

START

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CASE

CASE # 1792

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part V.
November Term Continued.

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THE PEOPLE OF THE STATE OF NEW YORK,
-against-
ANDY SEMITTO.

Before:
HON. JEREMIAH A. MAHONEY, J.
And a Jury.

New York, December 5th, 1913.

Indicted for grand larceny in the second degree.

Indictment filed November 24, 1913.

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

For People: ROBERT E. MANLEY, ESQ., Assistant District
Attorney.

For defendant: A. A. LUSTIG, ESQ.

A jury is duly impaneled and sworn.

Mr. Manley opens to the jury in behalf of the People.

(Samuel Meratchnik is sworn to act as interpreter
herein, in the Polish language.)

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

DIRECT EXAMINATION BY MR. MANLEY:

Q Where are you living at the present time? A Jersey City,
38 Broadway.

Q What do you work at now? A Laborer.

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Q What kind of labor are you doing now? A Around buildings,
digging cellars.

Q Sometime the 1st of November, around the 9th day of
November, did you come to the city of New York? A I did.

Q Was that on a Sunday? A On a Sunday.

Q Where was it that you came from? A Canada.

Q Had you been living in Canada? A Yes, I was working one
year there.

Q What part of Canada was it? A Suskatoon, Saskatchewan.

Q How long had you been living in Canada? A One year.

Q Why was it that you came to New York on that day? A My
partner wrote to me that there is some farm I can buy here,
with about twenty acres of land, so I was going to buy it.

Q Was that outside of New York, somewhere you mean?

A Yes. I had an address where to go to look at it.

Q What time in the day was it that you arrived in New
York? A About eight o'clock in the morning.

Q Where did you go after you got here? A I came here to
New York, I went to Ludlow street to look for my partner. My
partner was not there. I went then to Houston street.

Q You say you went to Ludlow street, looking for your partner.
What do you mean by "partner"? Do you mean a fellow countryman
of yours, or what? A He is a friend of mine.

Q How did you happen to go to Ludlow street? Was it to see
him? A Yes, sir.

Q Did you have any baggage that you took with you to Ludlow
street? A I left the valise in Ludlow street.

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Q Did you go over to Ludlow street to see him, or did you go there for the purpose of getting a room? What was it? A I had a friend of mine in Ludlow street and I thought I will see him and find out whether he has a room to give me for a little while; and there was no room, I thought I will go out to Houston street, and find a room there.

Q What occurred on Houston street? A At the time when I came to Houston street this man, (the defendant) he only was standing there in the hall-way, speaking the Polish language.

Q Is that your language, the Polish language? A Yes, sir.

Q What occurred after you saw the defendant talking the Polish language? A I asked the defendant whether he has a room for me.

Q Was the defendant at that time alone or was there somebody with him? A Another man with him.

Q What happened then when you said that to the defendant? A The defendant said to me "Come into my house. I will ask my wife if there is room enough for you, all right; if not, I cannot help it.

Q Had you ever seen the defendant before that time? A No.

Q Had you ever seen the man that was with him before that time? A No.

Q Did you go anywhere with the defendant? A The defendant took me to his wife and his wife told him, "I have no room for this man."

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Q What place was it that the defendant took you to? A ⁴ 291
Houston street, in a corner.

Q What happened after the defendant's wife said there was no room? A He said to me, "You remain here in my house and I will go over to my brother-in-law and ask him. Probably he has a room for you."

Q Did the man who was talking with the defendant go up into the defendant's house with you two? A No, sir, the other man was not there. He walked away.

Q When the defendant said that he would go over to his brother-in-law's, did he go right away or did he stay in the house? A He went immediately and he returned afterwards with two other men.

Q What time in the day was it that you went to the house of the defendant? A Two o'clock in the afternoon.

Q How long was the defendant gone before he came back with the two men? A About an hour.

Q Had you ever seen those two men that came back with him before? A No.

Q When the defendant came back what did the defendant say to you? A He said to me, "My brother-in-law was not home at that time here in the house and I will go over again."

Q Tell me what happened after that. A The defendant told me to send out for beer. I gave the defendant a five dollar bill. He bought twenty cents worth of beer and he returned.

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Q What kind of money was it that you gave, that five dollar bill? A Paper money.

Q Was it Canadian paper money or United States paper money? A Canadian.

Q What happened after that? A We drank the beer, and then the defendant went again to his brother-in-law's.

Q What did the defendant say before he went again to his brother-in-law? A He said to me, "Sit here and wait. I will ask him if he has got a room for you, and if he has got it I will take you over there."

Q During the time you were in the defendant's house drinking the beer, does the defendant ask you any questions? For instance where you came from, or questions of that sort? A He did.

Q Tell me what he asked you and what you told him? A The defendant had a conversation with me at that time as to how much money a person could make over in Canada, what was the wages there and all such things. Then he asked me whether I have got any Canadian money--"Have you got a twenty dollar bill in Canadian money". I told him I had none. Then he asked me if I had a ten dollar bill. Well, I didn't want to tell him, but his wife says, "Let us take a look at it, what the money looks like."

Q Did he ask you what part of the country you came from? A Yes, sir.

Q What did you tell him? A I told him where I came from.

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Q Well, what was it, what did you say? A I told him I came from Canada.

Q When he wanted to see a ten dollar bill of Canadian money what did you say or do? A I showed it to him.

Q Whereabouts were you carrying your money at that time?

A (Witness indicating inside, in his vest pocket, right-hand side).

Q Is that the side, right side? A Yes, sir, right side.

Q Were you carrying it loose in a roll, or in a pocketbook?

A Loose.

Q When you took it out what did you show to the defendant?

A Ten dollars.

Q What did you do with it? Did you take a ten dollar bill off a roll and give it to anybody, or what did you do? A I took out the whole money, he seen my whole money, and then he looked at the one ten dollar bill.

Q Did he hold it in his hand?

Objected to as leading. Objection overruled.

A He did not.

Q After the defendant had looked at the ten dollar bill what did you do with the roll? A The defendant looked at the ten dollar bill. The defendant's wife looked also at the bill; and then afterwards I put it on the top of the other money and made a roll out of it, and put it back again in my pocket.

Q After the defendant went out the second time to go over

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to the brother-in-law's, when he got back, what did he tell you about a room? A We remained there until about six o'clock or half past six, and we had another talk and the defendant says to me, "Come along, I will take you now over to my brother-in-laws, and the other two men accompanied.

Q Are those the same two men who had come in with the defendant when he came in the first time? A Yes, sir.

Q Tell us what took place from that time right on? A The defendant then took me to some street, it is somewhere near the second elevated, I believe it is near the Bowery; then the defendant took out a pocketbook, and he threw it down on the ground. I don't know what was there, whether it was money or not. He picked it up with his left-hand; With his right hand he said "Let us go away in a quiet street, we will see what is there." At that time we were standing looking at it. As he went to look at it another man came into us. There I was standing, the defendant standing on the front of me, there were two men on both sides, and then a different strange man came up to us and he told us he lost some money.

Q Then, as I understand it, that man you had now seen for the first time, is that it? A That was the first time.

Q At the time when you saw this defendant there, when the defendant picked up a pocket book, were you walking with him, or were you walking with the other two men, or were you all lined up together on the sidewalk? How was it? A The defendant walked ahead of me. I followed the defendant, and the two other men was right behind me.

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Q Were you all walking at that time? A Yes, sir.

Q How soon was it after you had seen the defendant drop the pocketbook and pick it up before the strange man came up to where you were? A Five minutes.

Q Do you think it was five minutes? Do you know how long five minutes are? Do you realize how long that is? Do you think it was five minutes? A I couldn't say. It happened immediately, as soon as it happened, probably a couple of seconds.

Q What was it that the defendant said, tell us again, when he picked up the pocketbook? A He said to us, "Come let us go away in a side street."

Q Did he say anything else besides that? A He didn't say anything because the other man came right away.

Q Did the other man come right after the defendant had said that? A As soon as we turned away and stood there this other man came up to us.

Q Did the defendant as soon as he had picked up the pocketbook say, "Let us go into a side street"? A Yes, sir.

Q At the time when the stranger came up were you and the defendant and the others standing still, or were you walking? A We were standing.

Q Can you tell us in what direction the strange man came from? That is, did he come from the direction from which you had been walking or did he come in the other direction? A He came from the sidewalk.

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Q Well, what I mean is this: we will say here you and the defendant are walking this way, from this side of the table over here, and all at once the defendant dropped a pocketbook, as you say, and picked it up. Now, when the strange man came did he come from this same direction, walking this way, or was he walking in the opposite direction? A He came from the front of us.

Q What was it that the strange man said when he came over in the presence and hearing of the defendant? A He said to us, "I lost some money, probably some of you have found it."

Q What did any one say who was with you, in the presence and hearing of the defendant? A They told him they didn't find any money.

Q Who said that? A This defendant.

Q What did the defendant say, or any one, say in the presence and hearing of the defendant? A They showed the money they had in their pocket, they told him that was not his money, they didn't find any.

Q Who said that? A The defendant.

Q The defendant said what? A The defendant said "We walked along, we didn't find your money. There is a strange man with us that came from Canada, he didn't find it, he has got his own money."

Q What happened after that? A The defendant said to me, "Take out your money and show him." And I hesitated for a moment to show him that money, but the defendant says, "What are you

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afraid? Show him the money, let him take a look at it, he would not run away with it", and then he took it into his hands.

Q Who took it into his hands? A That was that man that came up there.

Q Well, did you take it out of your pocket? A Yes.

Q When you got it out of your pocket, what did you do with it? A When the other man took the money in his hand--

Q Wait a minute, that is not it.

MR. LUSTIG: I will ask the interpreter to finish the question.

THE COURT: Yes, finish the answer.

Q (Question repeated, as follows: When you got it out of your pocket what did you do with it? A The other man took the money in his hands. He gave it over to me and he changed it over and gave me some other thing.

Q My question was, when you had taken your own money out of your pocket, what did you do with your money? A At the time when I had the money, this money was taken, then some other thing was given to me. I looked up in it and I saw a ten dollar bill and I put it right away in my pocket.

Q After the defendant here had said to you, "Give it to this man, don't be afraid, he won't run away" did you take your money out of your pocket? A At the time when the defendant said so I took out my money, I didn't hand it to the defendant, I gave it to the other man.

Q What did the other man do when you gave him your money?

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A When I gave the other man the money he just turned around and then he returned back again to me, and he gave it to me back.

Q What part of the body did he turn towards you when, as you say he turned around? A As soon as I gave it to him he just took it in his hand and turned around the other way and gave it to me back, and said "That ain't my money."

Q When he said that, what did you do with your money? A I put it back again to the pocket.

Q Did you take a look at it before you put it back in your pocket? A Yes, I have seen it was ten dollars there, it was ten dollars, a bill; I looked at it and put it back again.

Q Was the ten dollars on top of the thing that the man gave to you, is that what you mean? A Yes, sir.

Q When you had put your money back into your pocket after showing the ten dollar bill to the defendant in his house had that ten dollar bill been on top of your roll in the house? A I had twelve ten dollar bills all in paper money.

Q You told me that in the house you had taken out a ten dollar bill and showed it to the defendant and that his wife looked at it and that you put it back in your roll; on what part of your roll did you put it when you put it back--on top or inside? A At the top.

Q After you had put this roll which the strange man gave to you in your pocket, did anybody say anything in the presence and hearing of the defendant, or did the defendant say anything?

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A As soon as this transaction occurred this defendant said to the other two men, "Take him up to that room, to my brother-in-law and myself, and this man will stay here for a little while, we have got to show something."

Q What two men did the defendant say should take you? Were they the two men whom he had brought to his house earlier in the day, or who were they? A That was the same two men that were over to his house.

Q And when he said "This man will stay", did you see what man he meant by that? A That was the same man who had my money and gave it back to me.

Q What did the defendant say that the man who had claimed that he lost the money would do? He told the other two--

MR. LUSTIG: Which man?

MR. MANLEY: I am trying to find out.

THE COURT: You object because the question is not specific?

MR. LUSTIG: Yes, sir.

THE COURT: Reform the question so we have the proper identification of each individual referred to.

MR. MANLEY: That is what I am laboring to do.

Q As I understand it, you say that the defendant said for the two men who had been in his house to take you to his brother-in-law's house, you have said already that the defendant said to another man to do thus and so, you have already testified that that other man was the man who had come up and claimed

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to have lost his money--now, I ask what it was that the defendant said that the man that had had your money was to do.

(Question withdrawn.)

Q What was it that the defendant told the strange man that had come up to do? A The defendant didn't say anything. He said to us, "Go home, I will remain here with him."

Q With him? With whom? A The defendant said to one of the two men, "Take him away; I will remain here with this new man," meaning the complainant that lost the money.

Q What did you do then? A I followed the other man.

Q Which man did you follow? A That was the man that was there, when I found him in the house earlier in the day.

Q You went away with those two men, is that it? A Yes, sir, I did.

MR. LUSTIG: He went away with both of them.

MR. MANLEY: Well, you can cross examine. I think it is plain.

Q Where did you go with that man?

MR. LUSTIG: I object; the witness says it is two men, not one man.

Q Did you go away with one or two men? A There were two men in here, they took us over to the corner. He said to the other man, "I will stay here for a little while, I will come back right away." So then he left him and then I was left with one hand--

Q When you started to walk away from the spot at which this

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thing happened, which you have told us about, how many men started to walk away with you? A Five.

Q Did everybody start to walk away right away after you had put this roll in your pocket? A Yes, sir, they did.

Q How far did you walk before you separated, any of you?

A (Witness indicating from the witness chair to the door, forty or fifty feet).

Q What happened then? A As soon as the other man left me he said, "You wait here for a little while I will be back in a couple of minutes." I stood there, I stood probably about half an hour. I then said to myself, "I am going to take out this money from here and put it away to some other place", when I took out this money I have seen that this money was changed, that it was not mine.

MR. MANLEY: I am willing that that should be struck out.

THE COURT: Strike it out.

Q Just as soon as you had put in your pocket the money that the strange man had given to you, did this defendant say anything? If he did, what did he say?

MR. LUSTIG: I object to the question, no foundation laid as to the time and when and identification.

Objection overruled. Exception.

A Defendant said to the other two, "Go home, take him up there, take him up to the room."

Q What did the other two men do when the defendant said that?

A I walked along with one man, another one followed us, and

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this defendant went away with the man that had my money in his hands.

Q Did he go in your direction, or did he go in another?

A The defendant walked right straight ahead, but they took me away in the side street, so I couldn't see where he went.

Q What happened while these two men took you away in the side street? A One left me, I followed the other man. The other man took me to the corner and he said "Wait here a few moments, I will turn back again, and I will see you."

Q What happened after that? A I waited, and he did not return.

Q How long did you wait? A About half an hour.

Q What happened then? A Afterwards, when I was left there I stood for a little while and I took out my money so as to be sure to put it away to some other place. I have looked in there, there was some bills in there that said "Twenty" on it. I didn't have no bill with "twenty" on it--only "Ten", so I knew that that was not my money.

Q What did you do then? A I returned back again to the same place where this happened, and I didn't find anybody there; that is, from the people that I had seen.

Q Do you mean the spot where the money had been taken?

A Yes, sir.

Q When you did not see anybody there what did you do then?

A I went to the police station.

Q Did you have any talk with the police officer? Did you

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talk to a police officer? A I did talk, through an interpreter.

Q Do you remember whether that is the officer that you saw (indicating Officer Ransburg)? A Yes, sir.

Q Did you show this Officer Ransburg the package that you had that the strange man had given to you? A Yes, I did.

(Marked for identification People's Exhibit 1.)

Q I show you People's Exhibit 1 for identification and ask you to take it and look at it all through first, and then I will ask you questions. A (Witness looks at People's Exhibit 1.)

Q Now I ask you if People's Exhibit 1 for identification looks like the package which you afterwards found had been handed to you by the strange man? A Yes, sir.

Q Did you leave this package with the officer after you went to the station house, or did you take it with you? A Yes, sir, it remained with the officer.

Q After you had talked with the officer did you leave the station house, yes or no? A Yes, sir.

Q Did the officer go with you? A The officer took me to the place where this happened, the Bowery, I showed him--

Q Can you tell me the place where this happened, where your money was taken? A It was some place near the second elevated. I know the number on the front of that house was 275.

BY THE COURT:

Q Do you mean the Second avenue elevated? A That was when you go from Ludlow street there is one elevated, and then you

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come to the other elevated and that is the one. I mean the Bowery.

BY MR. MANLEY:

Q You say you understand it was 275 Bowery, is that it?

A Yes, sir.

Q Well, now, did you go looking for anybody after that? A I returned back to Ludlow street to go to sleep.

Q Well, did you at any time, I mean after that, try to find any of these men? A I walked around the streets.

Q Well, did you ever find any of them? A I identified this defendant the next morning.

Q Where did you see him the next morning? A I was waiting on the front of the defendant's house, the defendant came out from the house and he was walking right straight to me but afterwards he turned around and he walked away. He was walking with his wife.

Q When you say "to his house" do you mean 291 Houston?

A Yes, sir.

Q That is the same place where the defendant had taken you the day before? A Yes, sir.

Q When you saw the defendant on the street walk in the opposite direction, what did you do? A I have looked around where the policeman was. I saw the defendant, and as soon as I saw him I had this money (Exhibit 1) in my hand, and I showed it to the policeman, and the policeman went with me to the defendant.

Q Is that the officer that you are now talking about that

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you went to on the street (indicating officer Potter)? A Yes.

Q What happened after that? A I said to the policeman, as much as I could in English, "This is the fellow that changed my money.

THE COURT: Strike that out.

Q Did you say in the presence and hearing of the defendant-

A No.

THE COURT: Strike out the answer then given before.

Q Did you say something to Officer Potter? A I told him that that is the fellow that took my money.

MR. MANLEY: I consent to strike that out.

THE COURT: Strike it out.

Q Did you say something to officer Potter? A I did. I told him something.

Q What did Officer Potter do? A He took this bundle here, and he ran up to the other man, the defendant.

Q Then did he take the defendant to the station house? A Yes.

Q On the way to the station house did this defendant say anything to you? A He said to me, "What are you doing now? I will try to return you the money as soon as you come together with the other people."

Q What else did he say? A He said to me, "I am going to pay you for the whole winter \$3 a day. "

Q \$3 a day? A Yes.

Q What else did he say besides that? A Nothing else.

Q Did the defendant at any time or place after that say

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anything else to you about it? A From the time I spoke to him in the station house to this day I never had any conversation with him since.

Q Did he say anything to you about it in the police court where there was a judge, in any room around the police court?

A No.

Q At the time when you took out your roll out of your pocket on the Bowery and gave it to the strange man how much money did you have in that roll? A \$150.

Q In what kind of money was it? A Twelve ten dollar bills, six fives.

Q American money or Canadian money? A Canadian.

Q When was it that you had counted your money last and knew that those bills that you have described were in your pocket?

A I counted it when I left Canada on the train, when I came to New York.

Q You mean that same morning? A The same morning.

Q Well, now, had you used any of the bills that had been on that roll from the time that you got in New York that morning up to the time that the money was taken? A Only the five dollar bill that the defendant changed for me.

Q Is that the one that you gave to the man to get the beer in the defendant's house with? A Yes, sir.

Q When you took that five dollar bill and gave it to the defendant to get beer, had you taken it off from the roll where you had the other money? A No. That was there, that was from

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a different--I had change in my pocket.

Q Then from the time that you counted this roll of money, the twelve tens and the six fives that same morning that you saw this defendant, had you taken any bill off to spend it up to the time that the men took your money? A Didn't spend anything, nor didn't change anything.

CROSS EXAMINATION BY MR. LUSTIG:

Q How long have you been in the United States and Canada?

A In Canada I was one year.

Q And the United States? A From the 9th day of November only.

Q The first time you saw the defendant was at Houston street when you were talking in the hallway with another man, is that right? A I didn't speak to anybody about the defendant.

Q And when the defendant came in the hallway, did you speak to him first? A I did. I spoke to him first.

Q And you asked him whether you could get a room, is that right? A Yes, sir, the defendant came from the barber shop with another man, it was raining at the time and they had a conversation.

Q And then he took you upstairs to his room, is that right?

A No, he went upstairs, spoke to his wife; his wife said she didn't have no room.

Q Where did you go after that? A I was sitting in his house.

Q And you were there from two o'clock on, is that right?

A Yes.

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Q How many people were in the room at that time? A His wife, the defendant, and two other men. Another man and another woman.

Q Then there was another man besides the man that came up with the defendant in the room already? A Yes, sir.

Q You do not drink very much, do you? A I do drink. I am not a drunkard. That day I only drank from the beer that I drank twenty cents from the defendant to buy.

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

Q You do not drink very much beer, is that true? A I did not take no beer for a whole year, not until I got here to New York.

Q And until that afternoon in 191 East Houston street you did not have a beer for a whole year, is that right? A Yes.

Q At whose suggestion was the beer sent out for? A At the suggestion of the defendant.

Q And you gave the defendant the \$5 bill, is that right? A Yes, sir.

Q Canadian money? A Yes.

Q Did you get any change back from that bill? A Yes.

Q How much change did you get back? A \$14.50.

Q How do you count American money? A How do you mean?

Q Where did you get your knowledge of how to count American money? A I know when I see five cents or ten cents, I know what it is.

Q Then in other words, you mean to say that the defendant

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spent fifty cents for a can of beer, is that right? A The defendant said to me that the Canadian money is cheaper here than the American money.

Q How much beer did he get in a can? A Twenty cents.

Q Was that the only time that you had sent out money, sent out for beer? A That is the only time for beer.

Q How many times did the defendant come out with an empty can? A The defendant left the house the second time, he got ten cents from his wife to go and get beer. There were two girls there. I did not drink no more from that, I did not participate, only the defendant, his wife and the others.

Q Did anybody else go out for beer in that room? A Yes.

Q You were all having a good time there--you were singing too, weren't you? A No.

Q You were there from two o'clock until six, is that right?

A Yes.

Q And it was Sunday afternoon? A Yes, sir.

Q And everybody felt happy, is that right--they were signing?

A No they were talking together; the general conversation was up to me, how much do you make? and how much have you got? and how do people work there? and what are they working at?

Q Can you remember how many cans came in from two o'clock that afternoon until six o'clock that night? A The twenty cents and then ten cents.

Q You are positive of that? A Yes, sir.

Q How many glasses of beer did you have during all that

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afternoon? A Two glasses, only.

Q You say the defendant went out after you had asked him to get you a room at his brother-in-law's. How long do you say the defendant was out of the room? A About an hour.

Q How do you know it was an hour? A I have got a watch.

Q Did you look at the time? A I looked at the watch. I told him, "I will go over with you." He said, "No, you had better sit here, home."

Q Did he go out alone? A All alone.

Q And did some more people come in after that? A Two returned with the defendant; two men returned with the defendant.

Q Did anybody come in while the defendant was away? A No. Nobody but the defendant's wife and myself in the house.

Q Why did you stay there that long from two o'clock to six o'clock at night? A Because the defendant returned. He told me his brother-in-law was not there, that he will be there in the evening, and that they will take me over there.

Q You asked two other men in the same room whether they couldn't find a room for you, isn't that true? A Yes, sir, they told me, "Wait, if you cannot get any room in the brother-in-law's house" of this defendant, "we will find a room for you in our house."

Q Then you became impatient and wouldn't wait for the brother-in-law's room, and then you went out with these two men, is that right? A Because the defendant told them to take me

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there. He told them, "I will stay here, you take him."

Q So you went out with these two men, you left the house at what time? A With one man, and they all three remained there.

Q At what time did you leave that house? A Their house, half past six.

Q Then you left that house with just one man; do you know that man's name? A No, he just was at his house; three of us left.

Q The defendant was along too, was that right? A Yes.

Q But this one man led you, did he not, out of the house?

A The defendant said to that man, "Go on, take him over there." That was afterwards when the money was changed already.

Q At the time when you left the house you say you left the house with one man. Do you remember now-- one man is one man-- I am going to call him by that name, "One man"? A The defendant and two others went and I was the fourth one.

Q But the first man was alongside of you, was he not? He took you out of the building in Houston street? A No, the whole three of them.

Q And how were you walking, was this one man alongside of you, or was the defendant alongside of you? A The defendant and two other men walked on the front of me and this man on the back of me.

Q You say the one man walked along side of you and the defendant and the other man walked behind you, is that right?

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A The defendant walked on the front of me with the other man, and this other man walked on the back of me.

Q When you left Houston street did you go to the Bowery? A They took me around somewheres and then they took me back again to the Bowery.

Q You don't know the streets of New York, do you? A Only from what I can read.

Q Do you remember where this money was taken away from you, do you remember the street, do you remember the name of the street where this money was taken away from you? Was it the Bowery?

A Near the Bowery.

Q What do you mean by near the Bowery? A The Bowery runs this way, and then they took me here in the sidewalk, right next to the elevator, where it is running.

Q On the street where this money was taken away from you there was no elevated structure there, was there? A Yes, there was an elevated structure.

Q You are positive about it? A Yes--

Q Aren't you positive that it was not on Avenue A? A No, that was not on Avenue A, that was near the Bowery. Now, the elevated--

Q You don't remember, is that it? A What do you mean?

Q You don't remember the street, the name of the street, is that the idea--you are not sure? A No, I don't remember the street, I am not sure.

Q Didn't you feel somewhat intoxicated at that time? A No.

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Q How many glasses of beer did you drink over to the house on Houston street? A Two.

Q When you got near the street, as you say, on the Bowery, how were you walking-- four in one line or three in one line, or two in one line? A No, we walked two abreast, the defendant and another in front of me, and another man on the back of him, followed him.

Q The defendant and another man, where did you say? A Front, I told you.

Q In front? A Yes.

Q Where did the defendant throw the pocketbook--in front of him or behind you? A As he walked he threw it away with his left, he picked it up with the right hand, and he said to us, "Let is go here in a side street."

Q And you said before that the defendant and another man was walking in front of you, is that right? A Yes, he was.

Q Do you remember that they were walking together, the two men were walking together in one line, walking along two by two? A Yes.

Q And do you remember whetheryou were going uptown or downtown at that time? A I don't know where they were taking me.

Q And can you tell us which one of the two-- the defendant and the other man, which one was nearest towards the curb? Was it the defendant near the curb, or whether it was the other man near the curb of the street? A Do you mean to his house or when we left his house?

Q I mean when you were on the Bowery, was the defendant near

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the curb, or was the other man near the curb? A The defendant was near the corner, where you turn around the curb, and he said to us, "Let us go over there", but I walked down to a side street.

Q That was the time you say the pocketbook was thrown on the ground, is that right? A Yes.

Q Do you remember with what hand the defendant threw the pocketbook on the sidewalk? A Yes.

Q Which hand was it? A With the left-hand he dropped it, with the right-hand he picked it up.

Q How could you see the defendant throw the pocketbook when he was in front of you? A Because he was right on the front of me, and I was right on the back of him.

Q Do you remember where that man came from who said he had lost his money? A As it happened immediately, as the defendant picked up this pocketbook, I have seen this man coming to the front of us, and he said he has lost some money.

Q You said before that the stranger did not come around for five minutes? A I couldn't tell you exactly how long a period of time it was. I know it happened immediately. He came up right away.

Q When you saw the defendant throw the pocketbook to the ground and pick it up again, didn't you ask him what he had picked up, or what he had thrown away? A I didn't know what to say. There was no opportunity for me to say anything. As soon as he picked it up the other one came up to him, demanded the money,

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from us, saying "Probably you found it, I lost some money."

Q At the time the defendant threw the pocket book to the ground could you see it in his hand as he threw it, or did you first see it as it was on the ground? A I have seen the defendant have it in his hand, I have seen him dropping it, and I have seen him bending down and picking it up again.

Q After the strange man came over what was the conversation that you had at that time? A No conversation whatever, only the man said, "I lost money. The other people took out some money from their pocket, and they showed it was their money, they didn't pick up his."

Q What kind of a looking man was this stranger? What kind of a looking man was he--an American or an Italian? A He was a little taller than the defendant is, he was stouter, and he was cleanshaven.

Q What did he say when he came over to all four of you?

A He said to us, "I lost money, I want you to show me my money, probably some of you people picked it up".

Q Were you the first man he came over to? Or which man did he come over to first? A To all of us. The conversation was addressed to every one of us. There were four of us, and he came between us and he said, meaning thereby--

Q Did he make a sort of a threat to you, when he said that?

A No.

Q Didn't he say he is going to kill you if you wouldn't show your money, or he would have you arrested? A No, no.

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Q Well, then you showed your money right away, as soon as he came over, is that right? A No, I had it in my hand, I didn't want to part with it, and this defendant says to me, "What, are you afraid to show him? He won't run away with it. If it is not his he will give it back", and I gave it to him.

Q Why did you take it out of your inside pocket, when you had it in your hand? A Well, this man says to me he wants to see my money. "I want him to show the money in the trouser's pocket." The defendant says to me, "Why don't you show him your money from inside? Don't be afraid, he won't run away with it."

Q Did everybody else show their money? A Yes.

Q Did the defendant show some money? A Yes.

Q What did he show? A He showed some money from the same pocketbook that he picked up.

Q What was it? A I don't know. There were a two dollar bill on the top, I don't know whether there was some more money there or not. I don't know.

Q What about the other men, did they show any money? A They showed him their pocket, they told him they didn't have no money.

Q Did this stranger come over and swear and grab it out of your hand and look at it, or did you give it to him yourself?

A No, he didn't grab it from me. I had it in my hand, I didn't want to give it to him until the defendant said to me, "Show it to him, this Canadian money--why are you afraid?" And I gave it to him.

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Q Then you gave it to him in his own hands, this stranger?

A Yes.

Q And the stranger returned it to you, is that right? A He turned away for a little while and then he turned back again to me, and he gave it to me back, and he said, "No, that ain't my money.

Q Did he look at everybody else's money that way? A No, they were standing at the side, and he turned around and then turned back again to me and gave it to me.

Q Didn't that stranger look at the other men's money at the same time, I mean, take it in his hand? A He took that pocketbook from the defendant, he looked at it and gave it to him right back.

Q Then he ran away, didn't he--the stranger? A No, he turned around the other side, and he said, "I am going to go for the police, to tell something to a policeman." The defendant said to the other man, "You can take him away now, bring him over there."

Q And where did the defendant go then after he said to take you to the other two men, to go away, where did he go? A He went right after this man, the man that had my money in his hand.

Q Where did the other man go first, the stranger? A They went away, to a different street on the other side of the avenue.

Q But the stranger and the defendant did not go together?

A The strange man was not far away from the defendant. He

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was walking and as soon as he started in to walk, the defendant says to them people, "Go ahead, take him over there, and I am going away this side, I am going to follow this man."

Q Did he say that? Did the defendant say that? You are positive about that? A Yes, I am sure about that. He said it to the man that we come from his house, we come from the defendant's house.

Q As soon as the defendant returned that money to you you put the money right back in your inside pocket, is that right?

A I have seen, I glanced at it, a ten dollar bill was on top, the same as I had before, and I returned it and put it back in my pocket.

Q And then you walked on, and these two men--where did you go after you left the scene? A Only one man took me away across the street, around the corner, and he said, "You wait here, and I going to return soon."

Q When did you look at your inside pocket again after that?

A I wanted to take this money out from this pocket, I wanted to put it into a different pocket. I have looked at it and I see a twenty dollar bill, I know I didn't have any twenty in there, and that is why I looked in there.

Q In other words, you became suspicious of this stranger that had taken this money from you at the scene of the hold-up, is that right? A No, I didn't have any suspicions when I left him.

Q At that time you did not connect the defendant here with the taking of the money on the money there, did you?

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MR. MANLEY: I object to that. I don't know what that question means, exactly.

THE COURT: The word "connect" is hardly the proper word to use. Ask him if he had a suspicion that the defendant had had something to do with the loss of the money?

MR. MANLEY: Does counsel mean after he looked at the roll?

MR. LUSTIG: Yes.

THE COURT: Withdraw your question along that line.

Q When you walked away with that one man, did you at any time become suspicious that this defendant had anything to do with the taking of the money, that is, after you looked at the roll?

MR. MANLEY: At that time he was not with the man?

A Yes, I thought right away that the defendant is the cause of this changing around of the money, because he wanted me all day long to give him the money and he will change it, the Canadian money for American money.

Q But he was very friendly with you all afternoon, wasn't he? A Yes, in the day time.

Q Are you in the habit of meeting strangers in this way and going to their homes and drinking beer and having friendly intercourse with them that way? A No.

Q You came down from Canada on the American train, did you not--on the work train? A I bought a ticket from there, I paid for it \$48. I boarded the train and came to New York.

Q And that morning, that Sunday morning you arrived in New York City? A Yes, sir.

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Q And you found a good many of your countrymen on board that train, is that right? A No, I did not have none.

Q Did you speak to any one on your trip from Canada on that train? A I did not speak to any one. I had an address to go to Ludlow street. I came to Ludlow street, I didn't find him home, and that is why I went out to look for another place.

Q How long did that journey take from Canada to New York City? A Tuesday evening I started from Canada, I come here Sunday morning.

Q Did you go to sleep at any time during the time of that journey, fall asleep in your chair? A Well, I took a nap during the day, but I did not sleep nights, because I was watching my money.

Q Well, during the time you were taking a nap you could not watch your money, is that right? A Yes, I always felt my money, I had my hands on it, I know it was in my possession, and I kept a pretty good watch on it.

Q And during the time you were asleep you had your money in your inside coat pocket, is that right? A Yes. Even when I got here to New York, when I got off the train and I was about to walk away, I again examined my pocket to be sure I have got everything I put there.

Q Why, you told the District Attorney before in your direct examination that you never examined the money that morning?

MR. MANLEY: I object to that as not being his statement of the evidence, he said distinctly that he did.

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THE COURT: Objection sustained. You may ask him now if he did count his money in the morning or did not.

Q Did you count your money that morning after you left the train, and when and where? A Yes.

Q Where did you take the money out--in the railroad station? A Railroad station.

Q And you counted it there in the front of everybody, is that right? A I went into the toilet and counted it over there.

RE-DIRECT EXAMINATION BY MR. MANLEY:

Q What language was it that this stranger talked when he came up on the street and said he had lost the money? A Polish.

Q How did your roll of money correspond in size to People's Exhibit 1 for identification? A Yes, exactly as this one.

Q What was it that this defendant, during the time you were in his house, had sent to you about exchanging the money for you into American money? A At the time when the defendant spoke to me the conversation was, "How much money have you got?" I did not feel like telling him, and then he wanted to know how much a day I made there, how much I was getting a week, and when he insisted upon me showing him a ten dollar bill at the time the defendant seen the bundle of my money.

Q I understood you to say something to counsel on cross examination-- did he say anything to you at any time that he would change the Canadian money for you into American money? A He did, a couple of times.

Q Tell me what he said on that point? A The defendant said

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to me at that time, "Give me your money, I am going to go out and change it for you. I will bring you more money than if you will change it yourself, because I know the people that change the money."

Q What did you say to him when he said that? A I told him "I have got time yet, I am going to change it myself."

O T T O R A N S B U R G (Detective Bureau, 15th Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You are a member of the police force of the City of New York?

A Yes, sir.

Q Do you remember on or about the 9th day of November of this year seeing the complaining witness, Alexander Olaskowsky in the station house? A Yes, sir.

Q Where is that station house? A 5th street and First avenue. It is moved since.

Q About what time was it when you saw him, in the day or night? A Night.

Q About what time? A About nine thirty.

Q In the night time? A Yes, sir.

Q Just answer this question, yes or no--did you have a talk with him? A Yes.

Q Did you talk to him through a Polish interpreter? A Yes, sir.

Q Did he show you anything? A Yes, sir.

Q Now I show you People's Exhibit 1, for identification. Did

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you bring that down this morning from the property clerk's office in Police Headquarters and give it to me, or give it to somebody who gave it to me? A Yes, sir.

Q Where was People's Exhibit 1 for identification when you saw it first, who had it? A The complainant had it.

Q Did he show you that in the station house that night when you talked to him? A Yes, sir.

BY THE COURT:

Q You mean Olaskowsky had it? A Yes, sir.

BY MR. MANLEY:

Q After you talked to him did you go out on the street anywhere with him? A Yes, sir.

Q Whereabouts did he take you? A He took me in front of 275 Bowery.

Q That is in the City and County of New York? A Yes, sir.

Q Just answer this yes or no: did you leave any instructions with him, did you tell him what to do? A Yes, sir.

Q When did you next find out anything about the case? A On the 10th, about 9 a. m., next morning.

Q What happened then? Where were you? A I was in the station house.

Q What happened there? A Officer Potter brought in Andy Semitto, the defendant.

Q Did anybody else come along too? A Olaskowsky, the complaining witness.

Q The complainant? A The complainant.

Q Did you talk with this defendant at any time in the English

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language? A Yes, sir.

Q Does he talk English and does he understand English? A Yes, sir.

Q Did you say anything in English to the complaining witness Olaskowsky, in the presence and hearing of the defendant, when Officer Potter brought those two into the station house, the following morning? A Yes, sir.

Q What was it? A I asked him did he know Olaskowsky, he said no.

Q You asked who? A I asked Semitto, the defendant.

Q Did you ask Semitto any other question beside that? A I asked him if he took his money and he said no.

Q Did you ask him anything else, or did Semitto say anything else? A He didn't say nothing else in the station house to me.

Q Did the complainant Olaskowsky say anything to you in the presence of Semitto in the station house? A Yes, sir.

Q What was it? A He said it in English, he said that man takes my money.

Q In broken English, in about the way you said it? A Yes.

Q Well, I suppose you then took the defendant-- A To the police court.

Q Did you have any talk in the police court with the defendant? A Yes, sir.

Q What did you say and what did he say? A The defendant says that he knows that man, but he didn't take his money.

Q He knows what man? A He knows Olaskowsky.

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

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Q How did he happen to say he knew him but did not take his money, what led up to it? A Olaskowsky told me that the defendant said he is going to give--

THE COURT: strike out anything that Olaskowsky said to you, unless in the presence and hearing of this defendant.

Q Was it in the presence and hearing of the defendant? A No, sir.

Q Well, Olaskowsky said something to you; as the result of Olaskowsky saying something to you, did you say something to the defendant? A Yes, sir.

Q What did you say to the defendant? A I says--

THE COURT: What you stated to the defendant you may say.

A (Witness continuing) I says, "Olaskowsky told me you are going to pay him the money back." I said, "I thought you don't know him?" He said, "Yes, I know him", and that's all he said.

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

CROSS EXAMINATION BY MR. LUSTIG:

Q Was the officer, your brother officer there at that time?

A In court?

Q When the defendant said that? A In the police court, no, sir.

Q He said this in the police court? A Yes, sir.

Q Where? In the pen? A No, no, I was bringing him to take his pedigree.

CHARLES G. POTTER (17th Precinct), called as a witness in behalf of the People, being first duly sworn, testifies

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as follows:

DIRECT EXAMINATION BY MR. MANLEY:

MR. MANLEY: I now offer in evidence People's Exhibit 1, heretofore marked for identification.

(Received in evidence and marked People's Exhibit 1.)

Q You are a member of the police force of the City of New York, are you? A Yes, sir.

Q And you are attached to the 17th Precinct? A 17th precinct.

Q Sometime before noon of the 10th of November, did you see a witness here Alexander Olaskowsky, on the street somewhere?

A Yes, sir.

Q You cannot state what he said to you, but did he come up to you and say something to you, yes or no? A Yes, sir.

Q After he said something to you did you look in any direction? A Well, he pointed towards the other side, showing me---

Q Well, you looked, didn't you? A I did.

Q The answer is you did look, is that it? A I did.

Q Well, when you looked did you see anything? A Yes.

Q What did you see? A A man and woman.

Q Do you see in court here the man that you saw there? A Ye.

Q Whereabouts is he? A Sitting right there, (indicating Defendant.)

Q The defendant? A The defendant.

Q Did you go over and say anything to the defendant? A I didn't say anything to the defendant that time, no.

Q Did you at any time say anything to the defendant? A No,

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only upon Olaskowsky's word, showing me something in his hand,
he said he was robbed.

THE COURT: Strike that out.

Q When Olaskowsky came over to you, you have already
testified he said something to you-- did he show you anything?

A Money.

Q Was it money? A Well, it looked something like money.

Q Did you look at it? A I looked at it.

Q Was it money? A It was not, when I looked at it.

Q I show you People's Exhibit 1 and ask you to look at it;
did he show you something that looked like that? A That is
what he showed me.

Q Well, now, I suppose that you went over to where this
defendant was, after that, did you? A Yes, sir.

Q Did you say anything to him when you went over to where
he was? A I went up after him to avenue A.

Q Did you say anything to the defendant when you got there
to where he was? A No, sir.

Q You did not say a word? A I just brought him back with
this Olaskowsky.

Q Where did you bring him? A Right to the corner, stood
him there, and asked him, "Are you the man" so and so, and he
told me, "He has taken the money from me."

Q I do not understand that. Did you at any time that
morning say anything to this defendant? A No, I didn't say
anything to the defendant.

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Q At no time? A Only upon the complainant Olaskowsky--

Q Well, I don't care who is complainant. I want to know if at any time that day-- I do not care when--if you said anything to the defendant? A Yes, that morning.

Q What did you say? A I said, "Are you the man that took this money from this here party?"

Q Was the party there when you said it? A Yes, sir.

Q You mean Olaskowsky, I suppose? A Yes, sir.

Q What did the defendant say? A He said no, sir.

Q Did you say anything else to the defendant? A No, sir, I says well--I asked the complainant then--

Q In the presence and hearing of the defendant? A Of the defendant.

Q What did you ask the complainant? A I asked him, "Is this the man that took your money?"

Q What did he say? A He said "Yes, sir." Then I said, "Well, I will have to take you to the station house on the complaint of Olaskowsky".

Q Could you understand very well what Olaskowsky said? A Well, in broken English I could. I understood.

Q Then you took them to the station house? A Yes.

Q Did you there see Officer Ransburg? A Yes.

Q And you found out probably that Ransburg knew something about the case? A Yes, sir.

Q And did you then turn it over to him? A Yes, sir.

Q That is all you had to do with it, probably? A That is

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all I had to do with it.

MR. LUSTIG: 'No cross examination.

MR. MANLEY: People rest.

(No motion made by counsel for the defendant.)

Mr. Lustig now opens to the jury in behalf of the defendant.

A N D Y S E M I T T O, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows: (Through Interpreter Meratchnik)

DIRECT EXAMINATION BY MR. LUSTIG:

Q What is your occupation? A Laborer. I work for the Interborough.

Q Do you remember the 9th day of November, Sunday afternoon?

A Yes, sir.

Q Do you know the complainant? A I do not know him.

Q Before that night? A That was the first time.

~~Q How did you meet the complainant that Sunday afternoon,~~
November 9, 1913? A I came from church, I found the complaining witness and a neighbor of mine standing and having some conversation in the hallway.

THE COURT: It is five minutes to one. In order that you may not be interrupted, I think we will adjourn at this time till 2 o'clock.

(The court now declares a recess till 2 p. m., first duly admonishing the jury in accordance with law.)

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After Recess, Trial Resumed.

A N D Y S E M I T T O, the defendant herein, resumes the stand and further testifies:

DIRECT EXAMINATION BY MR. LUSTIG:

Q You stated before that you met the complainant, Olaskowsky, in the hallway, and then afterwards you went upstairs to see your wife. Tell us what happened after you saw your wife?

A The complaining witness followed me, he went over to my house. I asked my wife, "Have you a room for this man?" After this she say--

Q And then what happened? A She told me that she has no room for him.

Q Where was the complainant Olaskowsky at this time when you were in conversation with your wife? A He was in the house and he gave us for a pint of beer.

Q When you left the hallway to see your wife upstairs, tell us where was the defendant at that time, when you had the conversation with your wife? A He was talking with some man in the hallway.

Q During the conversation that you had with your wife what happened to the complainant Olaskowsky, what happened to him?

A The man that he had a conversation with lived upstairs, he is a tenant in the same house. He told him to go into my house, I am in, and he sent out for a pint of beer.

Q What time was this, about? A About half past one.

Q And this was in your house at 191 East Houston street?

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A Yes, sir.

Q Was there anybody else in the room besides your wife when Olaskowsky came in? A And the two boarders, a woman and a man, which were in the house at that time.

Q Did your wife speak to Olaskowsky at that time and tell him? A No.

Q What was the general conversation then while you were there from half past one on? A He said to me that he would like very much to be among his own people, and that he came from Canada just now, and he asked me what was I working at.

Q Did you ask him at any time to let you see what money he had on his person? A No.

Q Did you know how much money he had on his person? A No.

Q You said that he sent out for a pint of beer--did he give you any money? A He took out from his inside pocket some money which was tied up in a handkerchief, he took out from the \$5 and he gave it to me.

Q Do you recognize whether any money that has been exhibited here this morning, whether that was any part of the money that was in that handkerchief? A I don't know.

Q In other words you mean to say there were two separate packages, one package with the money that you saw here on the table this morning, and another package that he gave you the money from?

MR. MANLEY: Objected to. I do not understand the testimony that way.

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THE COURT: Objection sustained. What evidence is there here to the effect that he saw what was exhibited here this morning in the possession of the complaining witness?

MR. LUSTIG: He stated just a moment ago that he took out of the money that he gave him out of the handkerchief, and that there was some money in the handkerchief.

THE COURT: But I do not recall that this witness has testified that he saw this package in evidence, in the custody or charge of the complaining witness yet. My recollection of the facts may be wrong, but do you recollect that he so testified?

MR. LUSTIG: No, sir.

THE COURT: Don't you think you had better question then his remembrance, in view of that fact.

MR. LUSTIG: Question withdrawn.

Q Did you see the bundle of money lying here on the table this morning? A Yes.

Q Did that look anything like the money he gave you for the beer in your house that afternoon? A No. The other money was darker, it was five dollar bills, Canadian money. They were kind of a greenish color, dark.

Q You gave him change out of this money, did you not?
A Yes, four dollars and fifty-five cents.

Q Was that the only time that you went out that afternoon for beer for him? A Five times I left the house and every time I got twenty cents worth of beer.

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Q And he also took part in that beer and drank some of it?

A Sure. He was drinking that beer, he was drinking and so was I.

Q Were there many other people in the room at that time?

A There was a young lady there, she is a servant girl, she is working out, she came to me that Sunday, and he treated her with beer, he wanted her to drink beer, but I objected to it, I told her I wouldn't allow her to drink any beer.

Q Who else went out for beer? A My wife did.

Q Who paid your wife? A The complaining witness.

Q Did anybody else go out for beer? A My boarder went for beer; one that is boarding with me.

Q Who paid this boarder the money for the beer? A The complaining witness. One dollar and twenty cents paid for the beer.

Q You had a very happy time together that afternoon? A Yes.

Q All very happy? A Yes.

Q He was very happy too, was he not? A He was singing with the girls together.

Q Did he tell you any reason why he felt happy? A He said that he felt in love with the girl, he wants to marry her.

Q During the course of this conversation was any conversation spoken of about rooms for him to sleep in that night? A Two young men, one came to my house that Sunday, they worked on Clinton street, they lived somewhere on 16th street, he asked one of them, "Will you have a room?", or "Do you know

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any room for me?" He said, "Yes, I have got a sister there, and I will bring you over here and you can room with her."

Q And you were there in the house till half past six, is that right, that afternoon? A Yes, I was there till that time.

Q Before that did you try-- A That was half past five it was not half past six.

Q Did you at any time go out and look for rooms for Olaskowsky? A I went, I took him over to my brother-in-law, I wanted to get him a room there, I went over there to my brother-in-law, but I didn't find him home, but I found his wife-- he went to a meeting, to a Society; she told me she would take him in, she thinks she has a room, but without the consent of the husband she would not at the present time until he comes back.

THE COURT: When you refer to Olaskowsky, I understand you are referring to the complaining witness Olaskowsky, is that correct?

MR. LUSTIG: Yes, sir.

Q Where does your brother-in-law live? A Third street, I don't know the number.

Q That is not very far from your home, is it? A No, not far away.

Q You walked right back to your house after you got this information from your sister-in-law, or your sister? A Yes.

Q And you were not waiting a long while, were you? A No.

Q About how long were you waiting? A About fifteen or twenty minutes.

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Q And if the complaining witness, Olaskowsky, said you were away for an hour, that was not right, is that right? A No, that is not so.

Q Did you come back with any one when you came back to the house? A I came back alone.

Q You came back all alone? A Yes, sir.

Q And when you told this information to Olaskowsky, what did Olaskowsky say? A He said to me, "I am going to wait in your house."

Q And meanwhile two other men came in the house, is that right? A Yes, a girl comes into my house and she did not write home to her folks for about eight months, and the two young men came over to look for her and find some information from her.

Q And these two young men that came looking for this girl, do you know them? A No.

Q And when these two men came in did Olaskowsky have a conversation with these two men--after a while, of course? A Yes. They immediately became acquainted. They were singing together.

Q And did they drink some beer? A Yes.

Q And tell us what conversation took place about rooms with these two men, by Olaskowsky? A I heard a conversation between the complaining witness and those two men, they were speaking about rooms and like wanted to find out whether he is going to have a room or not. One of the men says, "I have got a sister, and I am going to take you over there."

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Q Did these two men volunteer to take Olaskowsky, the complaining witness, over there to their sister's house? A Yes; they went home, they took him along with them.

Q How did they leave the house in company together, the three men? A The three of them left together; Olaskowsky (meaning the complaining witness) said to me, "Come along, I am going to treat you with some more beer."

Q And you followed them? A No, I remained a little while in the house, because I asked my wife to give me some money to buy gloves to work with, and she gave me a ten cent piece because she didn't have any more money.

Q But when he asked you to go along with him you followed him, didn't you? A Yes, sir.

Q And where did you go? What street? Tell us what direction you took? A On 11th street, in the park, between Avenue A and Avenue B, not in Avenue A.

Q What streets? A Between 11th and 12th.

Q In other words, you were going towards one of the men's sister house on what street? A 16th street.

Q And you were going uptown, is that right? A Yes, sir.

Q And you were nevr near the Bowery, were you, at any time? A No, not near nowheres. I know where the Bowery is.

Q You never were near to No. 275 Bowery that afternoon?

A No.

Q You are positive that you took a course from Houston street directly over to Avenue A between 10th and 11th streets?

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A Yes, when we left our house we went immediately across the park and went into Avenue B--Avenue A.

Q You are pretty familiar with the streets of the east side, are you not? A Sure, yes.

Q And you are positive it was Avenue A between 10th and 11th streets that you were that afternoon? A I will swear to it all the time that I did.

Q Tell us the first thing that attracted your attention when you got to Avenue A between 10th and 11th street? A A man came out from the hallway there. He had a gold chain across his vest, he had a diamond ring on his finger, he looked to me like a lawyer.

Q Did he come over to him? A This man claimed that he lost a pocketbook, and Olaskowsky and the other man they picked that up.

Q And did he demand anything from the four of you at that time?

MR. MANLEY: I want to object to counsel leading. I have not objected before. I think he should ask what happened.

THE COURT: Objection sustained.

Q Tell us what the conversation was that took place there between this man, the stranger and the four of you that afternoon? A This man turned around to us and he said to us, "Do you understand Italian, German or English?" We told him no, we don't understand the language, only Polish.

Q What did he say after you told him that? A He said he

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lost \$300. He said that he picked up the pocketbook and he said to us that the money or the pocketbook was gone and he accused us of having his money.

Q At that time who had the pocket book in his hand? A That is something I couldn't tell you, I don't remember. I don't know whether it is Olaskowsky or some one else.

Q As you struck Avenue A between 10th and 11th street, who walked in front and who walked in back? A Olaskowsky walked in front of us with this other man that was going to take him to his sister to board with.

Q Did you have at any time in your hand this pocketbook as you walked along avenue A? A No.

Q Did you at any time throw it to the ground with your left-hand? A No.

Q Did you at any time pick this up with your right hand?
A No.

Q And show Olaskowsky that you had picked it up? A No.

Q This stranger who was there at that time and who came over to all four of you, did he have any conversation with you about searching all of you? A He took out the revolver, he pointed at us and he told us that he is going to take us to the police, and we were all frightened.

Q What did you then do after he took out the revolver? A He told us to show him our money.

Q And you showed him the money, showed him your money? A I had in this pocketbook ten dollars in gold wrapped up in a piece

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of paper. And this man took this money away from me, this ten dollar gold piece, and he remarked that was not worth anything.

Q Did you then suggest to this stranger to search Olaskowsky? A No.

Q Did you tell him that he had any money in his possession? A No.

Q How did the stranger happen to search Olaskowsky? A He searched every one of us. He pointed at the revolver and was searching every one of us.

Q Did you see when the stranger took the money from Olaskowsky? A No, the strange man that came to us got hold of me and he said that he is going to turn me over to the police. I turned away from him and I took the car and I left him there.

Q And you didn't see any money passed from the complainant, Olaskowsky to the stranger? A No.

Q As soon as you looked at your money you turned away and went away, is that right? A Yes. The strange man hold me by my sleeve, he told me "I am here." He said in English, "I am going to turn you into the police", but I got away from him. I ran from there. I went on a car.

Q You heard the complainant state that you were there during the time that the stranger asked the complaining witness for the money, is that true? A No, that is a lie.

Q The complaining witness further states that after the stranger went away you followed him, is that true? A No, I left

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them there.

CROSS EXAMINATION BY MR. MANLEY:

Q I suppose you were pretty much surprised when this strange man who looked like a lawyer came over to you, weren't you?

A We thought he must be a detective or a lawyer.

Q I say, I suppose you were surprised when he came over?

A Yes, we were kind of surprised, every one of us were frightened.

Q You have never seen him before, had you? A Never.

Q Was he dressed pretty well? A Yes, yes, he was very well dressed, he had a gold chain, he had a diamond ring.

Q On which hand did he have the diamond ring? A Right-hand.

Q Was it a pretty good sized diamond? A A little larger than the one on the stenographer.

Q Was it a single stone or were there two or three stones in the ring? A One.

Q You are sure it was one? A Yes, sir.

Q Can you tell upon what finger he had it, upon that hand?

A That I couldn't tell you, I don't know whether this one or this one.

Q But it was on the right-hand? A Yes, sir.

Q And either the second-- A Yes, sir, it was shining very much at the time when he pointed the revolver at us.

Q It was on the right-hand, was it? A Yes.

Q And either upon the second or the third finger? A Yes, sir, I couldn't say exactly. At the time when he pointed the revolver it must be on this one or this one.

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Q Now, you say that it was upon the same hand that held the gun, didn't you? A Yes.

Q Which one of you four did he point the gun at? A He pointed around from Olaskowsky to every one of us.

Q Did he shift it from one to the other? A Yes.

Q It was broad day light, wasn't it? A Yes.

Q People were passing back and forth upon the street, were they? A It was in the evening, it was about a quarter to six.

Q Well, people passing back and forth upon the street?

A Yes.

Q You saw the chain, did you, the gold chain? A Yes.

Q Did he have that across his vest? A Yes.

Q Did he wear an overcoat? A No.

Q What kind of a hat did he have on-- was it a derby hat or a soft hat? A He had a soft kind of brownish hat.

Q Was it in the park or on the street where this was happening?

A On avenue A, between 11th and 12th streets.

Q On the east or west side of Avenue A? A East.

Q About half way in the block? A Yes, sir.

Q Before this man came over to you, you were all walking on the avenue, weren't you? A We were walking along.

Q Were you walking on the avenue? A Yes.

Q Going uptown or downtown? A Up town.

Q You had seen somebody pick up a pocketbook, somebody in your crowd? A Olaskowsky, the complainant, with the other men.

Q You had seen Olaskowsky pick the pocketbook up on the

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the street, hadn't you? A I seen Olaskowsky.

Q Did Olaskowsky open it when he picked it up? A Yes.

Q You thought that there was money in it, didn't you? A I did not.

Q Was it after Olaskowsky had picked the pocketbook up that the man that looked like the lawyer came over? A This man in here walked on the front of us, Olaskowsky was on the front, and this man kind of bent down, and the pocketbook fell down and then he picked it up and went to us and said that the money was gone.

Q Who picked up the pocketbook? A Olaskowsky and the other man.

Q How soon after Olaskowsky picked up the pocketbook did the man come up? A Immediately.

Q And he says, "Do you talk Italian, German or English?", is that it? A Yes.

Q What language did he say that in? A In English language.

Q He never talked Polish at any time, did he? A He spoke to us in the Russian Language afterwards.

Q He talked English at first and Russian afterwards, is that it? A First he asked us "What language do you speak-- German, English or Italian?"

Q When you went upstairs in your house, 291 Houston street, with Olaskowsky, what was the name of the man that went into your house? A I couldn't tell you; I don't know his name.

Q Does he live in your house? A He was there before, he don't

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live with us any more. He went to the country.

Q You don't know where he is now at all, do you? A No.

Q When you got inside did you tell Olaskowsky that you thought that he could room with your brother-in-law? A I didn't tell him that; I told him probably the wife will take him in, but she can't take him in without having the consent of her husband.

Q You told Olaskowsky you would go over and find out about it, didn't you? A Yes, sir; yes, sir.

Q Did Olaskowsky say he would go over with you? A No.

Q And did you say to him, "You had better stay here and not go out. I will go out and find out about it"? A It was raining very hard at that time. I left him home and I went there myself. He didn't have no umbrella with him.

Q Did you say to him, "You had better stay here and not go out with me, and I will go over myself"? A No, sir.

Q Nothing of that kind was said, is that it? A No.

Q Did you ask him where he came from? Did you find out he came from? Did you find out he came from Canada? A Yes, he said so himself. He said he was looking for a room, and he said he came from Canada.

Q Did you ask him to let you see a Canadian bill? A No, at the time when he gave us for beer he showed us ourselves, and he asked us whether we had ever seen Canadian money.

Q Did you ask him to see a Canadian bill? A He showed it himself.

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Q Did you ask to see a Canadian bill? A No.

Q You simply happened to see it because he took out the money to pay for the beer, is that it? A Yes, sir.

Q Did you tell him that you would take the Canadian money and change it for him? A No, I did not.

Q Did you tell him that you could get more for it in American money than he could get himself? A No, I didn't tell him that. I advised him to put it into the bank.

Q Did he tell you he would change the money and do it himself? A Yes, he said to me that the next day he is going to do with it anything that he wants himself.

Q How long was it before you went out before the two young men came in to see the girl? A About three o'clock.

Q How long did they stay there before you all went out? A Till about half past five.

Q Had you ever seen those two young men before? A No, never, never.

Q How long had the girl lived in the house? A She came to see us, she is a working girl in a private place.

Q Did she live in your house, or just visit there? A Only visited us.

Q She had been visiting there that day, had she? A Yes, that was her day off for that day.

Q How often was she in the habit of visiting at your house? A Every third Sunday she has got a day out.

Q She hadn't been there for three weeks, I suppose, had

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she? A I don't know, my wife will tell you that. Probably she was in my absence.

Q Do you know where she lives? A She was a servant girl, up-town in Kelly street.

Q Do you know what number? A No.

Q Do you know what her name is? A No, my wife can tell you about it.

Q When the two young men came you were in the house at the time I suppose, weren't you? A No.

Q Where were you? A That is the time I went over to find out about the board, about the complaining witness. I was not home at the time.

Q When you came back you found them there is that it?

A Yes.

Q And I suppose you found them talking to the girl, is that it? A Yes.

Q And were they talking to the girl in the same room where Olaskowsky was, or was it a different room? A Yes, the front room.

Q In the same room, is that it? A Yes, sir.

Q Have you tried to find those two men since you were arrested? A My wife was trying. They said they were living some wheres on 16th street, but she don't know the number, she don't know the name, she don't know where to find them.

Q Didn't you know the names at all? A No.

Q You have not been able to find out from anybody their

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names, is that it? A My wife wanted to pay for it to find them.

Q Just before you all started out did you tell Olaskowsky that you would take him out to the place where he was going?

A No.

Q Why was it that you went out? A Because he asked me to go along with him.

Q And he said he would get you some beer, that was the reason, wasn't it? A Yes.

Q Did he get you some beer after you got out? A No, we just walked along straight.

Q Did you ask him where he was taking you to get the beer?

A No, he told me he will take us into a saloon and buy us beer.

Q Had you passed any saloon? A Sure, we did, but I refused to go in. I had a cold at the time, I didn't want to drink.

Q Well, didn't you tel, Olaskowsky that before you left the house, that you had a cold and didn't want any beer?

MR. IUSTIG: I object to the question. I do not see the connection with this witness.

Objection overruled. Exception.

A Yes, sure, I told him I didn't want to drink any beer, only he coaxed me.

BY THE COURT:

Q Were you sober at this time? A We were not very drunk that time. We only had about seven glasses of beer apiece.

BY MR. MANLEY:

Q Well, if you had seven glasses of beer in your house why

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was it you did not want to drink another because you had a cold?

A I was afraid that I will get a worse cold. I didn't have no overcoat on me and I didn't want to go in.

Q Did you ask the two young men where they were going to take Olaskowsky? A No, they told me they were going to take him one of their sister's.

Q Were you interested in knowing on what street it was so you could tell how far he had to walk? A They told me it was 16th street and I understood they took him to 16th street.

Q When this strange man came up to you on the street, did he say that you had probably found the pocketbook? A He didn't say anything. He pressed here immediately as he come in the front of us, he said "That you got my money, haven't you it?"

Q Did he say he wanted to see your money? A He came to us and he pointed a revolver at every one of us.

Q Did he say he wanted to see your money? A No, he didn't say to me, he said to the others and I showed him my money too.

Q Well, he did say to somebody that he wanted to see your money, did he? A Yes, to everybody. He had the revolver in his hand.

Q Did you say to Olaskowsky, "Give the money to him, don't be afraid"? A No.

Q Did you say to him, to Olaskowsky, "Show the money to him and he will see it is Canadian money and will then give it back"? A No.

Q Did Olaskowsky start to pull out the money in his pants pock-

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et, and did you say to him, "Show the money from the inside?"

A No, he took it out himself and he showed it to him at the time when the man was pointing the revolver.

Q There was no such talk at all, was there, between you and Olaskowsky? A No.

Q You have already testified that you did not pick the pocketbook up, haven't you? A Yes, sure.

Q Did you say after the pocketbook had been picked up, "Let us go into a side street? A No, no. We walked right uptown.

Q You did not say a solitary word to that strange man, did you? A No, not one.

Q And you did not say a single word to Olaskowsky about the strange man, did you? A No.

Q All the talk then was between Olaskowsky and the strange man? A That was the only conversation that this strange man spoke, not only to Olaskowsky but to every one of us.

Q But you did not say anything to the strange man yourself? A No, no.

Q Did you see Olaskowsky hand anything to the strange man? A No. I didn't say anything to Olaskowsky. I didn't say anything to the strange man, only when he told us to show the money, I had my money right here in the pocket, and I took it out and showed it to him.

Q Did you see Olaskowsky give anything to the strange man? A No.

Q Did you see the strange man hand back anything to Olaskowsky? A No.

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Q You had gone away before that happened, hadn't you? A Yes sir, because he wanted to hand me over to a policeman.

Q How did you get away from his revolver? A I ran away from him, and I ran into a car.

Q And I suppose you ran away right at the very beginning, didn't you? A At the time when this strange man came to me and he took out the revolver, I took out my money and I showed him the ten dollar gold piece I had. He looked at it, put it back in the paper, wrapped it up and put it back in my pocket. Then he turned around to the other man, still holding me over the sleeve. As he turned around I got away from him, ran away, got into the car and left him.

Q Didn't the strange man hand you back anything after you had given him that gold piece? A Yes, he took away my ten dollars and he gave me that at once back, he gave me back instead of that a copper piece, a check like you get in a pool-room or a saloon.

Q Have you got it there? A My wife has got it, she has got it.

Q Did you say to the two men, "Take this man over where you are going to take him"? A No.

Q You didn't say anything of that kind to him? A No.

Q Did you walk away with the strange man? A No, I left them right there.

Q Well, you wouldn't know where to find that strange man at all now, would you? A I wish I would find him, I would arrest him myself.

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I say, do you know where to find him? A No.

Q Did you the next morning see Olaskowsky in front of your house when you came out? A Yes, I did. He came with the policeman.

Q Did you tell him on the way to the station house that you would go and get the money back and you would give him three dollars a day? A No, no, I didn't.

Q Did you tell the police officers that you didn't know him? A Yes, I did.

Q Did you tell him that you had not seen him before? A Yes, I told him I have seen him on Sunday.

Q Did you tell the policeman right at the beginning that you had seen him before, and knew him? A Yes, yes, I did.

Q You never denied to the officer at any time, or never said to the officer at any time that you didn't know him, is that it? A No.

Q What I understand you to say is that Olaskowsky was pretty drunk? A He was fine drunk. He was drinking beer with the girls.

Q Did he stagger when he walked? A No, he as not walking at all, he was not staggering at all. He walked straight ahead.

Q Did he get mixed up a little when he talked? A Yes, at that time you could find out he was drunk.

Q You could tell from the way he talked that he was drunk, is that it? A He was even drunk the next day in the court.

Q I say, you could tell at this time that we are talking about--on Sunday--could you tell from his talk that he was drunk? A Yes.

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Q You say that Olaskowsky wanted to marry that girl that he had never seen before, is that it? A Yes.

BY THE COURT:

Q Did you distinctly see this man who you say looked like a lawyer or a detective, that wore a chain and the diamonds?

A Yes, I did, he pointed the revolver at us.

Q Were you sober then? A No, not very drunk. If I see him in the street I would know him.

Q Did you have your senses then, were you able to see everything and know everything that was happening? A I was drunk, but it seems to me if I would know him I would recognize him.

Q Were you able to see everybody and know what was happening about you? A I was drunk. I couldn't give you any distinct recollection about it. We were alldrunk all of us.

Q Do you remember everything that happened when that man came up that wore that chain? A No. At the time he told me he was going to take me to a policeman, I got away from him and ran away.

Q Did he still have the revolver in his hand when you left him? A Yes.

Q About how long did he have that revolver out in his hand?

A About ten minutes. Then afterwards he had it with his hands open.

Q He had the revolver out in his hand about ten minutes?

A Yes, sir.

MR. JUSTIG: There was another answer. He said he

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also hid it on the side.

THE INTERPRETER: Yes, he said he had it about ten minutes, pointing at us, and then he held it down.

Q How long did he hold it down? A About five minutes, about fifteen minutes he was bothering us.

M R S. B I R D I E S E M I T T O, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LUSTIG:

Q You live at 91 Houston street? A Yes.

Q What is your business? A Housework.

Q You live at these rooms there in Houston street? A Two rooms.

Q You also rent these rooms to boarders, is that right? A I haven't got now any boarder.

Q But about the 9th day of November, did you have any boarders in your premises? A Yes, I had a man and a woman.

Q Do you know Aleck Olaskowsky, the complainant in this case? A Once I have seen him.

Q You saw him, and that was on the 9th day of November, 1913?
A I think so.

Q Do you remember the time he came into your house? A Yes, I remember when he came to the house.

Q Who invited him to come up? A I don't know.

Q He came in, and what was the first words that he uttered when he came into the rooms? A He came up and he said he was

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looking for a boarder.

Q Before he came up did your husband have a conversation with you about taking him in as a boarder? A My husband didn't say to me anything.

Q But before the boarder came in who came in before Mr. Olaskowsky, the complainant in this case? Who came in before he did? A I forget.

Q Was your husband in the room when the complaining witness Olaskowsky came into the house? A My husband was in the house. I think the boarder that was in my house came from the street with this complaining witness.

Q What was the conversation that took place when Olaskowsky came into your room? A The boarder that is boarding with me with his wife said to me, this man is looking for a room, won't you take him in?" I told him no, I have got nothing. You are with your wife, that is enough in this house.

Q Did your husband then go out and leave the room? A My husband left. This complaining witness was in the house. He sent out for beer.

Q At the time your husband left where did he go? A I don't know.

Q Don't be nervous. At the time that you told Aleck that you had no room in your house did your husband suggest anything and go out for it? A Yes, he left, he went down somewhere, I don't know.

Q He went out for some purpose, didn't he? He went out for Aleck, to get rooms for him? A I think so.

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Q And how long did he stay away? A He was away for a while, I don't know how many hours or how many minutes. I couldn't tell you.

Q Did your husband go out for beer that afternoon? A No, the boarder did.

Q Did you go out for beer? A No, sir.

Q Who went out for beer that afternoon? A The boarder.

Q The boarder went out for beer? A Yes.

Q How many times did he go out for beer? A Three times.

Q And what was the price paid for each can of beer? A Three pints of beer were bought. They were paying twenty cents for each pint.

Q That means a double pint, doesn't it? A Yes, three pints for twenty cents.

Q Then that is six pints? A Yes.

Q During the time that these pints of beer went out and came in did the complaining witness drink any of that beer? A He did not come sober into my house--he was drunk already when he came in.

Q How many glasses of beer did he have while in your house from two o'clock till six o'clock that night? A He drank from every pint three or four glasses.

Q Did he at any time show you that he had any Canadian money amounting to some one hundred and fifty dollars in his possession? A Not to me.

Q Did he tell you that? A He showed to the boarder.

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Q And it was this boarder, a girl? A No. A married man and a married woman. This was the man.

Q There was also a girl there, wasn't there? A This was a young girl, I don't know her, I don't know who she is, she didn't come home to me, but she came to this boarding woman that was with me.

Q But the girl was there? A Yes.

Q And she was simply there as a visitor? A Yes, she came as a visitor to this boarding woman.

Q And Alex fell in love with her, is that right?

MR. MANLEY: I object to this. Counsel is doing all this testifying. I suggest the witness do it.

THE COURT: Objection sustained.

Q Did he show any attention to this boarder or girl? A Yes, he said he was willing to marry her.

Q Going to marry her when? A He said to her that he will have a little rest, he will get over this here noise, then he will marry her.

Q Did he treat her to any beer? A He did.

Q You were very happy there? A Yes, yes.

Q What were you doing there, -- singing? A They were sitting in the front room.

Q He was very happy, Olaskowsky, is that right? A Yes, he was happy. He said he was going to marry this girl, take her for his wife. I told her that has nothing to do with me, I don't want to know nothing about it.

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Q during the time you were sitting there two men came in.
Now, do you know--

Objected to as leading. Objection sustained.

Q during the time that you were having this beer did anybody come in? Did anybody come in? A Yes, two men came in there.

Q Do you know who these two men are? A No.

Q Well, those came in? A Because they came to the boarders.

Q Did Olaskowsky speak to them? A Yes, I heard them speaking one to the other and Olaskowsky was speaking about some board, and he told him he would find a room for him to board in.

Q Did Olaskowsky go away then? A He went; he left the two men.

Q He left the two men? A Yes.

Q How soon after that did your husband go out? A My husband was home, my husband was drunk. He left himself, I don't know where he went to.

Q Did you ever hear anybody ask him to come along, ask the defendant to come along? A They said, "Come along." I told them, "I wouldn't let you go, you are drunk. Go to sleep."

Q You are pretty positive though that your husband was the last man that left that room? A Yes, he was the last one, he left the home with the child.

CROSS EXAMINATION BY MR. MANLEY:

Q Do I understand that at that time a man and his wife were living at your house, boarding there, that is, having a room there? A They were living with me for one week, from the country.

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Q Do you know their names? A No, sir.

Q How soon after this day did they leave? A Right the next day they left me, they told me they can't find no work.

Q Were they Polish? A Russian people. I don't know their name.

Q Don't you know where they went to? A No.

Q This girl that came in came in to see them, did she? A Yes.

Q You say that the man and the woman had been there only a week, is that right? A Yes.

Q You probably had never seen the girl before that date, had you? A Never did before, noways.

Q Hadn't she ever come there on a Sunday before that? A No.

Q Hadn't she been there three Sundays before that? A No, no.

Q Well; did you ever see two young men before that came to see the girl? A Never did.

Q Do you know where the girl is now? A No.

Q Do you know where the two young men are now? A No. I don't know their names. I don't know them at all.

MR. LUSTIG: Defendant rests. I ask your Honor to dismiss the complaint and direct an acquittal.

Motion denied. Exception.

MR. MANLEY: I will recall Olaskowsky.

ALEXANDER OLASKOWSKY, the complainant, recalled by the People, in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. MANLEY:

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Q Did this strange man that came up on the street and to whom you passed the money, did he have a revolver? A No.

CROSS EXAMINATION BY MR. LUSTIG:

Q Did you feel drunk at that time, that afternoon? A No, two glasses of beer, that's all I had.

Q You had two glasses of beer all afternoon? A Yes, I only had two glasses of beer at the time the defendant came back from his brother-in-law.

Q You promised a girl over there in 191 East Houston street to marry her, did you not? A No. This girl was there, she was sitting there for a little while, two other girls come in, I didn't drink with the other girls, I only had two glasses of beer with this girl the first time.

Q But you sat with the girl when you had the glass of beer with her, didn't you? A Yes, they were speaking to her, they called her Rennie.

Q And you spoke to her too, did you not? A Yes, sir.

Q And you don't remember whether you promised to marry her or not, because you were too drunk, is that right? A No, no, no. I didn't say that I was going to marry her. Why should I say so, when I seen her for the first time?

Q But you sat alongside of her? A Well, the room there is very small. This man, meaning the defendant, and his wife was here, this other boarder was there, the wife was there, and that girl was there-- we had to sit one next to another.

Q Then you did sit next to the girl? A Yes, in the same

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room, him and me and everybody was sitting there.

Q Didn't you make love to the girl? A No, no, that is the first time I have seen her.

Q Didn't you feel drunk when you got to Avenue A and 11th street?

MR. MANLEY: It seems to me we have been over that.

THE COURT: Question allowed.

A No.

Q You still were drunk in the Magistrate's court the next morning, were you not? A They seen me when I returned home that day to Ludlow street, they seen me going around the street, they can tell you, and everybody will testify that I was never drunk and I was not drunk at that time.

BY THE COURT:

Q Did the defendant act as if he were drunk or sober?

A No, nobody was drunk.

O T T O R A N S B U R G, recalled by the People, in rebuttal, testifies as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You say it was about what time on that Sunday night when you saw the complaining witness, Alexander Olaskowsky? A About 9:30 p. m.

Q And was he intoxicated? A I wouldn't know he was drinking.

Q Was there any indication of any kind that he had been drinking at all? A No.

Q Did the defendant, the next day when you saw him, when he

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was brought to the station house, or with other officers, to testify up there, say anything about a strange man on the street coming up with a gun in his hand and pointing it at him? A There was nothing mentioned about a gun at no time.

Objected to. Objection overruled. Exception.

Q You say you talked with the defendant, and he could talk English, is that so? A Broken English.

Q At any of those times that you talked with him did he claim anybody on the street had a gun and pointed it at him, and the others? A No, sir.

MR. MANLEY: I suppose you will stipulate, that you will concede that \$150 in Canadian money is worth more than \$50 in American money, won't you?

MR. LUSTIG: Yes.

MR. MANLEY: People rest.

MR. LUSTIG: I renew the motions to dismiss the case on the ground mentioned before, and on all the evidence, the People not having produced sufficient evidence, and I ask your Honor to direct a verdict.

THE COURT: Motion denied.

MR. MANLEY: I am willing to withdraw the second count in the indictment and go to the jury on the first count charging common law larceny.

THE COURT: The second count is withdrawn from the consideration of the jury. Just go to the jury on the first count of the indictment.

Counsel now close to the jury.

The Court now charges the jury.

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CHARGE OF THE COURT, Mahoney J.

THE COURT: Gentlemen of the Jury, this defendant has been indicted for the crime of grand larceny in the second degree. In the indictment he is charged with committing the crime of grand larceny in the second degree, by what is called the common law count of larceny, and the second count by what is ordinarily known as the embezzlement count of larceny. The second count has been withdrawn from your consideration and this case is not going to you with the second count at all to be considered by you. The only count to be considered by you is the common law count of larceny --- that this defendant committed what is ordinarily known as common law larceny.

Larceny is defined by the penal law as follows:

"A person who with the 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:

"1. Takes from the possession of the true owner, or of any other person, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind, steals such property and is guilty of larceny."

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That is the general definition of larceny. We have different degrees of larceny, depending upon the amount involved in the stealing and depending to a certain extent upon the circumstances under which the stealing takes place. Of course, you have what is known as grand larceny in the first degree. And I might say in brief that it is larceny where the amount involved is of the value of more than \$500. That is the portion of the definition of grand larceny in the first degree that is at all material in a consideration of such a case as this. Because it is not alleged that the property was taken at night or anything like that.

Then we have what is known as grand larceny in the second degree. "A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this article, steals, or unlawfully obtains or appropriates:

"1. Property of the value of more than \$50, but not exceeding \$500, in any manner whatever."

If the allegation were that the property in question was worth more than \$500 the probabilities are that the defendant would have been indicted for grand larceny in the first degree; but the District Attorney makes no claim that the property in question in this case was worth

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more than \$500. Consequently, the defendant could only be indicted for grand larceny in the second degree. So far as value is concerned that portion of this section of the Penal Law is material which states "Property of the value of more than \$50, but not exceeding \$500, in any manner whatever." For your consideration it has been stipulated in this case that the property in question, although Canadian money, was worth more than \$50. Consequently, if you find all the elements of the crime present, if you find beyond a reasonable doubt that the stealing took place, then the crime committed might properly be grand larceny in the second degree, because the property stolen was of the value of more than \$50.

I told you that this indictment is in the form of what we call common law larceny, which is defined by decisions of our court as follows:

"The offense of larceny at common law is established by proof on the part of the prosecution showing that the defendant obtained possession of the property by some trick, fraudulent device or artifice, with the intention at the time of subsequently appropriating it to his own use."

You see there must therefore be at the time of the taking a felonious or fraudulent intent; that must be shown by the District Attorney beyond a reasonable doubt. The property must have been obtained by some fraudulent

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trick or artifice, with the intention of those taking it, or of him who took it at the time, of subsequently appropriating the property to his own use. That element of the crime, of course, must also be proven beyond a reasonable doubt.

And, also, you must find that the complaining witness, in order to find the defendant guilty in a case of this kind, or the one who parted with the property, merely intended to part with the possession of the property and not with the absolute title of the property at the time. That is in short what is known as the crime of grand larceny in the second degree, of the character of which this defendant has been indicted.

That is the law, so far as concerns the crime of the nature of which this defendant has been indicted.

So far as the facts are concerned, you are the supreme judges of what the facts are. What the law in the case is you must take from the Court. You are the supreme judges of the facts, and you must apply the law as I have given it to you defining larceny and more specifically the crime of grand larceny in the second degree, to the facts as you find them.

The counsel for the defense in his summing up and the Assistant District Attorney have referred to the facts in this case; but if they have stated facts at all at

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variance with your recollection of the facts as they are in the record, then you disregard anything they have said about the facts, because your recollection of what the facts are is controlling; you are the supreme judges of the facts. Furthermore, if they stated anything to you as to what the law in this case is you must disregard that and take the law solely from me. I must take the responsibility of giving you the correct principles of law to be applied to the facts in this case.

You have been told what larceny is, you have been told what grand larceny in the second degree is, and I have told you what elements you must find in this case before you can convict this defendant. In addition to what I have already stated I wish to state that there are certain principles of law which you must take into consideration before you come to a final conclusion. One of those is that a defendant in a criminal action is presumed to be innocent. His arrest, his arraignment before a Magistrate, his indictment by the Grand Jury, mean nothing; that is simply a formal procedure that must be gone through in order to bring the defendant into court and try him. Therefore, you must absolutely disregard the fact that he has been indicted. An indictment is a mere accusation. This presumption of innocence therefore is with the defendant throughout the entire trial; it is with him now, it is with him until you finally

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render your verdict.

Furthermore, the burden is upon the prosecution to prove the guilt of a defendant in a criminal case beyond a reasonable doubt. Some of you probably have sat in civil cases and heard it stated that if plaintiff proves his case by a fair preponderance of evidence you must find for plaintiff; but in a criminal case it is different --- the defendant must be proven guilty beyond a reasonable doubt, if he is guilty. What is a reasonable doubt? I will read it to you as the same has been stated by the Court of Appeals of this State:

"A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing; but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence in the case."

You gentlemen have heard the witnesses and it may possibly be that you believe one witness and you disbelieve another, and you want to know what the law is concerning that. I instruct you that the credibility of witnesses is with you; you are to determine how much weight you are to give to the testimony of the respective witnesses in this case. The credibility of the witnesses is for you to determine, and you are to determine that matter, taking

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into consideration other things in the case --- what motives might have inspired them to testify one way or the other; taking into consideration their conduct on the stand, how they told you their story and how they responded to the questions put to them. If you should determine that any witness here wilfully testified falsely on any material fact, or on any material aspect of the case, then you are justified in disregarding the entire testimony of that person. In other words, the credibility of witnesses is with you. You are to apply your judgment, your business training and experience in determining how much credibility will be given to the witnesses under the circumstances which I have stated.

There is some evidence in this case to the effect that the defendant was intoxicated at the time of the alleged commission of the crime. So far as that is concerned I will read the following provision of law which may be considered applicable thereto:

"No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the defendant was intoxicated at

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the time in determining the purpose, motive or intent with which he committed the act."

The learned District Attorney has also referred to the fact that he would request me to charge with reference to a person aiding or abetting in the commission of a crime, and anticipating his request to me, I will charge you as follows:

"A person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal."

I have refrained from discussing the facts in this case because I think your recollection of the same probably is quite clear. I stated that your recollection of the facts is controlling. If after you have retired to the jury room you are in doubt at all as to any of the portions of the testimony it is your privilege to request the Court to have the stenographer read any portion of the testimony to you which you wish to have read. Of course, it is but fit and proper that you should not decide a case where you have not a recollection of material facts in the case and if you want your recollection refreshed it is the duty of the court to instruct the stenographer

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to refresh your recollection.

Are there requests to charge?

MR. LUSTIG: None your Honor.

MR. MANLEY: Along the line of aiding and abetting, although it is practically covered by your Honor's charge, will you charge that where the evidence shows a criminal conspiracy or scheme between several persons and one does one act as part of the scheme and another another, that the one person is bound by the acts of the others, providing those acts are a part of the general scheme.

THE COURT: And same scheme, I so charge.

MR. MANLEY: May the jury take this exhibit?

THE COURT: If there is no objection, they may.

MR. LUSTIG: No objection.

(Exhibit taken by the jury.)

(The jury now retire to deliberate upon their verdict and upon their return render a verdict finding the defendant guilty of the crime of grand larceny in the second degree, with a recommendation of the defendant to the mercy of the Court.)

Stewart Liddell,
Official Stenographer.

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