

START

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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

-----x
THE PEOPLE

against

MAX WEINSTEIN.
-----x

2212

Indictment filed 31st day of March, 1913.

Indicted for Burglary in the third degree, Grand Larceny in the
second degree, and receiving.

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

For the People,

ASSISTANT DISTRICT ATTORNEYS McCORMICK and WELLMAN.

For the Defendant,

M. A. SACHS, ESQ.

Tried before HON. JOSEPH F. MULQUEEN, Judge, and a
Jury, on the 8th day of December, 1913.

Thomas W. Osborne,
Official Stenographer.

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M O R R I S S . T R O P , called as a witness in behalf of the
People, being duly sworn and examined, testified as follows:
(Residence 125 West 143rd street).

DIRECT EXAMINATION BY MR. WELLMAN:

Q You are president of the Trop Chocolate Company? A Yes.

Q And in February of this year, the place of business of
the Trop Chocolate Company was at 487 Greenwich Street? A Yes.

Q That is in this county and city? A Yes.

Q Did you have in your employ at that time a boy by the
name of Abram Kassel? A Yes, sir.

Q How long had he been in your employ up to the 17th of
February? A About ten weeks.

Q What was the nature of his employment? A Shipping clerk
and stock clerk.

Q On the 17th of February what time did you close up?
A About quarter of six.

Q And what did you do in closing up? A Locked the door.

Q The front door leading into Greenwich Street? A The door
upstairs, and front door leading to Greenwich Street.

Q Those are the only two entrances into your place? A Yes.

Q From the street? A Yes.

Q Who had a key to the store besides yourself? A Abraham
Kassel.

Q Was he with you that night when you closed up? A Yes.

Q What did you do after leaving the place? A Tried the lock

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to see if it was locked, and I was always the last one to be out.

Q What? A I was the last one to leave the premises, and saw that everything was locked.

Q And where did you go from there? A Went towards Desbrosses Street station.

Q With whom? A I went with him as far as Canal Street.

Q With Kassel? A Yes.

Q As far as Canal? A Yes.

Q Then you left him and went towards your home? A Yes.

Q When did you go to the store next day? A About eight o'clock in the morning.

Q Do you know a man named Joseph Goodman? A Yes, sir.

Q Who has a store across the way at 487? A Yes.

Q Did you see him on the following day? A Yes, sir.

Q Did you have a conversation with him? A Yes, sir.

Q Pursuant to that conversation, what did you do? A Went down to the police station and asked for officers to assist me in that case.

Q Was Officer Gilkinson of the 10th precinct Detective Bureau one? A Yes, sir.

Q What did you and Gilkinson do first? A We waited across the street from the factory and around the factory every night, and finally caught Abraham Kassel coming out.

Q You arrested Kassel, or had him arrested? A Yes.

Q Subsequent to Kassel's arrest, did you and the officer

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have a conversation with Kassel?

BY THE COURT:

Q Yes or no? A No.

BY MR. WELLMAN:

Q I mean by subsequent, any time after the arrest, and before Weinstein was arrested? A When we arrested him?

Q Yes? A Yes.

Q That was what I meant, you had a talk? A Yes.

Q And after that talk was the defendant arrested? A Yes, sir.

Q How many days afterwards? A The next day.

Q That was the same week then as the burglary was committed? A Yes.

Q Where did you arrest him?

THE COURT: Which one?

BY MR. WELLMAN:

Q Weinstein? A Rivington and Norfolk Street.

Q Before you had arrested him, had you seen a man named Seidman? A Yes.

Q Now, did you have a conversation with Seidman? A Yes, sir.

Q Did you see any of your property in the custody of Seidman? A Yes, sir.

Objected to as incompetent, irrelevant and immaterial and calling for a conclusion. Overruled. Exception.

MR. WELLMAN: We will connect it.

BY MR. WELLMAN:

Q Now, when Weinstein was arrested, where was he taken?

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A He was taken down to in front of 487 Greenwich Street.

Q That is your own place of business? A Yes.

Q Was Mr. Goodman there at the time? A He was taken there at the time to identify --

BY THE COURT:

Q Yes or no? A Yes.

BY MR. WELLMAN:

Q Where was Goodman? A Across the street.

Q Was he taken there for the purpose of Goodman having a chance to look at him? A Yes.

Q Do you know whether Goodman identified him? A Yes, sir.

MR. SACHS: I object.

THE COURT: I sustain the objection. Strike out the answer.

BY MR. WELLMAN:

Q What property was missing from your place the next day, that is, the day after the alleged burglary?

MR. SACHS: I object as leading and calling for a conclusion.

BY THE COURT:

Q State the articles which were in your store when you left and which you did not find there the next day? A One hundred and eighty cherries in a box, chocolate covered; fifty-six cherries packed to the box.

BY MR. WELLMAN:

Q Of what value?

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BY THE COURT:

Q How many boxes ? A About twenty-five of those large boxes, one hundred and eighties.

Q What was their market value? A Over \$75. -- I couldn't say their amount now -- pretty near nine months back.

BY MR. WELLMAN:

Q See if I can refresh your recollection, did you have cherries put up, one hundred and eighty of them in a box? A Yes.

Q What did you call those cherries? A Cherries in syrup.

Q What was the value of them? A A dollar and a quarter.

Q A box? A Yes.

BY THE COURT:

Q How many boxes of that kind did you fail to find, that had been there the night before?

BY MR. WELLMAN:

Q How many of the 180's? A About twenty-five or thirty-five. It is about nine months past and I could not recollect.

BY THE COURT:

Q Your best recollection? A About thirty-five.

Q Did you make any statement at that time? A Yes.

Q Would your recollection be refreshed if you heard it?

A Yes.

BY MR. WELLMAN:

Q Is it not a fact that you stated at the time this case was before the Magistrate, that there were thirty-five boxes?

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Objected to. Overruled. Exception.

Q With 180 in a box? A Yes.

THE COURT: This is calling attention to previous statements to refresh his recollection.

BY MR. WELLMAN:

Q Is that correct? A Yes.

BY THE COURT:

Q Does that refresh your recollection now? A Yes.

BY MR. WELLMAN:

Q Fifteen boxes of two cent cherries, fifty-six in a box?

A Yes.

Q And twenty boxes of cherry melloes? A Yes, sir.

Q Forty-eight in a box? A Yes.

Q Twenty-five boxes of cherries, nineteen in a box? A Yes.

Q If you know, what is the reasonable market value at that time of the two cent cherries, fifty-six in a box? A 60 cents.

Q 60 cents a box? A Yes.

Q And of the milk melloes? A 34 cents.

Q And of the forty-eight in a box? A That is the milk melloes.

Q Of the ninety in a box? A 63 cents.

BY THE COURT:

Q In all you say the market value of the property was about \$75.? A About that, totaling up the amount.

MR. WELLMAN: May we have it on the record that the full value is \$75.35?

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THE COURT: Yes, as testified to by him.

BY THE COURT:

Q You know the market value of those cherries? A Yes.

Q You have bought and sold? A Yes.

BY MR. WELLMAN:

Q Did you manufacture them? A Yes.

Q Was that your regular price? A Yes.

BY THE COURT:

Q That was the fair market value on that day? A Yes.

MR. WELLMAN: May I have your Honor's permission to recall this witness for the identification of the box. It has been mislaid.

THE COURT: You wish to end the examination now?

MR. WELLMAN: In a few moments, with that reservation to recall him for that purpose.

THE COURT: You may recall the witness at any time, unless the other side have suffered some loss in the meantime.

CROSS EXAMINATION BY MR. SACHS:

Q Did you ever have the young man Kassel arrested before the occasion that you mentioned in court here? A No, sir.

Q Was there a time three or four days before you had him arrested in this matter, that you had him arrested for taking packages out of your place? A No, sir.

Q What? A Had him arrested once.

Q Was this the occasion to which you testify? A That I just testified.

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Q In this case? A Yes.

Q That was the only time you ever had him arrested? A Yes.

Q You stated here that you were president of the Trop Manufacturing Company? A Yes.

Q What particular duties in relation to your business, did you perform at or about the time of this alleged burglary? A I superintend the factory, and attend to the finishing end of it.

Q Is that what you stated before in this case?

Objected to.

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

BY MR. SACHS:

Q As a rule what time did you leave your place of business to sell? A In the mornings.

Q About what time? A About 9 o'clock.

Q At what time did you, as a rule, get to your place of business? A 8 o'clock.

Q You spent an hour in your place of business? A Yes.

Q You told the jury just now that you looked after the financial affairs of the company? A Yes.

Q Did you spend any part of that hour with your bookkeeper?
A No.

Q Or going over your books? A No.

Q Or looking over your accounts? A No, sir.

Q What did you do during that hour? A Looked over the mail.

Q At the time that the Trop Manufacturing Company was in

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Greenwich Street, how many floors did you occupy? A One floor.

Q In what part of the building was that one floor? A The first floor.

Q Was that the floor on the street level? A No.

Q One flight up? A One flight up.

Q In the mornings you attended to your mail? A Yes.

Q About how long would that take you? A About half an hour.

Q Did you attend to the filling of any orders in the mornings? A No.

Q At 9 o'clock you left your place? A Yes.

Q On your tour of selling? A Yes, sir.

Q And on various days you went to various parts of the city?
A Yes.

Q Sometimes to Brooklyn? A Yes.

Q Sometimes to the Bronx? A Yes, sir.

Q And you spent your different hours in different places?
A Yes, sir.

Q For the benefit of your company always? A Yes, sir.

Q Was it a custom for you to come back to your place of business after you did your selling? A Yes.

Q And as a general thing what time would you return?

A 12 or 12:30, sometimes one. I generally get there about one o'clock.

Q After your arrival at your place of business, do you remain there steadily until the closing hour? A Yes.

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Q And during that time did you attend to the shipment of goods? A No.

Q Did you spend most of your time in your office? A Yes.

Q Let me see, where was your office located with reference to the entire floor? A The front of the building.

Q Would customers come up there to see you? A Well, no.

Q What did you do from one o'clock until your closing hour?
A Looked over my accounts and my books.

Q Your accounts and your books? A Yes.

Q That took you as a rule, up to 6 o'clock? A Yes.

Q On the 17th day of February you left your place of business at about 6 o'clock? A Yes.

Q Where were you living at that time? A 125 West 141st.

Q And as a general thing you came up on the 6th avenue train, did you not? A 9th avenue.

Q Kassel had been in your employ, you say, for about ten weeks at that time? A Yes, sir.

Q Did Kassel ever ride uptown with you? A He did.

Q How often during the ten weeks he was in your employ, did he ride uptown with you?

Objected to as immaterial. Question withdrawn.

Q Did he ride more than once?

Objected to as immaterial. Sustained. Exception.

THE COURT: It is the same question repeated.

BY MR. SACHS:

Q Had you known Kassel before he came into your employ?

A No.

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Q Do you know if, during the time that Kassel was in your employ, he was arrested on any charge not preferred by you? A No.

Q You do not know? A No.

Q Kassel was your shipping clerk? A Yes.

Q And as stated by Mr. Wellman in his opening address to the jury, you had certain letters and certain numbers on the boxes? A Yes.

Q That you sold? A Yes.

Q And from 9 o'clock until 12, as a rule, you were not at your place of business? A No.

Q Can you state whether or not your rules, as far as shipments were concerned, were always kept? A I could not say.

Q Mr. Wellman in his opening said that a box which bore the letter B 17, indicated that it was made in the second month of the year and on a certain date, the 17th day? A Yes, sir.

Q Now considering the fact that between 9 and 12 you were not in your shipping department, and that after one o'clock you were generally engaged in your office, would you say under oath that under no circumstances could a box marked B 17 be shipped on that very same day? A I could not say.

THE COURT: He did not say shipped. He said made.

THE WITNESS: It is made on that day.

Q That is the date of the packing? A Yes.

Q Do you ship them off as soon as you pack them? A No, never on that day.

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BY MR. SACHS:

Q Do you know if they were or not? A I know.

Q You were not present? A I was not present.

MR. WELLMAN: None were shipped in the usual way?

THE WITNESS: No.

BY MR. SACHS:

Q You say in answer to Mr. Wellman's question that none were shipped in the usual way on the same date of packing? A No.

Q But do you know whether or not by accident or chance or design or on purpose a box that was marked B 17 could not have been shipped on that very day? A No, sir, it could not be shipped

Q Tell us why, considering always that you were not present? A The orders are gotten in on the same day. The orders that are gotten in on that day are not shipped until the following day or a day later or two days later. We do not ship the orders the same day we get them.

MR. SACHS: We will take it that way.

BY THE COURT:

Q That "B" was shipping day, not packing day? A Packing day.

Q Packing day and not shipping day? A Not shipping day.

BY MR. SACHS:

Q You say the orders received on the 15th were shipped on the 16th or 17th? A Yes, sir.

Q Tell us this, how you know that a box marked "B 17" could not have been shipped to fill an order that was received on the

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15th? A The nature of these goods is maraschino cherries, and the nature of those goods, it has to set about four days or five until it matures and gets sort of a syrup in it. If you shipped it out the same day it is hard, and the result is you would get it back. That is why we have this mark upon it, so that we know for our own reference, how many days it has matured, so we can send it out in the proper time.

Q You tell us it would be inadvisable to ship cherries on the same day that you made and packed? A Yes.

Q I did not ask you that, you say they are not shipped because they have not matured, is that right? A Yes.

Q I do not ask you that question, I ask you to tell this jury how you know, considering the fact that you were not present, that goods marked B 17 could not have been by accident shipped on the same day? A Because we have a truckman that does the delivering for us. He comes the following day for goods turned in on the day previous -- he does the delivering for us, and all the orders for Monday -- he comes Tuesday or Wednesday to get the orders for those two previous days.

BY THE COURT:

Q Don't you keep a record of the boxes that are sent out?

A The amount of the boxes.

Q And the individual boxes? A No, the amount of boxes.

Q The number of boxes? A The number of boxes.

BY MR. SACHS:

Q When the expressman calls for his goods to be delivered,

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does he get a single box? A No, sir.

Q He receives packages? A Receives them in bulk that way, in quantity.

Q A number of boxes of that kind which is before you now may be put into a package? A No package --

THE COURT: Why not concede, if they went out, that they went out by accident.

MR. SACHS: I am willing.

BY MR. WELLMAN: By accident?

MR. SACHS: Yes, I do not care how they went out.

MR. WELLMAN: They did not go out with his authority.

MR. SACHS: Just a moment. They may have gone out in the regular way, except that certain --

THE COURT: He does not say they may have, but if they did go out.

MR. SACHS: That is all I meant.

THE COURT: If any went out, it was against his rule.

MR. WELLMAN: Yes, without his authority.

MR. SACHS: No.

MR. WELLMAN: That is what he says.

THE COURT: His order was not to ship any --

MR. SACHS: His order was to fill his orders.

THE COURT: But not ship any except those that had matured for three or four days.

BY MR. SACHS:

Q I will ask you this --

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THE COURT: He cannot, from the nature of things, swear that that box was not shipped that day.

BY MR. SACHS:

Q This defendant was arraigned in some Magistrate's Court?

A Yes.

Q And there he was discharged? A Yes.

Q Did you testify in that court? A No, sir.

Q Did the officer testify --

THE COURT: Unless he can swear that he saw that particular box in the store the night before he went home --

MR. SACHS: What?

THE COURT: I say -- could you swear you saw that particular box in the place the night before that you went home?

THE WITNESS: No. The boxes are all of the same color and all of the same date, and we made several hundred of them.

MR. SACHS: I did not hear that.

THE WITNESS : I say the boxes are of the same color, and same label on it and same date.

Q You said something else to his Honor? A That was all I said.

THE COURT: That was all he said.

BY MR. SACHS:

Q Will you swear you saw that box in your place on the 17th day of February? A I swear this is one of my boxes.

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Q I did not ask you that question? A How could I swear to it?

Q That is what I want to know, can you swear that that box was in your place? A No.

Q Were you in court, in the Jefferson Market Magistrate's Court during the examination of the defendant? A Yes.

Q Did the officer testify there? A No.

Q Did Kassel testify? A No.

Q Against the defendant? A No.

Q Did any one testify against the defendant? A One witness was called on the stand to identify the prisoner and he said he had different clothes on.

Q Who was that witness? A Goodman.

Q Goodman could not identify the defendant? A He did.

MR. WELLMAN: I will not object to this on cross-examination, but it opens the door.

THE COURT: I will sustain objection to it.

MR. WELLMAN: No, I want to have the door open.

THE COURT: We do not care what was testified to in the Magistrate's Court. If any witness called here made statements in the Magistrate's Court which you claim contradict statements made here, you can show those statements, and let the jury decide, but, what some other witness said or some one else did in the Magistrate's Court, is not binding upon any one. This jury will decide this case on the evidence given here.

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BY MR. SACHS:

Q The defendant was discharged in the Magistrate's Court, was he not? A Yes.

Objected to. Objection sustained.

THE COURT: We do not care if the Magistrate discharged him or not.

BY MR. SACHS:

Q Were you not made defendant in an action for false imprisonment brought by --

Objected to. Objection overruled.

MR. WELLMAN: Any defendant can bring an action of that kind.

THE COURT: They have a right to show motive for his testimony, if they wish.

MR. WELLMAN: It is a self manufactured motive -- the defendant brought the action.

THE COURT: The jury can determine how much weight to give it. It is a proper question.

MR. SACHS: I ask your Honor that you direct the jury not to consider the statement made by the District Attorney, that it is a self manufactured motive.

THE COURT: That is the District Attorney's deduction from the evidence, and they will give statements of counsel no heed unless they agree with them that they are proper deductions from the evidence. The rule is a simple one. You

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take the law from the Court and the facts from witnesses, and from no one else. We do not care what was done in the Magistrate's Court unless some witness called here made different statements there, and then that can be shown, but that is all. You are to decide this case on the law as I will give it to you, not as any Magistrate may have given it, and, on the facts as testified to by witnesses. Keep that clearly in mind.

BY MR. SACHS:

Q Now, Mr. Trop, you were made the defendant in an action for damages for false imprisonment? A Yes, sir.

Q And did you at any time after that action was commenced, go to the defendant and ask him to withdraw it? A No, sir.

Q Did you ever visit the defendant at his home? A No, sir.

THE COURT: How is that material?

MR. SACHS: I want to show the motive this witness has for testifying.

THE COURT: I will exclude the question. Strike out the last question and answer.

Exception.

THE COURT: If he ever made any threat to the defendant, you may prove it.

MR. SACHS: I do not claim that he made a threat.

BY MR. SACHS:

Q On the day this defendant was arrested, he was taken to

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your place in Greenwich Street? A Yes.

Q And from there he was taken over to Goodman's store? A Yes

Q Did you go to Goodman's store with the defendant? A No.

Q Who went to Goodman's store with him, do you know?

A Officer Gilkinson -- that is, he was across from Goodman's store.

Q I did not hear you? A He was across from Goodman's store.

Q Who was across? A The defendant.

Q The defendant was across? A Yes.

Q Standing on the street in front of your place? A Yes.

Q Was he not? A Yes.

Q Did Gilkinson go across the street? A Yes -- at least I went across the street.

Q Gilkinson remained with the defendant at your place? A Yes

Q On the sidewalk? A Yes.

Q You went into Goodman's store? A Yes.

Q And had some talk with Goodman? A Yes.

Q Did Goodman come out of the store? A Yes.

Q Did he come across the street? A Not across -- just across from the factory -- he did not cross the street.

Q Did he cross the street at all? A No.

Q He came out of his store? A Yes.

Q To the sidewalk in front of his place? A Yes.

Q And at that point he said something to you? A Yes.

Q In relation to the defendant? A He did not say it to me, he said it to the officer. I asked him "Could you identify him".

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Q Do not say that -- let me understand, when you brought Goodman outside to the sidewalk, was the officer standing outside of Goodman's place? A Yes.

Q With the officer was the defendant? A Yes.

Q And when you came out with Goodman, the four of you were then present? A Yes.

Q You, Officer Gilkinson, the defendant and Goodman -- was there any other person present? A Two officers -- Officer Traducci.

Q Outside of the other officer was anybody present? A No.

Q This defendant was not put in a line among other men? A I don't know.

Q At that time that you were outside? A No, sir.

Q When Goodman was called out? A Yes.

Q He was not put in a line with other men? A No.

Q And Goodman was not asked to pick him out from a number of men? A No.

Q But something was said to Goodman while the defendant was standing there with you and the two officers? A Yes.

Q And Goodman then said something to you? A Yes.

MR. WELLMAN: I reserve the right to ask what that something was.

MR. SACHS: I cannot help what you reserve.

MR. WELLMAN: Ask him all about it, what was said.

THE COURT: Let Mr. Sachs try his own case.

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MR. SACHS: I take an exception to any instructions given to me by the District Attorney.

THE COURT: The jury will not regard those statements. Counsel has a right to try his case in his own way and the People's counsel has the same right.

BY MR. SACHS:

Q Did you ever go to the defendant's home? A No -- I went to his home before his arrest, to look for him.

Q Is that the only time you went there? A Yes, sir, that is the only time.

Q Never after that? A No, never after that.

RE-DIRECT EXAMINATION BY MR. WELLMAN:

Q Now I show you this box and I ask you if you can identify it? A Yes.

Q Where did you see that box before?

MR. SACHS: I object unless it is shown the defendant did see that box before.

THE COURT: You mean this witness.

MR. SACHS: I mean this witness -- unless it is shown he saw it before.

BY MR. WELLMAN:

Q Did you ever see it before? A Yes.

Q Where? A At Seidman's stand, corner of Essex and Rivington Street.

Q Was that the time you went there, the day of the defend-

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ant's arrest? A Yes.

Q Can you state from looking at that, whether it was your property? A Yes.

Q Manufactured by you? A Yes.

Q Was there anything upon that box to show you upon which date that was packed? A Yes.

Q What? A There is B 17. Of course it is partly rubbed off, but I can see it.

Q I will ask you whether the goods you have enumerated here, the boxes of cherries which you said were missing the day after the burglary, when they had been packed? A The 17th day of February.

Q So all these boxes that were missing bore the mark B 17? A Yes.

Q And none of that property was shipped by you, through your direction, for two or three days? A Yes.

MR. WELLMAN: I ask that this be marked for identification.

Box is marked for identification People's Exhibit 1.

Q You said the witness Goodman in the Magistrate's Court stated that the defendant did not have the same clothes on when he saw him? A Yes.

Q He was the only witness called before the Magistrate? A Yes, sir, that was all.

Q Now was there a witness named Harry Kornitsky, who was to be called that day as a witness for the People? A Yes.

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Q Do you know what became of him, why he did not get to court?

Objected to. Question withdrawn.

Q Did you go to court with Goodman the day of the Magistrate's hearing? A Yes.

Q Did you say anything to him about Kornitsky? A Yes.

Q Is it not a fact that you told him Kornitsky had been slugged over the head that day? A Yes.

Objected to.

THE COURT: Told whom?

MR. WELLMAN: The witness Goodman. Counsel asked about Goodman, what he said in the Magistrate's Court, and he has opened the door to all the reasons for his saying those things, and that is what I am getting at now. This witness said he went to the Magistrate's Court with Goodman the day of the hearing, and told Goodman what happened to another witness.

THE COURT: This witness himself?

MR. WELLMAN: Yes, and then Goodman, who had already identified the defendant, came into court and said "That man has not the same clothes on" and no other witness was called.

THE COURT: Are you going to call Goodman?

MR. WELLMAN: Yes.

THE COURT: Goodman can state that if he wishes, but I strike it out now, and the jury will disregard it at this time.

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MR. SACHS: I ask for the withdrawal of a juror.

THE COURT: It is not necessary to withdraw a juror.

MR. SACHS: I except.

THE COURT: The jury will disregard the statement. The jury will understand that they will decide this case on the evidence that the Court admits, and that the statement made by Mr. Wellman was highly improper at this time and should not influence them at all, and they will decide the case solely on the evidence which is admitted. I think that will be sufficient, Mr. Sachs.

RE-CROSS EXAMINATION BY MR. SACHS:

Q Did you count any boxes on the 17th of February when you left your place? A No.

Q Did you ever count any boxes in your place of business?
A I did.

Q How long before the 17th of February did you last count boxes? A The stock clerk was supposed to keep stock of those boxes. I don't do the counting.

Q I did not ask you that? A I did not count them.

Q Did you count any boxes on the 17th of February? A No.

Q Did you ever count any boxes in your place of business?
A I did.

Q How long before the 17th of February did you last count boxes in your place of business? A About a week.

Q Are you of your own knowledge prepared to state that the

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number of boxes given by you, were really in your place? A Yes.

Q Of your own knowledge? A Yes.

Q I do not ask you for something that was told you now?

THE COURT: You went all over that before, Mr. Sachs, as to the best of his knowledge.

MR. SACHS: No, we did not go over that point at all.

THE COURT: You did -- you went over it as to one box, and what applies to one applies to all of them.

MR. SACHS: That was a different thing, that was questions of marking, and this is a question as to the numbers.

THE COURT: The same thing.

MR. SACHS: Not B 17 -- the number of boxes in the place.

THE COURT: He cannot testify to it of his own knowledge. He said he did not count them.

MR. SACHS: That is all I want.

THE COURT: He says he did not count them -- to the best of his information -- he had an opinion as to how many were there.

BY MR. SACHS:

Q How are those boxes marked, by a rubber stamp? A Yes.

Q And they are marked in your presence? A No.

BY THE COURT:

Q It is true that you did not count the boxes? A Yes.

Q That is true? A Yes.

Q You thought you knew how many were there? A Yes.

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Q But you cannot swear they were there without counting them? A No.

J O S E P H G O O D M A N, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:
(Residence 523 Canal Street).

DIRECT EXAMINATION BY MR. WELLMAN:

Q Where was your store on the 17th of February of this year? A 523 Canal Street.

Q And have you an entrance on Greenwich Street? A Yes.

Q What number? A Just on the corner, it is a corner store.

Q How near is it to 487? A Right opposite.

Q Right opposite the Trop Chocolate Company? A Yes.

Q Have you ever seen this defendant before? A No, only the night of the 17th of February.

Q I mean aside from seeing him in court? A No.

Q On the 17th of February where were you? A Standing in front of the stoop line, on the Greenwich Street side.

Q Tell the jurors what you saw? A On the night of Monday, February 17th, I saw a pushcart standing in front of Canal Street and Greenwich, by Depew's grocery warehouse, under the arc light, and there was a man walking up and down and I watched and this fellow was watching me --

MR. SACHS: I object.

THE COURT: Strike that out.

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THE WITNESS (continuing) He was walking up and down, and I seen him bringing down some candy.

BY MR. WELLMAN:

Q You are going a little too fast, was there another man by the pushcart? A Yes.

Q Besides the man walking up and down? A Yes.

Q The man who was walking up and down, did you watch his eyes? A Certainly did, under the arc light.

Q Did he come to your store? A The man that walked up and down came in, yes.

Q Tell us about that? A He came in my store and bought two cherries. He walked out again, went over and told this here party --

Q You saw him in conversation with the man at the pushcart? A Yes.

Q What happened? A He took the pushcart and backed it into 487 Greenwich Street.

BY THE COURT:

Q What do you mean by "two cherries"? A Two single cherries, two penny cherries.

Q Pay you two cents for them? A Yes, and he backed it in towards the door of the store, where Trop's Chocolate Company was

BY MR. WELLMAN:

Q How is the light in front of the door? A Dark.

Q Did you see that man in the light of the arc light there? A Yes.

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Q Could you recognize him if you saw him again? A Yes.

Q Do you see him in court? A Yes.

Q Who is that? A Mr. Weinstein, that gentleman over there
(indicating the defendant).

THE COURT: Go down and put your hand on the man that
was there.

A This man.

(The witness leaves his seat, goes down and places his
hand upon the defendant).

BY MR. WELLMAN:

Q Do you know Abraham Kassel by sight? A Yes.

Q Did you see him that night? A Yes.

Q Was he the man that was walking up and down the street?

A No.

Q Where did you see Kassel? A He went into the building.

Q Into 487? A Yes.

Q Who with? A With Weinstein.

BY THE COURT:

Q With this defendant? A Yes.

BY MR. WELLMAN:

Q What did you see them do? A Bringing out boxes of candy
and putting it on the pushcart.

Q How long did this occupy? A Oh, about fifteen or twenty
minutes.

Q They came in and went out more than once? A Yes, to fill
up the pushcart.

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Q Where did they go then? A Went towards Canal Street and beat it away.

Q Had you seen this defendant before that? A I seen him the Saturday before that.

Q That was on Monday and you seen him the Saturday before?
A Yes.

Q What was the occasion of that? A He dropped some candy in front of my door, a box of candy.

Q What do you mean by that? A A box -- he had a bundle tied and the bundle got loose and he dropped them.

Q They fell out of his hand? A Yes, the cord got loose.

Q That made a muss? A Yes.

Q And you saw him? A I happened to stand by the door and I seen him.

Q He picked them up? A Yes.

BY MR. WELLMAN:

Q Did you make any report of what you had seen to Trop?

BY THE COURT:

Q Yes or no? A Yes.

BY MR. WELLMAN:

Q When was that? A Tuesday morning.

Q The next day? A Yes.

Q After that, towards the end of the week, did you see the defendant again? A They brought him up there.

BY THE COURT:

Q Yes or no? A Yes.

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Q Where did you see him? A In front of 487 Greenwich Street.

Q Again? A Yes.

BY MR. WELLMAN:

Q Was he in the custody of an officer then? A Yes.

Q Where were you? A In the store.

Q Your store? A Yes.

Q Just where you had seen him from before? A Yes.

Q And you at that time recognized him? A Yes.

CROSS EXAMINATION BY MR. SACHS:

Q At what time on the Saturday before did you see the defendant? A 4 o'clock in the afternoon.

Q What were you doing? A Just happened to look out through the window -- stood and looked through the window.

Q For any particular reason? A No, I happened to just go by the door and looked out.

Q Did you see the defendant coming across the street? A I saw him standing in front of my door.

Q You did not see where he came from? A No.

Q He dropped some candy? A Dropped a box of candy.

Q Did you go out of your store to help him? A No.

Q You remained in your store? A Yes, sir, certainly.

Q And the defendant was bending over, picking up his candy?

A Picking up his boxes.

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

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Q You remembered his face? A I certainly do.

Q About what time on that Monday did you see him? A About half past six.

Q Is there an elevated road that runs through Greenwich Street? A Yes.

Q Was it light or dark at 6 o'clock in February? A Well, dark, I guess.

Q You were in your store? A In front of the door.

Q Looking across the street? A Yes.

Q Any particular object you had in mind? A No, nothing to do, so I stood there.

Q You were a witness in this case before? A I certainly was.

Q At that time did you say anything about the defendant's brother? A When?

Q The last time we had a trial here? A I didn't say nothing

THE COURT: He did not say anything about it to-day, did he?

MR. WELLMAN: He said another man.

BY MR. WELLMAN:

Q Do you know who he was, since? A I was told he was his brother.

BY MR. SACHS:

Q Did you say anything about another man at that time? A No, I said there was another man walking up and down. That was all.

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Q I mean on the trial of this case before, did you say there was another man? A Where?

Q Walking up and down? A They say he was his brother.

BY THE COURT:

Q Did you mention four? A I mentioned there was a man walking up and down.

BY MR. SACHS:

Q You said there was a man walking up and down? A Yes.

Q You did not mention anything about this defendant's brother at all, did you, at that time, on that trial? A I did not know who he was.

Q Have you seen the defendant's brother since that time?

A No.

Q Did you ever see him after that night? A No, sir.

Q You were a witness in the Police Court in this case? A Yes

Q Now, at the time you stood in front of your door on the 17th of February, about how far from you was the man with the pushcart? A Across the gutter, the opposite corner.

Q About how wide is Greenwich Street at that point? A From here to about over there (indicating).

Q What do you mean by that? A Until about that bench (indicating).

Q This? A Right there, yes.

Q There (indicating)? A Yes, until about there.

Q You say Greenwich Street at Canal is about as wide as

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from where you are there to this post? A I said where he was, where he was standing.

Q Was he standing near the sidewalk opposite you? A Afterwards he was.

Q At any time you saw him, where was he standing? A He stood at the corner of Canal and Greenwich, on the corner, under an arc light.

Q Your store is at the corner of Greenwich and Canal? A Yes

Q At what corner is your store, the southwest or northwest or northeast or southeast, is it on the uptown side of Canal Street? A Downtown.

Q Nearer the Hudson River than the other corner? A Near to the river.

Q That is the southwest -- was the defendant standing to the downtown corner of Canal Street? A Downtown -- he was standing on the opposite corner.

Q Is that as near a point as he ever stood to you? A That I know of, yes.

Q Was he in the gutter or on the sidewalk? A He stood on the sidewalk.

Q And that point was as far from you, you say, as from where you are sitting now to that post (indicating)? A Yes.

Q Greenwich at Canal? A Yes.

Q As wide as this? A Yes.

Q As he stood there, was he facing you? A Yes.

Q And when you first saw him, did you see any one coming out

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of Trop's place? A Saw him coming out with the goods.

Q You saw the defendant coming out? A Yes.

Q When you first saw him? A Yes.

Q A few days after that some officers came over to your place? A Yes.

Q With Mr. Trop? A I notified Mr. Trop.

BY MR. WELLMAN:

Q Was Mr. Trop there?

BY MR. SACHS:

Q A few days after this Monday night? A Yes.

Q Some officers came over to your store? A Yes.

Q Mr. Trop was with them? A Certainly.

Q And the defendant was with them? A No.

Q Who was with them? A When he was arrested do you mean?

BY THE COURT:

Q When the officers came to your store first with Mr. Trop?

A Yes.

Q Was anybody else with them? A Not at that time.

Q Just the officers, you and Mr. Trop? A Yes.

Q You had a talk? A Yes, told them about it.

Q Never mind that, you had a talk? A Yes.

Q Was there anybody else there? A Not at that time, no, sir.

BY MR. SACHS:

Q Now did they at any other time that day, or the day after or the day after that, come over to your place again? A Sure, yes.

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Q Now, did they have the defendant with them? A Not in my store, no, sir.

BY THE COURT:

Q They never brought him to your store? A No.

BY MR. SACHS:

Q Did they have him near your store? A Across the street.

Q And did they bring you over across the street? A No.

Q Did they come into your store? A Yes.

Q Did they say something to you in your store? A Asked me--

Q Wait a moment, did they say anything to you in your store?

BY THE COURT:

Q Yes or no? A Sure.

BY MR. SACHS:

Q While the defendant was across the street? A Yes.

Q Did you look across the street? A Yes.

Q At what time of the day or night was this? A 4 o'clock in the afternoon.

Q Now they said something to you about having the man across the street, didn't they? A Yes.

Q Did they ask you if you could identify him? A Yes.

Q Did you say you were not sure? A No, sir.

Q What did you say? A I said that is the man.

Q Now, the day after that did you go to the Police Court?

A Yes.

Q From the time that the officers came to you and asked

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you if this was the man, up to the time you went to the Police Court, did you have a talk with Weinstein? A No.

Q Did you have a talk with Weinstein's wife? A No.

Q Did you have a talk with any one who said that they came from Weinstein? A No.

Q Now, before the officers came to your store and told you about Weinstein being across the street, did you have a talk with Weinstein? A No.

Q Did you have a talk with any one who said they came from Weinstein? A No.

Q Or that they were related to Weinstein in any way? A No.

Q And in the Magistrate's Court you said that you could not identify the defendant? A On account one of the witnesses was done up, I heard -- Trop told me one of the witnesses was beaten and I was afraid to identify him.

Q Were you put under oath? A Sure.

Q You were sworn? A Yes.

Q On the bible? A Yes.

Q Did you say one word to the Judge about what Trop had told you? A No, sir.

Q Did you swear to an untruth then? A I did not.

Q You did not? A No.

Q Now, you said you could not identify the defendant?

THE COURT: That is perjury -- what is the use of discussing it with him. He admits it, but he says he was ter-

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rified. That was all. There is no use going into it further.

MR. WELLMAN: There has to be a malicious intent for perjury.

BY THE COURT:

Q You knew that was the man? A Yes.

Q And you swore you did not know? A I was afraid.

Q I know that, but you said you did not know? A Yes, sir.

Q And the explanation is you were afraid? A Yes.

BY MR. SACHS:

Q Up to that time no one had threatened you?

THE COURT: There is no use going into that.

MR. SACHS: It is most important.

THE COURT: No, he said distinctly no one threatened him but Mr. Trop told him this.

BY THE COURT:

Q You had not seen the man?

THE COURT: I will exclude any more questions along that line.

MR. SACHS: Will you allow me to put this one.

THE COURT: Not one. Proceed with the case. You may take an exception to my ruling.

MR. SACHS: Your Honor does not know what the question is.

THE COURT: I will not allow you to ask any more ques-

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tions along that line. It has been fully covered.

MR. SACHS: Not in relation to any threat to him.

THE COURT: No, nor any threat to any one.

MR. SACHS: I will submit this question to your Honor-

THE COURT: I will not allow you to submit any more questions on that point.

MR. SACHS: I take an exception to your ruling, and I ask you to permit me now to put the question before you rule upon it.

THE COURT: I will allow you to put one more question on that head.

BY MR. SACHS:

Q Up to that time had you seen the man that Trop told you was done up? A No, sir, I did not.

BY MR. WELLMAN:

Q Did you see him for several days afterwards? A Yes.

Q When did you see him next? A A few days later.

BY THE COURT:

Q See whom?

MR. WELLMAN: The man he asked him about, that was done up.

THE COURT: That makes no difference if he saw him or not.

BY MR. WELLMAN:

Q Did you ever talk with him? A Yes.

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THE COURT: The jury must pass upon the credibility of this witness. The People have a right to show that in the Police Court he made a different statement or different statements, or rather that he made statements, and you have to decide whether they were different or not, and if they differ, you must take his explanation as to why he made them in passing upon his credibility but, as to whether the man was done up or not, has nothing to do with it. He says that Mr. Trop told him the man had been beaten up, and that he did not want to get beaten up, and therefore he said he did not know him.

MR. WELIMAN: It might be a little stronger if he had been beaten up, and I wanted to ask him that.

THE COURT: It would not make it any stronger legally. He was willing to take Mr. Trop's word for it.

A B R A H A M K A S S E L, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 724 Caldwell Avenue, Bronx).

DIRECT EXAMINATION BY MR. WELIMAN:

Q How old are you? A Nineteen.

Q When you were in Mr. Trop's employ how old were you?

A Eighteen.

Q How long had you been in his employ before you were arrested? A Ten weeks.

Q What was the nature of your employment? A Shipping clerk.

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Q Had you seen this defendant during that time? A While I had been employed there, yes.

Q When would he come in there? A Mornings.

Q Now, had you had conversation with him at various times?

A Not at the start, no, sir.

Q Not at the start? A No.

Q When did you first have a conversation with him? A After I had been employed there about six weeks.

Q Tell us about the talk you had with Weinstein, the first talk? A After I had been employed there about six weeks --

MR. SACHS: I object as incompetent, irrelevant and immaterial, not binding, and not material to the issues involved.

THE COURT: There is a charge of receiving stolen goods in the indictment. It is material on that, if not on the burglary, and I think it is material upon all the counts, but certainly on the receiving count. The objection is overruled. Exception.

BY MR. WELLMAN:

Q Go on? A After I had been employed there about six weeks, Max Weinstein came up to me and says to me "Why didn't I try to make a little change for myself and give him some regular goods in with the job lots" and I told him I did not want to do it, so he said to me "The other fellow" --

BY THE COURT:

Q Was Weinstein a customer? A Yes.

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Q Would he buy job lots? A Yes.

BY MR. WELLMAN:

Q Now what are job lots? A Damaged candy.

BY THE COURT:

Q That is how you met him? A Yes.

Q You were a salesman there? A Anybody that came up to buy goods I would sell it to them while I was there.

Q You met him in that way, and he asked you what? A To mix up some regular goods in with the job lots. I told him I did not want to do it and he said to me --

BY THE COURT:

Q Explain to the jury what you mean by job lots? A Job lots are damaged candies.

Q He wanted you to give him good goods when he was buying damaged goods? A Yes.

BY MR. WELLMAN:

Q That was the first? A Yes, and I told him I did not want to do so, and he said the other fellow that used to work there used to do the same thing, used to mix them up and they never knew anything about it, and I did not want to do it, and then the following week he came up and said the same thing to me.

Q He spoke to you about this again? A About the same thing and then I gave him a couple of boxes they had there, mixed them up with the job lot.

Q What did you get for them? A Seventy-five cents a box.

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Q He gave you? A 75 cents for a box, regular goods.

Q What was the value of the regular goods? A A dollar and a quarter.

Q Those were the 180's? A 180 cherries in a box.

Q Tell us about the 17th of February, did you see the defendant on the evening of that day? A No, sir.

Q The 17th of February? A Oh, on the 17th of February?

Q Yes? A After I closed up the place with Mr. Trop, we walked down to Canal Street and I left Mr. Trop there and as I was walking towards the subway I met Mr. Weinstein and he was there with a pushcart. He asked me to go back to the place with him and give him some goods. He said "There is nobody around, and he said there would be no chance at all, nobody will see him" and we went back and I opened up the place and we both went upstairs.

BY MR. WELLMAN:

Q How did you open it up? A I had the key.

Q Did you have that from Mr. Trop? A Yes.

Q It was your custom to close the place? A Yes.

Q And open it in the morning? A And close it every night.

Q Did you have any authority to use that key out of hours?

A No.

Q Go on? A We went upstairs and I gave him the goods and he carried it down to his cart.

Q How much? A I gave him thirty-five boxes, 180 cherries;

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twenty-five boxes of 90 cherries; fifteen boxes of two cent cherries, 56 in a box, and twenty boxes of cherry milk mallows-- 48 in a box.

Q What did you do with them? A Took them and put them down on his cart.

Q Where was the property taken from by you? A That was taken out of the goods that was made up that day.

Q Do you know how they were marked? A Yes, sir, we mark the goods according to the month, and the alphabet A, B -- second day of the month it was marked, or second month of the year, it was marked B.

Q So this property had been marked? A That day B.

Q That very day? A Yes, sir, B 17.

Q How long would you keep these cherries marked on a date, to mellow, before they were sent out? A We was not supposed to send them out until ^{or} four^{five} days after they were made up.

Q Did any goods go out of there to your knowledge, outside of the property you took that night marked that day? A No, sir, that was the only goods I took out was that night.

Q And the goods marked that day were not to go out for five days? A Five days.

Q Did any go out to your knowledge inside of five days except this stolen property? A No, sir.

Q Who marked that? A The girls do.

Q Do you place it anywhere? A I place them in a shelf.

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Q Is that how you know that was the property put up that day? A Yes.

Q How long after were you arrested? A Three days after that.

Q You were charged with stealing also? A Yes.

Q What did you do, what was your answer to that charge, did you plead guilty or not guilty? A I pleaded guilty on that charge.

CROSS EXAMINATION BY MR. SACHS:

Q Where did you plead guilty to that charge? A Up in the Criminal Term Part I, before Judge Seabury.

Q Did you plead guilty on the day you were arrested and arraigneded in the Jefferson Market Police Court? A No, sir.

Q Did you have a lawyer in Jefferson Market Police Court? A Yes.

Q Did you take the stand in Jefferson Market Police Court? A No, sir.

Q Did you sign any papers there? A Yes.

Q Did you say you were not guilty there? A Yes, not guilty.

Q You swore to that, didn't you? A Yes.

THE COURT: How do you mean, sign any papers-- for whom did he sign the papers?

A Down in the court there, in the office.

BY MR. WELLMAN:

Q You did not swear to that? A No, sir, I just signed the paper down there.

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THE COURT: They are not allowed by law to take a sworn statement.

MR. SACHS: They swear to it before the Magistrate.

THE COURT: It is an unsworn statement. The Magistrate is not allowed to take a sworn statement.

MR. SACHS: If they are not permitted to, they do so all the time.

MR. WELLMAN: It says "taken before me."

THE COURT: They are not allowed to take a sworn statement. We are trying this case on what is done here, and we are not responsible for what the Magistrate does. If the People produce evidence to show you beyond a reasonable doubt that this man is guilty, you must find him guilty. If not, you must acquit him.

MR. SACHS: This goes towards this man's credibility.

THE COURT: Certainly. That is the only ground upon which the Magistrate's proceeding may be produced, to show that the defendant made statements -- now if there is an examination in the Magistrate's Court, that is a different matter. The Magistrate then may administer the oath, but in taking this formal, that is merely for his convenience.

BY MR. SACHS:

Q Did you take the stand in the Magistrate's Court? A No.

Q Did you waive examination, if you know what that means?

A Yes.

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BY THE COURT:

Q You did what your lawyer told you there? A Yes.

BY MR. SACHS:

Q Then you were indicted? A Yes.

Q Now did you before or after your indictment, have a talk with Mr. Trop? A No, sir.

Q At no time? A No, sir.

Q Do you remember the day upon which you entered the plea of guilty? A Yes.

Q From the time of your arrest down to the date upon which you plead guilty, did you have any talk with Mr. Trop? A No, not me.

MR. WELLMAN: That is a little indefinite -- talk about what?

THE COURT: He said any talk with Mr. Trop.

MR. WELLMAN: On anything.

THE WITNESS: No, sir.

BY MR. WELLMAN:

Q Did you tell him about the case, what had happened, did you tell him what you had done? A Mr. Trop?

Q Yes? A When I was in the Police Court I sent him a note. That was all.

BY MR. WELLMAN:

Q Tell us about that?

BY MR. SACHS:

Q Did you at any time -- let me know what word in the

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question I put to you, you do not understand -- from the time of your arrest until the time you plead guilty downstairs, have any talk with Mr. Trop? A No, sir, I had no talk with him.

Q Did your father or mother have a talk with him? A Yes.

BY THE COURT:

Q In your presence? A No, sir, not in my presence.

BY MR. SACHS:

Q Did your father or mother have a talk with you about going to Mr. Trop?

Excluded and exception.

Q You know that your father and mother did have a talk?

A Yes.

Objected to.

THE COURT: I will exclude it as immaterial. He cannot know that. Exception.

Q Did you, after that, plead guilty? A Yes.

Q Did you get a suspended sentence? A Yes.

BY THE COURT:

Q You say you sent a note to Mr. Trop in the Police Court?

A Yes.

THE COURT: Mr. Sachs may ask you what the contents of that note were, if he wishes.

Mr. Sachs, he said he did not have a talk, but sent a written communication to Mr. Trop when he was in the Police Court.

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BY MR. SACHS:

Q Have you a copy of that communication? A No, sir.

BY THE COURT:

Q You did not make a copy? A No.

BY MR. SACHS:

Q Did you ever go to the defendant's home after you were arrested?

Objected to. Overruled.

A No, sir.

BY THE COURT:

Q Do you understand the question, do you know where the defendant lived? A Yes. I did know where he lived.

Q Did you go to his house after you were arrested? A I did not go there. My folks did.

Q Never mind what your father and mother did, I ask you about you? A No, I just showed my folks where he lived.

BY MR. SACHS:

Q Didn't you go with Mr. Trop to the defendant's house? A No

BY THE COURT:

Q You mean you did not go into his house? A No.

Q How far did you go in the direction of his house with any one else? A I went to the door with him.

Q But you did not enter? A I did not enter.

BY MR. SACHS:

Q Did you show your mother where this defendant lived? A Yes

Q Did you have a talk with your mother as to what she was

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to say to the defendant Weinstein? A No.

Q Do you know if Trop ever went there with your mother? A No

Q To the defendant's house? A No.

BY THE COURT:

Q You don't know? A I don't know.

BY MR. SACHS:

Q On the day that you met the defendant with his pushcart, the 17th of February, had he told you he was going to be there with his pushcart? A No, sir.

Q Had he at any time asked you at what time you would leave your place of employment? A Yes --

Q On the 17th of February? A No.

Q Did he know that on the 17th of February you were going to leave Mr. Trop?

Objected to.

THE COURT: Who?

MR. SACHS: The defendant.

THE COURT: How can he tell what the defendant knew?

MR. SACHS: I want to know if he was there as the result of a prearranged scheme.

THE COURT: Do you mean on the 17th of February?

MR. SACHS: Yes, the 17th of February.

BY THE COURT:

Q Did you have an agreement to ^{meet} Mr. Weinstein there that day the 17th of February? A No, sir.

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Q You know the day we mean, the day of the alleged larceny?

A Yes.

Q How did you get in the shop that day to get these things out? A I had the key.

Q You had locked up for the day? A Yes.

Q And then you went back and opened up? A Yes.

Q How did you know Weinstein was going to come there to take these goods away? A I did not know he was coming. He knew the time we closed up the place and knew I walked down towards the subway, and he waited there until I came along, and we met.

Q You met, and what conversation did you have? A He asked me to go back to the place.

Q He did not know you were going to show up and take these things out? A Who?

Q Weinstein? A No, sir, he asked me to.

Q Weinstein asked you to come back? A Yes.

Q What did you say? A I said I was afraid to take the chance, and finally he spoke to me and urged me to go back with him and finally I went back with him.

Q Then he did know you went back to open up? A Yes, after I met him.

Q After you met him that day? A Yes.

BY MR. SACHS:

Q Where did your mother reside? A 724 Caldwell Avenue.

Q I want to know if you and your mother did not go to Wein-

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stein's place of residence?

THE COURT: He said he went as far as the door and did not go in.

MR. SACHS: I want to refresh his recollection again.

THE COURT: You have asked him that.

BY THE COURT:

Q You want to change that answer? A No, sir.

BY MR. SACHS:

Q You never went into Weinstein's home with your mother? A No

Q Had you ever been arrested for any other crime before this time?

THE COURT: I will exclude that as immaterial. It is not proper to ask about arrests. If there is any conviction, you may inquire about it.

BY THE COURT:

Q Have you ever been convicted of any crime? A No.

MR. SACHS: I take an exception to your Honor's ruling.

BY MR. SACHS:

Q Now when Weinstein first asked you to put good boxes in with the job lots he was buying, you said no? A Yes.

Q Did you tell Mr. Trop about the suggestion made to you by Weinstein? A No, sir.

Q And the second time that Weinstein asked you to do that you said no? A Yes.

Q Did you tell Mr. Trop then about Weinstein's suggestion?

A No.

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Q On the 17th of February, after the goods were on the pushcart, did Weinstein take the pushcart away? A No, sir.

Q Did you go with the pushcart? A I walked with Weinstein and somebody else pushed the cart.

Q Now, where did the cart go, do you know? A The cart went over to in front of his house.

Q Where was his house at that time? A At Ludlow Street.
BY THE COURT:

Q Near what street? A Near Delancey.

Q What happened when you got over there? -- You and Weinstein went over there? A Yes.

Q And did the wagon come up while you were there, the pushcart? A The pushcart was standing in front of the door and he went in the house.

Q Who went in the house? A Weinstein.

Q The defendant, and what became of the goods? A I did not see what became of the goods.

Q The pushcart was empty when you got there? A No, the cart was there and then I went away after I went to the house.

Q Were the goods on there when you and Weinstein got there?
A Yes.

Q Weinstein went in his house then? A Yes, sir.

BY MR. SACHS:

Q Isn't it a fact that the pushcart was in your view all the time as you walked to Ludlow Street where the defendant lived?

A Well, yes, sir, it was.

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Q Now, when you were putting these goods on the wagon, where was the defendant, when you took them out of the store, did Weinstein go in the store with you? A Yes, sir, he went upstairs and carried them down with me.

Q He saw you take the goods? A Yes.

Q And count them, and saw you bring them down and put them on the pushcart? A Yes, he took them down.

Q And you and he walked behind the pushcart or beside the pushcart, over to his home? A Yes, sir.

RE-DIRECT EXAMINATION:

Q What did you get for them, how much did he give you?

A \$25. He only gave me -- I think it was \$10. up to the place there and then I walked down to his house and he gave me the rest.

BY THE COURT:

Q He went inside and brought out the \$15. to you? A Yes.

RE-CROSS EXAMINATION:

Q You put that money in your pocket? A Yes, sir.

LOUIS SEIDMAN, called as a witness in behalf of the People, being duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:

(Residence 117 Rivington Street).

DIRECT EXAMINATION:

Q What is your occupation? A Keeping a soda stand.

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Q Whereabouts? A 117 Rivington Street.

Q Do you know Max Weinstein? A Yes.

Q In February of this year do you remember the time when Max Weinstein was arrested? A Yes, sir.

Q Now earlier in that same week did you see Weinstein at your place? A The same week, yes.

Q What happened when you saw him? A I bought of him cherry candies.

Q Did you keep a book of account of your purchases? A Yes.

Q I show you this book and I ask you whether that is --

THE COURT: You cannot introduce his book in evidence.

MR. WELLMAN: No.

THE COURT: He does not need any book -- put the book away. You can only use that to refresh his recollection and he has not said yet that he needs any book to refresh his recollection.

BY MR. WELLMAN:

Q Can you state what amount of cherries you bought from the defendant?

THE COURT: At that time.

BY MR. WELLMAN:

Q At that time? A Four small boxes, half boxes.

Q I show you this box, People's Exhibit 1 for Identification, and I ask you whether that is the size of box? A This size box, yes.

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Q What day was it that you bought these from him? A About the 19th of February.

Q Did you put down in your book the exact date? A Yes.

Q Could you tell the exact date by reference to your book?

THE COURT: He said the 19th.

MR. WELLMAN: He said about the 19th.

BY MR. WELLMAN:

Q Could you tell the exact date if you looked at your book?

A Yes.

Q I show you your book and I ask you then to refresh your recollection and tell us the exact date you bought the four half boxes of candy cherries from the defendant? A \$2.07.

THE COURT: On what date?

BY MR. WELLMAN:

Q What date? A On the 19th, 1913.

BY THE COURT:

Q Of what month? A February.

The book is marked for identification People's Exhibit 2

BY MR. WELLMAN:

Q Now on the day that the defendant was arrested, did you see Mr. Trop? A On the day of the arrest, yes.

Q Was that in the same week that you bought these things from the defendant? A Yes.

Q What did Mr. Trop do when he came to your place? A He came to my place and found a box of cherries and he paid me for it and took it away.

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Q. Was there any one with him when he came? A. He was with two other men.

Q. Now can you state whether or not it was a box like that that he bought, just like that? A. One like this (referring to Exhibit 1 for Identification).

People's
MR. WELLMAN: I offer Exhibit 1 for Identification in evidence.

MR. SACHS: I object to it being received in evidence.

THE COURT: Mr. Trop swore that is the very box he bought from him. I will allow it.

MR. SACHS: This witness said that the box that was purchased from him by Mr. Trop was a box that looked like that, not that box.

THE COURT: I will allow it in evidence.

Objected to. Objection overruled. Exception.

THE COURT: This witness says he sold him a box of cherries. He cannot identify the box but he says a box exactly like that, and the other witness comes and says that is the box that I bought from him. Now it is received in evidence.

People's Exhibit 1 for Identification is received in evidence and so marked.

MR. SACHS: The other witness, Trop, says that he does not know when the box marked B 17 left his place. He does not count them, and was not present when they were shipped.

THE COURT: There is no need for any argument about it.

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It is properly receivable in evidence, on larceny or burglary charge, or receiving stolen goods. It is for the jury to pass upon the weight of the identification. I say there is sufficient evidence, if they believe it.

MR. SACHS: I ask you to permit me to question the witness before receiving it.

THE COURT: Not now. I receive it.

MR. WELLMAN: I ask permission to point out to the jurors the partly erased marks.

MR. SACHS: I object to that statement.

THE COURT: I sustain the objection to that statement. You may show that box to the jury and you can call Mr. Trop for any further testimony upon that, if you wish.

CROSS EXAMINATION BY MR. SACHS:

Q Now Mr. Seidman, you won't say, of course, that this identical box was ever in your possession?

THE COURT: He said he would not. That is repetition. He has already said he would not.

MR. SACHS: I did not hear him say that.

THE COURT: He may say it again.

THE WITNESS: No, I cannot.

BY MR. SACHS:

Q At the time you purchased the boxes of cherries from Mr. Weinstein, did you examine them?

THE COURT: The boxes or the cherries?

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MR. SACHS: The boxes.

BY THE COURT:

Q Did you examine the boxes, the exterior?

BY MR. SACHS:

Q The outside? A No, sir.

Q You cannot tell us whether anything was rubbed off or marked off or not marked off? A I cannot say.

Q How much did you pay Weinstein for the boxes of cherries?

A \$2.07 for four small boxes.

Q What quantity did the boxes contain? A Cherry candies.

BY THE COURT:

Q How many cherries in a box? A Ninety in a box.

BY MR. SACHS:

Q What would be the regular price of the quantity that you purchased from Weinstein?

MR. WELLMAN: If you know.

MR. SACHS: If you know.

THE COURT: You mean the regular market price?

MR. SACHS: Yes.

THE WITNESS: \$2.40, the regular price would have been.

BY MR. SACHS:

Q Did you question Weinstein as to why he sold them to you for \$2.07? A Yes.

Q And what did Weinstein say? A He said he had job lots.

Q Were job lots cheaper? A Yes.

Q Then the quantity you purchased from Weinstein as a job lot was worth only \$2.07? A Yes, sir, it was worth about \$2.07.

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Q Where did you buy job lots before? A I had not bought any job lots before.

BY THE COURT:

Q Had you ever bought anything from Weinstein before? A Yes, I bought of him a couple of times.

BY MR. SACHS:

Q Now, what candy jobber did you deal with mostly?

A Hoffman, Fellstein, Miller Brothers.

MR. WELIMAN: Did he say Miller or Merrill?

THE WITNESS: Miller Brothers in Essex Street -- Koenig.

THE COURT: I do not see the purpose of this cross-examination.

BY MR. SACHS:

Q From whom did you buy cherries?

THE COURT: What difference does that make, from whom he bought cherries.

MR. SACHS: It makes a great difference if we claim he never bought them from us.

THE COURT: I exclude the question. He said he bought these from Weinstein.

NATHAN WEINSTEIN, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WELIMAN:
(Residence 135 Norfolk Street).

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Q What is your business? A Peddler.

Q Where is your pushcart stand? A Rivington corner of Suffolk.

Q Do you know Max Weinstein by sight? A Yes.

Q He is not related to you? A No.

Q Do you remember the time he was arrested in February?

A Yes.

Q On Monday night -- early in that same week, the 17th of February, do you remember seeing him at his pushcart in Rivington Street -- do you understand the question? A Yes.

Q Where was his pushcart in relation to yours? A About twenty feet.

Q About twenty feet away? A Yes.

THE COURT: Let him testify through an interpreter.

(The witness now testifies through the official interpreter, Mr. Rosenthal).

A About eighteen or twenty feet away from mine.

Q How long had his pushcart been in the same street with yours? A About five or six years.

Q Now on that night that you mention, Monday night the 17th of February, did you see the defendant leave the place there at Rivington Street? A Yes.

Q What time did he go away? A Between 5 and 6 o'clock.

Q And did he take his pushcart with him or leave it? A He left it standing there.

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Q Did you see when he came back? A Yes.

Q At what time did he come back? A Between 7 and 8 o'clock.

Q Did he have a pushcart when he came back? A He came with the pushcart.

Q Tell us just what you saw on the pushcart? A Candy.

Q What kind of candy? A Boxes containing candies, cherries.

Q I show you People's Exhibit 1, and I ask you whether they were boxes similar to this? A It was dark and I cannot say whether they were boxes like this.

Q Did you know anything else when he came back? A He came with a pushcart of goods.

Q Was it a cold night or a hot night? A It was not cold.

Q Did you have any talk with him?

THE COURT: Yes or no.

A Yes.

BY MR. WELLMAN:

Q Tell us what it was? A He called me over and gave me some candy.

BY THE COURT:

Q What did he say? A "That he had bought a bargain."

BY MR. WELLMAN:

Q What kind of candy? A Cherries.

Q Go on?

BY THE COURT:

Q Did he give you a box of cherries? A Some single cherries.

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Q He opened a box and gave you some of it? A Yes.

Q He did not give you a whole box? A No.

BY MR. WELLMAN:

Q How many boxes did he have on his pushcart? A There was enough goods there but I don't know how much.

Q Tell us the conversation you had with him?

BY THE COURT:

Q Did he say anything else in addition to the statement that he had bought a bargain? A He said he bought these goods as a job, and he said he has always such kind of jobs and he said he would sell it to the stand where he would get a better price than selling it from the pushcart.

BY MR. WELLMAN:

Q Is that all? A That was all.

CROSS EXAMINATION BY MR. SACHS:

Q You did not see any boxes like that that night, did you?

A No, it was in the night time and I cannot say.

Q Do you say this occurred on Monday the 17th of February?

A It was the day before the day he was arrested. The next day he was arrested.

Q Are you sure of that? A I don't know whether it was one day or two days or three days before.

Q Is it not a fact that it was a week before he was arrested? A Not a week -- several days.

Q Are you sure it was several days? A I can't remember, a

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year's time has passed already.

Q You won't say it was on the Monday of that week? A I can't remember whether it was on Monday.

Q You were at one time president of the Pushcart Peddlers Association, were you not? A Yes.

Q Do you know whether or not the defendant made a charge against you at Police Headquarters? A No.

Q You don't know? A No.

Q Were you ever called down before Commissioner Dillon at Police Headquarters?

Objected to. Sustained. Exception.

BY THE COURT:

Q Do you sell cherries? A No.

Q You are not an expert on cherries? A No.

BY MR. WELLMAN:

can

Q Then you say positively whether these were Trop manufactured cherries? A The candy that I ate at that time were cherries, but whether they were Trop's or not, I cannot say.

MR. WELLMAN: THE PEOPLE REST. The officer is detained in another court, Supreme Court, Part III. If it is necessary to call him, we can have him here to-morrow, but I do not think he is material, and we will rest at this time.

MR. SACHS: Will your Honor permit this case at this time to stand over until to-morrow morning?

THE COURT: You had better make whatever motions you wish to make now.

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MR. SACHS: I move that your Honor take from the consideration of the jury the count charging burglary in the third degree.

Motion denied. Exception.

MR. SACHS: And Grand Larceny in the second degree.

Motion denied. Exception.

MR. SACHS: And receiving stolen goods.

Motion denied. Exception.

MAX WEINSTEIN, the defendant, called as a witness in his own behalf, affirms, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

(Residence 161 Stanton Street).

Q Are you married, Weinstein? A Yes.

Q How long have you been married? A Five years.

Q How old are you at this time? A Twenty-four.

Q Twenty four years? A Yes.

Q How long have you been in this country? A 11 years.

Q You are a pushcart peddler? A Pushcart peddler all the time.

Q You belong to the Pushcart Peddlers Association? A Yes.

Q Are you now an officer of that association? A Vice President.

Q And as vice president of that association, did you ever make a complaint against the president? A Yes.

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Q To whom? A Commission Dillon. In New York every peddler knows --

MR. WELLMAN: I object.

BY MR. SACHS:

Q Just answer me; the president against whom you made a charge was Nathan Weinstein? A Yes.

Q For collecting money from pushcarts?

Objected to.

THE WITNESS: From every peddler.

BY THE COURT:

Q Yes or no? A Yes.

BY MR. SACHS:

Q Have you ever been convicted of any crime? A No.

Q Did you on the 17th day of February, go to Trop's place of business? A No.

Q Do you know where Trop's place of business was on the 17th day of February? A I know the place.

Q And had you bought goods from Trop? A Sometimes.

Q Before? A Yes.

Q For how long a time had you dealt with Trop? A A couple of years -- three years.

Q During that time what kind of candy did you buy from him?
A In the whole two years?

Q Yes, what kind of candy? A Cherries.

Q Now just take that box that is before you, look into that

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box inside, are there any candies in there now? A Some candies, yes.

Q Did you ever buy that box of candy from Trop? A Not like this.

Q What kind did you buy? A I bought good goods.

Q What? A Good goods.

Q Did you buy up job lots from Trop? A Yes.

Q When you bought job lots, did you buy the same kind that is in the box now? A Yes.

Q What do you call those candies, do you know? A Cherries.

Q Any particular name outside of cherries, have they got any other name? A Some -- another kind of goods.

Q The cherries, Weinstein, that you bought from Trop, do you call them by any other name or do you simply call them cherries? A Cherries.

Q Now you know this young man Kassel who was on the stand here this afternoon? A I seen him in Trop's place.

Q Did you at any time ask Kassel to put some good candy in with the jobs? A No, sir.

Q Did you at any time tell Kassel that the young man who worked there before he did, used to put good candies in with your jobs? A I was buying from the same man --

BY THE COURT:

Q Please answer the question? A No.

BY MR. SACHS:

Q Have you bought any of Trop's candies since you were ar-

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rested? A No.

Q Did you at any time go to Trop's place of business with a pushcart? A No.

Q Did you at any time go to Trop's place of business with your brother? A No, sir.

Q Did you at any time pay Kassel \$25. for candy? A Kassel only make the bundles and I pay Mr. Trop and I never stole in my life a penny.

Q When you went to Trop's place you bought candy there?

A Yes.

Q And Kassel would wrap up the packages for you? A Yes, sir.

Q And who would you pay for the packages? A Mr. Trop.

Q You were arrested some time after the 17th of February on Mr. Trop's complaint? A Yes.

Q You were taken to Jefferson Market Police Court? A Yes.

Q And you had a trial there? A Yes.

MR. WELLMAN: I object.

THE COURT: That is immaterial.

BY MR. SACHS :

Q You were discharged?

Objected to.

THE COURT: Why do you persist in that.

MR. SACHS: I want to show that an action was commenced.

THE COURT: I have already told you that that is highly

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improper, and the jury will disregard it.

MR. SACHS: The fact of the bringing of the action -- cannot we show motive?

THE COURT: Proceed. It makes no difference what was done in the Magistrate's Court.

MR. SACHS: Only as I said, as showing the cause of the action.

THE COURT: You have already brought out that he brought an action against Mr. Trop.

BY MR. SACHS:

Q Did you bring the action against Mr. Trop before or after you were indicted in this court?

Objected to. Sustained.

THE COURT: If you can show that Mr. Trop made any different statement at any time from what he made on the stand here, I will allow you to do so and that is the only thing that is relevant for this jury to consider. There might be a motive for a change of testimony, but if there is no change in the testimony of Mr. Trop, then you can disregard the statement about the action being brought by him as a motive.

MR. SACHS: Mr. Trop said he did not testify in the Police Court.

THE COURT: He may not have been asked to. He made the complaint. Proceed. We will have the issues clearly put

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before the jury. There will be no confusion of issues.

MR. SACHS: I except.

BY MR. SACHS:

Q Did Kassel ever come to your house? A Yes, after my arrest.

Q Now what do you mean by "after your arrest"?

MR. WELLMAN: I object.

THE COURT: He has told what he means. Proceed.

BY MR. SACHS:

Q Do you mean after you were arrested and taken to Jefferson Market or after you were arrested in this court? A From Jefferson Market.

Q And did Kassel have a talk with you at your house? A Yes.

Q And who was present when Kassel was there? A His mother and Mr. Trop and Kassel's father.

BY THE COURT:

Q Your mother or Kassel's mother? A Kassel's mother.

BY MR. SACHS:

Q Did Kassel talk to you then? A Kassel said --

Q Wait, did Kassel talk to you? A Yes.

Q And at the time Kassel spoke to you, Mr. Trop was present? A Yes.

Q What did Kassel say to you? A He said the \$10,000. damages dismissed and if you not do this, you will be locked up this week and I said "I do not care, I want for my false arrest, I want \$10,000."

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Q What did Kassel say to that? A Kassel say "I myself am in trouble with another boy and the case is before Justice Seabury in the Supreme Court, and the District Attorney told me "You tell Weinstein told you to steal the goods, I make you free"

Q That was what Kassel said to you? A Yes.

Q During all this conversation Trop was present? A Yes.

Q What did Mr. Trop say, if anything? A I cannot help -- when you make with me good I take off the case from Kassel.

Q Did Trop say anything to you to-day about withdrawing your case against him? A Yes, I think so.

BY THE COURT:

Q You only think so -- what did Trop say to you to-day?

A Give me a receipt -- you be quit with me, you be all right with me and I go upstairs to the District Attorney and I dismiss the case.

BY MR. SACHS:

Q Did Kassel's mother say anything to you the day she was in your house?

Objected to.

THE COURT: I exclude that. The only reason I allow these questions is on the question of the motive of the witnesses. They denied they had any motive or made any statements. He said they did, and the jury will have to decide between them. It is always proper to prove that a witness has a motive for giving his testimony but, in this case I

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will call the attention of the jury to the fact that Trop is alleged to have made the same statement before that motive existed.

BY MR. SACHS:

Q Did you ever sell any goods to Seidman? A No.

Q Any cherries or candy of any kind? A No, this is a different story.

BY THE COURT:

Q Did you ever sell him any candies? A No.

BY MR. SACHS:

Q Have you ever had any quarrel or any point of argument or any question of argument with Seidman -- did you ever have any trouble with Seidman? A Yes.

Q What was that?

MR. WELLMAN: When?

THE WITNESS: All the time, because I sell --

BY THE COURT:

Q No, since the last trial? A The last couple of years.

MR. WELLMAN: I object as indefinite.

THE COURT: I will sustain the objection unless you state the time, place and the nature of the trouble.

BY MR. SACHS:

Q Did you ever have any trouble or did you have any trouble with Seidman before you were arrested in this case? A Yes.

Q Now what was that trouble about, A I am a peddler and was

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selling goods very cheap and I take in about \$35. or \$40. a day--
Spearmint gum -- I sell two for a nickel Spearmint gum and the
stand keepers sell them at five cents apiece.

Q Come down to your quarrel with Seidman, what was it about?

A I am standing on the next block to the standkeepers and all
the standkeepers are against me because I sell my goods much
cheaper.

BY THE COURT:

Q Seidman is a pushcart man? A No, standkeeper.

BY THE COURT:

Q And you say Seidman told a lie about you to-day because
he is a standkeeper and you are a pushcart peddler? A Yes.

Q And there is war between the pushcart peddlers and the
standkeepers, is that so? A Yes.

BY MR. SACHS:

Q Did you ever give any candy to Nathan Weinstein from
your pushcart?

THE COURT: Yes or no.

A No.

BY MR. SACHS:

Q Cherries or any other candy? A Maybe he took it himself.

Q What was the nature of the complaint you made to Commis-
sioner Dillon against Nathan Weinstein?

Objected to as immaterial. Objection sustained.

Exception.

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Q Did you say anything to Weinstein about the complaint that you made to Commissioner Dillon?

THE COURT: Never mind about the complaint -- what did he say?

BY MR. SACHS:

Q What did you say to Nathan Weinstein? A Nathan Weinstein was collecting half a dollar by the pushcarts --

BY THE COURT:

Q What did you tell Nathan Weinstein?

THE COURT: Unless the fact that he made a complaint was brought home to Weinstein, you cannot prove there was any motive. Now, let this man say what he told Weinstein.

THE WITNESS: I did not say anything to Nathan Weinstein. I told it all to Commissioner Dillon.

MR. WELLMAN: I do not think there is any cross-examination.

THE COURT: Have you any further witnesses?

MR. SACHS: No.

THE COURT: You wish an adjournment to call more witnesses.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, December 9th, 1913, at 10:30 o'clock.

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New York, December 9th, 1913,

Trial resumed.

NATHAN WEINSTEIN resumes the stand:

THE COURT: I think yesterday there was some question as to whether a complaint was made by the defendant to Commissioner Dillon. I think I ruled on the law as I should have ruled, but I want to give the defense an opportunity to cross-examine him further on that point, if they wish to. The defendant says he never told Nathan Weinstein. Of course the jurors understand it is always permissible to prove a motive. You can prove a man has a grudge against you when he testifies against you. That does not mean he is not telling the truth, but it is a fact that you can take into consideration. Yesterday that matter was often referred to but not brought out clearly.

BY THE COURT:

Q Did you ever have a talk with Commissioner Dillon about a charge against you of taking money from other pushcart peddlers? A No, I was called to Commissioner Dillon.

Q What did he tell you? A This man made a charge against Alderman Levine.

Q Not against you? A No, sir.

Q You did not so understand it? A No.

Q You have no grudge against him on that account? A No, never.

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Q That is not why you come here to testify? A No. Alderman Levine subpoenaed me.

Q How long are you in this country? A Fourteen years.

Q You ought to speak English by this time? A I cannot too much.

(The witness now testifies through the official interpreter, Mr. Rosenthal).

BY THE COURT:

Q Were you charged by any one with exacting money from push cart peddlers on the east side, illegally? A Never.

Q Did Commissioner Dillon tell you that any one had made such a charge against you? A Never.

Q Now you said you were called before Commissioner Dillon, please explain how you came to go to Commissioner Dillon? A This Mr. Max Weinstein --

THE COURT: Speak in Yiddish.

A Max Weinstein had a trial about jewelry and Alderman was engaged as his lawyer, and Alderman Levine got \$40. for it. The case is not yet finished.

Q That is not what I want to know. I want to know about Commissioner Dillon and the graft charges? A On that account I was called to Commissioner Dillon.

BY MR. WELLMAN:

Q As a witness? A As a witness. He said that he had given him \$40. for a license and in fact he had given him \$40.

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for the case, and to testify to that I was called before Commissioner Dillon.

BY THE COURT:

Q Was the charge made that you got the \$40.? A No.

Q Or any part of it? A No.

Q Did you ever hear that any one made such a charge against you? A No.

Q Are you now the president of the Pushcart Peddlers Association? A Not now. I am the executive committee.

Q The defendant has not had you removed from office in that society? A No, I am president of the executive committee.

Q What is the defendant? A Nothing now. Before he was something.

Q So you have no grudge against him whatever? A No.

Q You have simply told the truth here? A Yes.

MR. SACHS: Will you pursue the inquiry in relation to his appearance before Mr. Fosdick on complaint of this defendant.

THE COURT: Then it was not Dillon?

MR. SACHS: It was both.

THE COURT: I asked him if he ever heard that this man made any charge against him anywhere and he said no.

BY THE COURT:

Q Did you ever go before Commissioner Fosdick? A I don't know him at all.

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Q The Commissioner of Accounts, did you ever hear of him?

A I did not hear of him.

Q You were before Commissioner Dillon, you remember that?

A Yes.

Q Were you before any other commissioner or official or person in the city of New York? A I sometimes go to an official to ask for a favor to permit the peddlers --

Q I do not mean that, I mean were you ever there in reference to graft charges against you? A Never.

Q You know what graft is? A Yes.

Q What is it? A If you take money.

Q For what? A For nothing.

BY MR. SACHS:

Q Will you answer this question -- did you ever go to No. 280 Broadway as the result of a complaint of this defendant?

THE COURT: Against whom?

MR. SACHS: Against himself.

THE COURT: He said he never heard that this defendant made a complaint against him.

BY THE COURT:

Q Did you ever go to 280 Broadway -- the Stewart Building-- you know where the Stewart Building is, 280 Broadway? A No, I don't remember.

Q The Commissioner of Accounts was there? A I was at the Commissioner of Accounts

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Q That is what I asked you before -- now were you there to answer a charge made against you by this defendant? A No.

Q Did you ever hear that he made a charge against you to any one? A No, he never brought charges against me to any one.

Q So far as you know? A Never. I am on good terms with him.

BY THE 4TH JUROR:

Q Did you ever have any trouble with this man? A No.

Q Any fight? A No.

Q On account of business or anything? A No.

Q Who brought you here to court to testify against him in this case? A Mr. Trop went into the street there and asked whether anybody had seen him bring goods, and I said yes, I had seen him.

Q You were on good terms with Weinstein? A Yes.

BY MR. SACHS:

Q Is it not a fact that you and this defendant had quarrelled because you had been taking away his pushcart stand or place, before and after the charges were brought against this defendant in this case; hadn't you quarrelled because you had taken away the defendant's pushcart stand or his place or position? A This is a complicated case.

BY MR. WELLMAN:

Q Tell us? A He is standing in the middle of the block and on Saturday he wants to stand on the corner. I had to give

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him my place on the corner. Twice he said he would beat me, and there is another candy peddler, and that candy peddler is standing at the corner and the other candy peddler always stands at the corner and this defendant said that he would like to be at the corner, so I settled the case between them, that Saturday this defendant should be at the corner and on other days the other candy peddler should be at the corner.

BY MR. WELLMAN:

Q Was there any row or fight or hard feeling between you and the defendant? A Not I with the defendant but the defendant with the other peddler, yes.

Q You settled this as an executive member of the Peddlers Association? A Yes, I made peace between them.

Q In the course of your duty? A Yes.

THE COURT: I think you have gone into that fully.

BY MR. SACHS:

Q The defendant said he would beat you? A Yes.

MR. SACHS: Just stand up Weinstein -- that is all -- no further questions.

FANNIE WEINSTEIN, called as a witness in behalf of the defense, being duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:
(Residence 161 Stanton Street).

DIRECT EXAMINATION BY MR. SACHS:

Q You are the wife of the defendant? A Yes. I can speak English.

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BY THE COURT:

Q How long have you been in this country? A Twelve years.

BY MR. SACHS:

Q You are married to the defendant? A Yes.

Q How long have you been married to him? A Five or six years.

Q Do you know Kassel? A Yes, sir, he came up to my house.

Q When was the first time that you ever saw Kassel?

MR. WELLMAN: I object to this, going all over this visit to the house.

THE COURT: I will let her answer it.

A Eight months ago.

BY THE COURT:

Q It was after your husband was arrested? A Yes.

Q You never heard of him before your husband was arrested?

A The first time my husband was arrested in the Police Court he went out free.

Q Kassel came to your house? A Kassel came to my house. There were four persons there and his mother.

Q The question is when, after your husband had been arrested? A Yes, after the arrest.

BY MR. SACHS:

Q What did he say to you or to your husband?

THE COURT: I will exclude that unless you can show that what he said contradicts what he said here on the stand to-day.

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MR. SACHS: What he said on the stand yesterday.

THE COURT: Yes, I mean yesterday.

MR. SACHS: I think I can show that.

THE COURT: Come right to the point.

BY MR. SACHS:

Q Did Kassel ask your husband to withdraw his suit against Trop?

THE COURT: Suppose he did. That is immaterial.

MR. SACHS: I will ask what was said by Kassel and Trop in relation to these charges and why they were brought.

THE COURT: Take one at a time. This complaint is made by the People of the State of New York. Kassel and Trop are only witnesses, and they both had made charges against this man before that visit. How can you say they made the charges on account of that visit. They might have said they would not press the charges or would not urge the District Attorney to prosecute if he dropped the suit, but that is immaterial. If you can show that they said anything different from what they have testified to here, I will allow you to do it.

MR. SACHS: There are two things I want to show.

THE COURT: It will be conceded by the People that they said if he withdrew his suit they would not press the charge against him.

MR. WELLMAN: That the witnesses will testify to that.

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MR. SACHS: This was before the indictment.

THE COURT: What has Trop to do with the indictment and what has Kassel to do with the indictment. That is the function of the District Attorney and the Grand Jury.

MR. SACHS: But somebody must bring certain facts to the District Attorney's notice.

THE COURT: That is just the point I have made. That the man had already been arrested on a charge of burglary and larceny before that visit.

MR. SACHS: He was discharged in the Police Court.

THE COURT: I have told you how I regard ^{the} Police Court decisions. They do not amount to anything.

MR. SACHS: Will you let me say ten words. I am going to show to your Honor that after the defendant was discharged in the Police Court, Trop and Kassel came to him and said "If you will drop your suit against me I will not go to the District Attorney's office, and if you do press your suit, I will go to the District Attorney's office."

THE COURT: I will not allow you to prove that. You have made that offer of proof and I will exclude it. It is entirely immaterial and I have tried to show it to you.

BY MR. SACHS:

Q Did Trop say anything, or did Kassel say anything during any visit to your house about the charges against your husband not being true?

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MR. WELLMAN: I object. May I first examine the witness as to the time of the visit?

THE COURT: I will allow it at any time. I will let that go to the jury. That is material.

BY THE COURT:

Q Yes or no? A Yes.

BY MR. SACHS:

Q Now, what did Kassel say or what did Trop say in relation to the charges against your husband being untrue -- what did Trop or Kassel say in relation to the truth or untruth of the charges against the defendant -- first state what Trop said as to the falsity of the charge if anything? A Trop came to my husband and told him, he said "Mr. Weinstein, will you take back that suit of yours for \$10,000. If you do that I will even give you back your expenses for the lawyer. If you fail to do that, then I will go against you."

BY THE COURT:

Q Anything else? A He asked me to ask my husband to induce my husband to do that.

Q Did he say anything else? A He had gone out and he came back again and opened the door and told me, he said "Try to induce your husband to do as I tell him to, otherwise your husband will be taken away from you once more."

Q Did he say anything else? A Did not say anything more. The second day my husband was taken away.

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Q That was all he ever said to you about this case? A Yes.

Q That is all you ever heard him say to your husband about the case? A Yes.

Q You are sure of that? A Yes.

Q How about Kassel, what did Kassel ever say to you about the case? A Kassel said "If you won't drop your suit for \$10,000, you cannot go free. If you don't do that then I will arrange it so that you will be arrested. It will be a false arrest but you will be arrested." Three times he came up to me and asked me to beg my husband to do what he wants him to do.

Q He told you it would be a false arrest? A Yes.

Q Did he tell you anything else? A Kassel's mother also begged me --

THE COURT: Leave out Kassel's mother.

BY MR. SACHS:

Q Kassel's mother made certain statements --

THE COURT: Kassel's mother has nothing to do with this case.

MR. SACHS: I thought it might as bearing on the motive.

THE COURT: No.

THE WITNESS: And another boy, a friend of Kassel's also begged me to induce my husband --

THE COURT: Strike that out.

BY MR. SACHS:

Q Do you know if the other boy who came with Kassel --

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THE COURT: I will exclude anything any other boy said, unless he is one of the witnesses in this case.

MR. SACHS: I except.

THE COURT: You are trying to prove that this case was framed-up on him, and that he is an innocent man; that these charges are false. If you can show that any of the witnesses here have made different statements at any other place than from what they have made here, you can show it.

MR. SACHS: That is what I am trying to do.

THE COURT: What some other boy said about them, amounts to nothing.

MR. SACHS: If I can show what another person said -

THE COURT: You cannot show it. You might have four thousand people over on the east side telling them that the arrest is illegal. I will confine it to the witnesses in this case.

Exception.

CROSS EXAMINATION BY MR. WELLMAN:

Q When was this that Mr. Trop and Mr. Kassel and Mr. Kassel's mother came to your house? A Eight or nine months ago.

Q What month of the year was it in? A I cannot remember whether it was April or March. I cannot remember. I know that my child at that time was very sick with pneumonia.

Q Who was there when they all came in? A Mr. Trop and Kassel and the father and a friend of Kassel's and two others.

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Q Who was there of your family? A A lady friend of mine and a brother-in-law and other people were there because my child was very sick at the time.

Q Who was there, was your mother there? A My mother-in-law was there.

Q And your brother-in-law, did he have his wife with him?

A Yes.

Q And a friend of yours? A Yes.

Q And you and your husband? A Yes.

Q All the family, is that right? A Strangers were there also.

Q What strangers? A One lady friend of mine.

Q What is her name? A Lena Wasser.

Q How did she happen to come there? A She came to see how the child was getting on.

Q And she is a friend of yours? A Yes, sir.

Q Then she was not a stranger, was she? A Not a relative.

Q But an old friend of yours, is that right? A Yes.

Q Do you mean to tell us that right there in the presence of you, your husband, your mother-in-law, your brother-in-law and his wife, and your lady friend, that Mr. Trop came in and said that he was going to go against your husband unless your husband dropped the suit against him, and made a threat in front of all your family? A Yes, sir.

Q And in front of all your family Kassel made the same threat? A Yes, sir, he wanted to speak in a low voice as a secret

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and my husband said "Please whatever you have to say, say it in the presence of everybody."

Q So that in a loud voice so that everybody could hear both of them made this threat? A Yes, sir.

Q And before all these people in a loud voice, before your family, in your house, Kassel said "It will be a false arrest but we will arrest your husband," is that right? A Yes.

A B E W E I N S T E I N, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Are you married? A Yes.

Q How long have you been married? A Two and a half years.

Q What is your business? A Book binder.

Q In business for yourself? A No, sir.

Q Employed as a book binder? A Yes.

Q By whom? A Mann & Sons, 79 Crosby Street.

Q How long have you worked there? A Worked over there for the last -- (Question withdrawn).

Q Are you a brother of this defendant? A Yes.

Q Do you know where he lived in March or April of last year? A Yes, sir.

Q Where did he live? A 223 Broome Street, second floor.

Q How long did he live there, do you know? A I can't remember that very good -- a year or xi months, I don't remember.

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BY THE COURT:

Q How do you know he lived there in March? A Because I went always.

Q But you don't know when you went up? A Yes, I know when I went up.

Q He asked you how long he lived there and you say you don't know? A I cannot tell the months.

BY MR. SACHS:

Q Do you know any one by the name of Trop? A Yes, sir.

Q Do you see Mr. Trop in the court room? A Yes.

Q Where is Mr. Trop? A I do not see him.

Q Do you know any one by the name of Kassel? A Yes.

Q Do you see Kassel in the court room? A Yes.

Q Point out Kassel? A That fellow.

THE COURT: Stand up Kassel.

(Kassel arises).

BY THE COURT:

Q Is that the man you mean? A Yes.

BY MR. SACHS:

Q When did you see Kassel for the first time? A Eight or nine months ago.

Q Where? A In 223 Broome Street.

Q Did you see him in the building? A Yes.

Q Where in the building? A In the rooms of Max Weinstein and us.

Q What day of the week was it, if you know? A Mr. Kassel was-

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Q What day of the week was it that you saw Kassel in Max Weinstein's house? A Sunday.

Q How did you come to go to his house that day? A My brother's baby was very sick.

Q And you went there? A Yes, with my wife.

Q Did you see Kassel when you got there? A No, after -- an hour later he came in.

Q Did you hear Kassel say anything to your brother? A Yes.

Q Just state to the Court and jury what Kassel said to your brother and what your brother said to Kassel? A So, Sunday I was in the house with my wife and a lady --

BY THE COURT:

Q Tell us what Kassel said? A Kassel and another fellow --

Q What did Kassel say? A Asked him that he shall take off the case for Mr. Trop \$10,000., and if he take off the case for \$10,000., then Mr. Trop will take off the case of the two boys. If he will do it, then Mr. Trop will have nothing to do with the two fellows and if he won't do it, then he will make my brother trouble. Then Mr. Trop said "Listen, Max, I am telling you the last few words, if you will not take off the case from me, I will have you for false arrest, because I must do it, because you have against me a case for \$10,000."

BY MR. SACHS:

Q Is that all that was said? A Yes.

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CROSS EXAMINATION BY MR. WELLMAN:

THE COURT: What is the use of cross-examination?

MR. WELLMAN: Some of the jurors may think this is a framed-up case, and I want to cross-examine.

THE COURT: This man had been arrested and this charge was made when he was arrested. I will charge the jury distinctly that all these statements are no evidence of a false charge on Mr. Trop's part. I will make it as clear as possible. I will protect your rights.

MR. WELLMAN: I have no cross-examination in view of your charge.

MR. SACHS: I have tried to explain my view of this case.

THE COURT: If I am wrong, you have your remedy on appeal. I say this charge was made when that man was arrested and that all this testimony refers to things after the arrest.

MR. SACHS: I say at the time the statements were made there was no charge pending against the defendant.

THE COURT: There is where you are wrong.

MR. SACHS: Suppose we can show the District Attorney did not intend to press this charge.

THE COURT: You cannot do it. It was the duty of the District Attorney to take it up. You cannot tell anything about intentions.

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MR. SACHS: Suppose we can show this --

THE COURT: You cannot show anything more on that line. Proceed. I have allowed you the fullest latitude. The jury will take the law from the Court. I am responsible for the law.

MR. SACHS: Will you give me two minutes to explain my position?

THE COURT: No.

MR. SACHS: I know you will permit this evidence, if you will only let me.

THE COURT: Call your witnesses and ask your questions and I will rule upon them. I will not hear any more discussion. If I am wrong, I am wrong.

MR. SACHS: I have two other witnesses and they will testify to the same thing.

THE COURT: Then their testimony amounts to nothing as to bias on the part of the prosecution, and I will so instruct the jury. That is all it is allowed for. It amounts to nothing. If this testimony all referred to something before the original arrest, it would be pertinent, but it is not pertinent now.

S A R A H W E I N S T E I N, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 161 Stanton Street).

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DIRECT EXAMINATION BY MR. SACHS:

Q Did you ever live with Max Weinstein at 223 Broome Street?

A Yes.

Q Do you know a young man by the name of Kassel? A A boy, yes.

Q Do you know Mr. Trop? A Yes.

Q Did you ever see them in your son's house after his discharge in the Jefferson Market Police Court? A Yes, I saw them there; I opened the door for them.

Q And who came in with Kassel?

THE COURT: That will be conceded.

BY MR. SACHS:

Q What did you hear Kassel say to your son in relation to these charges? A He knocked at the door and I said come in, and they came in and they said hello, and the two boys said to Max "We want to talk to you about something" and Max said "Talk in the presence of everybody, I have no secrets." So he said "Max, we want you to withdraw the case about the \$10,000, if you do it you will be set free, and if you don't do it, we will put you into great trouble," and then Trop came up and said "Max, I want you to do it for me and take back that case about the \$10,000., and if not, then I will make for you a false arrest."

Q Are you at the pushcart with your son every day? A Yes, sir, once a week he goes to buy goods.

(No cross-examination)

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BENJAMIN MILLER called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 284 South Fifth Street, Brooklyn).

DIRECT EXAMINATION BY MR. SACHS:

Q What is your business, Mr. Miller? A Candy business, wholesale candy business.

Q Do you know the defendant? A Yes.

Q How long have you known him? A About six or seven years.

Q Has he done business with you? A Yes.

Q Do you know other persons who know him? A Yes.

Q Do you know his reputation for honesty and uprightness?

A Yes.

Q Is it good or bad? A Very good.

CROSS EXAMINATION BY MR. WELLMAN:

Q How long have you known him? A Six or seven years.

Q When you make that answer that you know his reputation to be good, I will ask you if you ever heard that on the 11th of September, 1912, this defendant bought from a young boy a stolen ring which that young boy pleaded guilty to having stolen?

MR. SACHS: I object.

THE COURT: That is not a crime. He would have to know that it was stolen.

MR. WELLMAN: That he knowingly bought from a boy a stolen ring which the boy pleaded guilty to having stolen.

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MR. SACHS: I object to that.

THE COURT: You can ask him that.

MR. SACHS: I except.

A No, sir.

Q You had never heard that? A No.

THE COURT: The jury will understand that Mr. Wellman's question is no evidence that that is true, and if it is true he ought to be indicted and punished for it.

MR. WELLMAN: He has been indicted.

MR. SACHS: I object to the question and statement made by Mr. Wellman. This man has never been convicted of a crime.

MR. WELLMAN: He has not been tried.

THE COURT: The rule is on cross-examination a witness can be asked concerning his knowledge, if he is a character witness, of any other alleged criminal or disgraceful act in the record of the defendant. This is evidence of reputation. That is all, and is no proof that Weinstein is guilty of any other crime at all.

MR. WELLMAN: That is all.

THE COURT: And if I thought it was brought before the jury merely for the purpose of bringing that charge before the jury, I would dismiss the defendant at once.

MR. WELLMAN: No, but that is proper within the rules of evidence.

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THE COURT: The Courts have gone pretty far in allowing that, but the jury will be fair, and they will not consider that in any way. I do not think it ought ever to have been decided as a proper question, but it has been.

C H A R L E S M. S C H I R F called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 110 Suffolk Street).

DIRECT EXAMINATION BY MR. SACHS:

Q What is your business? A Wholesale confectioner.

Q How long have you been in the wholesale confectionery business? A Nine years.

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

Q For how long have you known him? A About six years.

Q Has he dealt with you? A Yes.

Q Do you know other persons who know him in the neighborhood and elsewhere? A Yes.

Q Do you know his general reputation for honesty? A Yes.

Q Do you know his reputation as an honest man? A Yes.

Q Is that reputation good or bad?

THE COURT: You can ask him if he knows his reputation for honesty.

BY MR. SACHS:

Q Do you know his reputation for honesty? A Yes.

Q Is it good or bad? A He is all right.

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Q What? A It is good.

(No cross-examination).

H A R R Y P L A T K I N, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 105 7th street).

DIRECT EXAMINATION BY MR. SACHS:

Q Do you speak English? A A little bit.

Q What is your business? A I am a peddler.

Q What do you mean by peddling, do you go around with a basket? A I am a pushcart peddler.

Q And have you a regular stand? A I have a regular stand in the same block Weinstein peddles from.

Q This Weinstein? A Yes.

Q Do you know Nathan Weinstein? A Very well.

Q He was or is president of the Pushcart Peddlers Association? A Mr. Weinstein?

Q Nathan Weinstein? A He is at the same time president too.

Q Who? A Weinstein.

Q Nathan Weinstein is president? A Yes.

Q Do you know whether or not Nathan Weinstein ever quarrelled with the defendant?

Excluded.

MR. SACHS: Why?

THE COURT: It is too indefinite.

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BY MR. SACHS:

Q Do you know whether Nathan Weinstein and the defendant quarrelled during the year 1912?

Objected to. Excluded. Exception.

Q Do you know whether they quarrelled in the months of January and February, 1912?

THE COURT: I will let you ask him concerning any specific declaration he ever heard Nathan Weinstein make against Max Weinstein.

MR. SACHS: I except to your ruling, and will follow your suggestion.

BY MR. SACHS:

Q Did you ever hear Nathan Weinstein say anything against the defendant? A Many times.

Q Did you hear him say anything?

BY THE COURT:

Q What did he say? A He said he would like to have him transferred from the block to another block, he does not want to have him there peddling.

Q Anything else? A About a corner place.

Q Anything else? A That has been their fight all the time for the last five or six years, about the place.

BY MR. SACHS:

Q How long do you know the defendant, Max Weinstein?

A About six or seven years.

Q Do you know other persons who know him? A Yes.

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Q Do you know his reputation for honesty? A Yes.

Q Is it good or bad? A It is good.

CROSS EXAMINATION:

Q Have you ever talked over his reputation with anybody?

A No, sir.

Q How do you know what his reputation is? A Because we are peddling for about six years in the same block and besides he was the vice president of the organization.

Q Of which you are a member? A Yes.

LOUIS GOLDSTEIN, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 157 Norfolk Street).

DIRECT EXAMINATION BY MR. SACHS:

Q Now, speak up loud -- what is your business? A Peddler.

Q Where is your stand? A My stand is on the school between Norfolk and Suffolk Street.

Q What street? A Rivington Street.

Q Do you know the defendant, Max Weinstein? A Yes, sure.

Q Do you know where his stand is? A His stand is one pushcart from me.

Q Did you ever hear Nathan Weinstein say anything against the defendant, Max Weinstein?

BY THE COURT:

Q Do you know Nathan Weinstein? A Yes, sir, sure. I know him.

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Q Did you ever hear him say anything against Max? A They had quarrels among them, between them.

THE COURT: Strike that out.

BY THE COURT:

Q Answer yes or no? A Yes.

Q What did you hear him say? A I did not hear what he said.

Q Didn't you hear him say Max Weinstein was an innocent man and he was going to send him to jail? A No.

BY MR. SACHS:

Q Do you know whether the defendant made any charges in Police Headquarters and before the Commissioner of Accounts, against Nathan Weinstein?

Objected to.

THE COURT: Excluded. We are not interested in the fact whether he made them or not. The question is whether they were brought home to Nathan Weinstein.

Exception.

MR. SACHS: If I can show that it was a matter of general knowledge.

THE COURT: It is a plainproposition, and there is no use discussing it. I will exclude the question. Exception.

MR. SACHS: If I can show that Nathan Weinstein knew that he went to the Commissioner of Accounts. You know that if possible I can show a motive that prompts a man to testify.

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THE COURT: That is what I have told you repeatedly,
but you must show it by legal means.

BY MR. SACHS:

Q How long do you know the defendant? A Four or five years.

Q Do you know other people who know him? A Yes.

Q Do you know his reputation for honesty? A Yes.

BY THE COURT:

Q Did you ever hear any one say anything bad about him?

A No.

Q He is a good man, in your opinion? A Yes, he is a
good man. I know him as an honest man.

THE DEFENSE RESTS.

MORRIS S. TROP, recalled in rebuttal:

BY MR. WELLMAN:

Q Now, did you at any time go to the house of the defendant
with Abraham Kassel and others, and speak to Max Weinstein in the
presence of his wife and others? A No, sir.

Q Did you ever go to his house in your life? A I did.

Q When was that? A When we went to look for him, to arrest
him.

Q Did you find him there? A We did not find him there.

BY THE COURT:

Q Which time was that, the first time he was arrested?

A The first time, after we got information that he was the ac-
complice.

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BY MR. WELLMAN:

Q As matter of fact, a suit was brought against you for \$10,000.? A Yes.

Q Have you ever from that day to this heard anything about that suit? A No.

Q Has issue ever been joined in it, or any steps taken in it? A No.

CROSS EXAMINATION BY MR. SACHS:

Q You say you never heard anything about it? A I heard--

MR. WELLMAN: He said it was brought.

BY MR. SACHS:

Q You never heard anything about the suit? A Not after I was served.

Q Did you go down to your attorney after you were served?
A Sent the papers down to him.

Q Did you go down and swear to an answer? A Yes.

Q Do you know if your attorney served that answer? A He did.

Q Was issue joined in your case? A I left it to the attorney, I don't know what he did.

Q Do you know what the joining of issue means? A No.

Q Did you make any investigation of the court calendars?
A No.

Q Do you know if the case is upon the court calendar? A I don't know.

Q Do you know if it is going to be called within the next

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thirty days or not? A No.

BY THE COURT:

Q You made this charge against him in the beginning, did you not? A Yes.

Q Acting on information? A Yes.

Q Now, whether that information was true or false, you made the charge honestly, you believed it? A Yes.

Q Were you influenced in that in any way by the bringing of this suit? A No, sir.

Q Didn't you make those charges long before the suit was brought? A Yes, sir.

BY MR. SACHS:

Q Did you say to the defendant yesterday that if he would withdraw his action against you, that you would try to have this proceeding against him dropped? A No, sir, he told me to go and see you. He came and kissed my hand.

THE COURT: That is immaterial. Keep quiet. I have excluded that. There is one issue before this jury, is this defendant guilty or not. That is to be proved by the evidence. The People have brought a number of witnesses to testify to certain things, and they made certain charges long before any suit was brought and I will tell the jury as matter of law that the making of those charges could not have been inspired by the bringing of that suit. If they can prove that these witnesses ever made different state-

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ments concerning those charges, that is proper proof. The other thing is a mere sham and worthless as a defense in this action. I cannot make it stronger.

MR. SACHS: If we can show motive.

THE COURT: You cannot show I had something done to me to-day as a motive for something I did six years ago. The motive must precede.

BY MR. WELLMAN:

Q Is it not a fact that after this defendant was discharged by the Magistrate, Kassel confessed and pleaded guilty? A Yes.

Q And that this defendant was re-arrested? A Yes.

Q And that he was indicted and brought on this charge? A Yes.

BY MR. SACHS:

Q Do you remember when it was that you first called upon the District Attorney in relation to this case? A In this same matter?

Q Yes? A I related the whole story to him, that witnesses were not called in Jefferson Market Court --

Q After the defendant was discharged in Jefferson Market, you came down to this building? A Yes.

Q Were you sent for? A No, sir.

THE COURT: It is immaterial whether he was sent for.

MR. SACHS: If you will give me two minutes.

THE COURT: No, I am perfectly clear upon that point.

MR. SACHS: I want to show what I claim is the motive that preceded his act.

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THE COURT: I know what you want to show. I will not allow it.

MR. SACHS: Will you permit me to put this question--

THE COURT: Do not ask any more questions about that. You can cross-examine him upon anything brought out by Mr. Wellman.

MR. SACHS: This is in relation to what was brought out.

THE COURT: Then proceed.

BY MR. SACHS:

Q Did you go down to the District Attorney's office before or after the defendant's action against you was commenced?

A He brought action perhaps the same day that he came out of Jefferson Market Court.

Q Please answer my question, did you go down to the District Attorney's office before or after? A I think it was after he was discharged.

BY MR. WELLMAN:

Q It was also after Kassel had confessed? A Yes, sir.

A B R A H A M K A S S E L recalled in rebuttal:

BY MR. WELLMAN:

Q Did you ever in company with Mr. Trop and your mother and others, go to the house of Max Weinstein?

THE COURT: I have excluded all that testimony.

MR. WELLMAN: You have allowed it by the defense. That is their whole defense.

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THE COURT: I told them that it amounted to nothing. Why open it up again. Do you want to open up the whole case?

MR. WELLMAN: No.

THE COURT: The statement made by Mr. Wellman "that is their whole defense" will not affect the jury. The jury will decide that. I tell the jury it makes no difference whether he went there or not, so far as his guilt or innocence is concerned. I will allow you, Mr. Sachs, to show that one of these witnesses ever said that man was innocent which or ever made a statement differed from the statement made in the Magistrate's Court or here. That is all, but you have not done that.

MR. SACHS: If I can show Kassel was there with his mother and made certain statements in the presence of Trop.

THE COURT: It amounts to nothing except for the purpose I have stated. This defendant is on trial and he is charged with a specific act. He either did that or did not. The People must prove that he did.

MR. SACHS: Is there any better way to prove that he did not than by the statements of the witnesses for the prosecution?

THE COURT: You cannot prove it in the way you state.

MR. SACHS: I except.

THE COURT: You are trying to prove a motive for the

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act. I know that you make the technical point that the prosecution began after. It did not. The prosecution began the minute that he was arrested, and the declarations were made then and they could not have been inspired -- they could not have been inspired by things which happened afterwards.

MR. SACHS: As matter of law no.

THE COURT: Nor as matter of fact.

MR. SACHS: Yes.

THE COURT: No.

MR. SACHS: It is shown by the fact that the District Attorney's office did not take up the case until Trop came down there, and Trop did not go down until after the suit was started.

MR. WELLMAN: Not until Kassel confessed and they had the additional evidence.

THE DEFENSE RESTS.

THE PEOPLE REST.

THE COURT: I will take away receiving stolen goods from the jury, because the evidence is that this man went into the store with Kassel, as I understand it, and took the goods, and if he did that he is guilty of larceny. A man cannot be thief and receiver. Some one else must steal before he can be a receiver. If you do not believe that he entered that store and took those goods, you must acquit

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him, and therefore I will take away the crime of receiving stolen property from the jury, and merely submit it on burglary and larceny.

MR. SACHS: I ask you to take from the consideration of the jury the count charging grand larceny, on the ground that proof of value was not sufficient.

THE COURT: Mr. Trop has stated the property was worth about \$73.35. It is for the jury to say if he knew what he was talking about.

MR. SACHS: That may have been the value of that property in Trop's opinion.

THE COURT: I will deny your motion. Exception.

THE COURT: I merely give you my reason for denying your motion. I do not pass upon the weight to be given to the evidence, but merely say there is evidence in the case of grand larceny in the second degree, and it is for the jury to say whether there is or not.

MR. SACHS: My motion brings up the question whether it is sufficient evidence.

THE COURT: It is sufficient to submit it to the jury. \$73.35 makes it grand larceny in the second degree.

MR. SACHS: My claim is that there is not sufficient proof of value.

THE COURT: I have denied your motion. Exception.

MR. SACHS: I ask your Honor to take from the consider-

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ation of the jury the count charging burglary.

Motion denied. Exception.

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$$\begin{array}{r} 108 \\ 36 \\ \hline 72 \\ 36 \\ \hline 180 \end{array}$$

$$\begin{array}{r} 108 \\ 36 \\ \hline 72 \\ 36 \\ \hline 180 \end{array}$$

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