START

15

CASE

-: I N D E X :-

I N D E X.

COURT OF GENERAL SESSIONS OF THE PEACE,

CITY AND COUNTY OF NEW YORK.

- - - - - - - - - - - - - - - - - - x
:
THE PEOPLE :
:
against :
:
JOHN DOE alias EDWARD HARLEM. :
:
- - - - - - - - - - - - - - - - - - x

Indictment filed 17th day of October, 1910.

Indicted for grand larceny in the first degree.

For the People,
ASSISTANT DISTRICT ATTORNEY WASSERVOGEL.

For the defendant,
K. HENRY ROSENBERG, ESQ.

Tried before HON. JOSEPH F. MULQUEEN, J., and a jury on the 19th day of March, 1912, etc.

Jury duly empaneled and sworn.

Thomas W. Osborne,
Official Stenographer.

P A U L I N E G O L D F A R B, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

(Residence 13 West 116th street.)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are a married woman? A Yes, sir.

Q Any children? A Yes, sir, four.

Q The oldest? A The oldest is a boy 20.

Q And where do you live? A 136 West 116th street.

Q You live there with your husband and your children? A Yes.

Q In the month of August, 1907, were you engaged in any business? A Yes, sir.

Q What business was that? A I was in the hair dressing business.

Q You had a hair dressing establishment where? A 136 West 116th.

Q Are you still in that business at the present time? A I only sold out Friday.

Q You sold out last Friday? A Yes.

Q No longer in thatbusiness? A No.

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

Q How long have you known him? A I know him a year before that time.

Q Would he come in your place at any time? A Yes, sir,

as a customer.

Q You also employed a manicurist in your hair dressing establishment? A Yes, sir, two manicurists.

Q Is this on the street? A Level with the street, the store.

Q Store level with the street? A Yes.

Q Between what avenues is that? A Between Lenox and Seventh.

Q In the County of New York? A Yes, sir, right near Seventh.

Q In the month of August 1907, did you have any conversation with the defendant with reference to any money matters? A Yes.

Q Tell us what that conversation was?

Objected to.

BY MR. WASSERVOGEL

Q Confine yourself to the 10th of August, 1907?

MR. ROSENBERG: I object upon the ground it is not the charge specified in the indictment. The indictment charges a larceny on the 10th of December, 1907.

THE COURT: Does this relate to the same charge in the indictment?

MR. WASSERVOGEL: Yes. You see, the stock was to be delivered or proceeds returned to the complainant in the month of December, so that the date mentioned in the in-

dictment is really the 10th of December.

Objection overruled. Exception.

Q Tell us the first transaction? A That man came in my store a year before he had this --

Q I know that -- listen to me, I am going to confine ourself to the 10th of August. [illegible] 10th of August I gave him I was paid.

Q What was said? A He was considerable upset.

Q What was said to him before you gave him the money? A That was what I was going to tell.

Q Tell me that. A Because, Mr. Coleman, have you got any money, I asks you, I have stocks. He said, why, a person like you should work so hard, or [illegible] in the stock, and why don't you invest in something, why don't you buy something. Stocks are so cheap now. I said, well I don't know anything about buying stocks or anything, investing of any kind, except my work, neither does my husband know of any kind of investing or buying stocks. He says, you don't have to have your husband, stocks are so cheap now. I remember when Amalgamated Corp. was 120. Now it is only 76. Why don't you buy some stocks. You don't have to speculate. If you speculate you lose, but if you buy right out, you can keep your stocks and you make more money. In four weeks I could make four hundred, [illegible] six hundred.

[illegible] thought it over and I went

[illegible] much money for [illegible]

[illegible] Amalgamated Copper.

[illegible] A. Yes, sir.

[illegible] A. Yes, sir, that

[illegible]

The paper in question in evidence, received and marked Plaintiff's Exhibit [illegible].

Q. After that did you again see the defendant? A. Yes, sir. After that he came to regular every day, reported in the papers and showed me how the stock was changing and then two weeks later he came again and told me.

Q. What did he say then, Mr. [illegible]? A. He said you see there, can you get that much money out of the bank when you keep your money there, you cannot get nothing out of the bank by keeping the money. You don't get so much percent. There is $12 in only two weeks. So I thought that was nice.

Q. What did you do? A. He wrote a receipt and told me to sign it and I signed it for him.

Q. Let me refer back to this [illegible], when was he to deliver

the stock to you? A He said I will try to sell it for you in a few weeks, I can make a few thousand dollars for you, but if I don't sell it within the time, by christmas, surely, you will get back the profits with the money or I will give you the stock.

Q Did you get any other money other than the $12 from him?

A [illegible] no, sir.

Q [illegible] A No, sir.

Q [illegible] any certificate or a loan? A [illegible] he said he has got to keep it.

BY MR. [illegible]:

Q The question is did you ever get any certificate of stock from him? A No.

BY MR. WATERWOOD:

Q After that did you advance any money? A After that he said --

Q What was the next time? A That was the 6th of September.

Q Tell us what conversation you had with him then? A Afterwards he said now, we will [illegible] homes, there is Mitchell Tining. I remember [illegible] can $10 a share. [illegible] is only a dollar [illegible] I can get it for a dollar and a quarter. [illegible] Mitchell Tining [illegible] I had [illegible] Mitchell Tining.

Q I gave him $500 for Mitchell Tining.

Q What was [illegible] Mitchell Tining?

Company, what did he say that was selling for at that time? A [illegible] -- [illegible] he said, "I bought the stock" and I gave him the money, I did not see the stock and he said, I [illegible] dollars and a half a share.

[illegible] give you for that? A That was [illegible].

[illegible] of those certifi- [illegible] keep them up to [illegible] with a big profit. [illegible] will give me the stocks. [illegible] this $500? A No. [illegible] sign this [illegible].

[illegible] evidence, received and marked [illegible].

Q [illegible] said if I could only [illegible] Mining will go up, it must go up, higher and higher. [illegible] papers over every [illegible] to show the stocks.

Q [illegible] newspapers, [illegible] [illegible] up. He said it is low now, but it is going up, it must go up. He said if I could have [illegible] more money I could make [illegible], you and your [illegible] would not have to work [illegible] your life, would you [illegible] to work the rest of your [illegible].

Q Did you at any other time give him any money after that? A I had no more money in the bank and I went to pawn my jewelry and I give him the money.

Q How much? A $400.

Q What was to be done with that $400? A Also to buy 200 shares of Mitchell Mining.

Q What was at how much a share? A Also a dollar and a half a share.

Q When was that to be returned or delivered to you? A That was also to be delivered to me by Christmas. All of the stocks was to be delivered or money by Christmas.

Q Did you get a receipt for that $400? A Yes, sir.

Q What became of that receipt? A I lost it.

Q You have not got it? A No.

Q These receipts offered in evidence here are somewhat worn, where were they kept by you, tell the jury where you kept them? A I was afraid my husband wanted to --

Q Where did you keep them? A I can't tell.

Q You will have to? A I was afraid to keep them around, my husband was so angry with me and I kept them in the lisle bank.

Q That is in your stockings? A Yes.

Q After you gave him these various amountsyou mention did you see the defendant at any time? A Yes, sir, he still kept on coming in.

Q Until when? A Until about the 2nd of December.

Q Did you have any talk with him then? A No, then he came in all dressed up in a fur coat and he said I am going away for a short time, but he said I will be back by the 10th, and when the 10th came -- he said he would write and he did not write and I went and telephoned to the place where he lived, where he gave his address.

Objected to.

Q Never mind what you telephoned, did you see the defendant? A No, they told me that he moved --

Objected to.

THE COURT: Strike that out.

Q You must not tell us that -- that was in December, 1907? A Yes.

Q When did you next see the defendant? A Well, shouldn't I tell about going to the detectives?

Q No, you must not tell us that?

THE COURT: Answer the questions put to you.

We will now take a recess.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 o'clock.

AFTER RECESS. TRIAL RESUMED.

P A U L I N E G O L D F A R B, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. WASSERVOGEL:

Q Before recess you were telling us that the last time you saw the defendant prior to his arrest, was in the early part of December, 1937? A Yes.

Q Is that correct? A Yes.

Q When and where did you next see him? A The next time I saw him on Fifth avenue corner of 22nd street.

Q Of 122nd? A No, sir, 22nd street.

Q And Fifth avenue? A And Fifth avenue.

Q In the day time? A About half past six.

Q In the afternoon? A Afternoon.

Q With whom were you at that time? A With my husband.

Q Was the defendant alone? A All alone.

Q What did you do? A I had him locked up.

Q You had him arrested at that time? A Yes.

Q Did you have any conversation with the defendant after that or at that time? A No.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, I show you a paper and I ask you whether that bears your signature -- I show you three papers and ask you if each of them bears your signature -- just look at the signature only without reading the contents, look at the signature?

A It resembles but it is not my signature.

Q Is it your signature? A No, sir, it is not.

Q Look at the second? A The same thing, it is not.

Q The third one? A No.

BY MR. WASSERVOGEL:

Q Is it? A No.

The papers are marked for identification Defendant's Exhibits A, B and C.

BY MR. ROSENBERG:

Q Now, I show you two other papers and I ask you whether they bear your signature, just look at the signatures on the two other papers? A No, sir -- this is mine (indicating)

Q The first one you said no? A No, that is on -- looks like my card, but it is not my signature.

Q The first one you said no, sir.

THE COURT: Mark it for identification.

The paper referred to is marked for identification Defendant's Exhibit D.

THE COURT: The fifth she said is her signature.

THE WITNESS: Yes.

MR. ROSENBERG: I ask that it be marked for identification.

MR. WASSERVOGEL: I have no objection to its going in evidence.

The paper is received in evidence and marked Defendant's Exhibit E.

BY MR. ROSENBERG:

Q Do you read and write English? A Only what is printed.

Q Do you read and write English? A Only printed, what is printed, papers.

THE COURT: Print she can read, but not writing.

THE WITNESS: No writing.

Q But you write your name? A Only my name.

Q When you write your name you use the first name of "L"? A Yes.

Q The first letter "L. Golofarb"? A Yes.

Q Is not that right? A Yes.

Q Your name is Pauline? A That is my husband's name, Louis.

Q Your name is Pauline? A Yes.

Q And your husband's name is Louis? A Yes, and I use this name in business.

Q And your in business? A And in business.

THE COURT: You use Louis L. Golofarb for her signature.

THE WITNESS: Yes, my signature.

Q Now Mrs. Golofarb, you say that you kept those receipts which the defendant gave you in the Isle bank? A Yes.

Q As you described? A Yes.

Q And the reason for that was because you wanted to be sure that you preserve the papers? A Yes.

Q You felt they were of some value? A Yes.

Q You say that you had an Iver receipt for $4000? A Yes.

Q That also was put in the lisle bank? A Yes, sir, but it fell to pieces.

Q It fell to pieces? A Yes, because the receipt he gave me was an old receipt when he gave it to me, and I said why do you give me such an old receipt and he said that is for collecting rent that I got but it is all right.

Q The reason you do not produce it here today is because it fell to pieces? A Yes, sir, because I have not got it.

Q Is that the reason you have not produced it, because it fell to pieces?

THE COURT: She said so -- she says she has not go it.

THE WITNESS: I lost it long before I found that man. I have been looking for him three years.

Q Is it because the receipt fell to pieces that you are not producing it? A Yes, sir, I could not help it. It fell to pieces.

Q Didn't you tell the jury this morning you lost it? A Yes, sir, by falling to pieces it lost, piece by piece, and I didnot have it and so I could not produce it.

Q Did you lose any of the other receipts? A I did not, the others were a little bit better.

Q The receipt you say you lost was for the $400? A Yes, sir.

Q You remembered it because you had pawned your jewelry? A Yes, sir, pawned my jewelry on that account of $200, and

$200 I took out of the deposit bank which I have the check, so that made $400.

Q Didn't you say this morning that you pawned your jewelry for $400, and gave him $400? A I didn't say, excuse me, for $400. I said I pawned my jewelry.

Q Did you say that? A I pawned my jewelry, but I did not say for $400 or $200. I said I pawned my jewelry to give him the $400. I had $200 which I took out of the deposit bank.

Q You pawned your jewelry in the Provident Loan? A Yes, sir.

Q It was out of that money you pawned your jewelry in the Provident Loan, that you gave the defendant the $400? A Yes.

Q Is that right? A Yes.

Q Is it not a fact because you saw Mr. Gluckman from the Provident Loan that you change your testimony as to how much money you got from the Provident Loan?

Objected to.

THE WITNESS: I did not know the gentleman.

MR. WASSERVOGEL: She has not changed her testimony.

THE COURT: She said she pawned her jewelry and she gave him $400.

THE WITNESS: I gave him $400.

BY MR. ROSENBERG:

Q The property which you say you pawned in the Provident Loan consisted of an ear screw and a diamond ring? A. Yes.

Q Sure of that? A Yes.

Q That was the only time you pawned anything in the Provident Loan? A That was not the only time.

Q I mean for money which you say you gave to the defendant? A Yes.

Q Where did you get the other $200 from? A I don't remember exactly when?

Q What? A The other two hundred.

Q Yes. A I had deposit in the Colonial Bank.

Q You got the $200 from the Colonial Bank? A Not all the $200 from there -- I got one hundred and fifty from the Colonal Bank.

Q Sure of that? A Positive.

Q was the account in your name in the Colonial Bank? A In my husband's name.

Q The account was in the name of Louis Goldfarb? A Yes.

Q Is not that right? A Yes.

Q In order to get the money from the Colonial Bank you drew a check signed by your husband? A But I did not get that money to give it to him at that time. He himself came and said there is a run on the ank, why don't you go and get the money out of the Colonal Bank and I telephone to my husband to send me a check. I had about $16' and something and I said send me a check for $150 and I will take out the one hundred and fifty, and then I put the rest to it and made $400.

Q But that $400 was made up by a check for $150 from the Colonial Bank? A Yes, sir.

Q Is that correct? A Yes, sir, that is correct.

Q And $200 from the Provident Loan? A Yes, sir.

Q How much was that? A That is three hundred and fifty.

Q What? A That is three hundred and fifty, and fifty I had in cash. I had a business. I had a store. Couldn't I have money with me.

Q You had a bank account in your own name? A That I gave him the money beforehand.

Q What bank did you have your own money in? A Savings bank.

Q Bank for Savings? A Bank for the savings.

Q Sure of that? A Yes, I can prove it to you.

Q The check which was made on the Colonial Bank was payable to your order by your husband, was it? A Not my order -- just made out.

Q Cash or to Mrs. Heins' name or what? A No, I don't remember what name.

Q But you are sure it was one hundred and fifty? A Yes.

Q When was it that you claim you gave this defendant $400 for Mitchell Mining stock? A The second of October.

Q Sure of that? A Yes, sir, positive.

Q There can be no mistake about it? A I don't think there is any.

Q The second of October is impressed upon your memory?

A Yes.

The 2nd of October has impressed itself upon your mind?

A Yes.

Q Is not that right? A I think so.

Q Don't you remember in the police court that the judge asked you a question as to the last time you saw the defendant and the question was at page ", "by the Court: Q What date was that? A I think it was the second of October. Q Did you see him on the 8th or 9th of December? A No, sir, I had not." Do you remember the judge asking you whether or not the last time you saw the defendant was the 2nd of October, 1907?

MR. WASSERVOGEL: I object. The question which Mr. Rosenberg read is not to that effect.

MR. ROSENBERG: I ask her if that does not refresh her recollection.

A I have seen that man up to the 2nd of December.

Q The 2nd of October is a mistake?

MR. WASSERVOGEL: There is no mistake.

THE WITNESS: No mistake.

MR. WASSERVOGEL: Wait a moment, please.

BY MR. ROSENBERG:

Q There is no mistake about it? A No mistake, that man used to come in every day to my store.

Q Do you remember since the District Attorney told you

there was no mistake, and you say there is no mistake -- look at page 7 -- do you remember this question being put to you and making this answer in the police court, "You say that the last time you gave him any money was on the 2nd of October, about the 2nd of October, 1907? A Yes, sir." Does that refresh your recollection as to whether that is the last time you saw the defendant? A No, sir, I saw him up to the 2nd of December.

Q You say you can only write your name? A That is all.

Q Did you write the figures on this defendant's Exhibit E? A I did not write anything else --

Q 136 west 116th? A That is all my address.

Q Did you write that? A Yes.

Q Then you can write something besides your name? A That is my address.

Q What does W. refer to in the address? A west.

Q How do you spell west? A I don't know.

Q You don't know? A Never took the trouble to spell it.

Q You can write your name Pauline? A Yes.

Q And write it in full? A Yes.

Q And you could in december of 1907? A I can write it any time.

Q The money in the Colonial Bank belonged to your husband? A Sure.

Q Now, the receipt, People's Exhibit 1, do you know in

whose handwriting People's exhibit 1 is? A That man, Mr. Harlem.

Q You call him something else besides that name? A I said Mr. Harlem.

Q Did you ever call him by any other name than Mr. Harlem? A I don't know him by any other name.

Q You knew him by the name of Mu, didn't you? A I never called him by his first name.

Q No? A No.

Q Did he ever call you by your first name? A Of course not.

Q You were not friendly enough to have him call you by your first name? A No, I am a business woman. There was nothing but business and I would not let anybody call me by my first name.

Q You could not let anybody? A No, nore do I call anybody that is stranger to me by their first names.

Q When you got this receipt was someone present? A Yes, sir.

Q Who was it? A A young lady that worked for me.

Q Tillie Lang? A Yes.

Q Didn't she read the receipt to you? A No.

Q Sure of that? A He himself read the receipt to me.

Q Was Tillie there? A Yes.

Q This receipt seems to be blurred now, it was not blurred at the time? A No, of course not.

Q And when he wrote for speculation, what did you understand that to mean? A No, he said he buys it right out, no speculation whatever.

Q But you got the receipt? A No speculation.

Q And in the receipt was marked -- A On the other side he said whatever profits he gets for me is ten per cent. for him, but no speculation.

MR. ROSENBERG: You did not read anything about the other side.

MR. WASSERVOGEL: I did not see the other side, is there anything else there.

THE WITNESS: Because he always said --

BY MR. ROSENBERG:

Q Let us get the idea, you say that when you received the receipt from this defendant, People's exhibit 1, he said it was for what? A For Amalgamated Copper.

Q You were to give him ten per cent. on the profits?

A For the profits that he gets for me I should give him ten per cent.

Q Did he mark that on the back of the paper? A On the other side.

Q You could not read? A That was what he said, he said I will mark it down for you.

Q Was not Millie Lang there when he marked it down? A She was sitting there. She did not see him writing it.

Q Wasn't she there when he was writing out the receipt? A She was right there, but she was not right next to the table. She was further, she did not watch him, what he was writing.

Q You were watching him? A I was watching him?-- I don't know what he was writing.

Q On that receipt People's exhibit 1 there appears to be the statement for speculation? A No speculation.

Q What did you understand that to mean? A No speculation because Mr. Marlex always said don't speculate, whatever you do buy right and sell it is an investment.

Q Did he tell you that before, in your different talks with him? A Investment, no speculation whatever and I guarantee for ten per cent. He said -- he guarantees that money for ten per cent.

Q When you gave him the money you accepted his guarantee for the money? A The receipt and what he said he guarantees -- that man said he is a millionaire and shouldn't I trust him?

Q Did you trust him with this money because he told you he was a millionaire? A Yes.

Q That is right? A That is right, I had confidence in him.

Q When you gave him the money you relied on the fact that he was a millionaire? A That he is a good business man. That was what I relied upon, that he will make ~~fex~~ money for me and

he understands the business, and so he did understand it.

Q When you gave him the money you thought he was a good business man? A Yes.

Q And that he was going to make money for you? A Yes.

Q He was going to make five or six thousand dollars for you? A That was what he said.

Q And you believed that? A I believed him. He said on that I will make $2,000 for you in a short time, in two weeks, he said.

Q You say he was to buy 8 shares of Amalgamated Copper? A Yes.

Q At $76 a share? A $76 a share.

Q What do you mean by $76 a share? A $76 a share.

Q You understood that, did you? A Yes, that was what he said.

Q You understood it? A Certainly, we spoke English.

Q You understood a share of Amalgamated Copper would be purchased at $76 a share? A Yes, sir.

Q Is that correct? A Yes, that is correct.

Q You were to get 8 shares of it? A Yes.

Q Were you? A Yes.

Q Do you know how much that would have amounted to? A I don't know.

Q Do you know how much that would have amounted to, how much? A How much would it?

250

Q I am asking you? A I don't know -- $76 a share, you can reckon up and find out.

Q Did you know? A I did not -- he said $76 per share and I was to get 8 shares.

Q And it amounted to $608 -- is that right? A Yes/

Q He was to take that $8 out of his pocket and put it to it? A No, he said he can always get it cheaper by his agent.

Q He was to get it cheaper? A He says it is more -- I remember what he said -- he said it is more but I can always get it for a little less.

Q That was it? A That was what it was.

Q He was not to put anything to it? A No.

Q Did you understand that when you buy stocks you are to pay a commission? A I don't know. He said he is so intimate with the banker that he gets it ~~xxxx xxx~~ cheaper than anybody else.

Q Less than what it is worth? A Yes.

Q You believed that? A I believed that.

Q Now, he was to make $2,000 on that investment, is that right? A Yes.

Q And he was to have eight shares of Copper? A Yes.

Q How much was to be the par value of that copper, if you know? A He says he remembers that Copper was as high as $130 per share.

Q Don't you remember testifying before the Grand Jury

and in the police court that it was at $100 he was to sell it, when it reached 96 or $100? A He said if it reaches 96 or 100, he will sell it.

Q If it got to 100, that would be 8 shares, eight times twenty four dollars, thatis the difference between 76 and 100 would be $24 -- and eight shares would make it eight times 24, $192.

Q That is all that he could make on that Copper, is not that right? A Will you allow me to tell you --

Q Is not that all -- you understood that, didn't you? A Yes, what he said.

Q If he could only make $100 on that Copper, which you say you bought, will you tell the jury how he was expected to make $2,000 on that Copper? A I will.

Q Tell the jury? A He said that as soon as it gets up to 96 I will sell it out and you get that much profit and then I will buy over again and wait until it goes up again. Because every day it rises and drops -- it goes up and goes down. What do I know about Copper, how it went.

Q Your understanding was -- did the defendant agree with you when you gave him that money for the 8 shares of Copper, that he should buy eight shares of Copper? A Yes.

Q And in order to make a profit for you, to re-sell it and re-sell it over again, until you could get a profit of about $2,000? A Yes.

Q Is that right? A That is right.

Q Sure of that? A Positive.

Q You understood that when you gave him the $600? A Yes, sir.

Q So that the eight shares of Copper which he bought, he had a right to resell it? A Yes.

Q And then after he resold it, he would have a right to buy other copper? A Yes.

Q Is that right? A That is right.

Q You gave him the privilege? A Yes.

Q And after he got other Copper, which he bought from that money, he would have a right to purchase more? A That was what he had -- I did not see the stocks.

Q You gave him that right? A Up to Christmas, up to that Christmas.

Q Now, do you know anything about the market quotations of December, 1907? A I do not know

Q You don't know anything about it? A No.

Q Didn't you tell the defendant he should not sell the Copper, the certificates until it reached 96? A I did not tell.

Q Never said that? A No.

Q Sure of that? A No, sir.

Q Did you ever tell him that? A I could not tell him because I did not see --

BY MR. WASSERVOGEL:

Q Did you or did you not? A No, I did not.

BY MR. ROSENBERG:

Q Out of the money which you gave him and out of the profits which you expected he should make, he was to get ten percent? A Yes.

Q Is that right? A Yes.

Q Sure of that? A That was what he put on the receipt.

Q The same arrangement -- you understood was to be in reference to the Mitchell Mining stock? A Yes.

Q The same arrangement thatyou say you had with him concerning the Amalgamated Copper? A Yes.

Q He was to purchase and sell it? A Yes.

Q And reinvest the money? A Yes.

Q And sell that? A Yes.

Q And then reinvest again? A That was what he said.

Q You gave him the right to do that?

THE COURT: Proceed.

Q That had reference to all of the stock transactions? A Yes.

Q Was this question put to you and did you make this answer --

THE COURT: Is this in contradiction of some statement she has made?

MR. ROSENBERG: Yes at page 7.

Q You said you never told him anything about $96? A I did not tell him.

Q "And it was to go to 96 before he sold? A Yes." A Yes.

Q Was that question put to you in the police court and did you make that answer? A Yes.

Q So that before he should sell, before he was to sell the copper, it should go to 96? A Yes.

Q That was your agreement? A Yes, only up to a certain time.

Q Didn't you give him the right? A Yes, up to a certain time.

Q Was not this question put to you, and didn't you make this answer, "Q And until the stock which was Amalgamated Copper, I believe, did go to 96. He should hold it? ~~and~~ It should never be sold until it reached 96? A Yes." -- Were those questions put to you and did you make those answers? A No, sir, up to Christmas.

Q Didn't you swear in the police court what I have just read to you? A This is not what I answered.

Q Didn't you swear in the police court just what I have read? A Perhaps it was a mistake. He should keep it until 96 and if he cannot sell it up to Christmas he shall return the stocks to me. Up to that time he should keep the stocks.

Q Did you say that in the police court? A Yes, [illegible]

not sell it.

Q I ask you did you say just what I read to you in the police court? A I did not say anything.

Q So if it is in here the stenographer made a mistake? A That may be.

Q May be? A That is possible.

Q Do you remember this question being put to you and making this answer, "Q As matter of fact you know the stock never did go to 96? A He has got the stock. I don't know, I never looked up the paper after that."

MR. WASSERVOGEL: I object to it unless Mr. Rosenberg reads it as it is in the minutes.

MR. ROSENBERG: I intended to.

MR. WASSERVOGEL: You did not, you said he has got the stocks.

MR. ROSENBERG: Then I made a mistake.

THE COURT: Strike it all out and read it correctly.

MR. ROSENBERG: This is what I intended to read.

THE COURT: It is not a question of what you intended to read. I am allowing you to interrogate the witness as to statements alleged to have been made by her on the theory that they contradict statements made heretoday. If you are going to read the statements you must read them exactly.

MR. ROSENBERG: That was what I intended to do.

BY MR. ROSENBERG:

Q At page 7, the last question on page 7, "Now, as matter of fact, you know that stock never did go to 96? A As he got the stock I don't know, I never looked up the papers after that." Does that refresh your recollection? A No, sir, that was a mistake.

Q The stenographer made a mistake as to that? A Yes.

Q You did not say that -- since you say it was a mistake that the stenographer made, do you remember when you testified before the Grand Jury? A Yes.

Q Do you remember this question being put to you in the Grand Jury room and making this answer towards the bottom of page 4, "Q How about the Amalgamated Copper stock, did you ever see that? A No, sir. Q He was going to keep it? A He was going to keep it until it rose and he would sell it" A Yes.

MR. WASSERVOGEL: Continue the full answer -- read the rest.

BY MR. ROSENBERG:

Q "He said by Christmas I will sell everything and give you your profits and if I cannot sell I will give you your stock back by Christmas" A That is correct.

Q There was no mistake made in the Grand Jury room? A No.

Q About that? A No.

Q Now, during lunch, or -- you have a private lawyer in addition to the District Attorney in this case, have you not? A No, I have not.

Q You have not? A No.

Q Haven't you seen the lawyer who represented you in the police court? A Yes, but this gentleman is not for me now.

Q Not for you now? A No, he has a case in this court and he came over and spoke to me.

Q Don't you know there is no other case in this court today other than the case on trial? A Well, he had --

MR. WASSERVOGEL: If you want the facts I will give them to you.

Q Did you speak to that lawyer during recess? A Certainly.

Q Did you talk about the case? A I don't know if I spoke about the case.

Q You don't know if you talked about it? A Perhaps I did, I don't remember.

Q That was only about an hour ago? A He came over and said how do you do -- shouldn't I speak to a gentleman I know?

Q That gentleman represented you in the police court? A Yes, but that is why I spoke to him, that is why he knows me.

Q You don't know why he is in court now? A Well, I suppose I know know why -- I suppose he is waiting to see the result.

Q Is that all? A That is all.

Q How many shares of Mitchell Mining stock were you going to get for the $400? A For the four hundred -- 266.

Q Did you figure that out yourself? A I guess so -- that was what it was on the receipt.

Q 266 shares -- how many shares of stock did you authorize the defendant to buy for the $500, of the Mitchell Mining? A 333 shares.

Q These 333 shares and 266 of the Mitchel Mining, he was supposed to buy and after he bought them you told him to sell them -- he was to sell them, wasn't he? A He said he will keep them until they will go up.

Q And if they were to go up he was to sell them? A Yes.

Q But you did authorize him to sell them? A Of course.

Q Whether they went up or not, in order to make five or six thousand dollars? A I suppose he would have sold them when they would go up in price.

Q You wanted to make five or six thousand dollars? A I did not want to make anything -- that was what he said he would make for me.

Q Didn't you want to make five or six thousand dollars? A I would want to make $50,000 if he could make it, but he says he could make that much money.

Q For the purpose of making the money, you authorized him to sell these shares of stock that he bought?

MR. WASSERVOGEL: That he said he bought.

THE WITNESS: That he said he bought.

MR. WASSERVOGEL: I object to the form of the question.

BY MR. DOWLING:

Q. Why did the District Attorney interrupt --

THE WITNESS: He did not buy -- he did not buy anything --

MR. WASSERVOGEL: (To the witness) Just a minute.

Q. [illegible] the defendant to sell the stock that he said he bought? A. [illegible] did not authorize anything.

Q. If you did not authorize him to sell the stock, how were you going to get the $2,000 or $5,000 profit? A. How could he sell it when the stocks did not go up that day -- those days rather.

Q. How do you know the stocks did not go up? A. He came up with the newspapers every day and showed them to me how the stocks were standing.

Q. Didn't you look at the paper yourself? A. Yes, he told me, he said there is stocks.

Q. He showed you how to look at the newspapers? A. Yes.

Q. [illegible] you how to read the stock quotations? A. That is right.

Q. Did he showed you in the Evening Sun every night how [illegible] -- he used to come in the day time.

Q. Kept away from him at night? A. No night time.

Q. [illegible] way? A. During the day.

Q Whatever was done was during the day? A Everything in my store.

Q Was it the time of the day? A During the day, in my store.

Q [illegible] the evening Sun which had the stock [illegible].

Q [illegible] you? A To read them off by [illegible]. I never had time to read them with me.

Q [illegible] time? A No; I am a busy woman.

Q [illegible] questions, do you remember the [illegible].

Q [illegible] anything about a racing chart? A No.

Q [illegible] was a racing chart in the evening [illegible] you? A Not me.

Q [illegible] know it to? A I don't know -- not in my store.

Q Didn't you ever play the races? A No.

Q [illegible] A Never.

Q [illegible] ever lose any money with the defendant on the [illegible] never played so I did have to lose.

Q [illegible] ever win any money at the races? A I never played. I don't know what the races are.

Q [illegible] down at the race track? A No, never.

Q [illegible] with Mr. Mein? A Never in my life.

I swear.

Q. You know you are swearing to everything you say here?

A I swear that is the truth and I can prove it.

Q. Didn't you make some little investment of $5 and $10?

A No, never.

Q. Sure of that? A Positive.

Q. You never gave the defendant any money to play the races? A Positively not.

Q. Did either have play the races? A No, none of us. We didn't know what the races were.

Q. You never heard anybody speak about races in the place.

BY THE COURT:

Q. Didn't he mention he was to see you -- in your presence?

A No.

Q. If he did you don't know it? A Yes, sir.

BY MR. PORTNOY:

Q. Do you know Joe Samuels? A No.

Q. Jack Samuels? A Jack Samuels. That was a customer of mine.

Q. Yes. A I don't know anything about his playing races. He used to come in.

BY MR. HARRINGTON:

Q. He asked you if you knew the man?

A I know the man.

BY MR. ROSENBERG:

Q Do you know that he was playing the races? A I don't know about him.

Q Do you know you told him you were playing the races with this defendant? A I did not.

Q You did not tell him that? A No.

Q Do you know Lieutenant Sussillo? A Yes, sir.

Q Nicholas F. Sussillo? A Yes, I know him.

Q In December of 1937 you saw Detective Sussillo? A Yes.

Q Did you see him? A Not until I got up to the Detective Bureau.

Q [illegible] don't care where you saw him, but you saw him? A [illegible]

Q [illegible] December, 1937? A [illegible].

Q [illegible] Sussillo you told about this [illegible] with this defendant? A No, sir.

Q [illegible]? A Positive.

Q [illegible] tell that detective [illegible] with him? A No.

Q [illegible] with him? A [illegible].

Q [illegible] A Never.

Q [illegible] game of cards? A [illegible], because I don't know how to play cards.

Q Did you tell Lieutenant, or [illegible] Sussillo, [illegible] December, 1937, that [illegible]

you claimed was lost here was lost while you were playing the races with this defendant? A No, sir, that is untrue.

Q Did you say anything to that detective on that subject?

A No.

Q Sure of that?

A Positive.

Q Now, you saw detective Sussillo about a complaint in this case, is not that right? A I gave the complaint.

Q You saw him about a complaint to have this man arrested? A I did not see him personally, pardon me.

Q You did not see him? A I went up after -- I went up to the detective bureau and put the case before them and they assigned [illegible]

Q [illegible] this defendant arrested? A Positively [illegible] Officer Sussillo [illegible] that case.

[illegible] talk with him? A Yes. We had the talk [illegible] case.

[illegible] before concerning what you testified about [illegible] to 96, you said [illegible] and anv- [illegible] the Grand Jury [illegible] chapter? A You did not say [illegible]

[illegible] whether you remember testifying on that subject at page [illegible] of the page, [illegible] short time. So I [illegible]

about two weeks after, he brought me $12 dividend on that. He was to invest that money to buy Amalgamated Copper. He said that Amalgamated Copper is only $76 per share and in a short time it will go up, it has got to go up, it will go up to 96, and then you will make so much profit." Did you say that in the Grand Jury room? A Yes, sir, that is right.

MR. ROSENBERG: That is all, except I have subpoenaed Police Headquarters and that report has not got down here yet and it may become necessary to interrogate the witness on that subject.

MR. WASSERVOGEL: You may bring her back again.

THE COURT: She will be here.

[illegible] L. [illegible], called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are employed where? A At Madam L. Goldfarb's.

Q Where is Mrs L. Goldfarb's place? A 136 West 116th.

Q Who is now the owner of that place? A Emanuel Hasen.

Q When was it sold by Mrs. Goldfarb last? A [illegible] Friday morning.

Q How long were you in the employ of Mrs. Goldfarb?

A I could have been six years in July, [illegible].

Q In what capacity, what kind of [illegible]

dresser and manicurist.

Q Do you know this defendant? A I do.

Q How long ago did you first see him? A About four -- it is about --

Q How long prior to 1907? A About a year.

Q Where did you see him? A In the store.

Q Do you remember seeing the defendant at any time in the month of August, 1907? A I do.

Q Which part of the month, can you tell us? A The early part of the month.

Q And who else was present at that time? A Just Mrs. Goldfarb and I.

Q Do you remember a conversation that took place then between the defendant and Mrs. Goldfarb? A Yes.

Q Something that was said? A Yes.

Q Tell me what was said? A He told her he had a good chance to buy some Amalgamated Copper. It was now 76 and there was a chance of it going as high as $100 or $108. He said it was very foolish of her not to buy some for she would have a chance to make a lot of money and by working in a store like that she could never get further and if she had not a husband [illegible] anything for her he would be glad to help her out [illegible] I believe gave --

Q [illegible]? A In August.

Q [illegible] transaction? A Mrs. Goldfarb gave this

gentleman $600 to buy Amalgamated copper with.

Q What else was said about the copper? A He told her that he had hopes of this going up around December, by Christmas. If it did not, he would give her the stocks or the money, but he went away at that time and we never saw him after that --

Q Wait a minute -- at the time the $600 was paid, was any paper drawn up, do you recognize this paper, look at it -- what do you say, do not shake your head? A Yes.

Q That was signed by whom? A By Mr. Warlem.

Q After that did you hear any other conversation?

MR. ROSENBERG: That refers to what exhibit.

MR. ASHBROOK: People's exhibit 1.

Q Did you ever see this paper, People's exhibit 2 -- what do you say? A I saw that.

Q Do you remember any conversation that took place between the defendant and Mrs. Goldfarb at that time? A Yes, he told her he had a chance to buy some Mitchell Mining for $1.50 a share, that he saw it as high as $16 a share and it was very cheap now, and he said it would be a good time to get some of this and that every Jew in Harlem has some.

Q Was anything said as to when the stock or money was to be paid over to Mrs. Goldfarb? A All around about the same time, around Christmas.

Q Do you remember any time when the subject of $12 was discussed between Mrs. Goldfarb and the defendant? A Yes, sir.

Shortly after she had given him the $600 he brought that $12 and he said see how quick your money is accumulating. He said no bank could give you money like this. He said, see what I am doing for you.

Q What was done? A And she gave him a receipt for the $12.

Q Were you present at any other time when she gave the defendant money after these two transactions? A Yes, she gave him $400 after that for some more Mitchell Mining.

Q When was that, do you recall? A About october, the beginning of october.

Q What part of October? A The early part.

Q Do You remember what was said at that time? A He told her to get some more of it.

Q Some more of what? A Mitchell Mining, as long as she had that much, he expected to get it for $1.25 but when he came back he said he had to pay $1.50 for it, but it was all right and also told her never to buy things on margin, to always buy them out right, that it was always an investment.

Q When did you see the defendant the last time? A The morning he came in in December.

Q Which part of december? A The early part of december.

Q What conversation took place at that time? A He came in and he said, I am going away for a short time and expect to be back with back money on the stock --

Q [illegible]? A [illegible] around Christmas.

Q Did you see him after that? A No, sir, I did not.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q Returning to the $400 which you say Mrs. Goldfarb gave to the defendant, were you present? A Yes.

Q Are you sure of that? A Positive.

Q Was it in cash? A It was.

Q Do you know where Mrs. Goldfarb got that money from?

A She got it from the Provident Loan.

Q Sure of that? A Positive.

Q You were with you when she got it? A No, but she came back and told me she pawned her earrings and diamonds and did not have them when she came back.

Q She went out on the same day to get the money? A She went out to get the money.

Q You say it was on October 2nd, 1937, is that right?

A No, it was not that same morning she went out. She came in the morning.

Q Who came? A Mr. Harlem, the defendant, and I believe it was the day before she went to the Provident Loan. I don't remember exactly the date. I know it was the early part of the month.

Q The early part of the month -- you are talking now of the second -- then it must have been on the first of October,

1907 -- only two days in thatmonth -- at any rate, Mrs. Goldfarb told you she got $400 from the Provident Loan? A Yes.

Q And she got that on her jewelry? A Yes.

Q Is that right? A Yes.

Q Was it an ear screw and a diamond ring? A Yes.

Q And ear screw and a diamond ring? A Yes.

Q Now then, you saw her give that $400 to this defendant? A Yes, sir.

Q She got the money the day before? A I would not say it was the day before.

Q How many days before? A It might have been the day before. I don't just remember. It was a good many years ago.

Q I know that -- you did not have any difficulty in answering the District Attorney about a good many years ago, did you? A I am answering you the same way, aint I?

Q You said in answer to the District Attorney's question that it was on October 2nd that that $400 was given over to the defendant, didn't you say that? A Yes.

Q Now, assuming that it was on October 2nd that that $400 was turned over to the defendant, when was it in respect to October when Mrs. Goldfarb told you she pawned her jewelry in the Provident Loan and got $400? A It must have been the first then.

Q October first, was it October first?

BY THE COURT:

Q You do not know, do you? A No, I do not.

BY MR. ROSENBERG:

Q About how many days before was it that she said that she pawned her jewelry? A About a day.

Q There can be no mistake about that? A No.

Q You were present when Mrs. Goldfarb gave the defendant $600? A Yes.

Q Is that right? A Yes.

Q And what day was that? A That was in August.

Q What day in August? A About the 10th.

Q You were present when Mrs. Goldfarb gave the $600 on August 10, 1907, that is the right date, is that right? A That is as near as I can remember, yes.

Q Is that a mere guess on your part? A No, it is not. I know it was the early part of August.

Q You said August 10? A It is about August 10, yes.

Q Does anybody refresh your recollection as to the date, August 10? A Yes, we often spoke about it.

Q Who all spoke about it? A Mrs. Goldfarb and the office and different people.

Q When? A At any time.

Q How many times have you spoken about the date August 10, 1907 and October 2nd, 1907? A I don't remember how many times we spoke about the date -- we often had conversation about the transaction.

Q What was done for the purpose of refresh your recollection? A Why no, not necessarily.

Q Not necessarily, but was it done for that purpose? A I don't know that it was done for. We often spoke about the matter.

Q [illegible] to the District Attorney's office? A Yes.

Q [illegible] to the District Attorney's office? A Yes.

Q And you went about August 13, 1907, is not that right? A Well, yes.

Q Is not that right? A Yes.

Q You spoke about October 2nd, 1907, did you? A I don't remember whether it was the second or not, I know we spoke about October.

Q You were [illegible] September, 1907, aren't you? A Yes.

Q You spoke about it with Mr. Wasserwogel in the little room adjoining this court this morning, didn't you? A Yes.

Q There is no harm in that. I am not accusing you of doing anything, but did you speak about it? A I did.

Q [illegible] said about those three dates in the little room adjoining the court room this morning? A It was just said on those three [illegible] stock was bought.

Q [illegible] all that was said? A That was all could have been said.

Q Was that all that was said in that little room adjoining the court room this morning? A That was all.

Q Just those few words? A Of course, if you are in a conversation it does not just go that way.

Q Who was it mentioned August 10, 1907? A Why, we all mentioned it.

Q Who is we all? A Mr. Wasservogel and Mrs. Goldfarb and the officers and so forth and so on.

Q It was then mentioned that was the date when the first $600 was given, is that right? A Yes.

Q Is that correct? A Yes.

Q It was also mentioned, the second money given was $500 as September 6th, 1907? A Yes.

Q It was also mentioned at that interview the third money was given October 2nd, 1907, $400, is that correct? A Yes.

Q Is that all that was said? A Yes.

Q That is all -- now, were you present when the $600 was turned over to the defendant by Mrs. Goldfarb? A I was.

Q You were present when this receipt, People's Exhibit 1 was given? A Yes.

Q Was given in your presence? A Yes.

Q And read over by you? A I think I looked at it.

Q Don't you know -- wont you please take your hand away from your face, we can hear you so much better -- don't you know -- what is your answer -- why are you hesitating? A I

don't remember everything I did so many years ago.

[illegible] still remember a date a good many years ago, don't [illegible] was something serious -- I did [illegible] at the time.

[illegible] why you [illegible] after it.

[illegible] said [illegible] -- can you tell [illegible]

[illegible] that night? A I [illegible] time.

[illegible] words that you mentioned? A Yes.

[illegible] down at the time? A No.

[illegible] recollection since that [illegible] Yes, I have.

[illegible] have.

[illegible] different times. [illegible] I [illegible] it in the store.

[illegible] short? A [illegible] in [illegible] and that [illegible] and as such a thing.

[illegible] words mentioned in the [illegible] A What words?

[illegible] you say the defendant used? A Very [illegible] in and said I will do this and I will do that -- she often walked up and down the store crying, hysterical-

by saying what he said -- the way he came in.

Q And that is why it impressed itself upon your mind? A Certainly.

Q You are sure this is the receipt? A That is the receipt.

Q People's exhibit 1, $600 receipt, you are sure of that? A Yes, because --

Q The reason you are sure of it is because you read it at the time, is not that right? A No, because I know it is a rent receipt and he said this will have to do, because it is the only one I have with me, but he said it will be all right.

Q You are [illegible] sure? A Yes, positive of that.

Q [illegible] exhibit 1, the $600, and state to the [illegible] receipt? A I don't know whether [illegible] is a rent receipt or not, but that is what he said. He said [illegible] right. I would not know a [illegible] I never had any.

Q [illegible] the rent receipt reference to the other transaction, the signed rent receipt on the other -- don't you know that? A I don't know what you mean.

Q [illegible] a little mixed up about the rent receipt -- you [illegible] you hold in your hand and given to Mrs. [illegible] on August 15th, 1947? A Yes.

Q [illegible] you remember it because you read it over at the [illegible] I know what one gave it to him for at the time.

Q [illegible] read it over? A Yes.

Q You read it over? A Yes.

Q You read it to Mrs. Goldfarb? A Yes.

Q You are sure of that? A Yes.

Q Did anyone else read it over? A At that time?

Q Yes. A Why no, she did not show it to anybody else at the time.

Q But you read it over, you are sure of that? A Yes.

Q Do you remember that receipt speaking about speculation, about speculation -- what did Mrs. Goldfarb say about that -- look at that receipt, it says something there about speculation-- when you read it to Mrs. Goldfarb what did she say about speculation? A I don't remember her saying anything about that.

Q Sure of that? A Positive, because he often said not to speculate. After that I remember, because he said you should never buy a thing on margin, always buy it outright, you never lose, you can always keep it and sell it at whatever price you want.

Q That was before she gave him the $600? A He spoke of it before and after.

Q Did that talk take place when she gave him the $600? A Why no.

Q So the talk about not speculating and buying on margin took place before she gave him the $600 and after she gave him the $600? A When she gave him the $600 he said, here is a

receipt and I looked and she looked at it. She said, all right, I guess that will be all right and she put it in --

Q I want you to look towards the jury? A She took and put the receipt away because she did not want her husband to see it.

Q Where did she put the receipt away because she did not want her husband to see it? A She kept it in her stocking.

Q You are not bashful, are you -- What is your business? A Hair dresser.

Q You are not a manicurist? A I also do manicuring.

Q Was massage done up in that parlor? A Massaging and scalp treatment and dying and bleaching.

Q Who did the massage work? A I did and Mrs. Goldfarb does it.

Q She was a massage artist? A Face massaging.

Q Only face massaging done there? A That was all.

Q Positive? A Positive.

Q Male? A Only female.

Q Gentlemen had their fingers manicured? A Only manicuring for gentlemen.

Q It was a standing rule in the establishment? A Positively.

Q Were you present when the $500 was paid over to the [illegible] man.

Q [illegible] September 6th, 1907, is that correct?

A That is right.

Q Is that correct? A Yes.

Q What was said on that occasion? A Why, that was the time he told her to buy Mitchell Mining.

Q Tell her to buy Mitchell Mining? A Yes, he could get it for $1.50 a share; it was a good chance for her and she would make a lot of money, that it was as high as $16 a share and it would not take long before it reached that point again.

Q What else was said? A That every Jew in Harlem had some of it and he did not see why she should not make some money, too.

Q Is that all? A That was about all.

Q Have you told the jury everything that this defendant did said to Mrs. Goldfarb when he got $600 from her on August 10th, 1937? A Why, yes, he told her --

Q All right -- have you told the jury everything that this defendant said to Mrs. Goldfarb when he got $500 from her on September 6th, 1937? A Yes, he always threatened her not to tell her husband, because if she told her husband he said he would not do anything for her. He said, women had a habit of telling everything and he said that would spoil the whole thing and he would earn his money before the profits came in and he was here to make good and he did not want to be the loser for everything.

Q Did Mrs. Goldfarb say that she wanted this defendant

to speculate as she should make money -- profits -- didn't she, honestly? A She did not tell him to speculate. She told him to buy it and to buy it right out and if he could not hand her the money by Christmas to hand her the stocks so she could sell them any time she wanted to.

Q She said that to him? A Because he told herhow to do that -- she did not know the difference -- she did not know anything about stocks.

Q Did this defendant ever come up there in the evening and bring an evening Sun with him and show her the quotations? A The Sun?

Q It was it the telegram? A He brought her in the World, I think, one morning to show her Mitchell Mining and Copper at different points, how it went up and down.

Q Didn't he bring up the evening Sun and show her? A Not that I remember.

Q Did you ever see her show him -- A Never saw the Sun.

Q Only the World? A Only I remember, in the morning --

Q Only the morning World? A Only the morning World.

Q How many times did he do that? A He came in often and he said see how it is going up and down, see how the market is doing, he said.

Q Did he ever say they were playing a system in making these profits? A Not to my knowledge.

Q Don't you know there was a system being played up there with this defendant, don't you remember the Evening Telegram with the racing charts? A I don't remember anything about racing.

Q You don't remember? A No.

Q Didn't you put a couple of dollars on the races through this defendant? A I did not.

Q That? A I did not.

Q Did anyone bet on the races? A I never saw anyone bet on the races.

Q Did you? A I did not.

Q Didn't you ever win any money? A I never did.

THE COURT: She has answered that she did not.

Q Were you ever down to the races? A I was not.

Q Did Mrs. Goldfarb ever go to the races? A Not to my knowledge.

Q Did she ever talk to you about the races?

THE COURT: That is enough on that line.

Q Now, the $400 -- did you make any memorandum of the dates when you claim these moneys were paid over to the defendant? A No, I did not.

Q At no time? A No, no time, I did not.

Q Did you make any memorandum of the conversations that were had? A I did not.

Q Sure of that? A Positive.

Q Have you talked the matter over with Mr. Abrams, the lawyer? A I have.

Q How often? A About a half a dozen times, I guess.

Q And those half a dozen times Mrs. Goldfarb was with you, is not that right? A Yes -- only once I met him and he said -- I asked him how the case was getting on and he said the defendant was trying to make a settlement or something with him.

MR. WASSERWOGEL: Never mind that, just answer the questions and that is all you have to do.

MR. ROSENBERG: I consent that that be stricken out.

THE COURT: Strike it out.

Q When did you talk to Mr. Abrams? A Sunday afternoon.

Q How long ago? A About December -- last December.

Q Last December, four months ago, is that correct? A That is right.

Q Mr. Abrams is in court now? A Yes.

Q Is not Mr. Abrams the lawyer in court now? A Yes.

Q Didn't you see Mr. Abrams with Mrs. Goldfarb during luncheon? A Yes.

Q Didn't you eat lunch together? A No.

Q What did you talk about during lunch? A I was just sitting there -- I don't remember what they were saying. I didn't pay any attention.

Q You were there? A Yes, but I didn't pay any attention.

Q Didn't Mrs. Goldfarb tell Mr. Abrams about the case,

what she swore to on the stand? A He just said how they getting on and she said I am just up to the part where I am telling them about $600 or something, that was all I heard.

Q You were there at the time? A Yes.

Q Did not Mr. Abramstalk to her about the different details of the case? A No, not today.

Q When did he the last time, to your knowledge? A I think the time when he was indicted, once in the court.

Q Not since that time? A Not to my knowledge.

Q Within the past couple of months has not Mr. Abrams called on Mrs. Goldfarb and talked the matter over? A I did not see him.

Q Did you talk it over with Mr. Abrams? A I just passed him on the street a few minutes, that was the time he said how do you do and that is all.

Q Didn't you talk the matter over with Mr. Abrams this morning, in the court room? A No.

Q Or outside the door? A We just had a few words about it. Not review it.

Q What were you talking about this morning? A I don't just remember how it started.

Q What was said? A We just said about the case.

Q What did he say about the case? A Asked us how we were getting along and what they thought about it and so forth and so forth -- didnot amount to anything.

Q [illegible] about the details of it? A No.

Q [illegible]? A [illegible].

Q [illegible]? A Yes.

Q [illegible] conversation [illegible]?

MR. [illegible]: She has said yes, and positive, ten times. [illegible] on [illegible].

BY MR. [illegible]:

Q [illegible] connected with [illegible] at the present time?

A [illegible] at the present time.

Q [illegible] been working for her [illegible] years?

[illegible]: She said she worked for her until she sold the place.

[illegible]: Up until Friday.

Q [illegible] friendly to this defendant? A Yes, when he [illegible] there.

Q Mrs. Goldfarb was friendly to him? A Yes.

Q Didn't they go out together? A No, sir.

Q Never went out together? A No, sir.

Q Did you ever go out with the defendant? A No.

Q What? A No.

Q Did you ever go to the Hotel Wilhelmina and have a drink with him? A Not to my knowledge.

Q I mean in the restaurant and have a drink with him? A I don't remember.

Q How did Mrs. Goldfarb address this defendant? A When

he came in the store Mr. Warlem and when we were out of the store we called him Schlemazzel, or, the dish on the wall.

Q That was about the time of the giving of the $600 you use to call him that? A Yes.

Q How long had he been coming to the store before this $600 transaction? A About a year.

Q He used to come in there every day? A Least.

Q Before this money was turned over? A Almost every day. He was very friendly and brought us customers and had his nails done and always acted as a perfect gentleman in the store.

Q I show you Defendant's Exhibit D for identification, Defendant's Exhibit E in evidence, Defendant's Exhibit B for identification and Defendant's Exhibit C for identification and Defendant's Exhibit A for identification and I ask you whether you recognize the handwriting of Mrs. Goldfarb on any of those papers -- never mind about reading the bodies of them?

THE COURT: What familiarity has she with Mrs. Goldfarb's signature?

BY THE COURT:

Q Did you ever see her write her name? A I often saw her.

Q Would you recognize her signature if you saw it? A I might.

Q How did she sign her name? A L. Goldfarb -- something like this.

Q You don't know if that is her signature or not? A I would not say it was or was not.

MR. WASSERMAN: Look at all of them.

By Mr. Gutchess:

Q Look at all but do not read the contents? A They all look -- [illegible] of alike, but I would not say it was or was not.

Q [illegible] Mrs. Holofard write? A Not very often -- she used very little of it.

Q Did she read the newspapers? A Only newspapers, she cannot read anything like this -- she only reads printed matter.

Q [illegible] her name? A Something like this it looks when she gets through with it.

By Mr. Wasserman:

Q [illegible] her name? A Yes.

By Mr. Gutchess:

Q The signatures on all of those papers I have handed to you, your best judgment [illegible] they look like it? A They look like it.

Q But you would not swear it is or is not? A No.

Q Any of them? A No.

Q Has the subject of these signatures been discussed with Mr. Gutchess and yourself?

By THE COURT:

Q Do you understand the question? A No.

Q Those signatures you have in your hand? A You mean whether she wrote them or not?

Q Those five papers, have you ever talked about them with Mrs. Goldfarb? A No.

BY MR. [illegible]:

Q Don't you remember two of them were used in the police court and she was asked about them? A That part of it, yes.

Q And don't you know within the last two or three days the subject of her signature was discussed between Mrs. Goldfarb and yourself? A Yes, yes, she said don't you remember he had some paper he was trying to say I signed.

Q When did she say that? A She only said that this morning.

Q Where did she say that? A Outside.

Q In the little room adjoining the court room? A Yes, or any other time she said -- she said that swindler even tried to say I signed receipts.

Q And she did not sign any of them? A I know she signed one for the $12 dividend, but I did not see her sign any others.

Q When did she sign that? A When he brought her the $12.

Q When was that? A In August.

Q Some of that? A Yes, when he brought back $12.

Q Did you make any memorandum of the date? A No, I did not.

Q Do you remember any particular person whom you did any

work for on the 10th of August, 1907? A A customer?

Q Yes. A I don't remember.

Q Do you remember doing anything on that day specially? A I cannot say.

L I V I N G S T O N H U N T, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR WASSERVOGEL:

Q What is your present business? A I am retired out of the Police Department.

Q You retired when? A December this last year.

Q Did you make the arrest in this case? A I did.

Q State the circumstances, please? A I was attached to the Harlem Detective Bureau at the time, and about six o'clock at night we got a --

Objected to.

THE COURT: Do not state any conversation.

Q As the result of the communication? A I was called by a communication to the 19th Precinct station house.

Q What did you do? A I went down there and the Lieutenant informed me that they had a man --

Q Never mind what they informed you?

A I made the arrest of this defendant.

Q That arrest was made when? A October 4.

Q Did you have a conversation with the defendant at that time? A Slightly, yes.

Q Tell us what you said and what he said? A We went up in the elevated --

THE COURT: Did he speak to you.

Q Did he say anything to you? A I asked him what his name was.

Q Did he say anything to you, yes or no? A Yes.

BY THE COURT:

Q Now tell us what he said? A He did not say anything until I asked him some questions.

Q Go on. A Going up in the elevator I asked him what his name was and he refused to tell me.

THE COURT: Strike that out.

BY MR. [illegible]:

Q What did he say? A He said he would get hunk on that woman that made the complaint against him. He said he would get hunk on her.

Q Did he tell you his name? A He said his name was John Doe.

CROSS EXAMINATION BY MR. [illegible]:

Q Didn't you say he refused to give you the name? A He said --

Q Didn't you say he refused to give you his name?

THE COURT: I struck that out.

THE WITNESS: He gave me the name of John Doe, if you consider that a name.

Q Didn't you understand that to be a name -- refused to give his right name? A Yes, I did.

Q And therefore you knew it was merely a name -- A Assumed name.

Q A fictitious name? A Yes.

Q But he refused to give you his real name?

THE COURT: That has not anything to do with the case. I struck it out. It is of no importance whatever. I distinctly asked the officer to state what this man said and not what he refused to say.

Q Are you quite sure the defendant said I will get hunk on her, or that woman? A Yes.

Q You are sure of that, officer? A Yes.

Q Did you make any memorandum of those words? A No.

Q Is this matter any clearer in your mind today than it was when you were before the Grand Jury? A Well, I wont say about that. It is over a year ago.

Q Do you remember when you were in the grand jury room being questioned as to what the defendant said, do you remember that? A Yes, I was asked --

Q Let me read the question and answer and tell the jury whether this is the correct question which was put to you in the

Grand Jury room and the answer which you made, at page 12, "Well now, what did he say to that? A Wh , he dnied it. He said I will beat her hands down." Did he say that?

THE COURT: That is not the question, whether he said that or not. The question is whether he remembers that question and giving that answer.

THE WITNESS: I don't remember that.

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

Q Is it not a fact that the only answer this defendant gave to you in response to your question was that he said "I will beat her hands down." A I don't remember that.

Q Do you deny that you gave that to the Grand Jury? A If [illegible] not deny it. This [illegible] it.

Q You might have a [illegible] on her instead of telling that you told the Grand Jury? A If I remember correctly, that is what he said to me, I will get hunk on that question.

Q Do you remember the question being put to you by a juror on the Grand Jury that you making this answer right [illegible] I have just [illegible] A He denied it and said I will beat her hands [illegible] about all there was to it."

Does that refresh your recollection as to what you said in the Grand Jury room? [illegible] to you? A I don't remember that.

Q Do you deny you said [illegible]

THE COURT: That is not the question. I will sustain and objection to that question. We do not care what he said in the Grand Jury room.

Q Does that refresh your recollection as to what you said this defendant said?

THE COURT: He has already answered your question that it did not.

BY MR. ROSENBERG:

Q Did you say that to the Grand Jury?

Objected to as having been already answered.

Objection sustained and exception.

THE COURT: He said he did not remember.

Q Do you deny that you stated to the Grand Jury in answer to a question that the defendant said I will beat her hands down?

Objected to as having been answered several times.

THE COURT: He has already answered that.

MR. ROSENBERG: I except.

Q Did you tell the Grand Jury --

THE COURT: Do not ask him any more questions about the Grand Jury unless you wish to put a question to him concerning a question and answer which differs from his present testimony here.

MR. ROSENBERG: I except to your Honor's refusal to permit me to interrogate the witness concerning what he

testified to before the Grand Jury. I desire to have it entered on the record that an order was made by a Judge of this court -- I want it to appear that we have the minutes of the Grand Jury.

THE COURT: It is admitted those are the minutes of the Grand Jury.

MR. WANGERVOGEL: Yes, it is conceded.

THE COURT: You may confront this witness with any statement that he made at any time which conflicts with the present statement that he makeshere.

MR. ROSENBERG: That is what I want to do.

THE COURT: You have done that, but he says he does not remember.

BY MR. ROSENBERG:

Q Did you tell the Grand Jury that this defendant told you that he would get hunk on this woman?

THE COURT: There is no evidence that he was asked that question.

MR. ROSENBERG: He was asked what the defendant said and he gave the answer.

THE COURT: He has given an answer and it is for the jury to say whether it conflicts or not.

MR. ROSENBERG: I want to know --

THE COURT: You have asked him that question as often as I will allow you. You have taken an exception. Now pro-

ceed.

MR. ROSENBERG: I except.

BY MR. ROSENBERG:

Q Have you now told the jury everything that the defendant told you at the time you made the arrest, or at any other time?

A I believe I have, yes, sir.

Q Were you in Police Headquarters when a subpoena was issued to the Commissioner of Police to produce a report of your brother officer, Sussillo? A No, sir. I am retired now.

MR. WASSERVOGEL: The People rest.

THE COURT: Where is the proof of the larceny of the certificates.

MR. WASSERVOGEL: The money was given to him for a certain purpose.

THE COURT: That is not the larceny of the certificates.

MR. WASSERVOGEL: The indictment goes further and says money.

THE COURT: Where?

MR. WASSERVOGEL: You probably have the original indictment. There was a superseding indictment which charges it.

THE COURT: Let me see the superseding indictment.

MR. ROSENBERG: There is no superseding indictment.

MR. WASSERVOGEL: Yes, there was.

MR. ROSENBERG: The defendant moves that your Honor direct the District Attorney to elect upon which count of the indictment he intends to proceed to submit this case.

MR. WASSERVOGEL: The District Attorney would prefer not to elect at this time, until all the evidence is in.

MR. ROSENBERG: All the evidence of the People is in.

THE COURT: I will deny the motion.

Exception.

MR. ROSENBERG: The defendant moves for a direction of a verdict in his favor and for an acquittal upon the ground first, that the facts proved do not constitute a crime; the facts proved do not constitute the crime, if any, charged in either of the counts of the indictment; the facts proved affirmatively that the defendant is not guilty of the crime charged in either of the counts of the indictment or of any crime; that the People have failed to establish the commission of the crime charged in each count of the indictment beyond a reasonable doubt.

THE COURT: Motion denied.

Exception.

THE DEFENDANT'S CASE.

S O L O M O N G L U C K S M A N, called as a witness in behalf of the defence, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q You are connected with the Provident Loan Association of the City of New York? A Yes, sir, I am.

Q Pursuant to a subpoena served upon your association, did you produce the original signature of Mrs. Pauline Goldfarb, that card, defendant's exhibit 2? A That card represents the signature on the ticket of the pledge on December 2nd, 1937, for a diamond ring for $90 and a diamond ear screw for $90.

Q What date was the pledge made with your association? A December 2nd, 1937.

Q Have you the original pledge ticket with you? A Yes.

Q Will bears the date which you have just given us and also the article which you have given? A The date, the article, name and amount.

BY THE COURT:

Q Where is the ticket? A That is the signature.

Q That is produced from the files of your company? A Yes.

THE COURT: That is the signature she admitted.

MR. WASSERVOGEL: Yes.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q What were the articles pledged at that time? A One diamond ear screw and a diamond ring.

Q How much was given to her? A $90 on the ear screw and $90 on the ring.

Q Do you know of any other pledges which were made by Mrs. Goldfarb at any other time? A I do not.

Q You were simply asked to produce your records of December 2nd? A Yes.

Q And you do not know?

BY THE COURT:

Q You have no recollection of any? A No, I have no recollection of any outside of the summons.

Q You just obeyed that subpoena? A Yes.

THE COURT: Let me see what the subpoena says.

BY MR. WASSERVOGEL:

Q The subpoena asks you to bring with you any books or book records or memorandum or other document which will show a pledge by Mrs. Pauline Goldfarb or Mrs. L. Goldfarb or either of them, of certain diamonds or other jewelry or valuables about December 2nd, 1907 -- that is the only date you looked up?

A December 2nd, 1907, yes.

BY MR. ROSENBERG:

Q Was there any other pledge with your company about that time? A No, sir, not that I know of.

BY THE COURT:

Q Did you look? A We had looked December 1907.

Q Have you looked back as far as August? A No, not to my knowledge.

Q You only looked for that one date? A I am from the ex-

ecutive office, and that comes from the Harlem branch.

Q You looked for that date only? A They looked through the month.

Q The month of December? A Yes.

THE COURT: She swore she made that pledge in October.

MR. WASSERVOGEL: Yes, $150. in October.

BY MR. ROSENBERG:

Q How long would it take you to get that information? A Five or ten minutes, probably.

THE COURT: Get it, and see if there is any record of a pledge in October.

THE WITNESS: October, 1907?

MR. ROSENBERG: Whether there is anything from August to December.

A N N A N E L S O N, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

(Residence 214 West 82nd street).

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your present address? A 214 West 82nd street.

Q Do you recall going to the place of business of Mrs. Goldfarb on 116th street? A Yes, sir, I do.

Q I show you a card, Defendant's Exhibit D for Identification, and I ask you who signed the name on that card?

A Madam Goldfarb.

Q She is in court? A Yes.

Q Do you identify her? A Yes, she is sitting right over there in the corner.

Q Now, Miss Nelson, did you buy an article from Mrs. Goldfarb on the day you were there? A I did not buy it, no.

Q What did you do, how did you get that card, Exhibit D? A I went into Madam Goldfarb's place of business and ordered some puffs -- no, I did not order them. I went and asked for puffs to match my hair, I think, I wanted about three -- she did not have anything that suited me.

Q You finally gave her some money? A I did, yes.

Q How much money? A I think it was a dollar.

Q Did she give you a receipt? A Shedid.

Q Is the receipt represented by the card, Exhibit D? A Yes,sir, it is.

Q Did you see her sign that card, A yes,sir, I did.

Q Sure of that? A Positive.

BY THE COURT:

Q How long ago was that when this happened? A Some time last winter or spring, it was.

BY MR. ROSENBERG:

Q Was it not longer than that ago? A I cannot exactly say the date. I don't remember exactly when that was.

BY THE COURT:

Q Who told you to go there? A This man.

BY MR. ROSENBERG:

Q This defendant? A Yes.

BY THE COURT:

Q Just to get her signature? A To get her signature.

Q Are you a detective? A No, I am not.

CROSS EXAMINATION BY MR. PASSERVOGEL:

Q You are a married lady? A I am not.

Q How long have you known this defendant? A Something about two years I think it is.

Q How did you become acquainted with him? A I was introduced to him down in 225 Fifth Avenue.

Q What place is that? A It is called the Brunswick Building.

Q What business place is there where you were introduced to him? A He was there in business.

Q Under what name? A Under the name of Hein.

Q That was at 225 Fifth Avenue? A 225 Fifth Avenue.

Q That was the very first time you met him? A The very first time I met him.

Q About two years ago? A Something about two, or probably a little over.

Q Was it on the same day that you met him that he asked you to go to this Mrs. Goldfarb's place? A No, sir.

Q How long afterwards was it? A Almost a year.

Q What? A I think almost about a year -- about a year I think -- I am not sure.

Q Do you remember what month it was that you first met him? A No, not exactly.

Q Do you remember what month it was that you went to Mrs. Goldfarb's place? A No, I do not recall that even, because --

Q Do you remember what year it was? A When I went to Mrs. Goldfarb's place?

Q Yes. A It seems to me it was last winter.

Q Last winter? A Last winter, yes.

Q And how often have you spoken to the defendant?

BY THE COURT:

Q You mean this past winter, or winter a year ago? A I think it was this past year.

Q This past winter? A I am not exactly positive.

Q Can't you remember -- this is still winter -- do you mean this present winter, last month or month before? A No, not this winter. A year ago.

Q That was what I asked you -- a year ago -- winter a year ago. A yes, sir, about a year ago.

BY MR. WASSERVOGEL:

Q But you do not recall the month? A No, I can't exactly.

Q What did the defendant tell you to do with respect to Mrs. Goldfarb? A He came to me one day and he said that he had

been arrested.

Q Go on? A And he said -- I said for what -- what have you been arrested for. I did not know anything about anything because --

THE COURT: Go on.

A He said that he wanted me to -- no, he said -- I said, what have you been arrested for. He said well, some woman has -- she gave me money to bet for her.

BY MR. WASSERVOGEL:

Q Now, what did he say about going to Mrs. Goldfarb's place? A I am trying to remember just exactly what it was -- I am telling just what I know.

Q That is what I am asking you? A He asked me to go there -- he said he had been arrested. I said what for, so he said some woman had --

Q You are talking about Mrs. Goldfarb's place? A I cannot recall exactly this very moment -- give me time, please.

Q Go on. A He said -- I cannot recall now at this moment. I will remember if you will give me time.

Q How many times did he mention the name of Goldfarb to you? A Wait a moment and let me tell you, please, what he told me. I will try to recall, if I can.

BY THE COURT:

Q You are only asked one question. We cannot wait all day for you -- what did he tell you about going to her place --

no matter what he was arrested for? A I told him, I said well, have you done it? He said no. He wanted me to go up there and get her signature for him.

BY THE COURT:

Q Did he tell you why he needed her signature? A He said she denied her own signature, because she had given him money to invest -- or, play the horses or something like that, and he could not -- she had given him a receipt for the money and she denied her own handwriting or her own signature, and in fact she didn't even know how to write her own name. I said, I don't want to go up there and have anything to do with this.

BY THE COURT:

Q You did go up? A yes, I did.

BY MR. WASSERVOGEL:

Q How manytimes did you talk with this man about going to Mrs. Goldfarb's place before you went there? A He asked me a couple of times to go. I did not want to go. He begged me to go.

Q Where were you living at that time -- don't remember where you were living, even? A No.

Q You know where you are living now? A Yes.

Q Where are you living now? A 214 West 82nd.

Q You don't know where the defendant called upon you at that time, that you do not remember? A He did not call --

Q Where did you meet him at the time of this conversation

about Mrs. Goldfarb? A He used sometimes to pop up -- before I knew, he would come and meet me in the street and say, how are you, &c.

Q What street would he meet you in? A I used to go to 225 Fifth Avenue, and I do not know.

Q Did youhave any business there at 225? A I did for a time.

Q What business did you have there? A I was selling toilet articles for awhile.

Q Are you in business now? A No.

Q No business at all? A No, I have just come back from Europe.

Q And when you called at Mrs. Goldfarb's place, who was present? A When I went in there Mrs. Goldfarb was there and there was some young lady, I believe.

Q Did you see the young lady in court here to-day? A I cannot recall the girl exactly.

Q You came there with some puffs? A No, I went there to buy some puffs.

Q How many puffs did you say you wanted to buy? A Well, I don't know exactly now, four or five or six. I don't recall exactly.

Q Did you not, in answer to a question by Mr. Rosenberg, say it was three puffs. A Yes, sir, I said three or four.

Q Do you remember that? A I do not know if I said exact-

ly three.

Q How many did you tell her you wanted? A I am not positive now. I think it was four or five or six, something like that.

Q Four or five or six? A I don't exactly recall.

Q Will you tell us who wrote the body of this card, Defendant's Exhibit D for Identification? A Well --

Q Who wrote the body of that -- that is the only question? A There was some girl wrote the body of that.

BY THE COURT:

Q In that room? A Yes. The young girl, because --

THE COURT: Never mind the because.

BY MR. WASSERVOGEL:

Q You did not write the body of it? A No.

Q Sure about that? A I am positive of it.

Q Was this date on the back, on the card at that time? A No.

Q Did you ever see that date before? A No.

Q That was not there at the time? A No.

Q After the memorandum had been written by some girl, you say Mrs. Goldfarb signed this herself? A She told the girl to write out a receipt for me. I gave her the money.

Q You gave her how much? A I think it was a dollar, and so I said well, you give me a receipt -- She said, I don't give any receipts. I said well, if you don't, all right, I won't give you my money. I can go somewhere else and get my puffs.

That was the answer I gave her.

Q Then you got this card? A I did not get the card. She asked the girl to write out a receipt and I said --

Q She gave you the card -- you say she wrote her name on this card and handed it to you, is not that correct, is that what she did -- did she do that? A Yes, but first she asked the young lady to write a receipt.

Q After the receipt was written? A I said no, I don't want that, I don't want the girl's receipt. I want yours, because she is not responsible.

Q You were very particular to get her name on that card? A Well, yes.

Q And then the card was handed to you by somebody? A No, she wrote out --

Q How did you get the card in your possession? A I got it from Madam Goldfarb.

Q She handed you the card? A She handed me the card, after Madam Goldfarb signedit.

Q Then, you immediately called upon the defendant and handed him the card? A I gave him the card.

Q You called at his home? A I met him.

Q Did he pop up on the street again? A No, I suppose I made xx an appointment with him then.

Q How did you make this appointment with him? A He asked me to go there and get the puffs.

Q You had the card; now, I want to know how it was you handed him the card? A I handed the card right after I got it.

Q Where was it you handed him the card? A I guess I met him in the street.

Q Met him in the street by accident? A No, I did not.

Q By appointment -- you met him on the street? A I did meet him, but don't remember exactly where.

Q How often have you seen him after that? A I have seen him a very few times. I don't recall, a couple of times.

Q Were you in court here yesterday? A No.

Q This is the first time you have been in court in this case? A In this or any other.

Q You were not a witness in the Magistrate's Court? A No.

Q This is the first time you have testified in this case? A Yes, sir.

Q How often have you talked with this defendant about the case? A About this case?

Q Yes. A I don't believe I ever have spoken to him probably since.

Q Not a word since that time? A Well, I don't know if I saw him once or twice. I am not sure of that.

Q Did you talk to him about the case? A I don't know. He came and told me one time the case was going to turn up or something. I don't know.

N I C H O L A S P. S U S S I L L O, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q A subpoena was served at Police Headquarters this afternoon, for your report? A Yes.

Q Have you that report with you? A Yes.

Q Will you please produce it -- hold it in your hand for a moment -- no need to show it -- now, do you recall meeting Mrs. Goldfarb, the complainant here? A Yes.

Q Do you recall having an interview withher in December, 1907? A Yes.

Q Do you recall whether she stated to you that she lost some money with this defendant as the result of playing the horses? A Not in that exact language.

Q In what language did she say it then? A During the course of a conversation on the 17th of December, 1907, when the complainant called at the Harlem Branch of the Detective Bureau to make a complaint against the man who was subsequently identified as the defendant, the complainant stated that in all she was induced to give the defendant about $1500., as near as I could remember -- about five hundred or six hundred dollars of that amount was for a specific stock transaction. The rest of the matter I did not take any interest in after listening to it, because it referred --

THE COURT: Never mind about that -

BY MR. ROSENBERG:

Q What did it refer to -- that is, the contradictory statement?

THE COURT: Where is the report -- is this calling for the contents of a written instrument?

MR. ROSENBERG: No, he is telling us what he remembers.

THE COURT: Of a conversation?

MR. ROSENBERG: Yes, with this woman.

THE WITNESS: That $500. was for a specific purpose.

BY MR. ROSENBERG:

Q What was the other money given for?

BY THE COURT:

Q What did this woman say, if you remember -- you were asked for a report, as I understood it.

MR. ROSENBERG: First I want to contradict Mrs. Goldfarb, if I can, by this officer's testimony.

THE WITNESS (continuing) That she had given the defendant several hundred dollars which he was to invest in the race track speculation -- referring to horse racing; that the defendant had a system whereby he made a whole lot of money, and he was going to make a whole lot of money for her.

BY MR. ROSENBERG:

Q Did she say anything about playing that system of horse

racing? A No, she did not say she played it, but she gave the money to the defendant to play it for her.

Q That was the part of the money which she said -- did you afterwards make a report in your official duty as a detective to your superior officer, concerning that complaint?

A When you say complaint, do you mean -- in what respect.

BY THE COURT:

Q Did you make any report about the case to your superior?

A Yes, sir. That part that referred to a crime.

BY MR. ROSENBERG:

Q You did not refer to the other conversation? A No, I told her, if you wish me --

THE COURT: Never mind about what you told her.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Have you the report here? A Yes.

Q May I see it --

MR. WASSERVOGEL: Shall we offer it, or will you offer it, as long as you called for it -- the People are willing to let it come in.

THE COURT: They have not called for the report. It was not made in the presence of the defendant.

BY THE COURT:

Q How do Mr. Rosenberg know that she made that statement to you -- Nobody saw that statement made to you. A At the Detective Bureau.

15

Q Yes. A No, sir, I was alone with the complainant.

Q You wrote down all she said to you concerning the six hundred, but did not write a word about the rest of it? A No, I can explain thatif you want me to.

Q How did Mr. Rosenberg know that she ever made that statement to you? A That is something that Mr. Rosenberg can answer. I cannot.

Q Did you ever tell the complainant that? A The complainant?

Q I mean the defendant? A No, sir.

Q Are you a friend of the defendant? A No.

Q Do not know him at all? A No.

Q I understood your testimony to be that you and she had a conversation, A Yes.

Q And it was your duty to make a report to your superiors about that? A Only the part that referred to the crime, in my estimation, because I told the complainant --

THE COURT: Never mind what you told the complainant, that is not admissible here. We merely want to get the circumstances under which this declaration was made to you. I have not any further questions.

BY MR. WASSERVOGEL:

Q In your report to the Police Department you said absolutely nothing about this horse racing business? A No, sir, not in the official report.

S O L O M O N G L U C K S M A N, recalled:

BY MR. ROSENBERG:

Q Have you communicated with your office concerning any pledges made by Mrs. Goldfarb? A I have.

Q Do you find any pledge made on October 2nd, 1907, yes or no? A No.

BY THE COURT:

Q Prior to the 2nd of October? A I have searched as you directed me, and find october 21st, 1907, two diamond screws for $200.

BY MR. ROSENBERG:

Q October when? A October 21st, 1907.

BY THE COURT:

Q Two diamond screws $200.; that was the first transaction she had with your firm? A I have not gone back.

Q How far did you go back? A 1907 -- the four months you directed me to.

Q What four months? A August, September, October, November and December.

BY MR. ROSENBERG:

Q August, September, October, November and December of 1907? A Yes, sir.

BY THE COURT:

Q The first transaction was October 22nd? A October 21st, $200., two diamond screws, and then October 26th, a diamond ring

for $60.; November 25th, 1907, diamond ring for $6. -- which address does not correspond but the signatures almost alike, and then, November 29, 1907, diamond ring for $20.

BY THE COURT:

Q And then the December one you have testified to already?

A Yes.

THE COURT: Now, Mr. Rosenberg, as to what occurred before the Grand Jury, I gave you full opportunity to examine the officer as to any conflicting statements he made. If you can show now that there is any other conflicting statement, you may do so.

MR. ROSENBERG: Then I offer in evidence the Grand Jury testimony.

THE COURT: We are not concerned with what he testified elsewhere. It is your duty, if you claim there is a contradiction, to call his attention to the statement which you say conflicts. You did call his attentin to one thing, and kept repeating it over and over again.

MR. ROSENBERG The point is this; he never said a word about that in the Grand Jury.

THE COURT: That is a matter of argument for the jury. You asked him all he said to the Grand Jury and he told you. Then you called his attention to that.

MR. ROSENBERG: May I not get in evidence the question and answer which I interrogated him about in the Grand Jury room?

THE COURT: We said to-day the defendant made a certain statement. You called his attention to the statement he is alleged to have made to the Grand Jury, and asked him to explain it, and he could not explain it, and it is for the jury to say whether there is any conflict or not.

MR. ROSENBERG: I will have to have in evidence the statement made in the Grand Jury room, so that I can argue to the jury that he swore in the Grand Jury so and so, and he swore here so and so -- so therefore it is necessary to have the Grand Jury evidence before this jury.

THE COURT: No, not at all.

MR. ROSENBERG: Then I will have to prove it by the stenographer.

MR. WASSERVOGEL: There is no question about it. I will concede those are the minutes.

MR. ROSENBERG: Then it is stipulated that Officer Hunt did testify in the Grand Jury --

THE COURT: And he did not make the same answer that he made here.

MR. ROSENBERG: But that he said nothing in the Grand Jury room concerning "I will get hunk on that woman". Nothing said in the Grand Jury room about that.

THE COURT: If that does not appear in the minutes --

MR. WASSERVOGEL: That does not appear in the minutes, but, that does not prove the man is lying.

THE COURT: You have already called his attention to the answers that he gave. I do not want to interfere with you, Mr. Rosenberg, in the trial of the case at all, or deprive you of any of your rights, but we must proceed. There is no use in repeating the same question over and over again.

MR. ROSENBERG: Then the Grand Jury matter is out, because I have got what I want.

THE COURT: Is there anything else you want?

MR. ROSENBERG: I want to determine whether to put the defendant on the stand.

THE COURT: We will give you until to-morrow morning to determine that.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, March 20, 1912, at 10:30.

THE PEOPLE vs. JOHN DOE, alias EDWARD HARLEM.

New York, March 20, 1912.

Trial Resumed.

MR. ROSENBERG: The defendant offers in evidence Defendant's Exhibit D for identification.

MR. WASSERVOGEL: I have no objection.

Defendant's Exhibit D for identification is received in evidence and so marked.

MR. ROSENBERG: The defendant offers in evidence Defendant's Exhibits A, B and C for identification.

MR. WASSERVOGEL: They are objected to as not proven. The signatures are denied -- nobody has proved them.

THE COURT: What are they?

MR. WASSERVOGEL: Papers which were shown to the complaining witness and she was asked "Did you sign these papers, and she said no point blank, and I object to their being offered in evidence.

Objection sustained. Exception.

MR. ROSENBERG: The defendant asks your Honor to submit to the jury Defendant's Exhibits A, B and C for identification, for the purpose of having the jury inspect the same in conjunction with Defendant's Exhibits D and E in evidence, for the purposes of comparison, pursuant to Chapter [illegible] of the Laws of 1909.

THE COURT: No sufficient foundation for that motion has been made.

MR. ROSENBERG: You have not read the law.

THE COURT: I will deny the motion.

MR. ROSENBERG: Will you look at the law?

THE COURT: No, it is not necessary.

MR. ROSENBERG: I assure your Honor there is a provision in thelaw which probably your Honor is not familiar with.

THE COURT: I will deny your motion.

Exception.

MR. ROSENBERG: Under Chapter 65 of the Laws of 1909.

THE COURT: No foundation has been made for that motion.

MR. ROSENBERG: I do not want to put your Honor in any false position.

THE COURT: I will not change my decision. You cannot bring in here a lot of documents. There must be something connecting them with this case and there is nothing at all -- connecting them with this woman. I have ruled upon the matter.

S O L O M O N G L U C K S M A N, recalled, by the defense.

BY MR. ROSENBERG:

Q Mr. Gluckman, have you produced pursuant to a subpoena served upon the Provident Loan Society, a list of the withdrawal

of pledges or what do you call them? A Yes, sir, pledges and redemptions.

Q Of redemptions? A Yes, sir.

Q Please state in detail the date of each pledge made by Mrs. Goldfarb, the complainant, and the date of withdrawal or redemption ? A The diamond screws pledged October 21 1907 for $200; redeemed October 26, 1907. A diamond ring pledged November 29, 1907 for $20, redeemed December 2, 1907. Diamond ring pledged October 26, 1907 for $60 , redeemed December 26, 1907. Diamond ring for $6 pledged November 25, 1907, redeemed October 10, 1908. The last loan, the address does not exactly correspond, but your Honor ordered ---

BY MR. ROSENBERG:

Q You gave that to us yesterday, what was that? A The ones yesterday were December 2nd loans.

Q Give us the pledge of December 2nd? A December 2nd 1907 one diamond ear screw for $90 redeemed April 14, 1908; a diamond ring for $20 redeemed January 3, 1908.

Q Does that cover all the pledges or withdrawals or redemptions? A Yes, sir, that covers all.

Q From what date? A From August, 1907 to January 1st, 1908.

Q The 1st of August? A Yes, around the 1st of August.

Q To and including December, 1907? A 1907.

No cross examination.

W I L L I A M L. O'N E I L L, called as a witness in behalf of the defense, being duly sworn and examined testified as follows:

(Residence 124 West 94th .)

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What bank are you connected with? A Colonial Bank.

Q Have you produced, pursuant to a subpoena served upon the Colonial Bank, the account of Louis Goldfarb? A Yes, I have.

Q And have you Mr. Goldfarb's address? A No, I have not.

MR. WASSERVOGEL: There is no dispute about that at all.

BY MR. ROSENBERG:

Q Have you made a transcript of the account of Louis Goldfarb? A Yes.

Q Please look at that transcript and will you please state to the jury whether there is a check drawn on the Colonial Bank on October 2, 1907 or October 1, 1907, a check for $150? A Not around October 1st or October 7th.

Q Will you read the checks drawn by Louis Goldfarb from September 20th down to and including October 21st -- read the checks and dates? A September 23rd $22.70. September 24th $22.92; October 3rd $16.67; October 4th $6.90. October 9th $120.33; October 11th $6. October 12th $3.50. October 12th $5.75. October 14th $12.18. October 16th $5. On the 16th $5; on the 18th $6; on the 19th $8.87. On the 24th of

October $150.

Q October 24th? A Paid by us on the 24th, and 25th $4.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q And this check of $150 of October 24th was a bearer check? A I have not seen the check.

Q Here is the check, this went through your bank (showing check)? A Yes.

Q $150? A Yes.

Q Was paid on it? A Yes.

MR. WASSERVOGEL: I offer the check in evidence.

THE COURT: How is that evidence in this case.

MR. WASSERVOGEL: They are bringing it out down to October 24th. This is the receipt which was lost and the woman may have been uncertain as to the date when this last sum was paid, and she has since looked into the matter and finds the exact check. She will be put on the stand to testify as to that.

THE COURT: Does she say she gave the check to this defendant, or drew the money and gave it to him?

MR. WASSERVOGEL: She testified the check was drawn for $150.

THE COURT: She did not give the check to the defendant.

MR. WASSERVOGEL: No, she said the money was drawn pursuant to this check.

THE COURT: But that check is not an exhibit in the case. It has not been connected with the defendant in any way. It does not corroborate her statement. There is a check for $150 but it is not a proper exhibit in the case.

MR. WASSERVOGEL: That is all I want to show.

THE COURT: If it was a check given to the defendant that would be a different matter, but it was not. Her claim is she got the cash on that check and gave him the cash.

MR. WASSERVOGEL: That is it exactly.

THE COURT: The check is not evidence.

MR. WASSERVOGEL: The check is simply proof that money was drawn.

THE DEFENSE RESTS.

MR. ROSENBERG: The defendant renews the motion made -- before I rest I would like to see that I got that offer correct.

THE COURT: Which offer?

MR. ROSENBERG: The defendant asks your Honor to submit Defendant's Exhibits A and B -- the defendant asks your Honor to submit to the jury for comparison the conceded handwriting of the complaining witness contained in Defendant's Exhibits E and D together with Defendant's Exhibit A for identification, B for identification and C for identification, so that the jury may have the said exhibits for the purpose of comparing the same with the original

and conceded handwriting of the defendant, and that such request is made pursuant to the authority contained in Chapter [illegible] of the Laws of 1909 and contained in section 961d of the Code of Civil Procedure.

THE COURT: The Court denies the motion for the reason that the question of the handwriting of Mrs. Goldfarb is not an issue in this case. There is no evidence that makes it an issue in this case.

MR. ROSENBERG: To which the defendant excepts.

THE COURT: There is evidence which you might give, which might make it proper to submit them, but that evidence is lacking and in the present state of the case I deny your motion.

MR. ROSENBERG: I ask your Honor to look at the Code of Criminal Procedure.

THE COURT: I am familiar with that. That is my interpretation of that section.

MR. ROSENBERG: The defendant moves to compel the District Attorney to elect upon which count of the indictment he will go to the jury --- now I rest.

THE COURT: The Court will direct the District Attorney to elect.

MR. GASSERVOGEL: We have not rested yet. There is some short rebuttal.

THE COURT: There is no proof of common law larceny.

MR. WASSERVOGEL: I want to go to the jury on the second count, leaving such allegations ---

THE COURT: The complainant charges that she gave this man money for a certain purpose and he diverted it from that purposeand appropriated it to his own use. The question is whether she did or not. That is the charge set forth in the second count of the indictment.

MR. ROSENBERG: In view of the election of the District Attorney to proceed upon the second count of the indictment, and your Honor's direction to that effect, I ask your Honor to dismiss the first count of the indictment.

THE COURT: I will take it from the consideration of the jury, except the allegations as to time and place and circumstances which are referred to in the second count of the indictment.

MR. ROSENBERG: Merely for the purposes of reference only.

THE COURT: Yes. They are referred to in the second count of the indictment.

P A U L I N E G O L D F A R B, recalled in rebuttal.

BY MR. WASSERVOGEL:

Q Did you see the young woman on the stand yesterday who gave the name of Anna Nelson? A Yes.

Q Did you ever see that woman prior to yesterday? A No.

Q Did you do any work for her of any kind? A No.

Q Did you ever sign this card in her presence (referring to Defendant's Exhibit D)? A No.

Q This card speaks of one string of five puffs -- are puffs made up in strings or were they at that time? A No.

Q How are they made up? A Only clusters.

Q How many in a cluster? A From twenty to fifty up.

Q In a cluster? A Yes.

Q You do not make up strings of five? A No strings of five.

Q How much is a cluster of twenty? A From five dollars up.

CROSS EXAMINATION:

Q Can you read that card Defendant's Exhibit D? A Yes, sir "Received one dollars -- I cannot read it -- I did not write it.

MR. WASSERVOGEL: Read as much as you can.

THE WITNESS: One string of five puffs, balance $1.50.

BY MR. ROSENBERG: Q That is your card however? A Yes, my card.

Q Is it your card? A Yes, that is my card.

BY MR. WASSERVOGEL:

Q Did the defendant ever have any of your cards? A Yes, sir, very often. He said I will send you customers.

MR. WASSERVOGEL: The People rest.

MR. ROSENBERG: The defendant asks your Honor to direct a dismissal of the indictment and for a direction of a

verdict of acquittal upon the ground first that the facts stated in the second count of the indictment do not constitute a crime; that the facts proved upon this trial do not constitute a crime; that the facts proved upon the trial of this case do not constitute the crime charged in the second count of the indictment; that the facts proved upon the trial of this case do not constitute the crime of grand larceny in the first degree as a bailee, trustee, servant, etc., as in said count set forth; that there is material variance between the crime charged in the second count of the indictment and the crime, if any, proved upon the trial; that the facts alleged in the second count of the indictment have not been proved, and that the facts proved upon the trial have not been alleged in the second count of the indictment.

Motion denied. Exception.

Mr. Rosenberg sums up in behalf of the defense.

Mr. Wasservogel sums up in behalf of the People.

MR. ROSENBERG: If your Honor please, I object to the District Attorney reading anything to the jury on the reverse side of the paper, Exhibit 1.

MR. WASSERVOGEL: It is all in evidence.

THE COURT: The whole thing is in evidence.

MR. ROSENBERG: I except.

(Mr. Wasservogel reads the reverse side of People's Exhibit 1 to the jury.)

THE COURT: If the defendant claimssyrprise upondiscovering that on Exhibit 1, I will open the case for him, but the whole paper is in evidence.

MR. ROSENBERG: You hold that it was in evidence and that ends it. I did not know it was in evidence.

THE COURT: It was admitted. You had a chance to examine it at the time. I did not examine it.

MR. ROSENBERG: I only examined the face of it, where I would naturally look.

THE COURT: The endorsement on a paper is part of the paper.

THE COURT'S CHARGE.

MULQUEEN, J.

Gentlemen of the jury, this defendant has been indicted by the Grand Jury of this county for the crime of grand larceny in the first degree. There were two counts in the indictment and I have taken the first count from you, so I will only read the second count. It charges that the defendant John Doe, otherwise called Edward Harlem, in the county of New York, on the day and year mentioned in the first count, to wit, the 10th day of December, 1907, being then and there the agent, bailee and trustee of one Pauline Goldfarb, and as such agent and bailee and trustee, then and there having in his possession, custody and control certain goods, chattels and personal property of the said Pauline Goldfarb, the true owner thereof, to wit, the same goods, chattels and personal property mentioned, described and set forth in the first count of this indictment, that is, one written instrument and evidence of title to property, to wit, a certain certificate of stock so called, the same being a certain certificate of the ownership of eight shares of the par value of one hundred dollars each of the capital stock of a certain corporation called the Amalgamated Copper Company, the said shares being of the value of seventy-six dollars each, and the certificate being of

the value of six hundred dollars, and one other certificate of stock so called, the same being a certain certificate of the ownership of 333 shares of the capital stock of a certain corporation called Mitchell Mining Company, the said shares being of the value of one dollar and a half each andthe said certificate being of the value of five hundred dollars, and one other certificate of stock so called, the same being a certain certificate of the ownership of 266 shares of the capital stock of the said Mitchell Mining Company, the said shares being of the value of one dollar and a half each, and the said certificate being of the value of four hundred dollars, and the sum of fifteen hundred dollars in money, lawful money of the United States of America and of the value of fifteen hundred dollars, the property of Pauline Goldfarb, did feloniously appropriate the said goods, chattels and personal property to his own use with intent to deprive and defraud the said Pauline Goldfarb of the same and of the use and benefit thereof, and the same goods, chattels and personal property of the said Pauline Goldfarb did then and there and thereby feloniously steal against the form of the statute in such case made and provided and against the peace of the People of the state of New York and their dignity.

You understand this is not an action between Pauline

Goldfarb and this defendant. It is entitled The People of the State of New York against John Doe otherwise called Edward Harlem, and the term "People of the State of New York" means organized society in this state, which, in order to carry out the purposes for which that society was founded, has passed laws which are binding upon every person within the borders of this State.

The particular law referred to here is known as Section 1290 of the Penal Law. It says: "A person who with intent to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person, takes from the possession of the true owner or any other person, or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use or that of any other person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or -- and this is the section which refers to the second count of the indictment -- "Having in his possession, custody or control as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association or corporation, or as a public officer, or as a person authorized by agreement, or by com-

petent authority, to hold or take such possession, custody or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use or that of any other person other than the true owner or person entitled to the benefit thereof, steals such property and is guilty of larceny." At common law that was not known as larceny. Larceny has been defined as the taking of personal property from the owner with felonious intent, with the intent of depriving the true owner of it or of appropriating it to the use of the taker or of any person other than the true owner. In this second section there is a taking in a legal sense, but not in a physical sense. The property is given by the owner or his representative to the person who is the bailee, servant or agent. There is no crime there. The taking is innocent. The original possession is innocent, but then the law charges the person who receives property as an agent or bailee or servant, with a crime, if he appropriates it to his own use. After he gets it honestly in his possession, if he then appropriates it to his own use with intent to deprive the owner of it or of the use and benefit thereof, then under this section he is guilty of larceny.

The charge made by Mrs. Goldfarb is that on three occasions she gave this defendant certain sums of money,

$600, $500 and $400, as I remember, to do certain specific things, namely, to purchase stock of the Amalgamated Copper Company and stock of the Mitchell Mining Company on other occasions. If he received those sums of money from her with the understanding that he should do that, it was his duty to do it, and to hold that stock or deliver it to her pursuant to the terms of their contract, whatever it was. If he was to keep it for her until the 10th of December, as she says, and return her the stock or money, or, if he had that money in his possession for that purpose and failed to buy the stock and appropriated the money to his own use, or, if he bought the stock and then appropriated the stock to his own use, under this second count of the indictment, if he did that with intent to deprive the true owner of it, and he appropriated it to his own use; that would constitute the crime of larceny under our statutes.

Larceny is divided into degrees. Grand larceny in the first degree, the count charged in the indictment is defined in Section 1294 as follows: "A person is guilty of grand larceny in the first degree who steals or unlawfully obtains or appropriates in any manner specified in this article property of any value by taking the same from the person of another in the night time, or property of the value of more than $500 in any manner whatever."

268

That is, if there was a larceny and the property which is taken, or which is the subject of the larceny is worth more than $500, then that larceny would be grand larceny in the first degree.

The indictment mentions several items. It mentions Amalgamated Copper stock, Mitchell Mining Company stock and $1500. So that, if any of the items, any of the articles mentioned in the indictment, any of the property therein mentioned was appropriated by this defendant in the manner charged in the indictment, so that he was guilty of the crime of larceny, if the value of that property which is the subject of the larceny was more than $500, that would be grand larceny in the first degree. If the value was less than $500 and more than twenty-five dollars, it would be grand larceny in the second degree. If the value of the property was twenty-five dollars or less, it would be petty larceny.

If property be taken in the manner specified in this indictment therefore of the value of more than $500, it would be grand larceny in the first degree. Less than $500 and more than $25, grand larceny in the second degree, and $25 or less petty larceny.

You will understand the Court does not state that the defendant ever received one dollar from this complainant for any purpose or that he ever appropriated any money

or property of the complainant. Those are facts for you to find from the evidence. The Court is merely instructing you in the law. It is the duty of the Court to rule on the legal questions that arise during the trial; to see that the defendant receives a fair trial, which means a legal trial -- a trial according to law, and to instruct the jury in the law. You must take the law from the Court without question. Then the Court's power and duty are ended. The Court has no further concern with the case when it is given to you. You are to pass upon the facts. The Court does not pass on any facts. It does not assume or desire to pass on any facts, or to form or express any opinion on the facts. That is your exclusive duty. You cannot shirk that responsibility, and the Court would have no respect for a juror who would seek to shirk his responsibility, or who would be afraid to exercise it. You are independent of this Court or of the District Attorney, or of the defendant's attorney. You cannot get rid of that great responsibility. So, do your duty and consider the evidence honestly and fairly. You must pass upon the credibility of witnesses. That is a great power, which is a corollary or necessary incident to your first great power of passing on the facts. Facts are proved by witnesses, by testimony, or by exhibits, writings or documents. You must say who told the truth.

We know that in every day life people do not always tell the truth and you have to use your good sense and good judgment in your ordinary business affairs to determine the truth from falsehood. You use that good sense which you use in your own affairs, in the consideration of the questions in this case. What is true in this case? What facts have been established by the evidence? That is your great power to say, and when you find them, then you know what has been established by the evidence.

The defendant is presumed to be innocent. That is the fundamental or basic principle of our law. It is a good principle. A man is not brought into court in America and told that he is guilty and that he must prove his innocence. There are some people who would like to see that law established, but it is not the law and never will be in my opinion. So, you must not depart from the law. Give the defendant all the benefit of the law. That principle, so that it might not be questioned, has been enactedinto law. The defendant in a criminal action is presumed to be innocent until the contrary is proved and in case of a reasonable doubt whether his guilt is satisfactorily shown he is entitled to an acquittal. The burden of proving his guilt is on the people. It is for you to say when his guilt has been satisfactorily shown -- not any one else -- that is what this law means--

shown satisfactorily to the jury beyond a reasonable doubt, then you may declare him guilty. If the evidence fails to convince you of his guilt beyond a reasonable doubt you must acquit him.

The question arises therefore as to what is meant by reasonable doubt. The term explains itself. It is a doubt based on reason. It is not an unreasonable doubt. It is not a doubt based on prejudice or whim or sympathy or a desire to avoid doing your duty. It is a doubt that is based on reason connected with the evidence or lack of evidence in the case. Your duty is to confine your attention solely to what is called the case -- that is the testimony; the law as given to you by the Court, the charge in the indictment and the testimony. You must not go outside the testimony, you must not guess or speculate. Confine your attention solely to the testimony, as I have told you and pass on the credibility of the witnesses. Find out what has been established here and then if the evidence produces in your mind a firm conviction to a moral certainty, a conviction so strong that you would be willing to base your own conduct on it in the important affairs of your life that this defendant is guilty, then you may say so. If the evidence merely creates the thought that he is possibly guilty or probably guilty or the suspicion that he is guilty, that is not enough.

Proof beyond reasonable doubt must go beyond the stage of suspicion and create moral certainty in your mind.

Now, did he ever become the agent or trustee or bailee of Mrs. Goldfarb for any purpose. If so for what purpose? Did he ever receive any property from her? Did he ever have in his possession property of hers of the kind mentioned in the indictment, stocks or money? Was it his duty on the 10th of December, to turn over that property to her? Did he hold that property or any of it as her agent and trustee and for her benefit and did he at that time with intent to deprive her of the benefit of that property appropriate it to his own use and therefore steal the property as charged in the indictment. If so and the property was appropriated by him with intent to deprive her of it, if that property was worth more than $500, whether stocks or money, provided it is mentioned in the indictment, he would be guilty of grand larceny in the first degree. If you have reasonable doubt upon any of these propositions, you cannot convict the defendant of grand larceny in the first degree. If you are convinced that he is guilty of the crime of larceny, convinced of that beyond reasonable doubt, but if you have a reasonable doubt as to the degree he is guilty of, you can only find him guilty of the lowest degree of larceny. If you have a reason-

able doubt as to whether he committed any larceny, you must acquit him.

MR. ROSENBERG: If your Honor please I omitted at the close of my case to move to dismiss the second count of the indictment. I desire to reserve and preservemy right to object to the second count of the indictment as being bad for duplicity, in that it charges two separate and distinct crimes in one count of the indictment.

THE COURT: There is nothing in that point. You may make it now but it is overruled.

MR. ROSENBERG: I have authority in the 166th New York but however you say there is nothing in it and I must bow to your Honor's ruling but let me get my motion on it first.

THE COURT: That is the law.

MR. ROSENBERG: (Continuing) In that the said second count of the indictment contains more than one crime in violation of the provisions of section --

THE COURT: There may be a thousand articles mentioned in the indictment.

MR. ROSENBERG: (Continuing) In that sections 278 and 279 of the Code of Criminal Procedure -- and, because of that fact the jury were unauthorized under our law to find an indictment which included in one count charging the commission of more than one crime therein.

THE COURT: There is only one crime charged. The jury will understand itis charged that on the 10th of December he had certain articles in his possession. It is not necessary for the state to prove that he had them all in his possession. If they prove he had any of the articles mentioned in the indictment in his possession as trustee, agent or bailee of Mrs. Goldfarb and that notwithstanding his duty to her to use such money or property for her benefit he appropriated it to his own use or in the words of the indictment did feloniously appropriate the same to his own use with intent to deprive and defraud her of the use of them -- any of the articles, stocks or the money, then he would be guilty of larceny, and, as I have told you before, according to the value of the property would be the degree of larceny, whether grand larceny in the first degree, second degree or petty larceny.

MR. ROSENBERG: Your Honor denies my motion?

THE COURT: I have denied the motion.

MR. ROSENBERG: I except. I desire to except to each and every part of your Honor's statement or charge which followed my [illegible] ask for an exception to that.

THE COURT: [illegible] It is a very unusual thing to receive your [illegible] at this time and I did not want the jury to [illegible] the law. I do not desire to take

away any of your rights, but the jury must take the law from the Court and not from counsel.

MR. ROSENBERG: I except to that part of your charge wherein you state in words or substance that if the jury find the defendant appropriated either the property or the money, that that --

THE COURT: Money is property -- any of the articles mentioned in the indictment -- if I made any distinction--

MR. ROSENBERG: I want to make a distinction between certificates of stock and money -- that they may find the defendant guilty -- I except to that part of your charge.

THE COURT: My charge is clear to the jury, that certain articles are set forth in this indictment and if it is proved that the defendant stole any of those, he is guilty of larceny.

MR. ROSENBERG: Will you allow me an exception to that statement?

THE COURT: Certainly.

THE COURT: Of course the other elements must be there -- that he was trustee, agent or bailee; that he had this property or those articles in his possession as such agent or trustee or bailee. It is not necessary for the state to prove either that had them all in his possession or that he stole all of them. If he had any of

the articles mentioned in the indictment as her agent, bailee or trustee and feloniously appropriated them to his own use with intent to deprive her, he is guilty of larceny.

MR. ROSENBERG: That is what I would like to have an exception to. Now I ask your Honor to charge the jury that the theory of this prosecution is, as set forth in the second count of the indictment, that this defendant did have in his possession as the agent, bailee or servant of Mrs. Goldfarb these certain certificates of stock which he purchased --

THE COURT: Or $1500 in money or some part of the $1500.

MR. ROSENBERG: The indictment says "And $1500."

THE COURT: Yes. The Court has ruled upon that. If the Grand jury have made a mistake as to the items of property -- if they charge him with larceny of any property, if he was guilty of the larceny of any property mentioned in that indictment, then the indictment is a good indictment.

MR. ROSENBERG: May it be understood that I have an exception to that?

THE COURT: Yes.

MR. ROSENBERG: Do you refuse to charge as I requested?

THE COURT: What was that?

MR. ROSENBERG: I ask your Honor to charge the jury that the theory of this prosecution as set forth in the second count of the indictment is that this defendant purchased or obtained in some way certain certificates of stock which he then and there had in his possession as the agent and trustee of Mrs. Goldfarb.

THE COURT: I decline to so charge. The theory of this indictment is that he received money from her to purchase that stock and that he had either that stock or that money in his possession.

MR. ROSENBERG: I except to that supplemental statement.

THE COURT: Yes.

MR. ROSENBERG: Do you hold there is a mistake in the indictment --

THE COURT: I do not. The indictment is perfect in form.

MR. ROSENBERG: I ask your Honor to charge the jury that if this defendant with the $1500 which the complainant says he received from her, purchased the certificates of stock mentioned in the indictment, in the second count--

THE COURT: Or any of them.

MR. ROSENBERG: I did not say any of them.

THE COURT: Any of them.

MR. ROSENBERG: If he purchased those certificates of stock, he cannot be convicted of appropriating the $1500.

THE COURT: He may be convicted of appropriating the stock certificates, if they were worth anything. I did not hear any evidence that he actually purchased them.

MR. ROSENBERG: That is what I asked you -- I asked you to charge the jury that in view of the fact that there was no evidence as to the market value of the certificates of stock mentioned and described in the second count of the indictment and referred to in the first count of the indictment, the jury must assume that they only have nominal value.

THE COURT: I decline to so charge. The testimony given by Mrs. Goldfarb was as to their value at that time as stated by the defendant to her. They will take that for what it is worth.

MR. ROSENBERG: Will you look at the Court of Appeals on that?

THE COURT: I decline to so charge.

MR. ROSENBERG: I except.

I ask your Honor to charge the jury as matter of law that there is no legal evidence as to the value of the certificates of stock on the 10th day of December, 1907.

THE COURT: The only evidence in the case is the statement made by Mrs. Goldfarb as to the statement of

the defendant as to their value.

MR. ROSENBERG: The authorities hold that stocks fluctuate every day and there must be legal proof as to the value of the stock, not only on the day certain --

THE COURT: Well, I will charge that.

MR. ROSENBERG: In order that there may be no misunderstanding.

THE COURT: It has been charged.

MR. ROSENBERG: The jury may not know what your Honor charged.

THE COURT: What do you wish me to charge?

MR. ROSENBERG: I ask your Honor to charge that as matter of law, there being no legal evidence as to the value of the stock mentioned in the second count of the indictment and referred to in the first count of the indictment, that under the law they must assume it has no value.

THE COURT: I will so charge.

MR. ROSENBERG: I except to your submitting to the jury the charge of larceny as agent and bailee, under the evidence in this case.

THE COURT: Is there anything else?

MR. ROSENBERG: That is all.

THE COURT: Gentlemen you may pass out. If you wish any further information I shall be willing to give it to

you.

The jury retired.

Later.

The jury come into court and render a verdict of guilty of grand larceny in the first degree.

THE COURT: You may have the jury polled if you wish.

MR. ROSENBERG: I am satisfied with that verdict.

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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

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THE PEOPLE v. JOHN DOE, alias Edward Harlem.

Indictment filed October 17, 1910.

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Defendant arraigned for sentence before HON. JOSEPH F. MULQUEEN, J., on the 27th day of March, 1912.

For the People, ASSISTANT DISTRICT ATTORNEY WASSERVOGEL.

For the Defendant, HENRY K. ROSENBERG, ESQ.

MR. ROSENBERG: If your Honor please, the defendant moves to set aside the verdict of the jury and for a new trial upon the following grounds:

First: The verdict is contrary to law.

Second: The verdict is contrary to the evidence.

Third: The verdict is against the weight of evidence.

Fourth: Because the facts proved do not constitute a crime.

Fifth: Because the facts proved do not constitute the crime charged in the second count of the indictment.

Sixth: Because there is a material variance between the facts proved upon the trial and the crime charged in the second count of the indictment; that the facts proved are not alleged and the crime alleged is not proved.

Seventh: Because the Court misdirected the jury on matters of law to which the defendant duly excepted and refused to charge at the request of the defendant, to which refusal the defendant duly excepted.

Eighth: Because the Court erred in denying the defendant's motion to advise the jury to acquit made at the close of the People's case and again at the close of the whole case, to the denial of which motions the defendant duly excepted.

Ninth: Because the Court erred in refusing to dismiss the second count of the indictment upon the motion made by the defendant, upon the ground that the said count was bad for duplicity and charged more than one crime, and in one form, in violation of section 278 and 279 of the Code of Criminal Procedure.

Tenth: Because the verdict of the jury is uncertain, unintelligible, illegal and unlawful, and does not purport to find the defendant guilty of the crime or crimes charged in the second count of the indictment.

Eleventh: Because the Court erred in admitting illegal, incompetent and irrelevant evidence, against the objection and exception of the defendant and excluded legal and competent evidence offered in his behalf.

And, the defendant moves in arrest of judgment, first, that the facts proved do not constitute a crime; second,

the facts proved do not constitute the crime or crimes charged in the second count of the indictment; third, because the second count of the indictment charges the commission of more than one crime in one count of the indictment, in violation of the provisions of sections 278 and 279 of the Code of Criminal Procedure; fourth, because the Grand Jury was without authority or jurisdiction to find an indictment charging the commission of more than one crime in one count in the indictment, and the Court was without jurisdiction or authority to try the defendant upon said indictment; fifth, because the Court erred in refusing to dismiss the second count of the indictment, upon the ground that the same was bad for duplicity and contained more than one crime therein, in violation of the provisions of sections 278 and 279 of the Code of Criminal Procedure, and lastly for errors apparent on the face of the record.

Motions denied.

Exception.

THE COURT: Is there anything further?

MR. ROSENBERG: Nothing upon the law, no, sir, unless you desire to hear argument on any of the motions I made with respect to the law.

THE COURT: These points were all raised by you during the trial and duly considered, and there is nothing new

in your present motions.

The sentence of the Court is that the defendant be confined in State Prison for not less than two years and no more than nine years and six months.