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I N D E X.

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1971

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :
: :
-against- :
: :
ELIAS JACOBSON. :
: :
-----X

Before:
HON. JAMES T.
MALONE, J.,
and a Jury.

New York, March 5th, 1912.

Indicted for attempted grand larceny in the second degree.

Indictment filed January 30, 1912.

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

For People: ASSISTANT DISTRICT ATTORNEY WELDER.

For Defendant: W. G. KEIR, ESQ.

(A jury is duly empaneled and sworn.)

(Mr. Weller opens the case to the jury on behalf
of the People.)

B E A T R I C E S T O D D A R D , called as a witness on
behalf of the People, being first duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. WELDER:

- Q Where do you live? A 220 West 107th Street.
Q You are a married lady, are you? A I am.
Q Do you live with your husband? A I do.
Q At what address? A 220 West 107th street.

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Q You live there now, and how long have you lived there?

A Since about the 16th day of January.

Q You have lived there since about the 16th day of January?
A Yes, sir.

Q Where previously did you live? A 113 West 117th street

Q Have you an account with the Greenhut, Siegel, Cooper Company, a charge account? A I have.

Q How long have you had that account? A I think the early part of November.

Q Do you know the defendant? A I do.

Q Elias Jacobson? How long have you known him? A The latter part of November.

Q And in what way, may I ask, do you know him? A Why, he came one night with his wife looking for a furnished room, and my husband showed him the rooms, and he selected a large room.

Q And he and his wife lived there with you and your husband? A Yes.

Q From what time to what time? A I know it was the latter part of November, until the time he was arrested. He even lived there after we moved -- we left him in the old house.

Q At 113 West 107th street? A Yes, sir.

Q Did you ever authorize Jacobson to pledge your account at the Greenhut, Siegel, Cooper Company for two watches and a

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chain? A I never did.

MR. KEIR: I object to that question, I think it is a little too technical.

THE COURT: Is that the only objection?

MR. KEIR: Yes, it is.

THE COURT: Well, perhaps it could be very much improved. I think it could be, Mr. Weller.

MR. WELLER: Very well.

Q Did you at any time state to the defendant Jacobson-- or give him permission to order any watches for you? A None whatever.

Q At the Greenhut, Siegel Company's store? A I never sent him to that store for anything.

Q And in particular you did not send him there for two gold watches and a chain? A I never did.

Q Did you ever authorize him to purchase anything for you at that store? A None whatever.

Q Now, did you know that he had been employed in that store? A I purchased from him during the holidays in the toy department. I asked him what they had there among children's toys ---

MR. KEIR: I object to that as incompetent and irrelevant.

THE COURT: Well, you will have to get close to the time.

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A (Witness continuing) I did know he was employed there; I do.

Q Do you know when he left the employ there? A Yes; Christmas Eve, I believe he was laid off -- he told me.

Q He told you he was laid off on Christmas Eve? A Yes, and he gave me some money for rent then.

CROSS EXAMINATION BY MR. KEIR:

Q Did you not send Jacobson on the 18th of January to Siegel-Cooper's to see about a trunk and a pair of shoes for you? A Never.

Q You say you never did? A Never.

Q Send him to the credit man of Siegel Cooper's? A Never.

Q Did you know he went down there in relation to the trunk and the pair of shoes? A He and his wife carried some things over to my new house for me, and I stopped then -- I was going back to the old house, and I stopped in at a tailor store to pay a bill and to try a suit on, and they stopped with me, and I said to the tailor I wanted to pay a bill, and he sent out to have some money changed; and I asked him if I could use his telephone, and he said I could, and while there Jacobson heard me telephoning, and I asked Siegel & Cooper to come up and get a trunk that was damaged that I had bought for a perfect trunk, which it was not, and a pair of shoes, and he said, "I will go down and see about the trunk and shoes." I said "Why should you go down, I will attend to it.", and

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that was all.

BY MR. WELLER:

Q That was on the 18th? A That was the day they called me up and asked me---

BY MR. KEIR:

Q At that time you did not say "don't go down"? A I certainly did, yes.

Q Told him not to go down? A Certainly. I said, "You keep away from Siegel & Cooper's. What do you want there?"

Q Well; where did you live on the 17th? What was your address on the 17th of January? I believe that is the date of the alleged attempt, where was your residence the 17th day of January, if you remember? A You see I had things in both houses -- I still had things at the other house too. We were living at 220 West 107th street, I know.

Q Can you recollect what address was attached to your name with Siegel & Cooper in relation to the credit? Do you remember what address they gave you? A Yes, 113 West 117th street.

Q That was the address you gave when you obtained credit at Siegel & Cooper's? A Yes, sir.

Q Did you ever change that? A I did later. After I heard all this talk.

Q But it was after this alleged transaction that you changed it? Up until the time of this young man's arrest it

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was still on their books, as far as you know, as 113 West street? A I think the day I telephoned I think I told them that I had moved; yes, I told them that day over the telephone.

Q That was on the 18th? A Well, that was on the 18th, yes. That was the first conversation I had with them.

Q The day of this young man's arrest? A The day of his arrest.

Q Was it before his arrest or after his arrest? A When he heard me say it over the telephone?

Q Then he had not been arrested. It was later that he was arrested. He was there at the time? A He was at the tailor's at the time.

Q Is your husband in court? A No, he is not.

L E O F. R Y A N , called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q Where do you live? A 56 West 17th street.

Q What is your business? A Jewelry salesman in Greenhut Siegel Cooper Company's.

Q How long have you been employed by them? A Since about the middle of November.

Q How long have you been in the jewelry business? A About twelve years.

Q During that time have you bought and sold gold watches?
A Bought and sold gold watches.

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Q Of all kinds and description? A Of all kinds and descriptions.

Q Do you know the value of watches and the value of gold?
A Yes, sir.

Q On the 17th of January were you a salesman in the employ of the Greenhut, Siegel Cooper Company? A Yes, sir, I was.

Q At the jewelry counter.

Q Where is their place of business? A Sixth avenue, 18th and 19th streets, both sides.

Q That was in the County of New York? A County of New York.

Q Did you see the defendant that day? A I did.

Q About what time of day did he come to your counter?
A About four o'clock.

Q What, if anything, did he say to you? A He asked to look at some watches and I showed him some.

Q What kind of watches? A Solid gold watches, Waltham cases; and he picked out two watches, one valued at \$60, and one valued at \$30; and then asked to look at a solid gold chain. I showed him some and he selected one at \$25. The entire amount was \$118. He said, "These goods are to be charged." I asked the name. He said, "Mrs. C. R. Stoddard."

Q Are these the watches that you showed him? A That is one of them.

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Q And is this another of the watches, and the chain you showed him? A Yes, sir.

MR. WELLER: I offer the watches and chain in evidence.

MR. KEIR: No objection.

(One watch with chain marked People's Exhibit 1, in evidence; the second watch is marked in evidence, People's Exhibit 2.)

Q When he ordered these watches of you what did he say with reference to paying for them? A He said, "These goods are to be charged."

Q To whom? A Mrs. C. R. Stoddard, 220 West 107th street.

Q Are you sure, 220 West 107th street?

MR. KEIR: Objected to. He has testified to it.

Objection overruled. Exception.

A I copied it down, I have it right here from the day I copied it down, that day.

Q So you copied down 220 West 107th street as the address he gave you? A Yes, sir.

Q What did you do with the watches after he gave you that address? A He said, "They are to be charged to that address and name", and sent to some name at a different address; that is 143 Lenox avenue.

Q What did you do then with the watches? A I sent them along to the cashier and it was the last I saw of them.

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Q In the regular course? A Regular course, yes, sir.

Q When next did you see them? A I saw them then the following day, I believe, in Mr. Barnard's office.

Q Is Mr. Barnard the store detective? A Yes, sir.

MR. KEIR: Objected to unless there was some marks on those watches that he knows are the same he saw in Mr. Barnard's office.

A (Witness continuing) There are marks on those watches.

Q Those are the watches, are they (indicating Exhibits 1 and 2)? A Yes, sir.

Q What was done after that, after you saw them in Mr. Barnard's office? A I couldn't tell you.

Q When next did you see them? That is what I mean?

A The next I saw them was in the Jefferson Market Court House.

Q And you brought them down here to-day? A Yes.

Q And those are the same watches he ordered that afternoon? A The very same watches.

MR. KEIR: I object to the leading.

THE COURT: Yes.

Q Are they the same watches? A The same watches.

Q You are an expert in watches, are you?

MR. KEIR: I object to that as leading.

THE COURT: The question is rather delicate. You may ask him if he can give you the value of this property.

Q What is your experience in buying and selling watches?

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A You mean how long?

Q Yes.

THE COURT: Twelve years in that business, he said. Now, you may be permitted to ask him if he can give an estimate of the market value, the fair market value of these watches and chain on the 17th day of January.

Q Will you give an estimate of the market value of the watches and chain? A Yes.

Q On the 17th day of January of this year? A Yes. Each watch -- one watch --

Q When you give the amount tell what the total is? A (Witness continuing) The case is a 14 karat, solid gold case with a seven jewel Waltham movement. I should say the case was about ---

Q You don't need to give the case and watch separately, but the entire amount? A The entire amount was \$60. The other was a Waltham watch, seven jewels, a solid gold case, \$30.

Q That was the market value? A Market value.

Q Now, about the chain? A The chain was a solid gold chain, valued at \$25.

Q That was the fair market value, was it? A Yes.

CROSS EXAMINATION BY MR. KEIR:

Q What is the real wholesale value, the value in the market?

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MR. WELLER: I object to what the wholesale value is, the question is what is the market value.

Q. Do you know the wholesale value of those watches? A I can't say definitely; I don't know the weight of the cases.

Q. Do you know what the movements were worth in these particular watches? A The movement is worth in each watch wholesale about nine dollars.

Q. Do you know what the cases are worth, each case? A I can't tell on account of not knowing the weight of the cases. They are worth a dollar a pennyweight.

Q. Well, there is really only one value for gold -- there is a market value for gold in the market of the financial world. Isn't that the same value that you have, that you place on them here? A I am more familiar with the price of gold in the City of Boston, and the prices here are different than they are there.

Q. Not much? A Well, ---

Q. A very small difference, isn't there, between the Boston and New York markets?

THE COURT: Do you contest that these watches are not worth \$25?

MR. KEIR: No.

Q. Mr. Ryan, this young man (indicating defendant) was at your counter and you spoke to him first, I believe, that you wanted to sell him some watches? A I asked him if he would

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like to see some watches.

Q He didn't speak to you first or ask you, did he? He didn't suggest to you anything in relation to this transaction, you commenced it, didn't you? A Yes, sir.

BY THE COURT:

Q He was at the counter, was he? A Yes, sir.

Q You were the salesman there? A Yes.

Q He was there, and you were there in your business?

A Yes, sir.

Q To sell watches and chains? A Yes, sir.

Q To sell whatever you had in your case? A In the department, yes, sir.

BY MR. KEIR:

Q And then you brought them out and showed him the goods. When he gave you Mrs. Stoddard's address he gave you 220 West 107th street, didn't he? A Yes, sir.

Q And that was not the address she was known by in your credit department, was it? A I don't know.

Q Your credit man is here? A Well, he can tell, I suppose.

Q After he gave you Mrs. Stoddard's address and that name you say, did you then ask him what his name and address was?

A I did not.

Q That is the custom, is it? A The custom?

Q Yes. Why did you violate it on this occasion? Isn't

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it the custom? A It is the custom to ask "Purchased by whom?" "Same", or whoever it might be.

Q That is, isn't it the custom to say, "What is your name?" That is true, isn't it? A Yes.

Q And you did not in this case, did you? A I did not.

Q And he of course made no representation, he didn't give you any name? A No.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q When goods are delivered you do not require anybody who orders them on a charge account to sign any paper, do you?

A The floorwalker has to sign the papers on a charge delivered.

Q If the goods are taken away by the purchaser is there anything to sign? A By the floorwalker -- the aisle man.

Q Does not the purchaser sign always when the goods are taken away? A No, sir.

Q Sure? A Yes, sir.

RE-CROSS EXAMINATION BY MR. KEIR:

Q Do you mean to tell me that any goods are taken from your place unless the purchaser who takes them away signs a receipt -- on credit? A I do.

Q You mean he don't sign? A He does not sign.

A N D R E W R. C L E X T O N , called as a witness in behalf of the People, being first duly sworn, testifies as follows:

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DIRECT EXAMINATION BY MR. WELLER:

Q Where do you live? A Port Richmond, Staten Island.

Q What is your business? A Assistant to the credit man, Greenhut, Siegel, Cooper Company.

Q Will you state what the custom is with reference to charge accounts in Greenhut, Siegel, Cooper Company on the 17th of January, 1912? A Where goods are to be delivered they are wrapped up at the counter and they go to the delivery department. In case---

Q You are speaking now of being delivered by the firm? A Delivered to the delivery system -- wagons or the drivers, yes.

Q Go ahead. A They are O.K'd there. If the account is correct, everything being correct, by the authorization clerks, which authorizes the delivery department to deliver the package or the merchandise.

Q That is on a charge account? A Yes, sir.

Q What is your course of business with reference to a charge account with delivery made to the purchaser over the counter? A That is at the jurisdiction of the aisle manager, or commonly called "the floorwalker."

Q And do you deliver goods to a purchaser in a charge account over the counter without any signed statement of memorandum? A Without a signed statement. He must at the same time be sure that he is delivering to the customer without

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reasonable doubt. We have a system of identification coins.

Q When he answers certain questions--- A We have a certain system of identification coins.

Q When you are satisfied by these identification coins of the identity of the person you deliver the goods over the counter? A The floor man can deliver the goods over the counter up to ten dollars; there are many customers who have no coins, but if the floorwalker knows the customer or she identifies herself to him, he is at liberty to deliver them. In that case he signs the sales check authorizing the delivery.

Q This is all with reference to delivery over the counter? A At the counter, yes, sir.

Q In this particular transaction to Mrs. Stoddard, has your attention been called to this matter? A It was, yes, sir.

Q When was your attention called to the Stoddard matter??

A Why, the sale was ----

Q When? A On January 18th.

MR. KEIR: Objected to unless you were present when the sale was made.

THE COURT: Objection overruled.

Q Have you the card of Mrs. Stoddard with you? A No, I have not.

Q Mrs. Stoddard did have a charge account on the 17th and 18th of January, did she? A That account of course was in the name of Mr. Stoddard, but Mrs. Stoddard---

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Q And what was the address of that account? A The address at that time that we had was 113 West 117th street.

Q Do you know when the address on the account was changed to 220 West 107th street? A It was not changed on our records at that time.

Q On the 17th? A No, sir, -- or on the 18th either.

Q When was it changed? A Well, without referring back to the records, I can't say.

Q In any event the address on the books was 113 West 117th street? A Yes, sir.

Q When did this pair of watches come under your direction if you will state that to the jury? A The morning of the 18th.

Q What were the circumstances? A The man who would authorize the delivery of those in the delivery department---

MR. KEIR: Objected to.

THE COURT: Just tell what happened.

A (Witness continuing) The man who would authorize ---

THE COURT: No, what happened within your knowledge.

A Well, this is what happened --

Q Is it within your knowledge? A Yes, certainly.

Q Go ahead then. A The address being different from what he had a record of he referred the package up-stairs.

THE COURT: Well, somebody came to you and something was said and something was done. Now, keep that in mind and go ahead.

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Q Then it was referred to you? A The package was referred to me, yes, sir.

Q What was the address on the package that you saw?
A 117th street.

Q 113 West 117th street? A That was the changed address.

Q And where was the delivery to be made? A That I am not sure of.

Q 143 Lenox avenue, was it? A The address was different, that I am sure of.

Q Now, what, if anything did you do upon learning of this? A Why, we had our investigator---

Q What did you do? Just what did you do? A The package was on my desk awaiting authorization -- and I can't connect that without saying -- in the regular course of business it was not given by me, but one of my investigators had ---

THE COURT: No, the question is what you did.

Q Did you do anything when you learned of this discrepancy in the address? A No.

Q That came to your notice later in the day? A Later in the day Mr. Jacobson was in the front office -- that is, outside at my office, and the boy came in to me and said---

Q Did the boy announce him? Did he bring him into your office? A The boy brought him into the office.

Q Don't say what the boy said, but what did the defendant

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do? A He told me that he wanted to know why the goods were not delivered to Mrs. Stoddard that she had purchased; that she had telephoned seven or eight times about them. And I asked him what relation he was to Mrs. Stoddard, and he said he was her brother. I told him that the package had not been delivered because of the difference in the address.

Q What did he say? A I asked him to wait a moment. I went in the rear office and sent a Miss Harris for Mr. Barnard.

MR. KEIR: I object.

A (Witness continuing) And I telephoned-----

Q You informed your girl something and then what was done? Now, you can't tell what was done behind this defendant's back, you can only tell what was done to his face, because then he can contradict it. What did the girl do after that? The connection was made with whom? A I talked with Mr. Stoddard over the telephone.

Q You called him up on the telephone? A Yes, sir.

Q You called Mr. Stoddard up on the telephone? A Yes.

Q Did you know Mr. Stoddard previously? A No, I hadn't seen him.

Q Who answered the telephone? Who did he state he was?

MR. KEIR: I object.

THE COURT: Well, you didn't know. You hadn't any dealings with Mr. Stoddard, you would not recognize his voice.

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THE WITNESS: No.

MR. WELLER: I just want the fact.

THE COURT: Well, he says he did call Mr. Stoddard.

Q After you called up a gentleman by the name of Mr. Stoddard on the telephone you obtained certain information, did you not? A I did.

Q And after you obtained that information what did you do? You cannot state what the information was because you do not know Mr. Stoddard; that can be connected later on; it would not be right for you to say it, but just tell what you did and said to Mr. Jacobson after you had your conversation with Mr. Stoddard? A I told Mr. Jacobson that Mr. Stoddard said that*-----

Q No -- A I told Mr. Jacobson -----

Q Well, you told him something that Mr. Stoddard had said, did you? A Yes, sir.

Q What did you say after that to Jacobson? Did you deliver him the goods? A I did not.

Q You did not deliver the goods? A No, sir.

Q Whom did you send for after that? A Mr. Bernard about that time was in the outside office.

Q Who is he? A The house detective.

Q What was done then? Was anything further said between you and Jacobson.

Q Did you hear any conversation between Jacobson and

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Barnard? Did you happen to overhear any part of it? A Mr. Barnard asked Mr. Jacobson ---

THE COURT: Cannot you answer?

THE WITNESS: Yes, sir.

Q What was said? A Mr. Barnard asked Mr. Jacobson to step over to his office.

Q That is the last you know about it? A That is the last.

Q You had no further cross examination with Jacobson?

A No, sir.

CROSS EXAMINATION BY MR. KEIR:

Q Mrs. Stoddard had no account there at all, had she? Yes or no? A Mr. Stoddard had an account.

Q Mrs. Stoddard had no account there at all? Yes or no?

A No.

Q There was an account in the name of Mr. Stoddard?

Q And these goods were to be charged to a lady named Mrs. Stoddard; that is true, isn't it? A We wouldn't charge them to Mrs. Stoddard.

Q I don't know what you would do, but these goods were to be charged to a lady named Mrs. Stoddard? A Not that I know of.

Q Didn't the watches come up and didn't the slip come up in relation to a charge to Mrs. Stoddard? A Yes, sir, but we would take that as Mr. Stoddard.

Q Well, then, the credit slips were to be charged to

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Mrs. Stoddard? A I couldn't tell without seeing the slip on that.

Q What is your recollection? Didn't you originally see these slips when they came to you? A Yes.

THE COURT: He says he cannot say without seeing the slips.

MR. KEIR: Isn't it conceded that these were to be charged to Mrs. Stoddard? Your first witness, Mr. Ryan, said so.

MR. WELIER: As I understand it the husband is liable for the wife's necessities anyway.

MR. KEIR: I do not want to argue that now. It is only the fact.

MR. WELIER: I don't know. You will have to ask this gentleman.

Q As I understand it, you don't recollect whether the slips are to Mr. or Mrs. Stoddard, is that right? A I do not.

THE COURT: Mr. Ryan said that they were to be charged to Mrs. C. B. Stoddard, 220 West 107th street.

Q Mrs. Stoddard had no account there at all, had she? A Not under her own name.

Q Well, Mr. Credit man, I ask you had she an account, yes, or no? A I said no.

Q When the address was sent out as to the person to whose credit these were to be charged you saw that the address did

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not tally with the address you had on your credit books, is that true? A Yes.

Q And that being the case you did not send the goods out, is that true? A That is the idea.

Q And is that the only reason you did not send the goods out, because the address did not tally with the address on your credit books? A No.

Q What was your other reason, if any? A Because the purchase was excessive.

Q You mean above the credit of the individual on your books, is that what you mean? A That's what I mean.

Q You mean to the Stoddard name you would not give that much credit? A I would not say that.

Q What did you mean? A That we would have to know something -- we would expect to know something more than what we did.

BY THE COURT:

Q Before you would give this property? A Before we would give the property to deliver it.

Q To the person who had the account? A That's the idea.

THE COURT: Gentlemen, you will not discuss the case, nor form nor express an opinion about it, but keep your minds open and free until it is submitted to you. You will be in your places, please, promptly at half after ten tomorrow morning.

(Adjourned to Wednesday, March 6th, 1912, at 10:30 a.m.)

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New York, March 6th, 1912.

TRIAL RESUMED.

A N D R E W R. C L E X T O N, resumes the stand, and further testifies.

GROSS EXAMINATION BY MR. KIER:

Q As I understand, you are the credit man of this concern? A Assistant to the credit man.

Q Well, you have knowledge of the credits and the system? A Yes, sir.

Q If any goods are purchased there and the name that is given for the credit, together with the goods, sent to the credit department, and that name is not amongst those who have credit accounts, do you or do you not send those goods? A We do not send the goods.

Q You do not send the goods? A No.

Q In other words, every person whose name goes with the goods must have an account there or you won't send the goods? A That's the idea.

Q You have sent a bill to Mr. Stoddard for these goods, haven't you? A I am not sure that a bill was ever rendered for those goods yet. Yes, there was a bill rendered for them.

Q For these very goods? A Yes, sir.

Q And you expect Mr. Stoddard to pay for them, do you?

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A No, we do not.

Q Why did you send a bill? Did you ever send a bill for them before? A The goods were credited after.

Q But after all this transaction you sent a bill for these very identical goods to Mr. Stoddard? A Yes.

Q You didn't send it for fun, did you? A No.

Q You sent it in earnest? A Yes.

Q Then you charged up on Mr. Stoddard's account these goods, didn't you? A We did.

Q And on the accounts of your concern to-day these goods are charged against Mr. Stoddard? A Yes.

Q Now, if a person's name is sent with goods to be charged and attached to that name is a different address from the one on your books of the credit department, would you or would you send it without investigation? A We would not send it without an investigation.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q Did you have an account in December, 1911, with one Montague Appleton? A We did.

MR. KIER: I don't see the connection with this case.

THE COURT: I can't say yet. There may be.

MR. KIER: If the District Attorney might indicate to us before ---

THE COURT: We will see in a moment whether it has any bearing or relevancy.

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MR. KIER: Well, I will wait until it goes further.

Q. Montague Appleton of 300 West 42nd street? A. Yes, sir.

C H A R L E S R. S T O D D A R D, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q. Where do you live? A. 220 West 107th street.

Q. What is your business? A. Clerk.

Q. For whom? A. The Corn Products Refining Company, 17 Battery Place.

Q. Do you know the defendant? A. I do.

Q. Did you and your wife take the defendant, and his wife to board? A. To lodge.

Q. And what were the dates, please? A. About the middle of November, as far as I can remember.

Q. And this was your wife, the lady who testified here yesterday afternoon? A. She was.

Q. In the month of January of this year, or at any time, did you authorize the defendant to pledge your credit with the Greenhut-Siegel-Cooper Company? A. I did not.

Q. How long have you had an account with the Greenhut, Siegel-Cooper Company? A. Since the first part of November.

Q. Did you ask him to order any watches or a chain in your behalf? A. Never.

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BY THE COURT:

Q Or anything else? A No, sir; nothing, whatsoever.

BY MR. WELLER:

Q Are you in any way related to the defendant, or is he related to you? A Not in any way.

Q On the 18th of January 1912 did you receive a telephone communication from the Greenhut-Siegel-Cooper Company? A I did.

Q About what time of day was that? A About quarter past eleven or half past eleven.

Q And pursuant to that telephone communication what did you do? Don't state what was said because that would not be competent -- just state what you did? A I waited.

Q In your office? A In my office.

Q And then did you hear anything else? Did you receive another telephone communication? A Yes, sir, I did.

Q Later in the day? A Yes, after lunch.

Q Pursuant to that telephone communication what did you do? A I went up to Siegel Cooper's store, - Greenhut-Siegel-Cooper's store.

Q In Sixth avenue? A In Sixth avenue.

Q And did you see Mr. Clextan there, the gentleman who was just on the stand here a minute ago? A Well, I don't remember who particularly; there was quite a few people in the office at the time, and my attention was particularly

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attracted to Mr. Barnard ---

MR. KIER: I object and move to strike it out.

MR. WELLER: Consented to.

THE COURT: Strike it out.

Q Did you see the defendant there? A I did.

Q Did you have any conversation with the defendant when you got there? A I did.

Q Will you state what conversation you had? A I asked him why he had done this, why he had ordered those watches in my name, and he said he didn't know why he had done it, he didn't intend any wrong.

MR. KIER: No cross examination.

B E R N A R D E. T E S H, called as a witness in behalf of the People being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q Where do you live? A 151 West 22nd street.

Q Are you employed by the Greenhut-Siegle-Cooper Company?

A Yes, sir.

Q And you have been for how long? A One year.

Q In what capacity? A As floor man.

Q What are the duties of floor man -- just tell the jury? A The floor man is to look after the various departments in which he is placed, and also he keeps the time of the different employees under his jurisdiction.

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

Q When was he first employed by the Greenhut-Siegle-Cooper Company? Have you got the record with you? A To my knowledge the first time that he was employed in my department was the 18th of December. I have the record with me.

Q Have you got your book with you that you keep?

A Yes, sir.

Q Speak up loud, so everybody can hear. What do you keep in your book? A I keep the time of all the employees in my department, and in the section which I have charge of.

Q And when was Elias Jacobson first employed by the Greenhut-Siegle Cooper Company? A Well, the defendant was employed in my department under the name of Hackel.

Q What was the full name? A William Hackel.

Q When? A December 18th.

Q What year? A 1911.

Q How long was he employed? A Up till December 23rd, 1911.

Q Now, had Elias Jacobson been previously employed by the Greenhut-Siegel-Cooper Company? A Yes.

Q When was he employed previously to that?

THE COURT: Do you think this is relevant, Counsel, or do you want it?

MR. KIER: I really do not object to it, because it is a question I am going to ask. I do not object to it.

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THE COURT: If you want it all right. As I view it, it is irrelevant to this issue.

Q When was he previously employed by the Greenhut-Siegle-Cooper Company? A I have no record that way.

Q You don't know the dates? A No, sir, I don't keep the dates, except in my own department and my own section.

Q But you do know that he was employed? A He was employed in another department.

Q Do you know about how long ago that was? A Well, that was ---

BY MR. KIER:

Q And his record was good while he was with you people?

A Yes, sir.

BY MR. WELLER:

Q Was his record good the first time he was with your people? A I have not any record of that.

Q Do you know or do you not know whether his record was good? A I don't know.

THE COURT: The presumption must be if he was continued there that his record could not have been bad; he was re-employed. The doctrine on estoppel will apply here. I will not permit you to go beyond that. This witness speaks about the last employment--- do you not?

THE WITNESS: Yes, sir.

BY MR. KIER: Q And you know nothing against him while he was

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in your employ? A No, sir.

THE COURT: He has said that. Stand down.

A L I C E K. W H I T E, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q What is your address? A 414 West 125th street.

Q What is your business? A Post Office clerk.

Q By whom are you employed? A Charles Wicksecker.

Q On the 18th of January of this year where were you employed and by whom? A 143 Lenox avenue, by Charles Wicksecker.

Q Is that a drug store? A Yes, sir.

Q You were in the post office department of the drug store? A Yes, sir.

Q On the 17th of January 1912, did you see the defendant?

A Yes, sir.

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

A He come into the store and he said, "I am Mr. Stoddard. If a package comes for me from Siegle & Cooper's to-morrow, will you accept it?" I said, "Yes, sir, I will, if I am here." On January 18th he come in twice in the morning and once in the afternoon about two o'clock and asked me did the package come, and I said no.

Q That is all you know about it? A That is all I know about it.

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CROSS EXAMINATION BY MR. KIER:

Q You remember on the morning of the 18th when you saw this defendant in the store and he talked to you, you remember him telling you not to receive a package if it came? A No, sir, he never told me such a thing.

Q Did he at any time that day tell you not to receive a package.

Q Or at any time? A No, sir.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q What did he say to you in the afternoon when he came in on the 18th? A Asked me if the package come, and I said no.

RE-CROSS EXAMINATION BY MR. KIER:

Q On that day, the 18th if you remember, what was the last time on that day that you saw the defendant? A Two o'clock.

Q And trying to recollect as much as you can you say he did not say to you, "Don't receive packages"? A The only thing he said to me is "Did the package come?", and I said "No, sir."

D O R O T H Y C O H E N, called as a witness in behalf of the People, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q Where do you live? A 106 Morris Avenue, Bronx.

Q Are you employed by the Greenhut-Siegle-Cooper Company?

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A Yes, sir.

Q Were you on the 9th day of January, 1912? A Yes, sir.

Q In what capacity? A In the office.

Q Which office? A In the charge office.

Q Are you employed in the same department that Mr. Clextion is the head of? A Yes, sir.

Q Mr. Clextion, the witness who was here before you? A Yes, sir.

Q Did you see the defendant in the office that afternoon?

A He was standing outside of the office.

Q Will you state what conversation if any you had with the defendant? A He came over to me and he says, "I want the address of Charles R. Stoddard changed", and he gave me the old address, and he wrote it ---

MR. KIER: Objected to.

Q Gave you the old address. What address did he give you? A 117th street, and he said that he wants it changed to the address on 107th street, and I took a paper and pencil and I put it do n, and then he said "I bought a watch and chain here and had it charged and it has not come home yet, and I wonder if I could take it with me", and I told him I couldn't tell him that, and he would have to go down on the balcony, and then he went down and saw Mr. Clextion.

Q He stated he was Mr. Stoddard? A I couldn't say whether he did or not.

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Q What did he say? A He says, "I want the address changed", and he had bought the watch and chain.

BY THE COURT:

Q Did he say anything else besides that? A No, sir.

Q He said nothing about who he was, or what his name was?

A No, sir.

BY MR. WELLER:

Q What address did he say he wanted changed? A Mr. Stoddard's address.

Q Did he say ---

Objected to. Objection sustained.

Q Give me the exact conversation he said with reference ---

A He come up and I asked him what he wanted? He said, "I want the address of Charles R. Stoddard changed, and he gave me the old address, 117th street, and he said "I want it changed to 107th street." And he said he bought a watch and chain and had it charged and it has not come home yet, and he wonders could he take it with him, and I told him I couldn't tell him that, he would have to go down to the balcony to find out.

CROSS EXAMINATION BY MR. KIER:

Q Is it not a fact that when the defendant talked to you about a change of address, or about Mr. Stoddard, that he talked about a pair of shoes and a trunk? A No, sir.

Q Have you any recollection of any part of this conversation relating to shoes and a trunk? A No, sir, that's all he said to me, never told me about anything.

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BY THE COURT: You have told us just what you remember about what he said and what happened? A Yes, sir.

BY MR. WELLER:

Q And he said nothing about a trunk or a pair of shoes?

A No, sir.

CHARLES E. DENNISON (Detective Bureau, 18th Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q You were assigned to this case as a detective, were you? A Yes, sir.

Q Did you go to the store of the Greenhut-Siegel-Cooper Company on Sixth avenue? A Yes, sir.

Q And did you see the defendant there? A I did, yes, sir.

Q Did you arrest him? A Yes, sir.

Q Did you have any conversation with him on the way to the police station house? A I had a conversation with him in the office of Mr. Bernard, in Siegel-Cooper's.

Q Mr. Clextion's office? A Mr. Bernard's office, I believe it was.

Q What was said? A I asked the defendant if he ordered the goods.

BY THE COURT:

Q Was anybody else present? A They were coming in and going out at the time.

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Q Mr. Bernard was not there? A Mr. Bernard was there most of the time.

Q This conversation is between yourself and the defendant?

A Yes, sir.

Q And something casually could have been heard outside of this? A Yes, sir.

BY MR. WELLER:

Q Go ahead? A I asked the defendant if he had ordered the goods of which he was accused, and he said that he had, and I asked him who did he order them for, and he said himself. I asked him why, and he said he needed the money. I asked him whose name did he use. He said C. R. Stoddard, pointing in the direction of a gentleman who sat in the office, who I believe was Mr. Charles R. Stoddard.

Q Was it the same gentleman who testified here a few minutes ago this morning? A Yes, sir. And I asked him how did he come to take C. R. Stoddard's name and he said he knew him. I asked him how did he come to order or buy the goods at Siegel-Cooper's. He said he lived at Mr. Stoddard's house and knew Mr. Stoddard had a charge account at Siegel-Cooper's, and I then arrested him.

MR. KIER: No cross examination.

M I S S C A R R I E B U R R I S, called as a witness in
behalf of the People, being first duly sworn, testifies
as follows:

DIRECT EXAMINATION BY MR. WELLER: Q Where do you live? A 60

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West 104th street.

Q By whom are you employed? A Greenhut-Siegel-Cooper Company.

Q On Sixth avenue? A Yes, sir.

Q Which store are you in, the old store or the new store?

A The Greenhut Building.

Q Were you employed there on December 29th? A Yes, sir.

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

Q In what department were you employed at that time? A I am employed in the lamp Department.

Q On that day did the defendant come to your counter?

A He did.

Q What, if anything, did he say?

THE COURT: What date is this?

MR. WELLER: December 29th, 1911.

Objected to. Objection sustained.

THE COURT: Be careful not to put any facts into the case in the nature of a legal error.

MR. WELLER: I am proceeding under the Guier case.

THE COURT: Yes. Objection sustained.

Q When did you see the defendant? A Between the hour of about 12 o'clock, or a little after -- I couldn't just exactly say.

Q On December 29th, 1911? A Yes, sir.

Q What did he say to you at that time?

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Objected to. Objection sustained.

Q. Did he order any goods from you at that time?

Objected to.

THE COURT: Objection sustained. Disregard it. Now, I think counsel has gone far enough. I will ask him not to go further.

MR. WELIER: Well, if your Honor, please, I don't think I have gone at all.

THE COURT: I don't think you will go a bit further.

MR. WELIER: Very well, sir. People rest.

MR. KIER: The defendant, if your Honor pleases, moves the court to dismiss the indictment and direct the jury to render a verdict of not guilty, for the following reasons:

First, the indictment charges with the intent to deprive and defraud a certain corporation called the Greenhut-Siegel-Cooper Company of property, moneys, goods and so forth. There is no evidence produced here in relation to the incorporation of the Greenhut-Siegel-Cooper Company either showing the incorporation or copartnership, nor is there anything on that subject whatever.

MR. WELIER: If there is any question about that I ask permission ---

MR. KIER: Pardon me. Furthermore there is no evidence before the Court as to any one, either the Greenhut-

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Siegel-Cooper Company, or any other Company, or any other individual, having right or title to these goods, to wit, the two watches and the chain regarding which an attempted larceny has been alleged. In other words, there is no proof of title at all as to the articles alleged to have been stolen.

Second, the evidence tends to prove that under the credit system in this store it would have been impossible for the defendant to have accomplished a larceny, as the evidence shows that he gave the name of Mrs. Stoddard, and such a person had no credit account there. And the custom is where a person has no credit account that the goods will not be sent out.

Thirdly, on the whole case there is no evidence to prove that this defendant has committed the crime of attempted grand larceny in the second degree.

THE COURT: Mr. Weller?

MR. WELLER: So far as the question of incorporation is concerned, if there is any question about that I ask permission to call Mr. Clextan back to the stand.

It has been testified to here that the Greenhut-Siegel-Copper Company operates both of those stores -- the old Siegel Cooper Company and the Greenhut Company -- and if it is a question of documentary proof, then of course I would have to send down to the County Clerk's office.

With reference to the property in the case, it has

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has been shown here, that either the husband or the wife having an account in the Greenhut Company would be permitted to charge goods against that account. In this particular case the goods were charged against Mrs. Stoddard. The goods went through in the normal course. Had it not been that there was a mix-up in the address the goods would have been sent out, but inasmuch as the address given was different from the address on the face of the books of the company they were not sent out.

THE COURT: It is only a question whether you have made the proof, Mr. Weller. There is objection raised as to the sufficiency of the proof. You have alleged in the indictment that this is property of the Greenhut, Siegel-Cooper Company, a corporation, and it is alleged here that there is no proof of that fact which you have laid in the indictment.

MR. WELLER: That it is a corporation?

THE COURT: Yes.

MR. WELLER: Well, if that is relied upon why then I shall have to ask for an adjournment to bring somebody here to testify that it is a corporation.

THE COURT: Should not have been done before you rested your case?

MR. WELLER: Technically speaking, I presume that is true, yes, sir, but if we have to bring somebody from the

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County Clerk's office in all cases, why it is going ---

THE COURT: Even inconvenience must be carried when you ask the penalties of the law.

MR. WELLER: That is true. If he will not concede they are a corporation I shall have to ask for further time.

MR. KIER: I won't concede it and I object to an adjournment.

MR. WELLER: Then I ask the Court's permission to adjourn the case until 2 o'clock so I may get an officer of the corporation here, or a representative from the County Clerk's office to prove that the Greenhut-Siegel-Cooper Company is a corporation.

THE COURT: You may have, Counsel, an exception to your motion. I feel that in the interest of the public justice I ought to permit the case to be re-opened for that purpose. You can have an exception to my action at the same time. I will permit the State to supply this proof. It should have been done before with the rest of the case.

MR. KIER: An exception then to your Honor's ruling.

THE COURT: Oh, yes, of course.

MR. KIER: Is the remainder of the motion denied, your Honor?

THE COURT: Yes.

MR. KIER: And an exception to your Honor's ruling

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denying the whole motion?

THE COURT: Yes, of course.

MR. KIER: It being a substantial matter to concede I would prefer that the defendant stand up and let the stenographer take his language as to conceding, if there is a concession regarding the corporation.

MR. WELLER: We do not ask for any concession. I have just been informed that an officer of the corporation is downtown here somewhere, and I can get him here in fifteen minutes.

THE COURT: I do not think there is any difficulty about the ability to prove it, but I think, Counsel, it is your duty as a lawyer to insist upon every legal right for a defendant, otherwise you would not be performing your full duty. I do not question that it can be proved -- and I do not take it that you will --- but it is your place to raise every question in the interest of your defendant. You have done so, and your rights are going to be saved to you. Now, if you desire to do anything further you can.

MR. WELLER: I might state, in view of this recent decision by the Court of Appeals which held that the question of ownership in a larceny is immaterial if the ownership is not in the defendant, that perhaps I was lax in not subpoenaing an officer to come down here in this case, but I thought in view of that decision, it being

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generally understood that ---

THE COURT: Well, all rights would be saved anyway. If you desire to do anything further to facilitate the trial, you can do so, but saving all your rights in law. Your point, as I take it, Counsel, is at this time counsel for the State having rested his case, that you are justified in objecting to the court's permitting that proof to go in. I think you have taken the proper stand, but I have in the interest of public justice permitted this and to my act and to my ruling you have an exception saved for the defendant. Now, what do you desire to do?

MR. KIER: I will have to insist upon the proof, your Honor.

MR. WELLER: Very well, then.

MR. KIER: The defendant concedes that the Greenhut-Siegel-Cooper Company is a corporation, subject however to his prior motions and exceptions.

THE COURT: Yes. Of course those rights are saved are saved to him in connection with the Court's action in permitting the State to open this prosecution for that purpose but now those rights having been saved to the defendant you concede that it is a corporation of New York, existing under the laws of the State of New York, perhaps --- I don't know, but I fancy it is.

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MR. KIER: Yes, sir. The defendant rests and renews the motions heretofore made, and asks the Court now to direct the jury to render a verdict of not guilty upon this indictment.

Motion denied. Exception.

(Counsel now close to the jury.)

(The Court now charges the jury.)

(The Jury now retires and upon its return renders a verdict of guilty, with a recommendation of the defendant to the mercy of the Court.)

THE COURT: One week and all rights will be reserved for his counsel to make whatever motion he sees fit to make.

(Defendant remanded to March 13, 1912.)

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