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

#1759

-----X  
THE PEOPLE

Before:

vs

HON. THOMAS C. O'SULLIVAN, J.,

HARRY JARESKY and PERETZ  
FEFFERMAN:

and a Jury.

-----X  
New York, June 12th, etc., 1912.

Indicted for Grand larceny in the second degree.

Indictment filed April 15th, 1912.

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

ASSISTANT DISTRICT ATTORNEY MORRIS KOENIG, for the  
People.

SAMUEL MARKOWITCH, ESQ., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,  
Official Stenographer.

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## THE PEOPLE'S TESTIMONY.

CHARLES L. McKEE, of the 7th Precinct, Detective Bureau, living at 77 Montgomery Street, being duly sworn, testified as follows:

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until to-morrow morning, June 13th, 1912, at ten-thirty o'clock).

## TRIAL RESUMED.

New York, June 13th, 1912.

CHARLES L. McKEE, a witness for the People, on the stand:

DIRECT EXAMINATION BY MR. KOENIG:

Q You are a police officer attached to the Municipal police force of this city? A Yes, sir.

Q And to the Detective Bureau? A Yes, sir.

Q Now, on the 3rd day of April, to what precinct were you attached? A 7th Precinct.

Q At that time you were a member of the uniformed police? A Yes, sir.

Q Now, on the 3rd day of April, at about ten a. m., where were you on duty? A I was on duty on South Street.

Q And at that time did you see these defendants? A Yes.

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Q Which of these defendants did you see first? A I saw both of them.

Q And did you know them at that time? A I knew them to be workmen in the premises where they were standing.

Q What was the number of the premises? A 246 and 247 South Street.

Q And what sort of premises are they? A They are conducted as a warehouse.

Q Now, what, if anything, did you see these defendants do? A I saw the two defendants now present and a third party, whom I didn't know, carry three ice-boxes out of the premises 246 and 247 South Street.

They placed the ice-boxes on a platform in front of the premises, and Fefferman, that defendant there (indicating) placed the first ice-box on his back, and walked through South Street in an easterly direction, and the other defendant, Jaresky, took the second ice-box, and put it on a hand truck, and followed in the same direction.

There was nothing suspicious about their actions, because I had known these men to be employed in the building.

Q Well, of course, officer, never mind about that. We don't want your conclusions just now. So you didn't do anything at that time? A No, sir.

Q Now, do you know whether there were any numbers on

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those ice-boxes at that time? A Yes, there were.

Q You didn't notice the numbers at the time, did you?

A I didn't note the numbers.

Q Now, about 10:45 a. m., of the same day, did you see the defendants again? A Yes, sir.

Q Now, what, if anything, did you see these defendants doing? A I saw them, in concert with three other persons, who were arrested in connection with this case, place a third case on a covered truck. What this case consisted of, I can't say.

Q Now, you say that these defendants --- and how many others? A Three others.

Q Who were those three others? Did you subsequently ascertain their business or occupation? A Yes, they were transacting business there for the American Bookbinding Company.

Q As what? A As drivers and helpers.

Q And the American Bookbinding Company was in business there; was it? A No; they stored their paper in that warehouse.

Q In the same warehouse from which the ice-boxes were taken? A Yes, sir.

Q Now, do you know Eugene McCoy? A Yes, sir.

Q And who is he? A He has charge of a warehouse at 250 South Street.

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Q Is that the same warehouse that these ice-boxes were taken from that you observed? A No, sir; two doors from it.

Q Now, do you know Mr. Mann? A Yes, sir.

Q Both Samuel and David Mann? A Yes, sir.

Q Now, when did you <sup>first</sup> see Mr. Mann after this occurrence, as you have related? A I saw him on Thursday afternoon, the following day.

Q Which one did you see, which Mr. Mann? A David Mann.

Q And did you have a conversation with Mr. David Mann? A Yes, sir.

Q Now, as a result of that conversation where did you go? A As a result of the conversation I reported the facts to the station house.

Q Well, I say where did you go after that? What did you do, if anything? A I didn't do anything on that day.

Q Well, the next day, did you do anything? A The following day we made a search for the three persons in question who placed the case upon the truck, and who were also connected in connection with this case.

Q Now, let me abbreviate your testimony, officer, so that we can get along rapidly. Did you, the next day, go to the house of the defendant Fefferman? A Not until Saturday.

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MR. MARKOWITCH: I beg your pardon, Mr. Koenig, but we will concede, to save time, that the ice-boxes were found in our possession.

MR. KOENIG: No, I don't care for the concession. I just want to put the facts before the jury; that's all.

BY MR. KOENIG:

Q Now, when did you go to the defendant Fefferman's house? A On Saturday afternoon.

Q And who was with you at the time? A The complainant.

Q Give me his name? A David Mann.

Q And what, if anything, did you find in the home of the defendant Fefferman? A We found an ice-box in his home, with the mark on it, which corresponded with the marks given to me by David Mann.

Q Have you a memorandum now of the marks that you saw on that ice-box? A Yes, sir.

Q Will you please tell us what they were? A The box was 952E. That was in Fefferman's premises. And also "Mann Brothers" was marked on the back of it.

Q And did you see the defendant Fefferman at that time? A No, sir, not at that time.

Q Well, how long after that did you see him? A Well, we sent for him, and he came in.

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Q All right. Now, did you have any conversation with him in reference to this case, and this case only, officer?

A Yes.

Q What, if anything, was said about these ice-boxes?

A I asked him where he got the ice-boxes, and he said he got them through Jaresky, the co-defendant.

Q And did he say where he had gotten them from?

A Yes, sir.

Q Tell us. A He said that he got them from Mann Brothers' warehouse, 246 and 247 South Street.

Q Now, what, if anything did the defendant Fefferman do with reference to the defendant Jaresky, in your presence? A I asked him who Jaresky was, and he informed me that Jaresky lived at 220 Madison Street, and that he also possessed one of the boxes. We went around to Jaresky's house, but he wasn't at home, and we didn't find the box in his premises, but in the adjoining premises.

Q And who lived there at those premises? A Jacob Polowitz.

Q Now, how many ice-boxes did you see in the defendant Fefferman's home? A I saw one in the home of Fefferman, and one in the home of Lena Goulab, adjoining.

Q And who is she? A She is a tenant in this building.

Q In the same house <sup>in</sup> which the defendant Fefferman lives?

A Yes, sir; and in the premises adjoining the premises of

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Fefferman.

Q Now, what did the defendant Fefferman say as to how he got those boxes? A He couldn't account for the boxes at all at that time.

MR. MARKOWITCH: I object to that.

THE COURT: Objection sustained.

BY MR. KOENIG:

Q What did he say? A He said he got them through Jaresky.

Q Did he say how Jaresky got them, as he was informed? A No, sir.

Q Can you remember anything else that was said about it, how Jaresky obtained those ice-boxes? A He said that they just took them out of there.

Q Now, did the defendant Fefferman say that Jaresky had taken them out with some fellow down there?

MR. MARKOWITCH: I object to that as leading.

THE COURT: Objection sustained.

MR. KOENIG: If your Honor please, I've called his attention to the conversation, and he has exhausted his memory, and I now refresh his recollection as to whether that was said in that conversation.

THE COURT: Of course, if there be any good reason for it, the Court may allow it. However, I think the question had better be modified.

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BY MR. KOENIG:

Q Now, was there any conversation between you and the defendant Fefferman regarding the manner in which Jaresky had informed him that he got the ice-boxes? A There was conversation, but I couldn't understand it all, because he didn't speak all the time in English. He spoke to David Mann part of the time.

Q Did Fefferman say anything about his giving any box to Jaresky? A No, sir.

Q Now, that ice-box you found in the home of Mrs. Goulab, did you make a memorandum as to the remark on that? A Yes, sir.

Q Will you read the mark? A 944 E, and "Mann Brothers" marked on the back of the box.

Q Now, you say --- and the defendant Fefferman is the same man that you saw carry those ice-boxes? A Yes, sir.

Q And the defendant Jaresky is the same man that you saw have an ice-box on that wheelbarrow? A Yes, sir.

Q Now, did you have any conversation with Jaresky as to the ice-box that was in his possession? A Yes, sir.

Q What did he say? A I asked him where he got this ice-box, and he said that he bought it off a man down there, who represented himself as the agent for Mann Brothers.

And I asked him if he knew David Mann, and he said he

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did.

And I also asked him if he knew the watchman, and he said he knew the watchman.

And I asked him where this man was and he said he didn't know, but he said he bought it off him, and got a receipt off him.

Q Now, produce that receipt, will you, officer?

A I have the receipt here.

MR. KOENIG: I will offer it in evidence.

MR. MARKOWITZ: No objection.

(It is admitted in evidence and marked People's Exhibit 1).

BY MR. KOENIG:

Q Did you ask him who Harry Levy was? A I did.

Q And what did he say? A He said he didn't know him, only he was there on that day.

Q Now, will you state whether or not you had a conversation as to the ice-boxes that he had sold to Fefferman?

A I asked him that question, and he denied it. He said that he and Fefferman both had bought ice-boxes in concert with each other.

Q That is, they took them from the same man? A Yes, sir.

Q He didn't say that he had sold the ice-boxes to Fefferman; did he? A No, sir.

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## CROSS EXAMINATION BY MR. MARKOWITCH:

Q Now, at the time you saw these men carrying the ice-boxes out of the place, you were talking to another officer; weren't you? A No, sir.

Q That is, there was another officer near you? A No, not at the time.

Q Did you see them take the three ice-boxes out at the same time? A Yes, sir.

Q And you say you saw a third man there? A Yes, sir.

Q And you never saw the third man since; did you? A No.

Q Do you know who the watchman is that, as a rule, opens the premises? A Yes, I know the watchman.

Q Is he in court to-day? A No, sir.

Q And did Mann tell you about how many boxes were stolen from those premises? A He said he thought possibly a hundred had been stolen. He hadn't taken stock.

Q And isn't it a fact that that was the first day that these men were working in these premises? A No, sir, I saw these men two days prior.

Q Two days prior? A Yes, sir.

Q Sure of that? A I recognized these men.

Q And did you see any boxes carried out of there during those two days that those men were working; that is, before

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that day? A No, sir.

Q That's the first time you saw these men carry out any ice-boxes? A Yes, sir.

Q Now, Mann was telling you about some agreement that he had with the American Bookbinding company, that they were responsible for 200 ice-boxes; didn't he? A Well, he mentioned something about that. I had no recollection on that. It has no bearing on the case.

Q Well, he told you that he allowed the American Bookbinding company to occupy the premises together with him, upon the condition that they would insure him to the extent of 200 ice-boxes which may be stolen; do you recall a conversation of that kind, to that effect? A I can't state that.

Q Well, did he mention something like that? A The only statement he made to me was he thought the American Bookbinding company was responsible for the action of the three men who were supposed to take this third ice-box away, and he thought he would bring a civil action. That's the only conversation he had with me. And he said he thought possibly he had lost 100 boxes, but, after taking stock, he only lost three, that is, up to date, but he says he hasn't went through all the stock yet.

Q Only three? A Yes, sir.

Q And do you remember his stating in the Police Court.

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that he had lost at least 100 ice-boxes?

MR. KOENIG: I object to that. There is no evidence to show that Mann testified differently there, and Mr. Mann hasn't testified at all yet here.

MR. MARKOWITCH: If your Honor please, our defense is that we bought those ice-boxes in good faith.

THE COURT: Objection sustained.

MR. MARKOWITCH: Exception..

BY MR. MARKOWITCH:

Q Now, when those drivers were arrested, officer, do you remember having had a conversation with the defendants, in which Mann was present? A Which defendants?

Q I mean the defendants at the bar, Fefferman and Jaresky? A The arrest of the drivers had nothing to do with this case at the time. They were arrested on Friday, while these two defendants were arrested on Saturday.

Q The day after? A Yes.

Q But you arrested them in connection with the same case? A Yes, in connection with the case.

Q Exactly. Now, did you ask these men if they could identify the drivers as having sold the ice-boxes to them, any one of the drivers? A Yes; after the arrest of these two defendants I asked them.

Q And these defendants told you that none of those men,

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of those three men, had sold the ice-boxes to them; is that right? A That's right; yes.

Q And you were telling us about a conversation that you had with Fefferman. As a matter of fact, Fefferman doesn't speak the English language well; does he? A No.

Q And it is true, as you told us, that you couldn't understand a half of what he said? A No, I couldn't.

Q So that you couldn't really swear to a positive certainty as to whether he told you that Jaresky had sold him the ice-boxes? A I remember that part distinctly.

Q And is that so distinct that you can recall that, and not recall anything else? A My reasons for that was in order to connect the third box; that was my only reasons for finding out.

Q Now, what did they tell you about selling the third box? Did they tell you that they sold the third box to that woman? A Well, Jaresky sold that box.

Q And didn't he tell you that he sold it? A Yes, sir.

Q And got \$13 for the box? A Yes, sir.

Q Did you ascertain whether that was so or not from the woman? A Yes, Mrs. Polowitz --- Jacob Polowitz, rather, said that he had paid \$13 for that box, and he returned the money in our presence.

Q And while you were watching those premises, did you

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see any women coming in there? A No, sir.

Q And how long were you around there? A Well, it's a short post, and I spent the greater part of the day after nine o'clock.

Q And were you told anything about these men having gone to their homes, and having brought their wives over to select the ice-boxes?

MR. KOENIG: I object.

BY MR. KOENIG:

Q Did either of the defendant say that? A No, sir.

BY MR. MARKOWITCH:

Q Well, were the defendants present when you were told that? A No, sir.

Q Now, officer, you were present in the office of the Assistant District Attorney, the other day, when Mr. Mann was up there? A Yes, sir.

Q And were you there when David Mann was in that office? A Yes, sir.

Q Were you there when Samuel Mann was in the office? A No, sir.

Q And do you recall the conversation that was had?

A (No answer)

MR. MARKOWITCH: Well, never mind. I withdraw that. That's all.

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S A M U E L M A N N, of 46 West 129th Street, a witness  
called on behalf of the People, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q What is your business? A We are jobbers of  
furniture.

Q And where is your place of business? A To-day?

Q Yes. - A To-day, it is at 250 South Street.

Q And where was it on the second day of April? A It  
was at 182 and 184 Grand Street, our salesrooms, and our  
warehouse at 246 and 247 South Street.

Q Under what name do you do business? A Mann  
Brothers.

Q Now, at the premises No. 246 South Street, did you  
have any property there? A We did, yes.

Q Where? A At 246 and 247 South Street, running  
through to Water Street. We had on the ground floor, the  
entire ground floor --- we had that floor stocked up with  
refrigerators.

Q Commonly called ice-boxes? A Yes, sir.

Q And that was stock belonging to your firm? A Yes,  
sir, to the firm.

Q Now, do you recollect having a conversation with  
Officer McKee? A I did, yes.

Q And after that conversation did you go anywhere with

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Officer McKee? A I did not, sir.

Q Did you go the house of this defendant Pefferman with Officer McKee? A I did not, sir.

Q You had no conversation in the presence of the officer? A No, sir.

Q Was it your brother that had it? A I had the conversation with Officer McKee.

Q No, but with the defendant Pefferman? A No, sir.

Q It was your brother? A It was my brother.

Q Did you see the ice-boxes that were found in the defendants' possession? A When they came back from the Property Clerk, I seen them.

Q And you identified them as your property? A I did, sir.

Q And did you ever sell those ice-boxes to anybody?

A Those very same three ice-boxes, they are in the stores now.

Q (Question repeated) Did you sell them, or authorize anybody to sell them? A We do the selling ourselves, in the salesrooms, in Grand Street. There is no selling in the warehouse.

Q And you didn't authorize anybody to take them from those premises; did you? A No, sir.

CROSS EXAMINATION BY MR. MARKOWITZ:

Q Now, Mr. Mann, you had a conversation with the Dis-

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trict Attorney, the other day, did you not, in reference to this case? A Yes, you sent me up in his office.

MR. KOENIG: One moment. Just answer his questions.

BY MR. MARKOWITCH:

Q You did? A Yes, sir.

Q And you also talked to the bosses of these two men, did you not? A Yes; they came to me and spoke to me, and you also.

Q And I spoke to you in the presence of the District Attorney about this particular case, didn't I? A Yes, sir.

Q And I told you, didn't I, Mr. Mann, "You know these men---" didn't I tell you this, "You know, Mr. Mann, that these two fellows didn't steal those ice-boxes; that they bought them, and you know who did steal them, and who sold them to them"? A No, sir.

MR. KOENIG: I object.

THE WITNESS: No, sir.

BY MR. MARKOWITCH:

Q I didn't say that to you? A No, sir, but I can tell you what you said to me.

Q Go ahead. Tell me. I want you to tell the whole thing.

MR. KOENIG: I object. I submit that the entire

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thing is incompetent. What difference does it make as to what conversation occurred between the witness and counsel for the defendant, unless it is given for the purpose of contradicting anything that the witness may have said here.

THE COURT: Yes. Objection sustained. Proceed.

MR. MARKOWITCH: Exception. Now, in order to test the credibility of the witness, if your Honor please, I want to ask him a certain line of questions.

BY MR. MARKOWITCH:

Q You got a general release from these men; didn't you?

MR. KOENIG: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

A They came to me, and begged me to meet the man ---

THE COURT: No, answer the question.

A I got releases from these two gentlemen.

BY MR. MARKOWITCH:

Q And they came to you with their boss, the man that you engaged to do carpenter work on your premises; didn't they? A Yes.

Q And they gave you those two releases, two days ago; didn't they? A Yes.

MR. KOENIG: Objected to.

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THE COURT: Allowed.

BY MR. MARKOWITCH:

Q Now, did you tell the District Attorney that you knew that these men didn't steal the ice-boxes; that they bought them and paid for them? A I didn't tell that to the District Attorney.

MR. KOENIG: No, he didn't say it at all.

THE WITNESS: I'll tell you what I said.

BY MR. MARKOWITCH:

Q Well, tell us then.

MR. KOENIG: Objected to. I object to having any fishing excursion here.

THE COURT: Sustained. Our time is too valuable to allow every witness to take the stand here to tell what his conversation was with the District Attorney. We are simply going into the realm of testimony here, not investigating the fields of curiosity at all.

MR. MARKOWITCH: Exception.

BY MR. MARKOWITCH:

Q Now, did you have a conversation with Mr. Kowalsky, that gentleman there (indicating)? A He came to my place of business with those two defendants.

Q Did you tell Mr. Kowalsky that you are convinced, that you know, that these men didn't steal those ice-boxes, and that you know who did steal them?

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MR. KOENIG: I object.

THE COURT: Allowed.

A I didn't tell him anything of the kind.

BY MR. MARKOWITCH:

Q Didn't you ask Kowalsky to bring those men down to you, the two defendants, and to give you general releases, and that you would tell the District Attorney to drop this case? A I did not, sir. I tell you what Mr. Kowalsky came to my place and said.

THE COURT: Now, why do you say that? Why don't you answer the question, and stop.

BY MR. MARKOWITCH:

Q You did not? A No, sir. What was the question?

(Question is repeated by the Stenographer)

A I didn't tell him that.

Q Well, why did they give you the general releases then?

MR. KOENIG: Objected to.

THE COURT: Sustained.

MR. MARKOWITCH: Exception.

BY MR. MARKOWITCH:

Q Now, how many ice-boxes did you lose from your premises, Mr. Mann? A We didn't take stock yet, because we moved from our salesrooms over to 250 South Street, in May, and this was a big building that we were overhauling, and

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we didn't take stock yet to know how many we are short.

Q Now, when was this larceny committed? A April 3rd, 1912, from the information from Officer McKee. And they have got the releases ---

THE COURT: Now, I will ask you again to stop, when you have given the answer. We cannot afford to waste time here.

BY MR. MARKOWITCH:

Q Now, do you mean to say, Mr. Mann, after you were informed that three ice-boxes were stolen from your premises, you were not sufficiently interested to take stock, to find out how many ice-boxes were missing? A No, sir, I didn't take stock yet.

Q You didn't? A No, sir.

Q And the only reason is that you moved on May 1st? A Well, we can't take stock, because we have a tremendous stock to take.

Q How many ice-boxes have you that you call a tremendous stock? A \$22,000, at that time.

Q But how many ice-boxes were there? A About 2,000.

Q And how long would you take to count 2,000 ice-boxes? A It would take to count them, and take them down from the racks, possibly a month.

Q Well, you have had from April 3rd, when you moved, to do it? A We didn't have time to do it.

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Q Do you remember telling Magistrate Appleton that, in your opinion, there were about 100 boxes stolen? A There were from 50 to 100, just from the looks of the rest on the ground floor of the building that we occupy.

Q Have you got an agreement or understanding with the co-tenant of your place, the American Bookbinding company, that they would be responsible for the losses of ice-boxes in your premises?

MR. KOENIG: Objected to.

THE COURT: Sustained.

MR. MARKOWITCH: Exception. That's all, sir.

MR. KOENIG: That's all, Mr. Mann.

D A V I D M A N N, of 42 West 120th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q Mr. Mann, you are connected with the firm of Mann Brothers? A Yes, sir.

Q And did you go to the defendant Fefferman's house with Officer McKee? A Yes, sir.

Q Did you have a conversation there with the defendant Fefferman? A Yes, sir.

Q And you heard the conversation that took place

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between McKee and Fefferman? A Yes, sir.

Q Now, tell us what that conversation was, insofar as it concerns these ice-boxes? A I went in the next door from Fefferman, right next door, and I found an ice-box, 944E, and Mrs. Fefferman told me these boxes were stolen.

Q Who told you? A Mrs. Fefferman.

Q Well, was Fefferman there? A He was to the barber.

MR. MARKOWITCH: I move that that be stricken out.

MR. KOENIG: I consent.

MR. MARKOWITCH: However, I will let it stand, if he says that Mrs. Fefferman said to him that those ice-boxes were stolen.

THE COURT: No, we cannot have any conditions. The rules of evidence must be applied. Strike it out.

BY MR. KOENIG:

Q Now, listen, Mr. Mann. Tell us any conversation that you had with the defendant Fefferman, or any conversation that was had in your presence with him. A Well, when we come in Fefferman's house he wasn't there; he was in the barbershop, but I asked her ---

Q No, don't tell that. I don't care about any conversation with Mrs. Fefferman. Did Fefferman come back?

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A Yes, sir.

Q What did he say? A He told me that he bought these ice-boxes from a party by the name of Harry Levy, agent for Mann Brothers, and I told him we had no such person agent for Mann Brothers; that I was the only person that had charge in this place, and he knew I was the only one in there.

BY THE COURT:

Q And what is your name? A David Mann. That's all I said to him.

BY MR. KOENIG:

Q Well, was that Fefferman or Jaresky? A That's the one from 141 Monroe Street.

Q Fefferman? A Yes, sir.

Q And was that conversation in English or Jewish?

A Jewish.

Q Well, did the officer have a conversation with him in English? A In English, yes, but I had to speak with him in Jewish to repeat it to him.

Q But the officer's talk was in English? A Yes, sir.

Q Can the defendant Fefferman speak some English?

A Is that the one from Madison Street? I don't know the names.

Q This is Fefferman, and this is Jaresky (indicating).

A Yes; it was with Fefferman.

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Q Now, did you authorize anyone to give that receipt which I show you? A No, sir.

Q You say you looked at the ice-boxes? A Yes, sir.

Q The three of them? A Yes, sir.

Q And were they your property, or the property of Mann Brothers? A Yes, sir.

Q And you looked at the numbers and the marks?  
A Yes, sir.

Q And you did identify them? A Yes, sir.

Q And you did not sell them; did you? A No, sir.

Q Or authorize anyone to sell them? A No, sir.

MR. KOENIG: That's all.

CROSS EXAMINATION BY MR. MARKOWITCH:

Q Did you hear the officer tell us that Fefferman told him he bought those ice-boxes from Jaresky? A No, sir.

Q You didn't hear that? A No, sir.

Q I will ask you, do you mean to tell this jury that, when you came to the home of Fefferman, and Fefferman wasn't there, Mrs. Fefferman told you that the ice-box in her house was stolen? A Yes, sir.

Q You want the jury to believe that; don't you?  
A Yes, sir.

Q And did you tell her who you were; did you tell

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Mrs. Fefferman who you were? A Yes, sir.

Q You told her you were Mann? A Yes, sir.

Q And that you were the owner of a certain place?

A Yes, sir.

Q And you told her that you owned ice-boxes? A Yes, sir.

Q And that you are looking for certain ice-boxes that were stolen? A I seen them in the room, yes.

Q And you asked her where she got them? A Yes, sir.

Q And she told you that she knew the ice-boxes were stolen? A Yes, sir.

Q That is true; isn't it? A Yes, sir.

Q Now, when did you go to Jaresky's home? A On Saturday.

Q And you were at Fefferman's home when? A On Saturday.

Q The same day? A Yes, sir.

Q After you got through with Fefferman you went to Jaresky? A Yes, sir.

Q Now, when you were talking to Fefferman, you interpreted what the officer spoke to him from English into Yiddish; is that right? A Yes, sir.

Q In other words, the officer asked the question in English, and you interpreted it to Fefferman in Yiddish?

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A Yes, when he spoke to him, when the officer spoke to him in English, he couldn't understand it, and I had to repeat it in Yiddish.

Q And then you repeated the answer to the officer in English? A Yes, sir.

Q How many ice-boxes do you say were stolen from your premises? A Well, we didn't take any stock, and I thought there was over a hundred.

Q Yes. Well, what do you think now? A Well, we haven't taken any stock yet.

Q Well, on what did you base your thought or opinion?

MR. KOENIG: I object to that as immaterial.

MR. MARKOWITCH: I want to show how accurate his testimony is.

BY MR. MARKOWITCH:

Q What did you base your thought or opinion on?

MR. KOENIG: Objected to.

THE COURT: I will allow the question.

A Well, we had to move out from 182 Grand Street, and then we had to move from 246 and 247 South Street, and we only had about a week or nine days, and we couldn't take any stock. This Mr. Driggs had to move out from South Street, and we had to move ---

Q No. I ask you this, on what you base your opinion that there were about 100 ice-boxes stolen?

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MR. KOENIG: I object.

THE COURT: Allowed.

A Well, I --- there were about a hundred missing.

BY THE COURT:

Q Well, that is not what he wants to know. You say there were certain ice-boxes missing. Why do you say it?

A Mr. McCoy said that he saw a lot of boxes going out.

Q Who is Mr. McCoy? A An employee of Mr. Driggs. He is the one that notified me, Thursday, that boxes were being taken out.

Q Who is he? A He works for Mr. Driggs, 250 South Street.

Q What is his business? A He has charge of a warehouse at 250 South Street. This man notified me, on Thursday, that boxes were stolen out of the place.

Q There were a lot of people going in and out of the premises that you occupied in conjunction with the American Bookbinding Company; were there not? A Well, I don't know about that; I don't know about those days.

Q You could pass in that building from one tenant's place to the other tenant's place; couldn't you? A Yes, sir.

Q From one tenant's part to another tenant's part?  
A Yes, sir.

Q About how much did the ice-boxes weigh, each?

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A. An average of 200 pounds.

BY MR. MARKOWITCH:

Q. Is your watchman here, the watchman who opened the premises, that morning? A. No, sir.

BY THE COURT:

Q. And do you know the measurements of the boxes?

A. I couldn't say.

Q. Well, about? A. Well, we'll say an average of 48 inches high.

Q. Four feet? A. Yes, sir; and about two foot wide.

Q. And they would weigh about 200 pounds? A. Yes, sir, an average of that.

BY MR. MARKOWITCH:

Q. Now, your watchman, you say, isn't here? A. No, sir.

Q. And he was the one authorized to open that place?

A. That morning?

Q. Is that right? A. Yes.

Q. Is the watchman working for you now? A. No, sir.

Q. When did you discharge him? A. Well, after the holiday.

Q. What holiday do you mean? A. Easter.

Q. Well, that was just about the time that those ice-boxes were stolen; isn't that so? A. Yes.

Q. That is when you discovered the fact that they were

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stolen? A Yes, sir.

Q And you discharged the watchman? A No.

Q Now, let's see. You remember that the ice-boxes were stolen, so far as you know, during the Jewish Passover; isn't that so? A Yes, sir.

Q It was a Jewish holiday? A Yes, sir.

Q And Easter was the same week; wasn't it? A Yes, sir.

Q Now, when you tell us that you discharged him on Easter, that was just about that time? A I said after Easter. I told him to go home, because I didn't need him any more.

Q You don't employ a watchman any more? A No, sir, not after Easter.

Q You didn't discharge him because he was lax in the discharge of his duties? A What do you mean?

Q You didn't discharge him because he didn't attend to his duty, and watch the premises carefully? A No, sir.

RE DIRECT EXAMINATION BY MR. KOENIG:

Q You had that watchman only for the holidays? A Yes; and for other work before that.

Q And after the holidays you didn't need him any more, and discharged him? A Yes, sir.

Q Or let him go home? A Yes, sir.

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Q Did you have any Harry Levy in your employ at any time? A No, sir. And Mr. Fefferman and Mr. Jaresky picked out the drivers, downstairs.

Q Was he picked out at any time by either of these defendants as the man from whom they bought the ice-boxes, as they said? A No, sir.

Q On received them? A No, sir.

MR. KOENIG: The People rest.

MR. MARKOWITCH: I don't suppose it is necessary to make a motion, your Honor, here, because a prima facie case appears to have been established, and, therefore, I will proceed with the defense.

THE COURT: Very well. Proceed.

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## THE DEFENSE.

HARRY JARESKY, of 220 Madison Street, one of the defendants, being duly sworn and examined through the Official Interpreter, Mr. Rosenthal, testified as follows:

## DIRECT EXAMINATION BY MR. MARKOWITZ:

Q Mr. Jaresky, what do you do for a living? A I am a carpenter.

Q And for whom do you work? A For Mr. Kowalsky.

Q Did you work for Kowalsky on the 3rd day of April, 1912? A I don't know what time you refer to.

Q Well, on the day that you got those ice-boxes, did you work for Kowalsky? A No, that day I was working for Moschowitz.

Q Moschowitz was your boss on that day? A Yes, sir.

Q Now, were you order to go to work at Mann's premises by Moschowitz? A Yes, sir.

Q And who went along with you? A I went alone.

Q And when you came there did you find anybody else?

A I found there about four workingmen.

Q And was Fefferman one of them? A He wasn't there as yet.

Q Well, who was there? A Mention their names. A Levine.

Q Is Levine in court? A Yes, sir. And Jake Kaplan.

Q Is he in court? A He was here yesterday, but he isn't

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here now.

Q And who else? A And another man. He is a helper there, a Hebrew. He lives in Monroe Street. I don't know his name.

Q And when did Fefferman come to the place? A About eight o'clock, or five minutes of eight.

Q Now, who opened those premises? A A man came and opened the door, and we went inside, and we were about to undress ourselves in order to go to work, but it was very hard work, and we didn't know how to start the work without the boss, and then we were standing there and waiting until about half past nine.

Q Now, then, while you were waiting, did you have any conversation with any man --- with the man who opened the place that morning? A We had no conversation during the time we were waiting, but, after half past nine, he said whoever was willing to buy an ice-box could buy one, and Fefferman went to the woman, and brought the woman.

Q His wife? A Yes, his wife. And she picked out an ice-box, and she bought it.

BY THE COURT:

Q Who did? Who bought it? A Fefferman's wife. And the man helped Fefferman to carry away the ice-box.

BY MR. MARKOWITCH:

Q Pardon me. Do you mean that the man who helped him

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was the same man who sold it to him? A Yes, the same man.

BY THE COURT:

Q How did they carry it away? A Both the man and Fefferman, both carried it away.

Q But how? A It was put on the shoulders. I think it was put on the shoulder of Fefferman.

Q Can't you remember exactly how it was taken away?  
A Exactly I can't remember.

Q Well, did you see it taken away? A Sure.

Q How do you know that you saw it taken away? A I was standing nearby, and all the people were there.

Q Well, what did you see them doing? A Mrs. Fefferman was taken out to the sidewalk, and there she picked out the ice-box, and after they had bought an ice-box, I bought one, too, but I said I wouldn't carry it myself, and the man put it upon a truck and brought it to my house.

BY MR. MARKOWITCH:

Q Do you mean a hand-truck? A Yes, sir.

BY THE COURT:

Q Now, then, what I want to know is, how the other ice-box was taken away. Did you see that taken away? A I don't remember exactly whether Fefferman took it upon his shoulder, but I know that both of them carried it away.

Q Now, will you tell us how they carried it. That's what we want to know. A I believe one took it on his back,

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and the other was helping.

Q You believe that. Don't you know that? A I don't remember exactly, but I am almost sure it was that way.

Q Well, why should you be almost sure of it? Will you answer that question? A I don't remember who was carrying the ice-box, whether this man or the other man, but they were carrying it.

Q I would like to know why you say they were carrying it. Why do you say they were carrying it? A Why, I saw it.

Q Yes, you saw it? A Yes, sir.

Q Then you know who carried it? There is no guess about it. A I know that Fefferman carried it, but the other fellow helped along.

Q That's what I want to know. A That's what I said.

Q Now, then, how did Fefferman carry it? You saw it, and you ought to know. A Fefferman had it upon his back, upon his shoulders, and the other man went from behind, and helped along.

THE COURT: Now, we are arriving at something.

Proceed, please.

BY MR. MARKOWITCH:

Q Now, Jaresky, did you buy the ice-box before or after Fefferman bought his? A Fefferman bought first, and after him I bought.

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Q How much, if you know, did Fefferman pay for his ice-box? A This I don't know. I didn't see him pay.

Q How much did you pay for your ice-box? A \$12.

Q How much money did you have in your possession in the place? A You mean at that time?

Q Yes. Not at the time when you paid for it, but when you negotiated for the purchase of that ice-box? A \$10.

Q And did you ask him to go anywhere with you to get the balance of the money? A Yes, sir.

Q And did he go with you? A Yes, sir.

Q Where? A To Madison Street.

Q To what place? A To Madison Street. I went there to borrow the money.

Q Whose place is that? Is it a saloon, a liquor saloon? A Yes, sir, a saloon.

Q And who owns it? A Max Bernstein.

Q And how much money did you take from him? A Five dollars.

Q And you paid for the ice-box in Max Bernstein's place? A Yes, sir.

Q And did you get a receipt for it? A Yes, sir.

Q And is that the receipt, marked People's Exhibit 1? A Yes, sir.

Q Look at it. Is that the receipt? A Yes, sir, this is the piece of paper, but I can't read.

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BY THE COURT:

Q How do you know that that is the piece of paper?

A It was such a piece of paper as this. I had it.

Q Can you write at all in your own language? A In Yiddish I can write.

THE COURT: Yes, I thought I saw his signature here.

BY MR. MARKOWITCH:

Q Now, will you tell us how that woman --- pardon me. Now, did you show that receipt to the officer? A Yes, immediately.

Q And did you tell Mann how you came into possession of the ice-box when he went there with the officer? A Yes, sir.

Q Were you over in Mann's place of business several days ago? A No.

Q A few days ago were you there? A No.

Q Well, did you sign any paper for Mann Brothers?  
A Yes, sir.

Q Well, didn't you deliver it to Mann? A Yes.

Q Well, you were there when you delivered the paper; weren't you? A No.

Q Well, who delivered it? A What paper?

Q The release that was signed? A Yes, I signed it for them.

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Q Well, did you bring that paper to Mann, after you signed it? A I didn't bring it to him. He gave me the paper, and I signed it.

Q Where was that paper signed? In whose place of business was that paper signed? A In his place, in South Street.

Q Well, then you were there when you gave him that paper, weren't you? A Yes, sir.

Q Now, state the conversation you had with Mann?

MR. KOENIG: I object to that as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

A I said, "I'm a poor man. I must make a living," and he said I should sign the paper; that he has nothing at all against us.

BY MR. MARKOWITCH:

Q Did he tell you that he knows who stole those ice boxes? A No, he didn't say that.

Q Well, did he have a conversation with Kowalsky, while you were there? A Yes, sir, but I didn't hear what they said.

Q Now, was Fefferman there, too? A Yes, sir.

CROSS EXAMINATION BY MR. KOENIG:

Q Now, who opened that place on that day? What kind of a looking man was it? A A young man.

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Q Was it a man or a boy? A I don't know; but a young man.

Q Do you know the difference between a young man and a boy? A It wasn't a boy.

Q Did you, on that morning, intend to buy an ice-box?  
A Yes.

MR. MARKOWITCH: Well, what part of the morning?  
When he came there, he didn't intend it, but after he was there he intended it, and bought it.  
A Yes, when I came there, I had no intention of buying an ice-box.

BY MR. KOENIG:

Q Well, did your wife tell you to buy an ice-box, if you found a chance to buy one cheap? A She was going to buy an ice-box on that day --- not exactly that day, but on any day.

Q Well, your wife had told you that she was going to go out to buy an ice-box? A Yes, sir, she did.

Q And you happened to go to work, that day, at a place where there were ice-boxes? A Yes, sir.

Q And you saved your wife the trouble, and you bought it yourself? A Yes, sir.

Q Now, you knew that wasn't a store; didn't you? A I didn't know.

Q Well, you didn't see anybody in that place at the

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hour of half past nine in the morning selling ice-boxes; did you? A No, that's the first time.

Q There was no customer coming in there to buy ice-boxes; was there? A No, sir.

Q And the only ice-boxes that were sold were the ice-boxes bought by you and this man Fefferman; is that right? A Yes, sir.

Q And there wasn't anybody else in that place, except the man that opened the door, as you say? A Yes, sir.

Q You didn't see any bookkeeper, salesman or customers; did you? A No, sir.

Q And you say you came there to do some carpenter work; do you? A Yes, sir.

Q And the man didn't show up, the boss didn't show up? A No, sir.

Q And at half past nine you were working? A Yes.

Q And how much did you get a day? A Five dollars.

Q And had you worked the day before on those premises? A No.

Q Had Fefferman worked the day before, do you know? A No, that was the first day.

Q And this young man who opened the door, this young man who opened the door, was he in that place from eight o'clock until half past nine, or did he go out at any time? A No, he was sitting there, reading a paper.

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Q Watching you? A No, he was standing near the door, and he was reading a paper.

Q And this man said, "As long as you haven't anything else to do, I'll sell you ice-boxes"? Is that right?

A Yes, sir.

Q So that you, who knew that your wife wanted an ice-box, didn't ask him whether he would sell an ice-box or not; did you? A No, sir; we were figuring that the boss would arrive very soon.

Q And yet, when this man said you should pick out an ice-box, because you had leisure time, you did so? A Yes, sir.

Q And you believed that that man had the right to sell ice-boxes? A Yes; he said he was the boss.

Q Did Mrs. Fefferman come there when the first ice-box was sold to Fefferman? A Yes, sir.

Q And then you bought one? A Yes, sir.

Q How many ice-boxes did Fefferman buy? A Two.

Q But the first one that he bought was bought with the help of his wife; wasn't it? A Yes, sir.

Q And he took it away, did he, on the truck? A The first one?

Q Yes, the first one? A No.

Q What did he do? A He took it away on his shoulder, and the man helped him.

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Q And you took yours away how? A My ice-box I didn't care to carry, and he took it away on a small hand-truck.

Q And this man, who was the boss of the place, with 2,000 ice-boxes --- I'll withdraw that. How many ice-boxes were in that place? A I don't know.

Q Well, was it ten or twenty or a hundred? A Who knows? I don't know.

Q Was it a big place? A Yes, sir.

Q And was it full of ice-boxes? A Yes, sir.

Q And you believed that this man was the boss over those ice-boxes? A Yes, sir.

Q And this man that you believed to be the boss went out and helped to carry the ice-box? A Yes, sir.

Q And you still believed that he was the boss? A Yes, sir.

Q And at the time you saw him doing that you believed he was the boss? A Yes, sir, I believed he was the boss, because he appeared like a gentleman.

Q Did you ever buy an ice-box before? A In my life?

Q Yes. A Yes.

Q And when you bought an ice-box did you always carry it home on your back? A I bought, once before, an old ice-box, and it was brought to me on a pushcart.

Q Yes, you didn't carry it on your back; did you?

A No, sir.

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Q And you didn't buy that ice-box in a store either, did you? A No, sir.

Q Did you ever buy one in a store? A No, sir, never.

Q Now, this receipt. You say you didn't have any money? I withdraw that. I show you this receipt. Who made that out? A That man.

Q Now, did this man leave the premises with Fefferman and his ice-box? I'm talking about the first ice-box?

A Yes, he went away, he helped him, and then he came back.

Q And then you waited until he came back? A Yes; all the people there were waiting.

Q And then he helped you with your ice-box? A Yes, sir; he put it on a hand-truck, and brought it to the house.

Q To your house? A Yes, sir; and I was walking along with him.

Q Now, did this man sign the name "Harry Levy"? A Yes. I don't know. But that man gave me this paper.

Q Now, did this man both make out the receipt and sign it, or did he make out the receipt and did somebody else sign it? A This I don't know. He gave me this paper.

Q Weren't you present when the man made out the receipt? Wasn't it you who asked for it? A Yes, I asked for one, and he gave me this paper, and I didn't look at it very much, because I can't read.

Q But he was the only one that did the writing? A Yes,

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sure.

BY THE COURT:

Q Now, you have answered the District Attorney that the man who gave you the receipt was the only man who did any writing. Now, did you say that because the man handed you the receipt, or because you saw him writing the receipt?

A The man gave it to me, but I didn't see ---

Q You didn't see him write it? A No, sir.

BY MR. KOENIG:

Q You went to a saloon with this man that sold you the ice-box; didn't you? A I was short some money, and I went there to borrow.

Q And did the saloonkeeper lend you any money? A Yes, five dollars.

Q And did you pay that money over to the man that sold you the ice-box? A Yes, sir.

Q And you gave it to him in the saloon; did you not? A Yes, sir.

Q And at that time did you ask that man to give you a receipt for the money which you had given him? A Yes, sir.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

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## After Recess.

H A R R Y J A R E S K Y, his cross examination being continued, testified as follows:

## CROSS EXAMINATION CONTINUED BY MR. KOENIG:

Q The man who sold you the ice-box, did he speak English?

A Yiddish.

Q Why did you ask him for a receipt? A Because when I bought the ice-box before, I also got a receipt.

Q From your cousin? A Not from my cousin.

Q From whom? A From the man of whom I bought it.

Q How many ice-boxes did you buy from this man Levy, as you claim? A One ice-box.

Q Didn't you buy two? A No.

Q One of which you sold to a woman living in the house?

A The one which I had bought.

Q Didn't you sell that to a woman in your house, a tenant in your house? A Yes; because the old one which I had, she didn't want to buy, and my wife was about to be confined, and we had no room for two ice-boxes.

## RE DIRECT EXAMINATION BY MR. MARKOWTICH:

Q Jaresky, were you ever convicted of any crime, or arrested, charged with any crime? A No.

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S A M U E L J A C O B S, of 188 Madison Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKOWITCH:

Q What do you do for a living? A Working in a law office.

Q Talk up loudly, so that the last gentleman can hear you. Where are you working? A Jacob M. Schoenfeld, of 299 Broadway.

Q A lawyer? A Yes, sir.

Q And how long are you working there? A Six months.

Q And do you know the defendant Jaresky? A Yes, sir.

Q You are a step-son of Max Bernstein, who owns a liquor saloon at 188 Madison Street; are you not? A Yes, sir.

Q I show you this receipt, this paper marked People's Exhibit 1, and I ask you to see if you can identify it?

A Yes, sir.

Q In whose handwriting is it? A Well, the receipt, except the signature, is my handwriting.

Q You wrote it out? A Yes, sir.

Q Who asked you to write it? A Well, the young man there, the gentleman that was supposed to sell the ice-box.

Q Can you describe the man? A (No answer)

BY THE COURT:

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Q When was that? A Why, the day he asked me to write it.

Q But when was it? A Oh, that was about two months ago.

THE COURT: What is the date of the indictment here?

MR. KOENIG: April 3rd --- no, April 15th.

THE COURT: And the receipt is dated the 2nd?

MR. KOENIG: Yes, sir.

BY MR. MARKOWITCH:

Q Do you remember the day of the week it was? A Yes, sir, Wednesday.

Q How do you recall that it was on a Wednesday? A Well, I wasn't working that day. It was a Jewish holiday, and I was off. I wasn't working.

Q What holiday was it? A Passover.

Q And do you know when the first day of Passover was, what day of the week that was? A Why, it was a Tuesday.

Q And this was the second day of Passover? A Yes, sir.

Q And do you recall the day of the month it was?  
A Well, I can't recall that.

Q You don't recall the day of the month? A No, sir.

Q Now, just describe the man who asked you to write that receipt. And, by the way, was it in the presence of the

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defendant Jaresky? Was he there, was he in the place at the time? A Yes, he was in the place at the time.

Q Now, tell us how that man who asked you to write that receipt looked? A He was a young fellow, from 20 to 22 years of age, I should judge, clean shaven. That's about all I can say. A pretty tall fellow, slim. That's about all I can remember.

Q You were subpoenaed in this case about half an hour ago, weren't you, at the law office where you are working? A Yes, sir.

MR. MARKOWITCH: That's all.

CROSS EXAMINATION BY MR. KOENIG:

Q Did the man who asked you to sign that receipt speak English? A Yes, sir.

Q Did he speak good English? A Yes, sir.

Q Did you know who he was at the time he asked you to make that receipt? A I never saw him before.

Q Was Jaresky there? A Yes, sir.

Q Was he taking part in the conversation? A Why, no. He didn't --- he kind of didn't understand it mostly, the English, but of course, he knew what it was about, but it was mostly this youngman that asked me to write this.

Q Was Jaresky there at the time the young man asked you to write that receipt? A Yes, he was.

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Q And did he see you make it out? A Yes, I think he did.

Q You wrote it out in his presence? A Well, I don't know what you mean by his presence. He was in the place at the time.

Q Didn't he come in there with this youngman? A I can't say that.

Q Who came in first? A I don't know.

Q Did Jaresky ask you to make out a receipt? A No, sir. The other man.

Q Did he mention to you anything about a receipt?

A Why, I kind of understood ----

Q Can you speak Jewish? A Yes, sir.

Q Could you talk to Jaresky? A Yes, sir.

Q Did you put any questions to him relative to that receipt? A Yes, I asked him what the amount was.

Q So that, by talking to Jaresky, you knew that Jaresky the  
knew that/young man was asking you to make out that receipt;  
is that right? A Will you repeat that, please?

MR. MARKOWITCH: I object to that as calling for the operation of the witness's mind.

THE COURT: I will allow it.

MR. MARKOWITCH: Exception.

(The question is repeated by the Stenographer).

A Yes.

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BY MR. KOENIG:

Q And in order to make out a proper receipt, you had spoken to Jaresky about the amount he was paying? A Yes.

Q And then you wrote it out, did you not? A Yes, I did.

Q And Jaresky was there while you were writing it out?  
A I don't know whether he saw me write it out, but I know he was there at the time.

Q You knew the date on which you had made out that receipt, did you not? A When?

Q You knew what day of the week it was? You told us it was Wednesday? A Yes.

Q Your memory is excellent? A No, I don't say it is excellent. I remember it just for that fact, that I was off, that day.

Q But you know now, on the 13th day of June, that the day on which you made out that receipt, was a Wednesday; you know at this time that the day on which you made out this receipt, in the month of April, was a Wednesday; your memory goes back as far as that? A Yes, sir.

Q But you can't tell us whether these two men came in together? A Well, if you will allow me to explain, I will let you know.

THE COURT: Go ahead.

BY MR. KOENIG:

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Q Go ahead. A Well, this place of business happens to be my stepfather's, and I was off, that time, and we live upstairs, and I come down, and found them there, and I don't know who came in first, but this here young man broached the subject to me.

Q Did you ask this young man whether, in view of the fact that he could speak English easily, whether he could write English? A Yes.

Q And what did he say? A He couldn't.

Q And you knew the date of the month, did you not; at that time you were aware of it? A Well, so far as I know, I think I was aware of it.

Q And you don't believe you made a mistake, do you, with reference to the date that you put on that receipt? A I wouldn't swear to it.

Q You know that the date is important upon a receipt, the date on which it was made out? A I do.

Q And I ask you to look at it. The date is April 2nd. Does that refresh your recollection as to the day on which it was made? A Yes, that's in my handwriting, and I know it was written on the day given here, but I wouldn't swear to it, whether I was sure of the date or not, then. I thought it was April 2nd.

BY THE COURT:

Q You say it was a holiday? A Yes, sir.

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Q. Passover? A. Yes, sir.

BY MR. KOENIG:

Q. And how long does that holiday last? A. That holiday happens to be all the week.

Q. And the first two days of the holiday you don't work? A. I happened to be off the second day.

Q. And you don't work the last two days, do you?

A. No, sir.

Q. The whole week is a holiday; isn't it? A. Yes, sir.

Q. And was there anything said about any trouble about an ice-box at the time you wrote that receipt? A. No, sir.

Q. And the only explanation that the man who spoke English well gave was that he couldn't write English?

A. That's the explanation he gave me.

Q. But you are quite sure that Jaresky had spoken to you about making out that receipt? A. No, not the whole subject, but I only asked him the amount.

Q. And you wrote it out? A. Yes, sir.

MR. KOENIG: That's all.

RE DIRECT EXAMINATION BY MR. MARKOWITCH:

Q. You don't know in what language that man spoke to Jaresky, do you; whether he spoke to him in English or in Jewish? A. Well, I really don't remember.

Q. If you recall, say so, and if you don't, say so?

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A No, I don't recall.

BY THE COURT:

Q Do you recall ---- and I would not be hasty in my answer, if I were you --- whether it was the first or second day of Pass over that this was written? A It was the second, I think.

Q Would it refresh your memory any to know that the first day of Passover, this year, was April 2nd? A No, I don't remember anything about the dates. All I happen to remember is it was Wednesday, but I don't know the dates.

MR. MARKOWITCH: Well, we can ascertain that, if your Honor please, by getting an almanac. An old almanac will show us when the Jewish Passover was.

THE COURT: Just a moment. That's all.

RE CROSS EXAMINATION BY MR. KOENIG:

Q The fifth juror asked me to ask you: How do you fix that day as Wednesday? A Because I happened to be off, that day.

Q Is that the only day in the year you happened to be off? A Well, that's the only day I happened to be off while working in this office.

Q And you are sure it was Wednesday because you were off that day? A Yes, sir.

Q Were you off two days? A One day.

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Q You didn't observe the holiday? A What do you mean I didn't observe it?

Q Did you observe the holiday? A Well, I somewhat do; not very often, though.

M A X B E R N S T E I N, of 188 Madison Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKOWITZ:

Q Mr. Bernstein, what is your business? A I am in the saloon business.

Q And where is your place of business? A 188 Madison Street.

Q And that young man that was on the stand before, what relation does he bear to you? A He's my son.

Q Your stepson? A Yes, sir.

Q And do you know Jaresky? A I do.

Q Do you remember the occasion when he called in your place with some man, and they were talking about some ice-box?

A Yes, sir.

Q Now, will you tell us what took place, if you know?

A I know that Jaresky came in with another young man, and he asked me I should lend him \$5.

Q Yes. A And he bought an ice-box, and he is short for

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five dollars, and I should lend him the five dollars, and I gave him the five dollars, and that's about all I know.

Q Now, do you remember the day of the week that was?

A It was on a Wednesday.

Q And do you recall what holiday it was? A It was Passover.

Q What? A Passover.

Q Passover? A Yes, sir.

Q And was that the second or first <sup>the</sup> day of Passover holiday? A The second day.

Q The second day? A Yes, sir.

Q And do you recall the day of the month it was?

A No, I couldn't do that.

Q Do you recall having seen that receipt marked People's Exhibit 1, written in your place? A Yes, by my son, my stepson.

Q Your stepson wrote it? A Yes, sir.

MR. MARKOWITCH: You may examine.

CROSS EXAMINATION BY MR. KOENIG:

Q Did you see him write it? A I seen my son write it, yes.

Q Did he say anything about a receipt, when you handed over the \$5. to Jaresky? A Why, Jaresky asked that young man for a receipt.

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Q In your presence? A Yes, sir.

Q And what did you say? Anything? A I didn't say nothing.

Q Did the youngman say anything? A What young man? My son?

Q No, the young man with Jaresky? A Yes, he said, "Come on, I give you a receipt. Don't you know that I have charge of the place? Didn't I let you in to go to work?" Jaresky made the remark that the firm name wasn't on the

receipt, and I said, "Do you know the man?" And he said, "The only thing I know is he opened the place for to let us in to work, he unlocked the place to let us in to work."

BY THE COURT:

Q That is, the man who signed this receipt? A Yes, sir.

BY MR. KOENIG:

Q And did they leave you then? A Yes, sir.

Q And did you say anything then to that young man or to Jaresky, after he made that statement? A No, sir.

Q Didn't you say that you would make out a receipt?

A No, I called my son over to make the receipt.

Q Oh, you told your son to make it out? A Yes, sir, and my son wasn't in the place, he was upstairs when they came in.

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Q And you called him down? A No, sir, he just happened to come down.

Q And you told your son to make out the receipt?  
A Yes, sir.

Q And how long have you known Jaresky? A Oh, I've known him a couple of years.

Q And he comes into your place frequently? A Sometimes.

Q What do you mean by sometimes? A Why, sometimes he comes there once in a month, and sometimes he is liable to come in three or four times a week.

Q You are friendly with him; aren't you? A Yes.

Q And you have loaned money to other people; haven't you? A Oh, yes, each week I lend away fifty or sixty dollars.

Q Now, how many people have you loaned money to in the last two months? A Oh, about ten or twelve.

Q Any in the month of April? A In this month already--

Q I said in the month of April? A Sometimes, you know, a customer comes into the place, and he asks you to lend him five or ten dollars, and you've got to lend it to him.

Q In the month of April, did you loan any money to anybody? A If I would look over my book I would tell you.

Q Will you give this jury the name of any person to whom you loaned money in the month of April, and the date on

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which you loaned the money? A I couldn't tell you the name, but I know it is three or four people.

Q And the date? A I couldn't tell you the date.

BY THE COURT:

Q Now, did you hear those people say anything about when that box was bought? Was it on that day that they bought it, or did they say that they bought it on that day?

A Well, the way I understood it, that time, he brought him over the ice-box, which was bought at whatever price it was, and Jaresky was short of the money, five dollars, and I loaned it to him.

Q You understood that the ice-box was bought and delivered on that day? A Yes, sir.

Q Or, to be delivered? A Yes, sir.

RE DIRECT EXAMINATION BY MR . MARKOWITCH:

Q And there were other people in your place at the time; weren't there? A Oh, yes, plenty.

Q And you can't say whether Jaresky stood right by the young man that asked to have the receipt made out? A No, sir, it was a holiday, and in the morning, before they come from schule, and they go in and have a drink, and maybe I'm very busy, that time. I couldn't tell.

Q Now, did they have any drinks in your place? A Yes, they bought a drink.

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Q I suppose, during the Passover week, you sell slivowitch? A Yes. I don't sell no beer, that week, only slivowitch and wine.

Q And can't you recall in what language that fellow, who called himself Levy, spoke to Jaresky? A If I'm not mistaken, he spoke to him Jewish.

Q In Yiddish? A Yes, Jewish.

RE CROSS EXAMINATION BY MR. KOENIG:

Q Were you in this courtroom when your son testified?

A Yes, sir.

Q And were you in court when Jaresky testified as to what language that young man spoke to him in? A No, sir; I wasn't in court, this morning.

Q But you were here when your son testified? A Yes, sir.

Q And you were here, this afternoon, when the question was put to Jaresky in what language he spoke to the young man or the young man spoke to him; did you hear that question put to him? A Yes, sir; but I didn't hear the answer, because I'm far away, and I couldn't hear it very well.

THE FIFTH JUROR: Will your Honor ask him how he fixes Wednesday as the day?

THE COURT: You can ask any question of the witness yourself, if you care to.

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BY THE FIFTH JUROR:

Q How do you fix Wednesday as the day on which this occurred? A The reason is that it was a holiday, the second day of the holiday.

Q How can you fix the second day from the first day now in your mind, what fixes it? A Because I know it was the second day, I know it was on a Wednesday.

BY MR. KOENIG:

Q Will you tell this jury anything that happened on the first day of the holiday; whether you loaned anybody any money on that day? A Not that I know of.

BY MR. MARKOWITZ:

Q Now, I will bring that out. A few days after the time they were in your liquor saloon you heard that Jaresky was arrested; did you not? A Yes, sir.

Q Were you asked what took place in your saloon? A I was.

Q And that was only a few days after it occurred?

A That was either Saturday or Sunday.

Q Yes, on Saturday after the Wednesday that it took place? A Yes.

Q And was it for that reason that you fixed that day in your mind, and it has been in your mind ever since? A I remembered positively, distinctly, that that was the second day of that holiday, Passover, and on Saturday night or Sunday, a

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man came over and asked me if I know anything of it.

BY MR. KOENIG:

Q Mr. Bernstein, you didn't testify in the Police Court; did you? A No, sir.

Q This is the first time you are testifying? A Yes, sir.

Q You knew that the defendant Jaresky was under arrest; didn't you? A Yes, sir.

Q And are you sure that that receipt was not made out after the time he got into trouble? A No, positively no.

MR. MARKOWITCH: Why, that receipt was found on him by the officer, or he gave it to the officer.

THE COURT: Let us have no discussion, gentlemen. Proceed with the case.

P E R E T Z F E F F E R M A N, of 114 Monroe Street, one of the defendants, being duly sworn and examined through the same Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. MARKOWITCH:

Q Fefferman, are you a carpenter? A Yes, sir.

Q And do you remember the 3rd day of April, 1912, having been asked by your former employer, Moschowitz, to go to work for Mann Brothers? A Yes, sir.

Q How many days did you work for him altogether? A It

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was the first day.

Q And how many days did you work there altogether?

A Three days.

Q So you worked there on Wednesday, Thursday and Friday; is that right? A Wednesday, we didn't work.

Q Why didn't you work on that Wednesday? A The boss wasn't there, and we didn't know what to do.

Q You mean your boss didn't come there? A Yes, sir, our boss didn't come.

Q And how long did you --- what time in the morning did you come there? A After eight o'clock, because I came from another boss, from another job.

Q And when you arrived there, who did you find at the premises? A All the workingmen standing outside and waiting.

Q And who opened the place for you? A At half past eight--- at a quarter of eight --- after eight, or half past eight, I'm not sure, a man came and opened the place.

Q And did you talk to that man who opened the place?

A No.

Q Well, now, how long did you wait in the place? A From a quarter of an hour to half an hour; about that time.

Q And did that man who opened the place then talk to you? A No.

Q Well, how did you come to get that ice-box? Just tell us. A We were sitting there, and then this man said,

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"Boy, whoever wants to buy an ice-box can do so."

Q Well, was that the man that opened the place who spoke to you? A Yes, sir.

Q That's what I asked you. Well, now, what did you say to him? A I said I was going to call for my wife. She should pick out one.

Q And did you call your wife? A Yes, sir.

Q And how far away from the place did you live, how many blocks? A About four blocks.

Q And is your wife in court now? A Yes, sir, outside.

Q And did your wife select an ice-box? A Yes, sir. He took her over to several ice-boxes and at last she picked out one.

Q And what did you pay for it? A \$11.

Q How did you carry that ice-box away? A He said he would me to carry it. I took it upon my back, and he from behind helped me carry it.

Q And you mean the man that sold it to you helped you carry it? A Yes, sir; the same man.

Q Now, when the police officer called at your home on Saturday, tell us what you said to him and what he said to you? A Two policemen were standing there, and they saw as I was carrying the ice-box.

Q And I am asking you what did you say to the police

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officer when he called at your house, and what did he say to you? A He asked me where I got the ice-box, and I told him that I had bought it from that man, and I told him all about it.

Q And did you tell him where Jaresky lived? A Yes, sir.

Q Now, some ice-box that you also --- that a woman on your floor had bought, now, tell us the circumstances attending that purchase? A When I brought home the ice-box, it appeared to be too small, and my wife said she made a mistake. She wanted to pick out a larger one. So she was about to send it back, and the woman living there, next door, said, "Don't send it back. I will pay for it \$11, because I need an ice-box."

Q And the woman next door took the ice-box? A Then I went back and paid \$13 for one, and with an expressman I brought it over to the house.

Q That was the expressman who was arrested in connection with this case? A No.

Q Well, how did you get the expressman? A The man that sold me the ice-box got the expressman from the street, and brought him to the store, and put the ice-box on the express wagon.

Q And that ice-box was delivered at your house? A Yes, sir; it was even carried into the house.

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Q Now, several days ago, did you call at Mann's place of business? A Never.

Q Now, when you signed a certain paper for him, several days ago, did you call there with the paper? A It was on Friday. I was out working, and he sent for my wife, and said that this paper must be signed, otherwise, he will put me away for three years.

Q Now, did you call at Mann's place? A Then Jaresky's boss came, and said he was responsible, and the case would be dismissed, and then I signed it.

Q Did you talk to Mann? A Yes, sir, when I bought the ice-box I talked to him.

Q No. I mean to Mann, Mr. Mann. I'm talking of Mr. Mann. A No, I didn't talk to him.

Q Well, who delivered the paper for you to Mr. Mann? A In the office where the ice-boxes are, there <sup>we</sup> were called, and there the paper was signed.

Q Now, then, you did call at Mann's office; didn't you? A It was before yesterday.

Q But you were there, the day before yesterday? A Yes, sir.

Q Now, did you talk to Mann while you were there? A Yes.

Q Well, now, tell us what you said to him and what he said to you.

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MR. KOENIG: I object to that, if your Honor please, as immaterial, irrelevant and incompetent.

THE COURT: I will allow the question.

A He told me to sign the paper, and I said, "I don't want to," and then he said, "All right, good bye. Go home."

Q Well, how did you come to sign the paper? A Then Jaresky's boss came to me, to my house, and then we went again.

Q And when you came there the second time, what happened? A I was only there once, and my wife was there once.

Q Now, while you were there, did you or did you not sign that paper? That's what I want to know.

Q Well, how did you do it? Tell us. You say that you left the place and didn't sign it. Now, how did you come to sign it?

MR. KOENIG: I submit that it is incompetent here, why or how he did it.

THE COURT: Allowed.

A The first time the wife was there, and the second time I was there and signed the paper.

MR. MARKOWITCH: That's all.

CROSS EXAMINATION BY MR. KOENIG:

Q Was your wife looking for an ice-box at the time you bought this one? A Yes, sir.

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Q Had you one home? A No.

Q And the ice-box that your wife picked out she didn't like when she got home, and sold it to a neighbor; is that right? A The neighbor next door, yes.

Q And this man that had sold it to you, was he still at the place when you got back from your house? A Yes, he was.

Q And did you go back a second time with your wife? A No, alone.

Q And did you pick out the second ice-box alone? A Yes, sir.

Q Your wife made a mistake, but you didn't? A It was covered with boards, and it couldn't be seen very well, whether it was a big one or a small one.

Q Who did you think that man was who sold you that ice-box? A I didn't know. It was a man; it was the first day I came there to work, and I saw a man, but I couldn't tell whether he was the boss or not.

Q Well, didn't you believe that the man who sold you the ice-box had a right to sell it? A I don't care whether a man has a right or not. If he sells me an article from a business place, I will buy it.

Q Did anybody besides yourself and Jaresky buy an ice-box? A No, sir.

Q And this was the only person inside the place, except

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yourself and the co-defendant and the workingmen? A Yes.

Q Did you see anybody else buying an ice-box except yourself and the co-defendant? A No, sir; but, as so many people were around there, I didn't suspect anything.

Q Did you believe that he was the boss, the owner of the place? A Sure.

Q And you thought it was all right for the boss to help you carry an ice-box? A He helped me carry it about two blocks, and then he said, "I'll have to go back to the business; I left everything open."

Q Did you see any of his workingmen around there?

A No, sir, nobody. Only he alone was there.

Q Didn't it occur to you that that boss might send his workmen to help you instead of helping you himself?

A I thought he was the boss because I bought it off him.

Q You didn't get a receipt; did you? A No, sir.

Q Did Jaresky tell you that he got a receipt? A I didn't see Jaresky when I bought.

Q Well, when Jaresky came back, after he bought one, did he tell you, and show you a receipt that he got? A Yes.

Q And you didn't ask for a receipt; did you? A No, sir.

Q Didn't you want a receipt, as long as Jaresky got a receipt? A What did I know? I didn't think about it.

MR. KORNIG: That's all.

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RE DIRECT EXAMINATION BY MR. MARKOWTICH:

Q Do you recall what day of the week that was? A It was on a Wednesday, the second day of Passover.

R O S I E F E F F E R M A N, of 114 Monroe Street, a witness called on behalf of the Defense, being duly sworn and examined through the same Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. MARKOWITCH:

Q Now, Mrs. Fefferman, you are the wife of Peretz Fefferman, one of the defendants in this case? A Yes, sir.

Q And you recall your husband asked you to go over to a place on South Street and asking you to pick out an ice-box? A Yes, sir.

Q When was that? A It was the second day of Passover, on Wednesday, about ten o'clock in the morning.

Q And did you select an ice-box? A There was inside a box that I didn't like, then he took me out to the sidewalk, and there were several boxes there, and I picked out one.

Q And did you pay for that ice-box? A Yes, sir.

Q How much? A \$11.

Q Can you tell us to whom you paid that \$11? A To the man who gave me the goods.

Q And will you describe him? A I didn't pay much

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attention. I have several children at home. I only threw a shawl around my shoulders, and ran there, and I was in a hurry to get back, and I didn't pay much attention and I can't tell.

Q What happened to the ice-box after you got it home?

A I am the janitress of the house, and when the ice-box was brought it, I called the tenants to look at it, and they said, "You ought to get a larger one. This isn't big enough."

On the third floor, a tenant had bought an ice-box, a larger one, and she said I ought to have bought a larger one, this was too small.

Then I nailed the boards around that ice-box, as it was before, and was about to send it back and there was a woman, "What are you going to do?" And I told her I was going to send back the ice-box.

She said, "Why do you bother to send it back? You paid for it \$11. It's worth the money. I'll pay you the \$11, and leave it here."

Q Is that the lady who spoke to you (indicating)?

A Yes, sir.

Q What's her name? A Mrs. Golub.

Q Now, did you ever tell Mr. Mann, when he called at your place, that you knew the ice-box was stolen? A No.

CROSS EXAMINATION: None.

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I S I D O R E L E V I N E, of 170 Hanover Street, a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKOWITCH:

Q Q Now, Levine, what is your business? A Carpenters.

Q And on Wednesday, the second day of Passover, were you sent by your boss, Moschowitz, to the place owned by Mann Brothers? A No, sir. I was sent from Mr. Kowalsky.

Q Oh, he sent you? A He didn't send me, but I left his work, and went over on this job.

Q Now, did you see Jaresky and Fefferman there? A No, sir, I only seen Mr. Jaresky there.

Q Now, did you see any transaction there about an ice-box? A No, sir.

Q Now, did you see the man who opened the place? A Yes, sir.

Q Describe him. How did he look? A He looked about --- A little lower than I am, and he is about 22 years old.

Q Clean shaven? A Yes, sir.

Q And do you know whether any talk was had about an ice-box? A Yes, sir. The man opened the place and he came in the place, and he sit down and reads the paper, and we was waiting, because we didn't want to start the work before the boss comes, because it is heavy work.

And that fellow says, "If any of you fellows want to buy

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an ice-box, you can buy it."

And so that fellow said, "If any of you fellows wants to buy an ice-box, I will sell it to you for wholesale price.

And Mr. Fefferman said he would bring his wife to pick out a box, and he goes and brings his wife back.

And he brought over his wife, and she picked out a box, and Mr. Fefferman took the box on his shoulders, and took the box home.

And after that Jaresky picked out one, and he took his box on a hand-truck, and that fellow took his box home, until 120 Madison Street, take it home for him.

Q You were waiting for your boss, you say? A Yes, sir.

Q How long did you wait for your boss? A About an hour and half.

Q And finally you went away? A Yes, sir.

Q And did you do any work on the place before that Wednesday, in that place? A Yes, I do half a day on Monday.

We was working on the third floor, where the paper factory is. But that was the first day we come down to work in Mann's place.

Q And were Jaresky and Fefferman working on Monday there? A Jaresky was working on Monday.

Q Well, they were not working for Mann Brothers? A No, sir.

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Q But for the people that had the paper factory? A Yes, sir.

Q In the back? A In the front, on Water Street.

CROSS EXAMINATION BY MR. KOENIG:

Q You were not working for Mann Brothers, were you, on Wednesday? A No, sir.

Q You were working for the warehouse people? A I was working for Mr. Moschowitz.

Q No, you were not working for Mann Brothers? A No, sir.

Q And for an hour and a half this man said nothing, but read a paper? A No, sir; he come around about ten or fifteen minutes after eight, and he sits down to read the paper, and he says, "If anyone wants to buy an ice-box, I will sell it wholesale price."

Q And you didn't buy an ice-box, did you? A No, sir.

Q How long have you known Jaresky or Fefferman?

A Jaresky I've known six or seven years.

Q Did you think that the man who sold the ice-boxes was the boss? A I didn't know. I can't tell, because he comes around nice and sporty, clean shaved, and white collar.

Q And though he helped one of these men carry an ice-box three or four blocks, you thought he was the boss?

A Well, he opens the place, so I think he is the boss.

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BY THE COURT:

Q How long have you been going to that place? A Only it is the second day.

Q How often, for how many days? A I only worked there Monday, and I came around on Monday for a day, and Tuesday for a day, and Wednesday was the third day.

Q And every day you came there you saw this man?  
A No, sir.

Q Well, didn't you know when you had gone there three days who was the boss? A You see I wasn't working in that place. I was working on the front of Water Street.

THE COURT: That is all?

MR. MARKOWITCH: Yes, sir, that is all. That's the defendants' case.

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## REBUTTAL.

D A V I D M A N N, being recalled by the District Attorney,  
testified as follows:

## DIRECT EXAMINATION BY MR. KOENIG:

Q Mr. Mann, those three ice-boxes, what is the reasonable  
market value for them? A \$16 apiece.

Q \$16 apiece? A Yes, sir.

## CROSS EXAMINATION BY MR. MARKOWITCH:

Q How many years do you know the watchman who worked  
in your place? A Over 20 years.

MR. MARKOWITCH: That's all, sir.

THE FIFTH JUROR: Just a second, please, your  
Honor.

## BY THE FIFTH JUROR:

Q This description that we have heard of the man that  
opened the door, does that describe your watchman? A No,  
sir. They said he was a Jewish fellow who opened the door,  
and my watchman is a Gentile fellow, and he weighs about  
210 pounds, and he says the fellow was slim, and my watchman  
is a big tall husky fellow, with a big stomach on him.

Q Did anybody else have the keys to your house, your  
warehouse, besides your watchman? A No, sir.

Q What time --- you said you had a watchman during those

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holidays. What time was that watchman supposed to get there?

A Well, he came there about a quarter after eight, and, some mornings, nine o'clock, because he is a janitor, and has about 50 tenants, him and his brother, and they had to take out about 25 or 30 cans of garbage, and his brother happened to be sick that morning, and he said, "You stay home, and take out the garbage."

Q And, in other words, your watchman wasn't down to business, that morning, and that's how you think it happened?

A Yes, sir.

Q Your watchman was supposed to have been there, that morning, and to have opened that place? A Yes, sir.

BY THE COURT:

Q But was not? A No, sir.

Q How do you know that? A Well, I asked him.

Q Oh, you know it only by what he says? A Well, this was Wednesday the boxes were stolen, and Thursday I was notified, and I asked him Thursday.

Q Yes, but you don't know any other way except by what he says? A No, sir, of course, but I know him for 20 years.

BY THE SEVENTH JUROR:

Q Do you know the watchman's brother? A Yes, sir.

Q What sort of a looking fellow is he? A A tall slim fellow.

Q A tall slim fellow? A Yes, sir.

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BY THE COURT:

Q Now, have you anybody around there, working there, except the watchman? A We had an office, a main office, on Grand Street, at that time.

Q But at this time, I mean? A No, sir; only carpenters; nothing

Q It was/ but a storage place for those things; wasn't it? A Yes, sir. We occupied the ground floor, and the upstairs is all empty.

Q How long was it before you were informed of this theft that those men came there, or you had any information that they were there? A The carpenters, you mean?

Q Yes. They claim that they had been there, some of them, two or three times.

MR. KOENIG: No, sir; the defendants deny ever having been in the premises before, and they are contradicted by their own witnesses.

MR. MARKOWITCH: No, I beg your pardon. They were working upstairs in the paper factory, they say.

BY THE COURT:

Q Had you seen them there before? A Yes, sir, I seen one fellow there.

Q Which one? A This young fellow on this side, Jaresky.

Q Did you ever talk to him? A No, sir.

Q Did you ever talk to either of these men? A No, sir.

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Q Did any of them ever address you? A The boss, the contractor.

Q He spoke to you? A Yes, sir. He asked me to make room for him.

Q Who did that? A The boss did.

Q What boss? A The contractors of the carpenters.

Q Well, what do you mean by the boss? A He says to me, "Mr. Mann, I'm going to work on this floor, and I want you to take away a few boxes, so my men can work."

Q Who was that? A Mr. Cohen.

Q Well, I'm not asking about him, but I am asking you about either of those two defendants. A I never spoke to them, but I seen them working there. It was none of my business to speak to these men.

Q And they never spoke to you? A No, sir.

Q How often did you see either of them around there?

A Oh, they were working there two days. This fellow (indicating Jaresky) I saw working there two days.

Q Well, did anybody ever sell anything, except you or one of your two brothers? A No, sir, only just my brother and I. And I had charge of that place at 250 South Street, and my brother had charge at 182 Grand Street, in the sales-rooms.

Q And what became of those refrigerators? A We got them back.

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Q you have them? A Yes, sir.

Q When did you learn about the disappearance of these boxes? A Thursday.

Q That was the day after the alleged theft of them?

A Yes, sir.

THE COURT: That's all.

RE DIRECT EXAMINATION BY MR. KOENIG;

Q Mr. Mann, this tall, slim man, the brother of your watchman, he doesn't speak Yiddish; does he? A No, sir.

Q He is a Gentile; isn't he? A Yes, he understands a few words; that's all.

RE CROSS EXAMINATION BY MR. MARKOWITCH:

Q Did you talk to the watchman on Thursday? A Yes, sir. I said to him, "Look out. There is boxes stolen, and be on the watch."

Q And, as matter of fact, <sup>you didn't know,</sup> /except from what the slim fellow's brother, the regular watchman, told you? A Mr. McCoy, of 250 South Street, told me.

Q And did he tell you that he saw anyone take an ice-box out of the place? A Mr. McCoy?

Q No, sir. The watchman's brother, the slim fellow?  
A No, sir.

Q And, for all that you know, he wasn't there at all?  
A Yes, sir, he was there all the afternoon, Wednesday after-

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noon, from a quarter of twelve to ---

BY THE COURT:

Q Well, how do you know that? A Well, he told me.

BY MR. MARKOWITCH:

Q Well, what about the morning? Did you find out who opened up your place in the morning? A I told you he took out about 30 cans of garbage and ashes that morning, and was late.

MR. KOEIG: The People rest.

MR. MARKOWITCH: The defendants, if your Honor please, move for a direction of a verdict, on the ground that, on the evidence, on the facts in the case, a reasonable doubt was created, as matter of law.

THE COURT: I will submit it to the jury. I will deny your motion.

MR. MARKOWITCH: Exception.

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## THE COURT'S CHARGE.

O'SULLIVAN, J.,

Gentlemen of the Jury:

The defendants at the bar are charged with grand larceny in the second degree, and criminally receiving stolen property.

Grand larceny in the second degree is committed when property stolen is valued at more than \$25, but is not in excess of \$500.

The crime of criminally receiving stolen property, with the knowledge that it was stolen, the language of the Code, simply describes it, without saying any more. But it may be said that the elements required for the commission of that crime are the receiving of property, with the knowledge that that property is stolen property, and the verdict for such an offense is rendered in this language, that is, a verdict of guilty, guilty of criminally receiving stolen property, knowing the same to have been stolen.

But, before you could render a verdict of guilty, on either one of these charges, you would have to find these charges supported by the testimony, to the extent that the testimony satisfies you beyond a reasonable doubt, of guilt. If there is, from all the evidence in

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this case,, or the lack of evidence, a reasonable doubt nesting in your mind, after you have made a fair, honest and impartial investigation, discharge these defendants, because there is here more or less conflicting testimony, and you can only solve the question as to which side has told the truth by following your intelligence and judgment which you use in your own matters every day, and let the result be the answer to an honest, fair and intelligent investigation.

The District Attorney has done his duty. He has gone into this case from every viewpoint, and he has placed the testimony before you. So has the attorney for the defense done his duty. It now becomes your turn to do yours, and I am sure that you will do it as well as both the attorneys have done theirs on either side of the case; and, when you have finished with it, I am positive your verdict will be in accord with the good judgment which you have shown during this month, and be in accord with your conscientious regard for the testimony.

Of course, in a business community like ours, the life of which is the welfare of its trade and commerce, there are likely to be offenses committed against business men and business interests of this community, and when it becomes the duty of citizens, who know how important it is that certain business interests should be

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protected, to give to those business interests the protection which the law requires, and which, under their oath, they are bound to give.

At the same time, your regard for the business interests of this community, and for the business men who complain of such offences, is not to carry you away from doing exact justice; and if you believe that there is a reasonable doubt as to whether these men bought that property, or whether they stole it, you will have to acquit them.

If you believe from the testimony that somebody, professing to represent the owner of this stolen property, did pretend to sell this property to these men, then the inquiry is: Did they know that the man who so pretended to sell it had no right to sell it?

There is a question here which looks in both directions, and it is this. I asked the last witness, Mr. Mann, I believe, if those men were about his place at all, and he said he never knew them to be about his place, except at the time the property was stolen, and he was not positive that they were there then, but he said that they were in that neighborhood, and worked upstairs, and he saw them several times.

Now, I think there are two ways of looking at that question. Is it because these men were not familiar

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with that place that they may not have known that one, representing himself to be the boss, really had nothing to do with it?

Or were they familiar enough with this place, on account of the few times they were there, according to this testimony, to know just what the situation was, and to know that there had not been an owner or manager there, at certain times, and that the watchman was to be away? If they were familiar as that with the premises, that is a matter for you to consider.

Now, there is another matter for you to consider. What was the conduct of these men after the alleged theft?

Do men who steal property leave it where it can be easily found, or do they conceal it? If these men left that property in their homes, and in the home of the woman to whom one of them said that he sold one of these pieces of property, was it because they believed that they were secure in the possession of that property, because it was honestly purchased?

Or did they believe, because of the absence of the owner or manager from the place from which the property was taken, that it was secure in their homes, and that they would not be suspected at all on account of the absence of the persons who were in charge of the

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place, at the time the property was obtained?

Now, one of these theories leads to the conclusion of innocence, and the other to the conclusion of guilt, and, if you consider them at all, it is your bounden duty to adopt the one most favorable to the defendants.

And so, if you come to the conclusion, the final and positive conclusion, if you are satisfied to a moral certainty, beyond a reasonable doubt, on all the evidence that the defendants are guilty of the crime charged, you may find them guilty of either grand larceny in the second degree, or criminally receiving stolen property; or, if you are not satisfied beyond a reasonable doubt of the guilt of the defendants of any crime, then you must acquit them.

You may take the case, gentlemen.

(The jury retired at 3:45 P. M., and returned to the courtroom at 3:50 P. M.)

(The jury found the defendants not guilty).

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