After the thirty days, after I saw everything was all right,

MR. CARPENTER: I ask for an answer "yes", or "no".

THE COURT: You have framed your question so that you are not entitled to a "Yes" or "no" answer.

MR. CARPENTER: Well, I will reframe it. I withdraw that question.

MR. MOSKOWITZ: He has an answer.

THE COURT: It is withdrawn, and there is no answer at all.

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Q At the time of the signing of these articles of co-partnership, did you not agree, by and between the parties to these presents -

THE COURT: You have got that in evidence.

MR. CARPENTER: It is already in evidence. There is no necessity of questioning him on that. I withdraw the question. It is a waste of time.

Q Now, do you recollect the 30th day of August - I withdraw that. How many days did you remain in that store, or associated with Mr. Orbach, the defendant?

A You mean in 81st Street?

Q I mean, how many days did you remain associated with Mr. Orbach from the 30th of August, 1912, in that business?

A Until September 9th.

Q Did you not say in the Magistrate's Court - I mean, in the Municipal Court, on the 24th day of October, 1912, when you were asked "how long did you remain there? A About five days I stayed there." Do you remember answering that? A I was asked how long I had remained in Second Avenue. I said five days. That is right - in First Avenue, I mean, in the other store.

Q How many days did you remain altogether? A Until the 9th of September, about nine or ten days.

Q Do you recollect when the 30th day of August was, 1912? A I cannot remember the day. If I would look at the Morning Journal, I could say.

MR. CARPENTER: Will the Court take judicial

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notice of the fact that the 30th of August, 1912, was a Friday?

THE COURT: If that is so, I will.

Q You went into that business on Friday, did you not, and you stayed there Saturday? A No, Saturday I was at home.

Q What did you do Sunday, September first, 1912?

A Sunday I was in the business, but I don't remember exactly whether it was in the old store, or the new one.

Q Do you remember the time you moved from the old store to the new store? A I don't know exactly whether it was the first or the second of the month, but I remember he said he had to move on account of it being the first.

MR. CARPENTER: I object to that as not responsive.

Q Where was the old store situated? A 521 First Avenue.

Q Where is that? What street is that? A Between 30th and 31st Streets.

Q And where did you move to? A He moved from 81st Street to First Avenue.

Q You moved to 81st Street? A From 81st Street to First Avenue, between 30th and 31st Streets.

Q You moved from 81st Street to First Avenue between 30th and 31st Streets. Did you expect, by going into a new district and into a new territory, getting business right away?

MR. MOSKOWITZ: Objected to.

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MR. CARPENTER: If your Honor please, how many District Attorneys must I try this case against.

MR. MOSKOWITZ: That is objected to.

MR. CARPENTER: I see Mr. Press coaching the District Attorney who is trying the case.

MR. PRESS: I think I have a right to do that, Your Honor.

A No, I found out there in the new store there were only empty bottles and nothing in them.

MR. CARPENTER: I object to that, I have not asked any question and I ask the jury to disregard it.

THE COURT: The word "No" stands, the balance is out.

MR. MOSKOWITZ: He was calling for his expectation, and he gave them to him.

THE COURT: He says "No".

Q When you went into that business there--- I withdraw that. You are an educated man, are you not? A I am not an educatedman.

Q Did I not understand you were a teacher? A Yes sir, a teacher in Yiddish.

Q You don't mean to say you are a man without education? You have got general education, schooling? A General education, yes.

Q How long have you been in this country? A Soon it will be ten years.

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Q And you have had great opportunity to come in contact with business men have you not, during the ten years you have been in this country? A No, I had no business. I only was teaching, I was a teacher.

Q Have you been a teacher for ten years? A For eight years I was teacher in one place.

Q And other times you were in business? A The first two years I tried different things, I peddled, and I gave private lessons, and after that I got a place for eight years as a teacher.

BY THE COURT:

Q You say you have been ten years in America? In July you will have been ten years in this country? A Yes, in July it will be ten years.

Q Do you not speak English? A A little English.

Q You read English, do you not? A No, I do not read, But I can understand as it is spoken.

Q You cannot read English? A The printed I can read, but not the written English.

Q You can read printed letters? A Yes.

Q But you can't read writing in English? A No, I do not understand writing.

Q In what country were you born? A Russia.

BY MR. CARPENTER:

Q I understand you can read the printing of English, can't you? A I can read the printed English, but some words I

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don't understand even the printed.

BY THE COURT:

Q Are you a College graduate? A No.

BY MR. CARPENTER:

Q Now, you tell us that you had peddled here in America? A Yes, right after my arrival here.

Q And you had occasion then to buy and sell goods, in order to peddle? A There wasn't much to be done, a country man of mine took me to a store and taught me how to buy goods.

Q Then, you were taught how to buy goods, you had that experience? A A little dry goods.

Q How long were you engaged in the peddling business?

A About six months, not more.

Q And during that time you had occasion to buy often, did you not? A Sometimes, yes.

Q Now, upon the 29th day of August, 1912, when you went to 81st Street, to the store of Mr. Orbach, and entered into a negotiation as becoming an associate, a partner with him, there was open to you an opportunity to examine the stock chattels and merchandise in his possession, was there not? You had that opportunity? A I had no such opportunity. He told me that the business had been in existence only three months and that he had no partner before.

MR. CARPENTER: I ask to have that stricken from the record, that is not responsive.

THE COURT: I will leave in I had no such opportunity.

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nity. The balance is out.

Q Did you not say that, when you went to that store, that you saw two boys pouring something into bottles? A I said I saw one boy behind the partition. He was standing at a table. There were bottles.

Q Was he not pouring something into those bottles?

A When I looked at him he did not pour out anything into the bottles.

Q In the complaint in the Magistrate's Court---I show you this signature, and ask you whether that is your signature (Handing paper to witness)? A Yes, this is my signature.

Q You say this is your signature? A Yes.

Q This was read to you, I assume, by the District Attor, or by a Clerk in the Magistrate's Court? This is the original complaint in the Magistrate's Court? A No, it was not read to me.

Q Do you mean to say you swore before a Judge, not knowing what you swore to? A I swore that I will tell the whole truth, and so I did, like at the present time.

Q You were up to Mr. Moskowitz office, the District Attorney's office, were you not, at any time? A Not alone. With three others.

Q Did Mr. Moskowitz not prepare a paper and show you, and was it not read to you in your presence, as to what you were signing? A He asked me questions, how everything happened, and I answered those questions, and it was put down

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on paper.

Q Didn't Mr. Moskowitz read this paper to you that I now hold in my hand, and which you signed, and you were asked if all the statements therein contained were the truth?

A Yes, where I signed, this is the truth. It was read to me.

Qc And everything in this paper was the truth, what you signed? A Yes.

Q Did you not sign to the fact that at that time there was a small boy pouring oil out of a large bottle into small bottles?

THE COURT: What time do you refer to?

MR. CARPENTER: To this original complaint in the Magistrate's Court.

THE COURT: I know, but what time does the witness refer to in it as being the time when the oil was being poured into the bottles?

MR. CARPENTER: On the 3rd of February, 1913.

THE WITNESS: The store was partitioned off and behind the partition ---

MR. CARPENTER: Objected to.

THE COURT: I will allow him to answer.

THE WITNESS: Behind the partition I saw a boy standing at a table, and there were a lot of bottles some empty and some partly filled, and I ~~said~~ <sup>understood</sup> he was pouring something in to the bottles.

MR. CARPENTER: Objected to.

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THE COURT: He has given you his explanation of why he made a certain statement. Now, if you don't want it to stand, I will strike it out.

MR. CARPENTER: But, if your Honor please---

THE COURT: Now, you either want it, or you don't want it. I take it you don't want it. It is stricken out and the jury will disregard it.

MR. CARPENTER: At this time, I have not further questions of this witness.

RE-DIRECT EXAMINATION BY MR. MOSKOWITZ:

Q I want to direct your attention to just one question. At the time of the reading of this partnership agreement to you, and before you parted with your \$300, did you have any conversation with Orbach respecting that \$300?

MR. CARPENTER: Objected to, because he had ample opportunity to explain everything.

THE COURT: I will allow it in the interest of justice.

MR. CARPENTER: I take an exception. I object to the form of the question.

THE COURT: That objection is overruled.

MR. CARPENTER: I respectfully except

A Yes, I did.

Q What was that conversation? A I said that I wanted a point to be inserted into the contract, that the \$300 should be deposited in a bank. Mr. Orbach said it was not necessary

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to put it in the contract, to write it, as we will go right away to the bank and deposit it.

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

THE COURT: I think you had it in already. I will strike it out.

Q You were there nine days, you say? A Between eight and nine days?

Q Did you get any orders? A None at all.

Q Any business at all? A No.

Q Did you draw the \$25 a week? A No.

Q Was the article easily sold? A Nobody came in to ask for any.

MR. CARPENTER: Objected to.

MR. MOSKOWITZ: That is all.

THE COURT: You objected to that last question. I will sustain the objection.

CHARLES BARRICH, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSKOWITZ:

Q What is your name? A Charles Barrich.

Q Where do you live? A 330 East 77th Street.

Q What is your business, Mr. Barrich? A I am a Notary.

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Q How long have you been a Notary? A About twelve years.

Q And where is your business located? A 1519 Second Avenue, southeast corner of 79th Street.

Q How long were you there? A I am there going on three years.

Q At that address? A In that corner there.

Q And how long have you known this defendant, Mr. Julius Orbach? A Well, I know him about a year, I think.

Q Did you know him as the owner of the Tip-top Polish Manufacturing Company?

MR. CARPENTER: Objected to.

THE COURT: I will allow him to testify as to how he knows him.

Q How did you come to know the defendant? A Living there in the neighborhood?

Q Did he have a business there in the neighborhood?

A Yes.

MR. CARPENTER: Objected to as immaterial.

THE COURT: I will allow the answer to stand.

Q What business?

MR. CARPENTER: Objected to.

THE COURT: He says he knew him and knew him as a business man. Now, go ahead. Something else.

Q What business?

MR. CARPENTER: Objected to as incompetent, irrele-

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vant and immaterial, not binding on the defendant.

THE COURT: The objection is sustained.

Q. Did you have business dealings with this defendant.

MR. CARPENTER: Objected to as incompetent, irrelevant and immaterial, not binding on the defendant, as to whether he did, or did not, have dealings with him.

THE COURT: Is this introduced for the purpose of showing a similar transaction?

MR. MOSKOWITZ: It is introduced for the purpose of showing, as Notary that he came to him frequently to draw up these papers.

MR. CARPENTER: Objected to as highly incompetent, and I now ask for the withdrawal of a juror.

THE COURT: The request for the withdrawal of a juror is denied.

MR. CARPENTER: I respectfully except.

THE COURT: I think temporarily, I will exclude the inquiry. You may interrogate him respecting People's Exhibit 2 and what took place at that time.

Q. Now, Mr. Barrich, I show you People's Exhibit #1, and ask you whether you have ever seen it before (Handing said Exhibit to witness)? A (No answer)

BY THE COURT:

Q. Have you ever seen that paper that you now hold in your hand before to-day? A Yes.

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BY MR. MOSKOWITZ:

Q Is this your signature at the bottom of that instrument? A Yes sir.

Q State the circumstances under which you drew this up.

MR. CARPENTER: Objected to.

THE COURT: I will allow it.

MR. CARPENTER: I take an exception.

THE COURT: You may state where you were at the time you wrote it, and you may say who was there, and you may say everything that was said to you in the presence of the defendant, in the presence and hearing of the defendant?

MR. MOSKOWITZ: And how you came to draw it.

THE WITNESS: I have been called over there one day, I think it was 220 81st Street, I think it was 81st Street, to draw that contract.

Q Who called you?

MR. CARPENTER: Objected to. I object to who called him. It is not shown that that man was sent by Mr. Orbach, he may have been sent for by some somebody else.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

BY THE COURT:

Q What was the name, if you know, of the person that came to your place? A It was Davis.

Q What was his first name? A I knew him as Davis, by

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the name of Davis.

Q After Davis had said something to you, what did you do? A Davis came along---

Q After he said something to you, what did you do?  
A I went over to the place where he called me.

Q When you got to the place, who was inside of the place? A Orbach, and a man by the name of --- That man there, Luskin, and Davis was there, and two more, I think, working. I don't know what he was. Working.

Q Who spoke first after you got to the place? A When I got to the place Mr. Orbach and Mr. Luskin was there, and they told me they are going in partnership, to draw up a partnership agreement.

Q Who said that? A The two of them.

Q Then what did you do? A I asked them what they agreed, and they told me .

Q Who did you talk with? A With both of them.

Q What did you say to the defendant, and what did he say to you? A They told me that a man---

Q What did you say to this man who is on trial, and what did he say to you? A I asked him what points they agreed on, and the points they agreed on I put in the contract.

Q Tell us the conversation as nearly as you can? A When that contract was drawn, I think it was \$350, or something like that, I can't remember exactly, and they agreed to go

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in partnership and to invest that money, and I think there is one clause there that they agreed that, in thirty days, if he don't like it, if it is not a payable business, to return him the full amount of the sum he invested. That was the agreement made, what I have got there.

Q You just start in and tell us, as nearly as you can what was said after you got inside of that store, and who said it? A After I got in there, I asked the two parties what they wanted, and they told me they wanted---

Q Which one answered you? A I can't exactly remember which one, but the two were together.

Q Did they both speak to you? A Yes they both were together.

Q What language did they talk? A In German.

Q What language did they speak to you. A In German.

Q How long did they talk to you, about, before you began to write anything? A I don't think it was five minutes; five to seven minutes; they only told me what they agreed---

Q Just listen to me and try and answer. After they had talked to you for about five minutes, five or ten minutes---is that what you say? A Something like that.

Q Then what did you do? A Then I drewed the contract, according to their agreement.

Q Did you have that blank with you, the printed blank?

A Yes.

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Q Did you bring it with you from your place? A I brought it from my place.

Q The writing that you put on that, did you put it on in the office on 81st Street? A On 81st Street, in their office.

Q And who was there at the time that you wrote it?  
A Both parties.

Q And by both parties you mean this defendant and the complaining witness? A I mean this defendant and the complaining witness, yes.

Q And the man Davis who called for you, and two other men? A They were working inside, the two men.

Q After you had written everything that you did write on it, what did you do with the piece of paper on which you had written something? A I left it on the desk, if I aint mistaken.

Q Did you read it to anybody? A No, I don't think so. I read the contract.

Q Did you read the contract, as you call it to anybody?  
A I read it to the two parties. I read it over, and explained what it is.

Q That is to say, after you had written on the printed blank, you read over the printed part ~~xx kxx~~ and the written parts? A Yes sir, to both parties.

Q What language did you read in? A In English.

Q Did you make any translation of it? A Yes, I did.

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Q Into what language did you translate it? A I translated it to the best of my ability in the German language, explained it to each one, what it is, what the contract is, and the binding is.

Q After you had done that, did any one of them sign it?

A Both parties signed it.

Q Which one signed first? A The defendant.

Q And who signed next? A The complainant, Mr. Luskin.

Q And that was after you had read it and translated it; is that so? A Yes, your Honor.

Q Did you see any money while you were inside of that 81 Street store? "Yes" or "No", on that day? A Yes.

Q And when you first saw the money, who had it, A Mr. Luskin gave me the money, and after they signed the contract--

Q You mean, the complaining witness handed you money? How much? A I think it was \$250, if I ain't mistaken, I can't remember exactly.

Q But over \$300? A Over \$300. \$350 or \$375.

BY MR. MOSKOWITZ.

Q I hand you People's Exhibit #1 and ask you if that refreshes your recollection (Handing paper to witness)? A Yes.

BY THE COURT:

Q You say he handed \$300 to you, is that so? A Yes sir.

Q In bills? A In bills.

Q What did he say to you at the time that he handed it to you, in the presence of the defendant? A He gave me the

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\$300, I should give it to Orbach.

Q And what did you do with the \$300? A I handed it over to Orbach.

Q And what, if anything did the complaining witness say to Orbach at that time, in your hearing? Now, that is a plain question? A After I closed the deal up and the paper was signed, the money handed over to Orbach, and I was ready to go, Luskin said, "Mr. Orbach, let us go to the bank", and Mr. Orbach said "It is too late; we will go tomorrow"; and I left the place.

Q Now, you say that that was said after the money had been handed by the complaining witness to you and after you had handed the money to Orbach? A Yes sir, and I was ready to leave the place, and Luskin says to Mr. Orbach "Let us go to the bank". Mr. Orbach says "It is too late now, we will go tomorrow"; and I left the place.

BY MR. MOSKOWITZ:

Q Was there anything to be done at the bank, did he say?

MR. CARPENTER: Objected to as calling for an operation of the mind.

BY THE COURT:

Q Have you told us all the conversation you recollect? A Yes sir.

THE COURT: Now, you may ask him any leading question you want to.

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BY MR. MOSKOWITZ:

Q You don't remember anything else that was said? A Yes.

Q Do you remember what Luskin said regarding the money that was to be done at the bank, what was to be done with it at the bank, what was to be done with it at the bank.

MR. CARPENTER: Objected to.

THE COURT: The objection is overruled.

MR. CARPENTER: I respectfully except.

A Of course, I heard him say "Let us go to the bank".

BY THE COURT:

Q Did you hear him say anything else? A No, I left the place after that.

Q And you left them in the place? A And I left them in the place.

Q What hour was it, as nearly as you fix it, at the time you left the place? A I think it was--I can't recollect what time it was, whether it was before dinner or after dinner.

Q You don't remember the hour of the day? A I can't recollect it now, what hour it was exactly.

Q What time do you dine? A Well, I haven't any exactly hour.

Q About what time? A About two, sometimes one.

Q Had you had your dinner? A No, I didn't have my dinner, I am sure of that.

Q You are sure that at the time you were in this

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place and drew up the contract, you had not as yet on that day had your dinner? A No, I recollect that.

BY MR. MOSKOWITZ:

Q Do you remember me asking you this question, when I called you to the office, "What do you particularly remember?

A I remember well that when the closing of this contract was Mr. Luskin asked Mr. Orbach to go to the bank and deposit the money in the bank under both their names. I remember that well. He says, "It is too late, I will do it tomorrow."

MR. CARPENTER: Objected to.

THE COURT: The objection is overruled.

Q Do you remember answering that question? I remember he said "Let us go to the bank", and he says "It is too late, we will go tomorrow"; and I understood they don't go to the bank for nothing.

Q But they went to the bank to deposit the money in both their names. Don't you remember telling me that answer?

MR. CARPENTER: Objected to.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

BY THE COURT:

Q Do you remember that? A I remember saying, going to the bank.

Q Do you remember saying at any time that one said to the other, or rather, that the complaining witness said to

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the defendant to deposit the money in both names in the bank.

MR. CARPENTER: I object to this line of questioning, because he is trying to impeach his own witness.

THE COURT: The objection is overruled.  
re-

MR. CARPENTER: I respectfully except.

THE COURT: "Yes" or "No" or you don't remember.

THE WITNESS: I can't remember.

BY MR. MOSKOWITZ:

Q I direct your attention to that statement? A I know they were talking about going to the bank.

THE COURT: You have the testimony of the witness.

Do you wish to cross examine.

MR. CARPENTER: I have no questions to ask.

MATTHIAS SMALLOWITZ, called as a witness on behalf of the people, being first duly sworn, testified as follows;

DIRECT EXAMINATION BY MR. MOSKOWITZ:

Q What is your name? A Matthias Smallowitz.

Q Where do you live? A 1642 Anthony Avenue, Bronx.

Q Mr. Mathhias Smallowitz did you ever see this defendant before? A Yes sir.

Q When did you see him for the first time, and under what circumstances? A I see him the first time by advertising in the World for a partner.

MR. CARPENTER: Objected to as not binding on the

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defendant at this time. He don't state the time even.

Q When? A The 20th of August.

BY THE COURT:

Q Of what year? A 1912. It was saying "Partner wanted with \$500, good paying--"

MR. CARPENTER: I object to his reading until he refreshes his memory.

THE WITNESS: That is the advertisement.

THE COURT: The objection is sustained.

THE WITNESS : "Good paying established business."

BY MR. MOSKOWITZ:

Q You saw him on the 23rd of August? A 20th of August, 1912 .

Q Where did you see him? A In 81st Street.

Q Where? A 81st Street.

Q 81st Street? A Yes sir, 81st Street.

Q And when you saw him there, what time was it? A It was in the morning, about 9 o'clock.

Q And what did you say to this defendant at that time, and what did he say to you? A I walked in the store, and I asked him---

MR. CARPENTER: Objected to as not germane to this indictment .

THE COURT: I will receive it. If necessary, I will strike it out.

MR. CARPENTER: Th damage will be done then with the

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Jury:

THE COURT: I will receive it.

MR. CARPENTER: I respectfully except.

A (Continuing) Mr. Orbach was sitting by the desk. I walked in the store, and one man was sitting by the desk, and another man, ---after, when I started to talk to Mr. Orbach, I asked him who it was. He said it was a salesman, he works on 20%. Then I asked---

MR. CARPENTER: Objected to unless it was in the presence of Mr. Orbach, and Mr. Orbach heard it.

MR. MOSKOWITZ: Mr. Orbach said this to him.

A (Continuing) I asked Mr. Orbach if he advertised in the world, so he said, yes; I said "How much do you want?" He said "\$500." I told him I haven't got that much money." I said "I have \$375., and if it is a good business I can pawn something and make the \$500." And he agreed to the \$375; and I should give him a note for \$125. Then I asked him how long the business was. He told me the business was two weeks; and I asked him if he had any partner before, and he told me didn't have no partner before. Then I give him \$375, but the next day I found that he had a partner before.

MR. CARPENTER: Objected to.

THE COURT: Strike that out.

Q Did you give this defendant \$375? A Yes sir.

Q When did you give him the \$375? A The same day.

Q What time? A In the afternoon, about 3 o'clock, or

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half past three or a quarter past.

Q Did this defendant explain the business to you?

A Yes sir.

Q What did he say about the business?

MR. CARPENTER: Objected to.

THE COURT: The objection is overruled.

MR. CARPENTER: I respectfully except.

A He said, it is a good paying business.

Q What else did he say about it? A I asked him what he wants a partner for? A He says he wants a partner because he can't talk English, he wants a man who can talk English, and then it is too hard for him to attend to it himself.

Q Any said about the profits of the business?

(Objected to; objection overruled; exception)

A He didn't tell me about profits, but he said "It is a good business". I will get \$25 a week, and after the three weeks, if I am not satisfied, he give me the money back. That is why I went in because I thought I would get the money back if I don't like it.

THE COURT: Strike out "That is why I went in, because I thought I would get the money back if I don't like it."

Q What was the name of this business at 81st Street?

A The Tip-top Manufacturing Company.

Q And you gave him the \$375 at what hour? A About

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o'clock.

Q What was he to do with this money, did he tell you?  
What was said about the money? A To open a bank account.

MR. CARPENTER: That is objected to.

MR. MOSKOWITZ: Question withdrawn.

Q What was said about the money? A To open a bank account.

Q How? A With this money.

Q Where?

MR. CARPENTER: Objected to. The District Attorney knows at this delicate point he is trying to lead the witness. It is most delicate here.

THE COURT: Tell us everything that was said about opening of the bank account, and talk so the jury hear you?

A. The money was---~~yes~~

Q You tell us what you said to him and what he said to you about opening a bank account, and nothing else, and talk so they hear you? What did you say to him? A The next day I told him about opening a bank account. I went across the street, and a man told me he had---

Q Strike that out? What did you say to him? A The next day, I asked him about opening a bank account. He didn't want

Q What did he say? A He said, "No, he don't want it". He said he wouldn't open any bank account because I changed my mind.

MR. CARPENTER: I ask to have that all stricken

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from the record. It was a period of time from the time the contract was made to some subsequent period. There was no meeting of the minds at the time.

THE COURT: Strike it out.

Q At the time that you made an arrangement with this defendant, did you say anything to him about a bank account? Now, you will answer that "Yes" or "No", or you don't remember, that is a plain question. A No, I didn't say nothing. He said ---

Q Did he say anything to you about a bank account?

A He said the money will be to open a bank account.

Q Did he say in what bank? A No, he didn't say in what bank.

Q Did he say in what name? A He said under both names.  
BY MR. MOSKOWITZ:

Q Did he say that to you before you gave him the money?

A Yes, sir.

MR. CARPENTER: Now, if your Honor please, we have another example of the District Attorney leading the witness.

Q How long were you there in partnership?

(Objected to; objection overruled; exception)

A I was two days.

Q Two days? A Two days.

Q When did you leave him? A I was one day. The next day I was to 12 o'clock, and the third day, when the man told

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me he had a partner before---

THE COURT: Strike that out.

Q You had a conversation with the defendant before you left him? A Yes, he give me \$100 back.

MR. CARPENTER: Objected to on the ground no period of time is stated.

THE COURT: Objection overruled.

Q Just prior to finally leaving the defendant, did you have any conversation with Mr. Orbach? A I had a conversation with him.

Q What did he say to you and what did you say to him?

A I told him he had a partner before, because he told me before he did not.

(Objected to; objection overruled; exception).

Q Talk up? A So I told him that I see that there is nothing in it, so I said "I want my money back." And he said he can't give me the money back, and \$50 I lose and \$250 he give me a note for and I see there was nothing in it, and I had to be satisfied.

THE COURT: Strike out "I see there was nothing in it", and the jury will disregard it.

Q You demanded your money back?

MR. CARPENTER: Objected to.

Q You say you remanded your money back? A Yes sir.

Q Did he give it to you? A No, he gave me \$100.

Q Was any business done while you were there? A No.

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Q Was anything sold? A No.

Q What happened to the salesman?

MR. CARPENTER: Objected to, if your Honor  
pleases. None of this is binding on the defendant.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

A The salesman was with him talking together.

Q Was there a stenographer there? A Yes sir, there  
was a man there.

MR. CARPENTER: Objected to. How does he know  
there was a stenographer there?

MR. MOSKOWITZ: He was supposed to be a partner.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

MR. MOSKOWITZ: That is all.

THE COURT: Do you want to cross examine this  
witness?

MR. CARPENTER: No sir. I ask that all the evi-  
dence that he has given be stricken from this record,  
as not binding on the defendant, and as incompetent,  
irrelevant and immaterial.

THE COURT: Motion denied for the present, with  
leave to renew.

B E S A C H K R U P N I K, called as a witness on behalf  
of the People, being first duly sworn and examined through

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the official interpreter, Edward J. Rosenthal, testified as follows:

DIRECT EXAMINATION BY MR. MOSKOWITZ:

Q What is your name? A Besach Krupnik.

Q Where do you live? A 30 1/2 East 79th Street.

Q Mr. Krupnik, do you ever remember meeting this defendant, Mr. Orbach? A Yes sir.

Q When did you meet him for the first time? A About the month of August 1912.

Q In the month of August, 1912?

THE COURT: He says about.

MR. CARPENTER: I ask to have a date fixed.

Q About what time in August? A It must have been the 27th of August.

Q Is that your best recollection? A Or on the 27th of July, I can't remember that exactly.

MR. CARPENTER: Now, if that is so indefinite, I shall ask that he be recalled from the stand, if he can't fix it with any certainty at this time.

THE COURT: Your objection is overruled.

MR. CARPENTER: I take an exception.

THE COURT: He said it was either the 27th of July or the 27th of August? Now, proceed.

Q Under what circumstances did you meet him? A He had inserted an advertisement in which he was looking for a

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partner with \$150.

MR. CARPENTER: Objected to, for the simple reason he says, upon an advertisement. There is no advertisement here introduced; there is nothing introduced showing--

THE COURT: Counsel, don't argue it. Do you want that out?

MR. CARPENTER: I do.

THE COURT: It is out.

BY THE COURT:

Q Whereabouts did you see this man for the first time?

A 220 East 81st Street.

Q How did you happen to go there? A I read an advertisement and it appeared to me that I would have to do business with an honest man.

MR. CARPENTER: That is objected to.

THE COURT: Strike it out.

MR. CARPENTER: Will you instruct the jury that anything that is tricken from the record they are not to consider?

THE COURT: Yes, I will leave in that he read an advertisement.

BY THE COURT:

Q Now, after you read the advertisement, you went to this place and saw the defendant. Did you show him the advertisement you had read? A Yes sir.

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Q After you had shown him the advertisement, what did he say to you, and what did you say to him? A He said he was looking for an honest young man, and that he saw that I was the proper honest young man who with \$150, could become a partner.

Q What did you say to him? A I asked him what it was all about, and I asked him where he got that article which he intended to sell, what he intended to do with the \$150, and why he needed the \$150.

Q What did he say? A He said really did not need the money, that he had the money himself; not only he had money, he said, but he also said he had his own house. As he did not know me, the \$150 would really be only a security for the place I am going to take there, for I would have to collect moneys in the business. After about three or four days, I offered to go into the business, and we made a contract. After he had brought me into his house, into which he said he had put in \$10,000 and which, if he sold it, would bring him a profit of at least two or three thousand dollars.

MR. CARPENTER: I ask to have that all stricken from the record.

THE COURT: Motion denied. Go ahead.

MR. CARPENTER: I take an exception.

THE WITNESS: And, before the contract was made out by the Notary Public and signed, on the evening before I had agreed to a certain article in that contract,

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and this article was that I agreed to go into the business with him provisionally only, for four weeks, and within the four weeks he would have to furnish me with security for the \$150, so that I could get it back any time I wanted it, and he said to me, that the only security he would give me would be a note. I told him "Your note itself would not be sufficient security, but your house would be security for the note." That was Saturday night, and Monday he came into the business. Nothing was there except a cloth curtain and on the morning, Monday he decided that I should go to the bottle people and order the bottles while he would have to attend to other business, and in the afternoon he returned and told me that he had bought furniture for the office, and he showed me a bill for \$56 and the next day he again went away, after an hour or an hour and a half, and he returned and told me that he had bought some other articles. After we had gotten in the small bottles, we filled the small bottles with that cleaning stuff. After several days I suggested to him we will go out and try out power, and see who can do the better business. We left the place together in the morning, and agreed to meet again at 6 o'clock in the evening. In the evening at 6 o'clock, I came to the office, but I didn't find Mr. Orbach there, not even at 7 o'clock was he there. When I went home and came back the next morning. Mr. Orbach

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was in the place already, and he accused himself, saying that he had suffered a stroke of apoplexy, and had to be brought to the Bellevue Hospital, and in Bellevue Hospital he had to ~~xxx~~ spend \$2 so that he could be brought home for the night.

MR CARPENTER: Pardon me for interrupting, but I object to all this.

THE COURT: Oh, I will hear everything. Go ahead.

MR. CARPENTER: I take an exception.

THE WITNESS: About a day or two later he said to me that we did not have enough furniture for the office, but he was going away to buy a typewriting machine, and the same evening he really brought the machine, and he showed me a bill for \$42, and as a lot of money was spent according to my investment, he gave me a specified bill for \$152. As the whole matter appeared to me rather suspicious---

THE COURT: Strike that out, and the jury will disregard it.

THE WITNESS: I went deeper into the matter, and I found out that--

THE COURT: I wont allow that now.

BY THE COURT:

Q Did you pay this man \$150? "Yes" or "No"? A Yes sir.

Q At the time that you gave him \$150, did you say anything to him, or did he say anything to you? A Yes sir.

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Q What did you say to him when you gave him the \$150 and what did he say to you? A Mr. Orbach said that the \$150 were only a security for my place.

Q In other words, he was to keep the \$150 as security your for ~~the~~ performance of your agreement? A That I should not misappropriate moneys in the business.

BY MR. MOSKOWITZ:

Q You drew partnership papers? A Yes sir.

BY THE COURT:

Q Was that before the money was paid, or after? A After the contract was signed and he got the money from me.

BY MR. MOSKOWITZ:

Q You said a while ago you inserted a clause that, if you were not satisfied, you could withdraw that money?

MR. CARPENTER: Objected to.

MR. MOSKOWITZ: I am reviewing the testimony.

THE COURT: Objection sustained. I did not understand him to say a clause was inserted. He said that was something he wanted agreed to.

MR. MOSKOWITZ: And was agreed to.

Q Now, did you ever demand the return of your \$150?

MR. CARPENTER: Objected to. They speak of a contract. We have not had an opportunity of seeing the contract, or inspecting the contract, and now, as to asking anything which was contained in that contract

THE COURT: I will allow it. "Yes" or "No".

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MR. CARPENTER: I respectfully except.

Q Did you ever realize any money out of the partnership?

MR. CARPENTER: I object to that, if your Honor pleases.

THE COURT: Objection sustained.

Q How long were you in partnership?

MR. CARPENTER: That is objected to.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

A Three weeks.

Q Did this defendant ever pay you any money during those three weeks.

MR. CARPENTER: I object to that, if your Honor pleases. I object to the form of the question at this time.

THE COURT: Well, I will allow it. "Yes" or "No".

MR. CARPENTER: I respectfully except, as not binding on this defendant.

A Yes.

Q What did this defendant give you?

MR. CARPENTER: Objected to. He has got his answer.

THE COURT: There is another question. I will allow that.

A \$14.

Q You say you remained in partnership with him three weeks? A Three weeks.

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Q Did you have a conversation with this defendant? Did this defendant ever have a conversation with you regarding his business in those three weeks, what his purposes were in advertising and so forth?

MR. CARPENTER: I object to that, if your Honor please, he has been all through that now. He don't fix any time whatever. I think it is incompetent, irrelevant and immaterial.

THE COURT: I will allow it.

MR. CARPENTER: I take an exception. I object to the form of the question.

THE COURT: The objection is overruled.

MR. CARPENTER: I take an exception.

A Yes sir.

Q What was that conversation, A He wanted, before I left to get a third partner, and even a fourth partner.

Q Go ahead? A If I could help him to get a third or a fourth partner, then he would pay me with the money he would get from the new partner.

BY THE COURT:

Q In other words that is what he said to you? A Yes sir.

BY MR. MOSKOWITZ:

Q Anything else did he say to you? A During the three weeks he spoke to me a great deal.

Q That is all you say he said, what his intentions were in this business? A He said "We will try whether

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we can't make any money. America is the country where money can be made, and if a man does not perpetrate extraordinary swindles he cannot be found guilty, and if it should happen that one is being caught here in this country for swindling then all that is necessary is to have people have money, because in America everybody can be bought for money, judges, juries and everything.

MR. CARPENTER: I ask ~~that~~ to have that all stricken from the record.

MR. MOSKOWITZ: I am going to his intentions, what his intent was, that he never really intended to have partners in legitimate business transactions.

MR. CARPENTER: I object to the remarks of the District Attorney as highly improper.

MR. MOSKOWITZ: That is all.

THE COURT: I will allow this testimony to remain in is there any cross examination of this witness?

MR. CARPENTER: If your Honor please we will reserve our right to cross examine at a later time, if you will permit us to?

THE COURT: Very well.

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THE PEOPLE REST.  
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MR. CARPENTER: If your Honor please, at the end

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of the People's case I move, sir, that the defendant by a direction to the jury, be acquitted, first, on the ground that there was a contract here entered into. By the testimony of this Notary Public, he said, sir, that from statements made by the complainant and by the defendant in his presence, he drew up, in their presence a certain contract--

THE COURT: I recall the evidence, counsellor.

MR. CARPENTER: May I state my motion on the record?

THE COURT: Yes, you may.

MR. CARPENTER: He further says that he received the money, the Notary, from the complainant, and passed it over to Mr. Orbach. The complainant broke his contract and his obligation by the very clause in the instrument itself, as you are familiar with, by having examined the instrument, and "And it is agreed", from that part there, that they would render their services.

THE COURT: Just read that clause, so that it may be written into the minutes.

MR. CARPENTER: "And it is agreed by and between the parties to these presents that at all times during the continuance of their co-partnership, they and each of them will give their attendance and do their and each of their best endeavors and to the utmost of their skill and power to exert themselves for their joint interests,

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profits, benefits, advantages, " and so forth.

THE COURT: Mr. Stenographer, you can take down that, at the end of People's Exhibit 1, there is the following in writing, "And the said parties hereby mutually agree that said Boris Luskin has one month trial from date, in case said ~~xxxx~~ Tip-top Polish shall not prove to be profitable, so said Julius Orbach has to return to said Boris Luskin, the full sum, of his investment. Said ~~xxxx~~ Julius Orbach further agrees to show, to learn said Boris Luskin all the business and manufacturing belonging to said business. " Now, I will hear you further, Mr. Carpenter.

MR. CARPENTER: Now, All they agreed to show by this instrument, all the articles of agreement were in this instrument. He simply gave his services, as he says, for \$10 and then he left. If he had remained there thirty days, sir, then he would have a cause of action in so far as this man at that time would not have been put to the inconvenience and embarrassment that he was. In this instrument here Mr. Orbach has agreed ~~xx~~ and to that end and purpose the said Julius Orbach contributes to the said business the stock and office furniture and his fixtures. That is what he was doing. They were then in existence.

THE COURT: I understand it, counsellor. No elaboration required. Do you desire to state any other

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ground, I will hear the District Attorney, on what grounds he resists the motion.

MR MOSKOWITZ: Your Honor, the theory of the People's case is that this money was given for a specific purpose. That is, the money was parted with on the representation that this money was to go into a bank account in both names, the name of the defendant and the name of the complainant; that at no time was the character of that money to change; that, though they had entered into a partnership, this partnership is the lure, this partnership is the snare, that it is hoped would cover the receiving of the money. It was never intended to go to a bank, by the defendant. It was at no time meant for the bank, but was meant for a cover and a snare, to get the ~~the~~ complainants money. If your Honor is acquainted with the case of the People against Hughes, in that case there were two partners. One inserted an ad, in the same manner this was inserted. He called for three hundred dollars. That was to go for partnership purposes. The complainant in that case contended that this defendant received the \$300. He said he wanted to use it for the specific purpose of buying certain potatoes and merchandise which were to go to the partnership. Then this defendant, parted with the money and was no more to be seen. There the Court held it was evidence that this defendant never

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at any time intended to go into a legitimate partnership. Had the defendant in that case purchased the merchandise for a single instance and then resold them, nothing could have been done to that defendant; but in this case the money had attained such a character that at no time could it have been defrauded. Unless it was deposited in their names, it never could have been reclaimed by the defendant without the consent of the complainant. It was very evident that the complainant intended the money to go to the bank in both their names. It was very evident that the notary public had heard it was to go to the bank in both their names. The complainant says he was in the country ten years, and he was a teacher, and he had a little experience of six months in business, and he hesitated to part with this money. He wanted to make sure, that, at the end of thirty days---at that time the partnership was to go into vogue, and only then was it to go into vogue, and not until he had satisfied himself, at the end of thirty days, that this was a business in which he should engage to go into. At no time did the character of this money change, and at no time did it go into the partnership. It was intended to go into the <sup>bank</sup> ~~partnership~~ to secure both of them.

MR. CARPENTER: Just one point about the money. The complainant said he could read English. He had an opportunity to read that instrument, but the Notary said

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that he not alone read it out in English, but he interpreted it and explained it to them in German, that the money was passed, and the witness, the Notary, was the People's own witness, and he never recited that anything at any time was said about putting that money in the bank at the drawing of this instrument, or at the time of the passing of the money into the hands of the Notary and from the Notary's hands into that of the defendant. At that time, nothing had been said.

THE COURT: I recall the evidence. Now, the Stenographer will kindly write out the minutes and let me have them tomorrow morning.

MR. MOSKOWITZ: Can we urge this one further argument?

THE COURT: Yes.

MR. MOSKOWITZ: If your Honor will recall, this Notary came to the persons and said "Have you agreed?" And he said "We have agreed", and If your Honor will recall the complaining witness said "I want the \$300 to be placed into the co-partnership agreement, so that it will be placed in both our names." And that this defendant, Orbach said, "That is not necessary; we will go to the bank as soon as we get through here, we will go right there".

THE COURT: Now, I understand the contentions of the parties, and the Stenographer will supply me with

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the minutes, and I will reserve my decision. The first thing that will have to be determined is whether, in point of fact, a larceny was committed, and, of course, if I ~~could exclude~~ should conclude that the evidence is insufficient to warrant a finding that what the defendant is said to have done amounted to a larceny, that terminates the matter, and I shall be compelled to advise the jury to acquit. If I reach the conclusion that the evidence is sufficient to warrant a submission of that question as it now stands to the jury as a question of fact, then the question will remain as to whether these alleged similar transactions, particularly that alleged to be detailed by the last witness, was sufficiently similar in character, it will be receivable as bearing upon intent. That is another proposition. Decision is reserved. Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form nor express an opinion thereon until the same is submitted to you.

(The Court then took a recess until tomorrow,  
Tuesday May 6th, 1913, at 10:30 A. M. )

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THE PEOPLE, ETC.  
-vs.  
JULIUS ORBACH.

New York, May 6, 1913.

THE COURT'S CHARGE.

HON. THOMAS C. T. CRAIN, J.

The Court:

Gentlemen of the Jury: The defendant Julius Orbach is charged in this indictment with the crime of Grand Larceny in the Second Degree.

The indictment contains two counts, each count charging him with that crime. The first count in the indictment is in the form known as the common law form of larceny. The second count in the indictment charges the defendant with that crime as an agent, bailee or trustee. The second count in the indictment is withdrawn from your consideration and this case goes to you under the first count in the indictment, and under that alone.

An indictment is an accusation in writing. It has been preferred in this instance by the grand jury of the County of New York. It is nothing but an accusation. It creates no presumption that Julius Orbach is guilty. Julius Orbach has said ~~by~~ his plea that he is not guilty, and you have been empanelled and are now acting as jurors in this case, so that you may determine from the evidence, and from the evidence alone, in your capacity as the exclusive judges of the facts, whether or not this defendant is guilty of the crime of grand larceny in the second degree, as charged in the first count of the indict-

ment.

In order that you may make that determination, in the light of the law's definition of the crime of grand larceny, so far as such definition is applicable to that count, your attention is invited to what the law has to say it is, that constitutes the crime of grand larceny, and more particularly what it is that constitutes the crime of grand larceny in its second degree.

It is the law that a person who, with the intent to deprive and defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, obtains from the possession of the true owner, by any false pretense, personal property, steals such property and is guilty of larceny. Where property is taken under circumstances making the taking of it a larceny, the crime is grand larceny in its second degree, where the property not having been taken from the person of another in the night time, -- the value of the property taken exceeds the sum of fifty dollars, but is less than the sum of five hundred dollars.

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt <sup>as to</sup> whether <sup>his</sup> ~~that~~ guilt is satisfactorily shown, he is entitled to an acquittal. The burden of proof is upon the prosecution, and that burden requires that before ~~the~~ defendant can be found guilty, a jury must be satisfied from the evidence

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beyond reasonable doubt of his guilt. A reasonable doubt is a doubt that is founded in and sustained by reason. It is not a whim, nor a caprice, nor the action of unreasonable sympathy.

You will be uninfluenced in the rendition of your verdict by any disposition which the Court has made of any motion during the pendency of the trial, as such disposition imports no opinion by the Court as to what your verdict should be. The evidence which is to be weighed and considered consists of the spoken word of witnesses, responsive to questions put, in so far as the answer of a witness has been allowed to stand, not being stricken out on either the motion of defendant's counsel or on the motion of the Assistant District Attorney, or by the Court of the Court's own motion. The evidence also includes any exhibits in the case which have been offered and received in evidence. The evidence does not include anything that was stricken out under any of the circumstances mentioned, and if there be any exhibit in this case which was merely marked for identification but not received in evidence, it does not include such an exhibit.

What I have said gives you an outline of the law applicable in this case, but the character of the case, the nature of the charge and certain features of the evidence make it in the interest of justice that I should supplement that which I have said by other statements. If anything that I shall say to you respecting the evidence differs from your recollection of

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the evidence, your recollection will control you when you retire to deliberate. My recollection of the evidence in this case is in substance as follows:

The complaining witness, who, according to his story, is now a teacher and was at one time a peddler and who has been in this country, according to what he says, for between nine and ten years, on a certain day read in a certain paper an advertisement, and having read that advertisement he took the paper containing the advertisement to the place mentioned in the advertisement. That was a place on East 81st Street in the County of New York; and there, according to what he says, he saw this defendant, and there, according to what he says, there were certain other people besides the defendant; and there, according to what he says, he had a talk with the defendant; and there, according to what he says, the defendant said things, which indicated that he, the defendant, had inserted that advertisement, and that the advertisement in substance called for a person desiring to form a copartnership relation with the defendant who would have a certain amount of money; that that talk was on the 29th of August, 1912, and that pursuant to that talk and on the next day he had another talk with this defendant, at the same place, and that after some talk on the 30th, with the defendant in the same place, the purport of which he claims to give you, the defendant sent one of the other men who were in the place to the office of a person who has appeared here as a

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Witness in behalf of the prosecution, a notary by the name of Barrich, and that the notary came to this place and there, according to his testimony, he had some talk with both the defendant and the complaining witness, and as the result of that talk he did some writing; that that writing was on a blank containing certain printed parts, which blank, after he had written into it certain things, was, according to his testimony and according to the testimony of the complaining witness, signed by the defendant and by the complaining witness, and that blank has been offered and received in evidence, and is in this case as People's Exhibit number one. That after that paper was written, and according to the testimony, as I recollect it, after that paper was read, and according to some of the testimony in this case, as I recollect it, after that paper was translated into a language spoken by both the complaining witness and the defendant, the complaining witness, according to his evidence, took from his pocket a sum of money, and, saying a certain thing to the defendant, handed that sum of money to the defendant, or rather he put it, according to his testimony as I now recollect it, upon the table, and it was taken from the table by the defendant. According to the testimony of the notary, as I recollect it, the money was handed by the complaining witness to the notary, and by the notary to the defendant. At all events, be that as it may, the money which had been in the pocket of the complaining witness, and which is the alleged

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subject matter of this alleged larceny, came into the possession of the defendant. According to the testimony, the amount of money that so came into the possession of this defendant, was the sum of three hundred dollars.

The claim of the complainant<sup>is</sup><sub>A</sub> that he handed it to the defendant upon the mutual understanding that the defendant should receive it for the purpose of depositing it in a bank, in the joint name of the complaining witness and of the defendant.

The paper that was so written out and which has been received in evidence purports to be a co-partnership agreement between this defendant on the one hand and the complaining witness on the other. It purports to contain certain agreements on the part of each, and certain mutual agreements, and it contains a clause inserted in writing towards the end of it in the following words -- Mr. Moskowitz, will you let me have that paper? -- (continuing) "And the said parties hereby mutually agree that said Boris Luskin" -- and that it appears is the name of the complaining witness -- "has one month trial from date, in case said Tip Top Polish shall not prove to be profitable, so said Julius Orback" -- and that is the name of the defendant -- "has to return to said Boris Luskin, the full sum of his investment. Said Julius Orback further agrees to show, to learn said Boris Luskin all the business and manufacturing belonging to said business."

There is testimony going to the point, as I recollect it, that the defendant gave as the reason for the non-deposit

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of the money on the date of its receipt that it was too late to deposit it that day. It appears, according to the evidence of the complaining witness, as I recollect it, that the next day he asked the defendant to deposit the money, and that the defendant then asserted that the money belonged to him, the defendant, and it is in evidence that the complaining witness has not received back the three hundred dollars; that he went to the place of business of the defendant, if it be considered a place of business, on the day following the handing over by him to the defendant of the three hundred dollars, and that for some days afterwards he went to a place to which the defendant moved the certain articles of furniture and other things which had been in that place. During that time, according to the complaining witness, no persons came in to buy any article, and as I recollect the testimony of the complaining witness, he received no money whatsoever.

If this defendant was engaged in business at the address on 80th Street, to which the complainant went, and if the complaining witness and the defendant mutually intended to form a copartnership, the defendant to contribute what was then in the place as his contribution to the copartnership, and the complaining witness to contribute as his contribution to the copartnership, the sum of three hundred dollars, and if the three hundred dollars was paid over by the complaining witness to the defendant as his contribution to the copartnership business, then this defendant may not be convicted of the crime of grand

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larceny in its second degree, no matter how improvident the investment of money in the business may have been; no matter how injudicious it may have been for the complaining witness to enter into a copartnership relation with the defendant, or to pay as his contribution to the business the sum of three hundred dollars. But if, on the other hand this defendant was not engaged in the transaction of any business whatsoever, and if the insertion of the advertisement in the paper, and the ostensible occupancy of a place with certain articles in it, coupled with statements made by the defendant to the complaining witness, going to the point that he, the defendant, was carrying on a business, was nothing but a trick or device for the obtainment thereby of money, and the money was paid over by the complaining witness to the defendant because he was induced by such trick or device, and for a specific purpose, namely, the taking of it by the defendant for deposit in a bank, and the defendant received the money, feloniously intending at the time of its reception, by means of such trick and device, to obtain possession of it and appropriate it to his own use, the defendant was guilty of the crime of grand larceny, and if the amount of money so received under such circumstances was the sum of three hundred dollars, he is guilty of the crime of grand larceny in its second degree.

You will scrutinize the evidence in this case for the purpose of ascertaining what your determination should be upon the following propositions:

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First, did the complaining witness hand to the defendant or turn over to the defendant the sum of three hundred dollars with the intention of clothing the defendant with title to that money; or did the complaining witness turn over that money to the defendant without any intention on the part of the complaining witness to clothe the defendant with title to that money? Was that money turned over by the complaining witness to the defendant for a specific purpose, namely, for the purpose of depositing it in a bank in the name of the complainant and in the name of the defendant as well? Was there any intention on the part of the complainant that the money when turned over by him to the defendant should be contributed by him as part of a copartnership capital? Did the defendant receive the money on the implied promise that he would take it and deposit it in the name of the complainant and also in his own name, and if so, did the defendant fulfill that promise? Did he take it, and I am referring now to the defendant contrarywise, with the pre-conceived intent of appropriating it to his own use, and did he obtain it, if so, by means of a fraudulent device? Was that which the defendant did antedating the reception of the money a fraudulent device on his part to obtain it?

If you entertain on the evidence in this case no reasonable doubt that the defendant received the money in question by means of a trick, device or artifice, and if you entertain upon the evidence in this case no reasonable doubt, that, that being the case, he received it with the intention at the time of

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appropriating it to his own use, and if you entertain upon the evidence in this case no reasonable doubt that, that being the fact, he did appropriate it to his own use, and that the amount so appropriated exceeded the sum of fifty dollars, you may find this defendant guilty of the crime of grand larceny in its second degree; provided you find as a further fact, that the complainant, in parting with the money, intended to part merely with the possession, as distinguished from the title to it.

This case, you will see, from what has been said, requires that you should pass, among other things, upon what the intent of the defendant was. Intent is the purpose to use a particular means to effect a result which is definite, and certain testimony has been received in this case, bearing upon what it is alleged by certain witnesses that this defendant did with them in order that, in the light of that testimony, if it throws any light upon the subject, you may determine what the defendant's intent was at the time that he received or had turned over to him the money which it is claimed the complaining witness turned over to him.

In certain classes of cases, whenever the intent of a defendant in doing an act is material, any like acts or other acts of the defendant, whether prior or subsequent, which may tend to show his intent in doing the act in question, are admissible in evidence.

It will be for you to say whether the defendant did do with these other witnesses that which they say he did, and

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whether there is then such a similarity between that which he did with them, and that which he did with the complaining witness, as to warrant a finding as to what his intent was in doing that which he did with the complaining witness.

Now, if you have any requests to charge, Mr. Carpenter, you may hand them up. If you have any, Mr. Moskowitz, they may be handed up.

MR. CARPENTER: I have, your Honor (handing).

THE COURT: I am asked to charge as follows: The burden of establishing every material fact in the case beyond reasonable doubt, never shifts to the defendant, but rests on the prosecution from the beginning to the end of the case.

I charge you that.

I am asked to charge that the defendant in a criminal case is not obliged to bring forward any proof or offer any evidence, and the burden will still rest upon the prosecution to establish every material fact of the case beyond a reasonable doubt, and even if the defendant does offer testimony, he is not obliged to conclusively establish any fact, and if the testimony offered in his behalf goes no further than to raise a reasonable doubt in the minds of the jury as to the guilt or innocence of the defendant, he is entitled to an acquittal.

THE COURT: That appears to me to be somewhat inapplicable in this case, but as it is requested I will charge it.

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MR. CARPENTER: All, right, sir, I withdraw that.

THE COURT: The request sought to be embodied in paragraph 11 handed to me is declined except as charged, as sufficiently covered by the charge. The same is true of the proposition of law embodied in the 15th paragraph in this book, which is sufficiently charged in the main charge, and for that reason declined.

The same is true of the subject matter of the 25th paragraph in the book which I am requested to charge, and the proposition therein contained is sufficiently covered by the main charge.

I am asked to charge you as follows: That while a defendant may testify as a witness in his own behalf, his neglect or refusal to testify does not create any presumption against him.

I so charge. The fact that he did not take the stand is not to be commented on by any one of you when you retire to deliberate. The case is to be decided irrespective of that circumstance.

The requests to charge, as written out on two sheets of paper here in pencil, are declined. So far as they embody any position that is correct, they are sufficiently charged in the main charge.

Now, Mr. Moskowitz, any requests?

MR. MOSKOWITZ: No requests, your Honor.

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EXHIBIT

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THE COURT: Gentlemen you may retire.

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

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