

START

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CASE

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S A M U E L K A P M A N, a witness for the People, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q Where do you live? A 447 Miller Avenue, Brooklyn.

Q You are in business where? A 45 John Street, New York City.

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

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

Q How long have you known him? A About two years.

Q Do any business with him? A Yes, sir.

Q What is your business? A I am an importer of diamonds and jewelry.

Q Well, on the 2nd day of October, 1907, did you have any dealings with this defendant in the County of New York? A He was up in my office and he asked me, he needed a few diamonds for a pin, for a customer, for a private customer. I showed him the goods, he saw the goods and he told me he would take the goods and show to a customer, and in a few days he will let me know, he will bring the customer to my place.

Q Did you give him the diamonds? A Yes, sir.

Q Diamonds is your business? A Yes, sir.

Q You are accustomed to buying and selling diamonds? A Yes, sir.

Q What was the market, the reasonable market value of the

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diamonds you gave the defendant on the 2nd day of October, 1907?

A About \$85. a karat .

Q How many diamonds and how many karats? A there was
4 karats and 3/8ths.

Q How much were the diamonds worth?

MR. PALMER: I object to this testimony as it
varies from the indictment. The indictment calls for ten
diamonds worth \$42. apiece. The complaining witness is
now testifying to a different state of affairs.

THE COURT: I will allow him to state.

Exception.

Q What was the market value of those diamonds the day
that you gave them to this defendant? A \$85. a karat, 4 and
3/8th karats, -- you can find out.

Q you figure it up for me?

MR. PALMER: Objected to as not the best evidence.
The best evidence is any record at the time.

THE COURT: If you contend that this witness is not
competent to testify as to the value I will allow you to
examine him.

MR. PALMER: I don't contend that, your Honor, but
I contend that the best evidence of it would be a record
kept at the time.

Exception.

A About \$370.

Q About \$370.

A Yes, sir.

Q Now, did this defendant sign any paper in your presence?

A Yes, sir.

Q At the time you gave him the diamonds? A Yes, sir.

Q I show you a memorandum book and call your attention to the second memorandum on it, marked "People's Exhibit 1 February 3rd, 1908," and ask you what it is?

MR. PALMER: Objected to on the ground that the book is not properly identified as a book kept in this man's business.

MR. MARSHALL: I ask him what it is.

MR. PALMER: Objection withdrawn.

A The memorandum he signed.

Q Is that one of your books? A Yes, sir.

Q And that particular memorandum I called your attention to is what? A That is that he took the goods, 4 and 3/8th karats and 3/64ths, --

Q Who made it? A The bookkeeper.

Q In your presence? A Yes, sir.

Q Who was it signed by? A By Meyer Donchin.

Q This defendant? A Yes, sir.

MR. MARSHALL: I offer it in evidence.

THE COURT: You saw the defendant sign it?

THE WITNESS: Yes, sir; his signature.

MR. PALMER: No objection.

(The entry referred to is received in evidence and marked People's Exhibit 1.)

BY MR. MARSHALL:

Q When did you see the defendant again after he took those diamonds on the 2nd of October? A A few days later.

Q Where did you see him? A Up in my office.

Q What did you say to him or did he say to you? A I asked him for the goods, what about the goods; he told me he left the goods by a customer and she was giving them to her husband and he put it in the safe, locked the safe and he is gone away.

Q That is what he said. Talk out loud? What did he say when you saw him a couple of days after? A I did ask him for the goods, what is it about the goods and he told me he left the goods with a customer and she was giving the goods to her husband.

Q To her husband? A Yes, sir; and he put it in the safe and she don't know the combination of the safe.

Q Where was this conversation? A I beg pardon.

Q In your office? A Yes, sir.

Q He came into your office? A Yes, sir.

Q when did you see him next after that? A Yes, sir.

Q When? A In a few days later.

Q where? A In my office.

Q what did he say about it then? A The same.

Q He said the same thing? A Yes, sir.

Q Well, please go on. When did you see him, ^{the} next time,
tell us the time you saw him and what he said? A I was asking
him again about the goods and he told me he has not arrived, the
husband.

Q The husband hadn't got back yet? A Yes, sir.

Q How many times did he tell you that? A Many
times.

Q Over how long a period did that extend? A Well, it is
about a month.

Q When did you have him arrested? A Well, I do not
remember.

Q How long afterwards was it? A I think about six
weeks or two months.

Q Did he stop coming to the store? A Yes, sir.

Q Where did you find him? A Well, I found in his home.

Q where was that? A I can't remember.

Q Was it in the City of New York somewhere? A Yes, sir;
in the City of New York, uptown.

Q How long was it before you had him arrested that he
was last in your store?

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A About, I think, six weeks.

Q You had him arrested on a certain day. Now, how many days before the day he was arrested had he been in your store?

A Just about six weeks, I say.

Q From the last time you saw him until you had him arrested?

A Yes, sir.

Q Did you ever get your diamonds back? A No, sir.

Q Never got anything back? A No, sir.

CROSS EXAMINATION BY MR. PALMER:

Q When was the first time, or rather the last time that you saw Mr. Donchin in your place after he took this bill of goods on October 2nd? A About six weeks.

Q About six weeks that you saw him for the last time -- the last time after he took these diamonds -- when was that? A The last time when I saw him?

Q Yes? A A few days.

Q A few days after he took these diamonds? A Yes, sir.

Q How many days or weeks after that did you have him arrested? A About six or eight weeks.

Q Well, Mr. Kaplan, will you be kind enough to tell me if this is your signature; that is your signature --

THE COURT: The paper referred to is marked Defendant's Exhibit "A" for Identification.

A Yes, sir.

Q Do you recall when you signed that paper? A Yes, sir.

Q What is the date when you signed that paper? A I do not remember.

Q Look at it and see if your recollection is refreshed by looking at it? A February 8th.

Q What date? A The 8th of February.

Q February 8th? A yes, sir.

Q What year? A I took out the warrant, I think --

Q February 8th, 1909? A yes, sir.

Q Now, the warrant was taken out in this case on the 8th of February, 1909? A Yes, sir.

Q You sold him these goods the 2nd day of October, 1907. Now, account to me how you make it six weeks between the time that you took the warrant out and the time that you last saw him? A I will tell you; I cannot remember how many weeks it was, I say about.

Q But you remember the amount of the diamonds, the amount of the karats, and the fraction of karats you sold him on October 2nd? A Yes, sir; because it is in the books.

Q Now, Mr. Kaplan, will you kindly tell me did you ever speak to anybody about this case before you came on the witness stand? A No, sir.

Q Did you ever speak to Mr. Marshall about this case? A I spoke today to him.

Q For the first time? A I think that is the second time, it is the first time, -- I didn't speak to him before at all, I think.

Q You didn't speak to him before this? A No, sir.

Q When this case was called last month in Part V, General Sessions, you did not go to Mr. Marshall's room with him about this case, with your book, did you? A No, sir.

Q You did not? A No, sir.

Q Were you up in Mr. Marshall's room this morning? A Yes, sir.

Q Did you tell Mr. Marshall this morning what you are telling us here now? A Yes, sir.

Q Were you up in Mr. Marshall's room this afternoon at 2 o'clock? A Yes, sir.

Q You were in his room until one minute of three, weren't you? A Yes, sir.

Q Did you repeat to him this afternoon what you told him this morning, exactly the same story you told him this morning? A Yes, sir.

Q Did you ever speak to anybody else about this case outside of Mr. Marshall? A To customers; I told them he took the goods.

Q Ever speak to your own attorney about this case? A Yes, sir.

Q To Mr. Appell? A Yes, sir.

Q Did you ever speak to him (pointing to a man in the court room). A Yes, sir.

Q You consulted your attorney about this case, didn't you,-- you consulted your attorney about this case?

MR. MARSHALL: Objected to as utterly immaterial.

Q Did you consult your attorney about this case? A I told him.

Q You told him? A Yes, sir.

Q How long do you say you have known Mr. Donchin? A I think about two years.

Q Now, during those two years and prior to the 2nd day of October, 1907, did you sell Mr. Donchin any goods? A I did not sell him any goods only what he took on memorandum.

Q Did you sell him any goods? A Yes, sir.

Q How many bills? A I do not remember; it was everything in the book.

Q Have you got your books here that will refresh your recollection as to how many bills? A Yes, sir.

Q Look at your book and tell me how many bills of goods you sold the defendant, before the bill of goods dated the 2nd of October, 1907? A Seven.

BY THE COURT:

Q Were any of those memorandum transactions? A (No answer.)

BY MR. PALMER:

Q You sold him seven bills of goods? A Yes, sir.

BY THE COURT:

Q Were any of those memorandum transactions? A Yes, sir.

Q Were they all memorandum transactions? A Yes, sir; that is, Mr. Katz told me to give to him; I didn't charge it to him.

Q How many of those are memorandum transactions? A (No answer.)

Q Look at your book, if you can, and tell me how many of those transactions, if any, were memorandum transactions? A I think, your Honor, my bookkeeper is here.

Q If you don't know say so? A I don't know.

BY MR. PALMER:

Q You don't know? A No, sir.

Q I ask you to look at this book which you have identified as your ledger and read to this jury and to this court what you have written alongside of the various items that you have called memorandum transactions? A (No answer.)

BY MR. MARSHALL:

Q Have you written anything in here in your own handwriting?

A No, sir.

BY MR. PALMER:

Q Have you seen the bookkeeper write that? A Yes, sir.

Q Do you know the bookkeeper's handwriting? A Yes, sir.

Q Tell me if you recognize that handwriting? A Yes, sir,
that is the bookkeeper's handwriting.

Q Now, will you read to this court -- A (No answer.)

BY THE COURT:

Q What is the name of the bokkeeper? A Miss Alice
Gruneman.

Q Miss Alice Gruneman was the bookkeeper in your employ?

A Yes, sir.

Q During these times? A Yes, sir.

Q Then the entries which have been brought to your atten-
tion in your ledger are in her handwriting? A Yes, sir.

Q Is that so? A Yes, sir.

MR. PALMER: I ask you to read --

THE COURT: No.

MR. PALMER: I take an exception.

BY MR. PALMER:

Q Did you dictate to your bookkeeper the items that she
was to write, the charges she was to make in this book called
the ledger? A Yes, sir.

Q Did you dictate to your bookkeeper on or after September
20th "bill rendered from page 34 \$68.90"?

Objected to; objection overruled.

Q Did you dictate that? A What is that.

Q (Question repeated). A Please tell me again?

Q Did you dictate on or about or after the 20th of September to your bookkeeper to post in this book, called by you the ledger, the item "Bill rendered from page 34, \$68.90"?

A Yes, sir.

Q You did? A Yes, sir.

Q Did you dictate to your bookkeeper on or about the 20th of September, "Bill rendered from page 34, \$30."? A Yes, sir.

Q Did you dictate to your bokkeeper on or about the 24th of September, from page 34, \$47.40? A Yes, sir.

Q Did you dictate to your bookkeeper on or about the 24th of September from page 34, "Bill rendered amount \$30.63"? A Yes, sir.

Q Did you dictate to your bookkeeper --

MR. MARSHALL: May I make an objection? If your Honor please, I have no objection to the book going in evidence, but I have an objection to its going in evidence in this way. I think this is objectionable.

THE COURT: I do not allow the contents of the book to come in. I am allowing him to testify as to whether or not on certain occasions he did dictate certain things to his bokkeeper. That is all.

BY MR. PALMER:

Q Did you on or about the 18th of October dictate to your

bookkeeper the item "Bill rendered from page 36, amount \$90.?"

A I think this is another --

Q Did you dictate that? A yes, sir; everything I say to the bookkeeper.

Q Yes or no? A Yes, sir.

Q Did you, on or about the 18th of October dictate to your bookkeeper the item "Bill rendered from page 36, \$175.?"

A yes, sir.

Q On or about the 18th of October from page 36, amount \$95, that is, bill rendered? A yes, sir.

Q "7th day of November, the item ^{"cash} \$1.33", did you dictate that to your bookkeeper? A Yes, sir.

Q On or about the 9th day of November the item page 89, bills receivable amount \$85.? A Yes, sir.

Q On or about the 26th day of November, the amount "commissions from page 91, \$13.85"? A Yes, sir.

Q Also on or about the 9th day of December, 1908, the amount of \$90. from page 94, bills receivable? A Yes, sir.

Q On or about the 2nd day of January, 1909 "balance \$247.36? A Yes, sir.

Q Then on or about the 30th day of January, item "legal expenses page 104 \$1.30"? A yes, sir.

Q Did you on or about the 15th day of October, 1907, dictate to your bookkeeper the item, "note by note from page

82, \$85.?" A Yes, sir.

Q On the 15th of October, "by note \$90"? A Yes, sir.

Q On the 2nd day of October by check from page 112 \$45.?

A Yes, sir.

Q On the 2nd day of October the item cash? A Yes, sir.

Q Page 114 \$23.90? A yes, sir.

Q The 15th day of October, the item cash from page 114 \$103.? A Yes, sir.

Q On or about the 29th day of October, the item "Commission from page 87, \$13.85" and on the 29th of October, the item, "S. Kaplan, page 87, \$4.?" A Yes, sir.

Q That was a clock he sold you? A Yes, sir.

Q The 29th day of November, by cash \$50.? A Yes, sir.

Q On the 30th day of December, balance \$277.76? A Yes, sir.

Q The 31st day of August the item "Profit and Loss, balance, \$248.66"? A Yes, sir.

Q What makes you think, Mr. Kaplan, that the amounts of the market value and the price that you agreed to sell those diamonds through Donchin was the amount of \$275.? A I never agreed for any price.

MR. MARSHALL: Do you mean on these goods.

MR. PALMER: Yes.

BY MR. PALMER:

Q You never agreed to any price? A No, sir.

Q But the other items I have enumerated, haven't you agreed to a price on those? A Yes, sir.

Q This was the only item that you agreed on no price at all? A Yes, sir.

Q When Mr. Donchin came to your place did he ask you for the price of the diamonds? A No, sir.

Q Simply asked you for diamonds and you gave them to him and he walked away with them? A He told me to give them to him to show to a customer.

Q He didn't ask you the price of the diamonds at which they were to be sold? A No, sir.

Q Are you accustomed to give diamonds to a man for sale without letting that man know what the price of those diamonds are? A He was given them only to show --

Q Didn't he tell you he wanted the diamonds to sell at a certain price, did he? A No, sir.

Q He simply said, "I want to show this woman diamonds"? A Yes, sir.

Q What kind of diamonds were those you speak of? A White and perfect.

Q Were those diamonds set or unset at the time he first came to you? A (No answer.)

Q These diamonds that you showed him were they set or unset at the time you showed them to him? A Unset.

Q Are you sure about that? A Yes, sir.

Q As a matter of fact you did not take them out of the setting at the time he asked you about them and give them to him unset? A No, sir.

Q Sure about that? A yes, sir.

Q Your memory is very good on this, is it? A I think I remember.

Q Have you got in this particular book any item, or any memorandum in this ledger of yours regarding this particular sale on October 2nd? A There is no sale at all.

Q Now, did Mr. Donchin buy any goods after the 2nd of October, 1907? A No, sir.

Q Positive about that? A Yes, sir; he took only on memorandum.

Q He took a bill on memorandum? A yes, sir.

Q After the 2nd day of October? A Yes, sir.

Q About how long after this bill of October 2nd did he take these goods on memorandum? A About three weeks.

Q About three weeks after? A Yes, sir.

Q Sure it was three weeks? A Yes, sir; about, I cannot be sure.

Q At the time when he took this bill, after the bill of October 2nd, as having been taken on this indictment, you gave him a bill of goods on memorandum? A Yes, sir.

Q This was on the 28th day of October, 1907? A About three weeks.

BY THE COURT:

Q Was it 1907? A Yes, sir.

BY MR. PALMER:

Q Did you bill of goods that you charged ^{him} with taking under this indictment was on October 2nd? A Yes, sir.

Q So you did see him? A I saw him.

Q You did see him within six days after the second of October? A Yes, sir; I told you I saw him.

Q How comes it that on the 28th day of October, 1907 you, who had told this man repeatedly, time and again, that he must return these other diamonds give him another bill of goods on memorandum? A I will tell you why: Because he told me the goods is locked in the safe and he would let me know; he was giving the goods to the woman and the woman was giving them to her husband and he put it in the safe and the safe was locked and he was going on the road and when he came back he will get me the goods.

Q Why didn't you remember about this man going on the road before when the District Attorney asked you? A (No answer.)

Q Did you say that the woman's husband was going on the road when Mr. Marshall asked you this question? A Yes, sir.

Q Sure about that? A Yes, sir.

Q So for twenty-six days this man related to you that these diamonds were in the safe? A Yes, sir.

Q And you believed him? A I was a little suspicious, but that was a very little bill, about \$60. and I took a chance to give him again; I didn't want to show him I was afraid of him.

Q You didn't want to show him you were afraid of him?
A Yes, sir.

Q After the 2nd day of October, 1907 did Mr. Donchin make any payments to you? A Yes, sir.

Q How many times after the 2nd day of October, 1907, did he make payments to you? A Yes, sir.

Q How many times? A I do not remember; it is in the books.

Q Was it three times? A I can't say about.

Q About three times? A Yes, sir; he paid me on account of the notes.

Q On account? A Yes, sir.

BY THE COURT:

Q Now, these notes, were they notes that you received from him on account of sales made by you on transactions before the memorandum transaction? A Before.

BY MR. PALMER:

Q Have you got those notes? A Yes, sir.

Q You haven't given the notes to Mr. Donchin? A Because

he didn't pay me all; he only paid me on account.

Q You kept the notes and you charged us with the amount? A
Because he didn't pay me all; he paid me only on account.

Q You kept the notes and you tell us now that those
notes were not paid? A It wasn't paid all.

BY THE COURT:

Q Have you any note now in your possession made by this
defendant or given to you by this defendant which has been
wholly paid? A It has not, no, sir.

Q Have you got any notes of this defendant in your pos-
session at all? A That is the customer's notes?

Q You have notes of his? A Yes, sir.

Q Which he gave to you on account of bills? A Yes,
sir.

BY MR. PALMER:

Q So the other bills of goods that you sold to Mr. Donchin
were not memorandum bills, they were regular bills, only this
bill of the 2nd day of October was a memorandum? A It was
a few bills to Mr. Katz.

Q (Question repeated). A It was memorandum because
Mr. Katz told me to give them to him; he is good for this
amount.

Q For what amount? A For this amount I gave to him
on memorandum; I called up Mr. Katz and he told me I could give to

him the goods, he is good and in case Donchin would not pay he will pay me.

BY THE COURT:

Q You say that this particular transaction was a memorandum transaction and was not a regular or ordinary sale, is that so, yes or no? A No, sir.

Q Do you say that this transaction was a memorandum transaction, in other words, do you say that these diamonds were obtained by this defendant from you on memorandum and not on a purchase? A It was memorandum.

Q Now you say that that was the only memorandum transaction that you had with the defendant, is that so? A No, sir; it was more, a few.

Q You had some others? A Yes, sir.

BY MR. PALMER:

Q He paid you the others? A He paid me notes.

Q He paid you? A With the bum notes.

MR. PALMER: I object to that word "bum".

THE COURT: He gave notes for the others?

THE WITNESS: Yes, sir.

Q You say those notes have not been paid? A No, sir.

BY MR. PALMER:

Q Are you a friend of Mr. Donchin's? A No, sir.

Q. Are you an enemy of his? A. What do you mean by that.

Q. You are angry with him because he didn't pay you these bills? A. I was asking for this.

Q. You are angry with him? A. Certainly.

Q. You were angry with him on the 3rd of February when you went to the Magistrate's Court? A. Certainly.

Q. Will you kindly tell this court and jury why in the Magistrate's Court you said that the ten diamonds were of the value of \$420.? A. Yes, sir.

Q. And why you say now they are of the value of \$275.? A. Because I meant the ten stones were in a parcel of goods; it was a large parcel about seventy or sixty karats and I cannot figure this about \$8. a karat or figure it \$100. a karat.

Q. Why did you say at that time in the Magistrate's Court that the value of these diamonds was \$420. and these ten diamonds were valued at \$420. and why do you contend now their value is \$275.? A. I never said the price of them because I sell them by weight --

Q. You never said the ten diamonds were of the value of \$420.? A. I didn't tell that because --

The Court then admonished the jury, calling their attention to section 415 of the Code of Criminal Procedure and adjourned the further trial of this case until tomorrow, Tuesday morning, April 6th, 1909, at 10:30 o'clock A. M.

New York, April 6, 1909.

TRIAL RESUMED.

S A M U E L K A P L A N, a witness called on behalf of
the People resumes the stand:

CROSS EXAMINATION BY MR. PALMER CONTINUED:

Q Mr. Kaplan, you testified yesterday to an account
of how this man came to you and took these diamonds. Do you
still desire to tell the same story explaining the taking
of these diamonds by this man Donchin from your place?

MR. MARSHALL: I object to that as incompetent and
immaterial.

THE COURT: I sustain the objection.

Exception.

BY MR. PALMER:

Q At the time Mr. Donchin came to your place on the 2nd
day of October did he pay you any money? A I do not remember;
I cannot say; it is in the books.

THE COURT: Will you try and talk so that each of
the jurors will hear you?

THE WITNESS: I do not remember; it is in the books
everything.

BY MR. PALMER:

Q Don't you recall the 2nd day of October, 1907 that
Mr. Donchin paid you \$68.90 in cash? A I don't remember.

Q You say he did not pay you \$68.90 in cash?

A I cannot say anything because I don't remember.

Q He might have paid you on that day? A It could not be.

Q Are you positive that the diamonds that you showed to Mr. Donchin were mounted or unmounted? A It was unmounted.

Q Unmounted? A Yes, sir.

Q Don't you recall that you told Mr. Donchin that you had a bargain for him in mounted stones? A I cannot remember this, no, sir.

Q You can't remember? A No, sir.

Q But you might have told him? A (No answer).

Q But you might have told him that you had a bargain for him in mounted stones? A I can't remember this.

Q Don't you recall Mr. Donchin told you that he could not use any mounted stones of the kind that you showed him?

A I don't remember that; I can't remember these things.

Q As a matter of fact didn't you tell Mr. Donchin to come back in the afternoon and that you would unmount these stones and that you would then sell him the unmounted stones?

A I cannot remember this.

Q But you remember without your book that on that particular day you sold him 4 5/8th karats of diamonds?

A I did not sell to him; he only took on memorandum.

Q You remember that he took that much on memorandum on

that day? A Because it is in the books.

Q Do you remember that, don't you? A Yes, sir.

Q You remember that without looking at your books?

A Yes, sir; it is in the books everything.

BY THE COURT:

Q You are asked whether you remember this transaction of October 2nd, 1907, without looking at your books; or do you remember it only after looking at your books? A Well, I remember this because it was a transaction where I was giving him goods; I cannot remember what I talked about business.

BY MR. PALMER:

Q You can't remember about getting any money on that day? A Certainly I -- I don't know what day.

Q Is your memory as good in this particular as it was in the testimony that you offered yesterday that you went to the magistrate's court six weeks after October 2nd?

MR. MARSHALL: I object to that as not in evidence.

The testimony was that he had him arrested about six weeks after he had seen him last.

THE COURT: I sustain the objection.

BY MR. PALMER:

Q Do you recall testifying that you saw Mr. Donchin in your place last after the 2nd day of October two days later?

A He was there many times.

MR. PALMER: I will leave that to the jury.

BY MR. PALMER:

Q When Mr. Donchin bought the second bill of goods from you did you have any conversation with him at that time?

MR. MARSHALL: What second bill of goods do you mean?

MR. PALMER: The bill of goods for \$92.80 on the 3rd day of September, 1907.

THE WITNESS: It is in the books.

BY THE COURT:

Q Did you on September 3rd, 1907 have a talk with this defendant. Now either yes or no or you don't remember?

A I don't remember.

BY MR. PALMER:

Q Did Mr. Donchin at that time tell you that he had a customer for the diamonds or the purchase that he desired to make? A I cannot remember these things.

Q Did you ask him the name of the customer to whom he desired to sell your merchandise on that day?

THE COURT: That is September 3rd?

A I don't remember.

Q Did Mr. Donchin at the time that he made the purchase of you on the 5th of September 1907 tell you the name of the customer to whom he desired to sell that merchandise? A I can't remember that.

Q Did you ask him the name of the customer to whom he desired to sell that merchandise?

A I can't remember that.

Q Did Mr. Donchin on the 21st of September, 1907, when he made a purchase of you for the sum of \$78.03 tell you the name of the customer to whom he desired to sell that merchandise? A He never told me.

Q He never told you? A No, sir.

Q You never asked him? A I did not.

Q You did not? A No, sir.

Q But only on the 2nd day of October, 1907, you asked him whom he intended to sell those diamonds to? A He told me himself that --

Q He told you himself? A Yes, sir.

Q "I want to sell these diamonds to some particular person"? A He needed the goods for a customer.

Q Did he tell you what kinds of goods he needed?

A Yes, sir.

Q Did he tell you the price of goods he needed?

A No, sir.

Q What did he say to you, as best you can remember, on the 2nd of October, 1907? A He told me he needed for a piece of jewelry a few stones, I should give to him because he and will take the goods, show to the customer and after he will come

to my place with the customer and I will make the sale --- I will make the sale.

Q Are you sure that Mr. Donchin did not tell you the price goods he needed for that particular jewel? A He did not tell me anything.

Q Is it customary to purchase diamonds without a price? A Sometimes I give maybe a price --- they want only to show to the customer.

Q Sometimes you give without a price? A Yes, sir.

Q Mr. Donchin simply said "I want goods for a customer" and you gave him these diamonds? A Yes, sir.

Q You were a little bit suspicious you said yesterday of the way he acted at that time? A After I was suspicious.

Q You were not suspicious that day? A No, sir.

Q You were not suspicious when you took the money from him, \$68.90 in cash?

MR. MARSHALL: I object to that. There is no testimony that he took money from him on that day.

BY MR. PALMER:

Q How soon after the 2nd day of October, 1907 were your suspicions aroused ~~by~~ about Mr. Donchin's purchase of these diamonds?

MR. MARSHALL: Objected to.

THE COURT: Objection sustained because it assumes that diamonds were purchased on that day.

MR. PALMER: I withdraw the question.

BY THE COURT:

Q How soon after the transaction of October 2nd, 1907 were your suspicions aroused regarding this defendant? A About two or three weeks later.

Q Two or three weeks later? A Yes, sir.

Q Was it three weeks or was it two weeks? A I can't remember this, I know it is later.

Q What were the circumstances, if you can remember, that aroused your suspicions about this transaction on the 2nd day of October, 1907? A It is no suspicion because it is in the book, he signed the memorandum, it is without a price.

THE COURT: Strike that out. If you don't understand the question say so. If you do understand it answer it.

THE WITNESS: Because he told me that he will let me know in a few days and after I was again in his place and he told me the same, in a few days.

Q Repeat that slowly? A Because he told me many times that.

BY MR. PALMER:

Q You say your suspicions were first aroused two or three weeks afterwards? A Yes, sir.

Q Were they aroused before the two or three weeks or were they aroused after the two or three weeks? A About.

Q About two or three weeks? A Yes, sir.

Q So that for two weeks you had no suspicion about this particular transaction? A No, sir.

Q None at all? A No, sir.

Q Now, what was the first thing that Mr. Donchin said to you, or what was the first thing that occurred that aroused your suspicions after the second or third week? A Well, please tell me again?

Q (Question repeated as follows) Now what was the first thing that Mr. Donchin said to you or what was the first thing that occurred that aroused your suspicions after the second or third week? A Because he told me many times that he will let me know and he did not bring the goods back and I got a suspicion on this.

Q You say "he told me many times"; do you mean after two or three weeks or before two or three weeks? A Between.

Q Between? A Yes, sir.

Q So your suspicions were aroused between two weeks after the 2nd day of October?

THE COURT: He said, in substance, that his suspicions were aroused by this man telling him, over and over again, or frequently at all events the same thing.

BY MR. PALMER:

Q Mr. Kaplan, will you be kind enough to tell me slowly so that I can understand -- A I will try the best I can.

Q (Continuing) when was the first time after the transaction of the 2nd day of October when your suspicions were aroused? A About two or three weeks.

Q About two or three weeks? A Yes, sir.

Q The first thing he told you after two or three weeks was what? A I do not understand.

Q The first thing he told you after two or three weeks was what? A I don't understand the question.

BY THE COURT:

Q Your suspicions were aroused about two or three weeks after the transaction of October 2nd? A Yes, sir.

Q What was it that aroused your suspicions? A He kept the goods.

Q In other words your suspicions were aroused by the circumstance that he retained the diamonds and did not bring them back to you? A Yes, sir.

BY MR. PALMER:

Q Mr. Donchin had taken goods and diamonds and jewelry from your place before and had kept them two or three weeks without ever having told you anything about them and your suspicions were never aroused about these occurrences?

A Because it was very small articles.

Q How about the bill of September 27th, \$270, and another one for \$30? (No answer)

Q How about the bill you delivered him the 27th of September one for \$270 and one for \$30? A Yes, sir.

Q Why weren't your suspicions aroused? A I will tell you why, because Mr. Katz was good for this; he told me he would pay himself for these goods --- in case Mr. Donchin would not pay me he will pay me.

Q When did Mr. Katz tell you this? A when he brought me the customer to my place; he told me to give to him the goods.

Q That is the first time you ever saw him? A Yes, sir; that is the first time I ever saw him.

Q Now, after the first bill that you delivered to Mr. Donchin through Mr. Katz did you charge every other bill to Mr. Donchin directly, or did you not? A I called up Mr. Katz and he told me to give to him.

Q I ask you again, did you, after the first bill that you sold to Mr. Donchin and which you charged to Mr. Katz, charge any other bill of goods that Mr. Donchin took to the order of Katz? A I charged to Donchin and Mr. Katz told me that he is good for it, for this amount.

Q You charged the bill to Donchin? A Yes, sir.

Q Did Mr. Katz give you a writing that he would guarantee payment if Mr. Donchin did not make good? A On the delivery?

Q On the delivery? A Yes, sir; I got witness for this.

Q On the delivery? A Yes, sir.

Q Was this at the time when Mr. Donchin first came to your place on the 30th day of August, 1907? A I do not remember what date.

Q Did Mr. Katz ever come to your place after the first bill, after the first interview with Mr. Donchin? A Yes, sir; many times.

Q When? A I can't remember when.

Q Tell us when? A I can't remember when.

Q Was Mr. Katz ever present in your place when Mr. Donchin bought a bill of goods from you? A Yes, sir.

Q What time or what bill? A I can't remember; I can't say.

Q Did you ever ask Mr. Katz for a writing to guarantee Mr. Donchin's account? A No, sir; I never did ask him.

Q Mr. Katz gave you this verbal promise that you speak of without your asking for it? A I asked him for this.

Q When did you ask him for this? A When Mr. Katz goes in my place together with Donchin Katz told me when he

will call to give him some goods, to give to him, he is good for this.

Q That is the first time? A That is the second time; I called him up on the 'phone and he told me the same, I could give to him.

Q You charged it to Mr. Donchin? A Yes, sir; because a separate account --- I made a separate account.

Q Do you usually charge one man for another man's account verbally or do you usually ask for a writing?

Objected to. Objection sustained.

BY THE COURT:

Q What do you mean by a memorandum transaction in your business? A He took the goods on memorandum to show to a customer and after he was to come back again with the customer.

Q Turn around here. I want you to tell the jury slowly and I want you to tell me what you, in the jewelry business, understand by a memorandum transaction? A A memorandum transaction that is the goods belonged to me; I was ^{giving} only the goods to him to show it to the customer and bring again to me the goods back.

BY MR. PALMER:

Q Mr. Kaplan, have you got bills in your business?

A Yes, sir.

Q Outside of these memorandum slips, duplicate copies

of these? A I got original bills.

Q Did you ever, on any occasion, give Mr. Donchin any bill other than a copy of a memorandum slip in this book?

A I was giving him many bills.

Q Did you give him any bills? A Yes, sir.

Q Positive about that? A Yes, sir.

Q Other than this? A Yes, sir.

Q Other than those (showing witness some papers)?

A Yes, sir.

Q When did you give him them? A Many times.

Q When? A When he was in my place.

BY THE COURT:

Q You are asked when you gave him bills as distinguished from memorandums. When. Now, tell the jury when.

A I was giving him many times when he sold the goods; he told me he sold the goods I was giving him bills.

BY MR. PALMER:

Q Positive about that? A Yes, sir.

Q Now the first thing you gave him then was a duplicate copy of this? A Yes, sir.

THE COURT: "This" does not mean anything for the record.

MR. PALMER: This is People's Exhibit 1.

BY MR. PALMER:

Q When did you give him a bill after that?

MR. MARSHALL: After what?

BY THE COURT:

Q On what dates did you give ~~bills~~ to this defendant bills? A I was giving him many times.

BY MR. PALMER:

Q Give me the date of one particular bill. A There is in the book, in the ledger, you can find when it is sold I was giving him a bill.

BY THE COURT:

Q When you take the account between yourself and this defendant as contained in your ledger, the dates in the ledger indicate the sales and also indicate the date when a bill of sale was given by you to this defendant, is that so?

A Yes, sir.

BY MR. PALMER:

Q Did you give him a bill after you posted the account in the ledger or before? A It is before because it is in the day book before and comes afterwards --- comes in the ledger.

Q Why if you gave him a bill was it necessary for you to put down upon these memorandum slips the amount of the purchase price? A Because he took before a memorandum and afterwards he was in my place and told me he sold --- when he made a sale I put it in the day book.

Q You put it yourself? A No, sir; my bookkeeper; I did not.

Q Who put the amount on the memorandum slip, you or your bookkeeper? A The bookkeeper.

Q Is this your bookkeeper's handwriting on here? A I can't see so far, I believe it is.

Q That is your handwriting? A No, sir; my bookkeeper.

Q Did you tell your bookkeeper to do it? A Yes, sir; certainly.

Q Can you write? A A little.

Q A little? A Yes, sir.

Q In other words you cannot write enough --

MR. MARSHALL: I object to that as immaterial.

THE COURT: He did not write it.

Q You told the bookkeeper in your presence to write the price? A Yes, sir.

Q On this? A Yes, sir.

BY A JUROR:

Q Was the price made put on the memorandum bill of this transaction? A No, sir.

Q Wasn't a price put on the memorandum bill of this particular transaction? A No, sir.

MR. MARSHALL: I will read People's Exhibit 1

which is in evidence to the jury.

"Memorandum.

Messrs. S. Kaplan & Company, importers and cutters of diamonds, 51 and 53 Maiden Lane, New York, 53 Rue de Pelignon, Antwerp.

These goods are sent for your selection and remain our property. Sale takes effect after approval of your selection when a regular bill will be rendered which bill only will be proof or evidence of sale and until you receive such a bill of sale these goods are consigned and are held subject to our order and to be returned to S. Kaplan & Company on demand.

New York, 1900 blank and (filled in in pencil)
October 2nd, 1907. Mr. Donchin. The figures "74" in another column and the figure 10 and the figures 4 and 3/8ths."

The 74, what does that mean?

A No. 74 of the parcel, the lot number.

Q What does that 10 mean? A 10 stones, four carats and three-eighths and three-sixty-fourths.

Q The "c"? A That is the price; I did not tell him any price.

Q What does that "c" mean? A At.

BY MR. PALMER:

Q As a matter of fact wasn't the reason you didn't put a price on because Mr. Donchin said he could not give you \$60 and could only give you \$58 and you said "Sell it, I will charge you 58 for it"? A No, sir.

Q Positive about that? A Yes, sir.

Q Your memory is sure upon this point? A Yes, sir.

Q Now, the particular paper that Mr. Donchin signed for this--~~transaction~~ I mean the particular memorandum so-called was no different than the memorandum signed in every previous transaction? A There was a difference.

Q What was the difference, was it a different paper?

A It was in the same book; he didn't ask me the price and I did not tell him the price.

Q What was the difference? A Because he did not ask me the price and I did not tell him the price.

BY THE COURT:

Q In other words the difference in the memorandum as made out of the transaction of October 2nd, 1907 and the other memorandums given by you or given by this defendant to you is that the memorandum of October 2nd contain no price?

A Yes, sir.

Q It did not mention a price? A No, sir.

Q And the other memorandums did? A The other memo-

randums ---

Q Otherwise they were the same? A Yes, sir.

Q Now do I understand, or rather is it a fact that in the first instance, in every transaction, this defendant signed what you call a memorandum? A Yes, sir.

Q Is that so? A Yes, sir.

Q That the goods were ~~not~~ only billed to him on any occasion after he had, in point of fact, reported to you a sale by him of the goods, is that so? A Yes, sir.

Q In other words, there was no transaction between this defendant and you in which you billed the goods to him at the time he took the goods from your place. Do you understand me? A No, sir.

Q You had a number of transactions with this defendant?

A Yes, sir.

Q All of those transactions are shown in your books?

A Yes, sir.

Q Those transactions were on different dates? A Yes, sir.

Q Each time that the defendant got goods from you he signed a memorandum? A Yes, sir.

Q Every memorandum, each time, as I understand you, was the same as the memorandum of October 2nd, 1907 with this single exception that on the other occasions the price was mentioned in the memorandum? A Yes, sir.

Q I understand you that in connection with the other transactions the defendant obtained bills of sale upon reporting to you that the goods, in point of fact, had been sold by him, is that so? A Yes, sir.

Q And those bills of sale were made out by you in the name of the defendant as the purchaser? A Yes, sir.

THE COURT: I don't want you to say yes if it is not so.

BY MR. PALMER:

Q When was this book made up? When were these items charged, were they charged at the same time, all at the same time? A It could be later because it is put from the day book after ---

Q But they were all put into this ledger at one time, dictated by you at one time? A No, sir; when she got time she put it in the ledger.

Q At one time you dictated them --- you said yesterday at one time?

THE COURT: He did not say that he dictated them all at one time.

Q You said yesterday here ----

THE COURT: He stated he dictated them to his bookkeeper.

BY MR. PALMER:

Q I am asking you this question: All these items from September 20th to December 9th that appear in the handwriting of your bookkeeper, were they dictated to her on the same day?

A I cannot remember these things.

Q They might have been? (No answer)

BY MR. MARSHALL:

Q What do you understand the word "dictate" to mean?
(No answer)

BY THE COURT:

Q Did you read out loud to your bookkeeper all the items that appear in your day book or other books at one and the same time so that she could write out at the same time the entries that appear in the ledger, or did you dictate these on separate days? A I never told her to put in the books because she knows how to do it herself, to put in the books everything.

Q You said yesterday, on the witness stand, as I understand you, that you dictated to your bookkeeper the entries appearing on the ledger representing your transactions with this defendant, is that so? A I did not understand yesterday what he asked me.

Q What do you mean by dictate? A I never told her to put something in the books because she knows everything herself to put everything in the books; I have no time for this.

Q What did you mean by dictate? A That she was to put this thing in the book.

Q You told her to put a transaction in the book?

A Yes, sir.

Q What did you tell her? A To make a sale only, that is what I told her, to make a sale.

Q You keep in your business --- in your business there were different books kept? A Yes, sir.

Q Is that so? A Yes, sir.

Q All the writing in those books was done by your bookkeeper and not by you? A Yes, sir; by the bookkeeper.

Q One of those books is a book that you call your day book? A Yes, sir.

Q Is that so? A Yes, sir.

Q That is the book in which, according to your course of business, an entry would be first made after a transaction was completed? A Yes, sir.

Q Is that so? A Yes, sir.

Q Then it was a part of the duty of your bookkeeper, from time to time, to copy the entries as made in the day book into your ledger? A Yes, sir.

Q So that there might appear in your ledger a separate account as between you and each person that you had business dealings with? A Yes, sir; that is it.

Q And you meant that you dictated to the bookkeeper the making of the entries in the ledger in the sense that you told her to make such entries generally without telling her particularly the time when she should make them? A I never told her ---

BY MR. PALMER:

Q When a man bought goods from you and took the goods from you, and the man who took the goods was not in your place, was somewhere else, what kind of a receipt did you take from him when the goods were sent to him?

MR. MARSHALL: I object to that as utterly unintelligible.

BY THE COURT:

Q When goods were ordered by someone who was not at your place, as, for example, by mail? A I put it in a separate book, a separate account.

Q Were ^{the} entries made by you or your bookkeeper in the same day book as the entries where the purchaser or party taking on memorandum was in your place of business at the time? A It is a different book; when I sent goods to a party I put it in a separate book.

Q In a different book? A Yes, sir.

Q Have you got your day book here in court? A Yes, sir.

Q Can you turn to the entry in the day book relating to

the transaction of October 2nd, 1907? A I never put it in
the ---

Q Will you turn, if you can, to any entry in your day
book relating to the transactions of October 2nd, 1907 with
this defendant? A I never put this transaction in the books
in this day book.

Q The transaction of October 2nd, 1907 does not appear
in your day book? A No, sir.

Q Is that true? A Because it was not a sale.

Q In your day book you only make or cause entries of
sales to be made? A Yes, sir.

Q Not of articles taken on memorandum --- you have what
you call a memorandum book? A Yes, sir.

Q And that book is the book offered and received in
evidence as People's Exhibit 1? A Yes, sir.

Q Is that so? A Yes, sir.

BY MR. PALMER:

Q I will read to you the terms on this memorandum:
"These goods are sent for your selection and remain our pro-
perty". What do you mean by that? (No answer)

Q "Are sent for your selection and remain our proper-
ty"? A That is I was giving them the goods, that is for
selection, to show to the customer.

Q Did Mr. Donchin receive these goods that you speak

of on these various occasions in your place or at his home
or at his place of business? A In my place.

Q What do you mean by the general phrase "these goods
are sent for your selection and remain our property"? A These
goods, he took the goods to show to the customer and to bring
back to me.

Q "Sales take effect after the approval of your selec-
tion". Did not Mr. Donchin approve and select in your place?
A Yes, sir; I was giving him the goods and he take it to
show to the customer; he didn't select them himself, only
for the customer to show.

Q On every transaction before this? A No, sir; he
told me he needs a pair of stones for so and so price and I
was giving them to him.

Q It was approved right there? A He took the goods to
show to the customer and afterwards he came ---

Q On bills of goods purchased or transactions had before
October 2nd did Mr. Donchin then and there take and select
these goods in your place? A He told me about what price and
I was giving to him to show to the customer.

Q On all the transactions? A I do not remember. I
can't say, I can't say that ---- that I cannot remember.

Q Now, as a matter of fact, don't you remember that Mr.
Donchin was asked by you \$60 for these unmounted stones a

carat and he said "No, I can't give you more than \$50" and you said "Go out and sell them and we will have no more trouble about the price"? A Never was this.

Q That is a point you are positive of? A Yes, sir, certainly.

Q When people buy goods of you usually, outside of Mr. Donchin, do they sign a receipt for the goods? A No, sir.

Q They don't? A No, sir; I give them a bill only.

Q They don't sign a receipt? A No, sir.

Q Supposing they take goods in your premises and they want to have a record of the fact that those goods were taken instead of delivered; how is that record made? A I got a separate ---

MR. MARSHALL: I object to that as immaterial.

THE COURT: Objection sustained.

BY MR. PALMER:

Q Did you ever consult Mr. Bandes, your partner, about going to the Magistrate's Court at the time you took out a warrant against Mr. Donchin? A Everything about it, yes, sir, he is good for this.

Q Who is good for this? A My partner, Mr. Bandes.

Q What do you mean by being good? A I got written everything --- I can sign everything for him.

Q You can sign anything for him? A Yes, sir.

Q Did he know you were going to the Magistrate's Court? A Yes, sir.

Q He knew it? A Yes, sir.

Q Did he go along with you? A No, sir; he is in Antwerp; he lives in Antwerp, not here.

Q Did you write a letter to Antwerp or cable to tell your partner that you were going to have this man arrested? A No, sir; I did not cable to him.

Q Now, do you recall that you sold him a bill of goods after the 2nd day of October, in other words on the 28th day of October? A I did not sell to him, only he took memorandum.

Q He took on memorandum? A Yes, sir.

Q Was this memorandum of the 28th of October delivered after your suspicions were aroused or before? A That was after the suspicions only it was a very small article, about \$60, and I took a chance to give him, not to show him I am afraid of him.

Q Three times he paid you, on the 9th day of November \$50, the 24th day of November \$50 and on the 15th day of November \$65. Do you recall those times? A He paid me on account of the notes.

Q He paid you though at the time your suspicions were aroused? A Yes, sir.

Q Did you tell him about your suspicions? A Certain-

ly ---

Q The only thing he said to you was that the diamonds were in the safe? A Yes, sir.

Q And the man was on the road? A At that time he told me different stories.

Q Tell us some of the stories he told you at this time? A He told me that he sold and he has not the money and I was asking other people and they said he was a gambler on the east side; he gambled money on the east side.

Q Who told you he was gambling on the east side? A Mr. Horowitz.

Q Where does Mr. Horowitz live? A 45 John Street.

Q 45 John Street? A Yes, sir.

Q Your place of business is there? A That is his place of business.

Q Your place of business is 45 John Street? A Yes, sir.

Q Is he above you in business? A He is on the tenth floor.

Q Does he buy goods from you? A No, sir.

Q When did you have occasion to hear from Mr. Horowitz that Mr. Donchin was a gambler? A Because after when I ---

Q When? A In about a month later.

Q A month later? A Yes, sir.

Q Was that before you took out the warrant for this

defendant --- did you go up to the tenth floor to tell Mr. Horowitz about Mr. Donchin? A He was living before in Maiden Lane, 51, and he was in my place and I told him that Mr. Donchin took from me goods on memorandum and I never saw the goods back and he told me that Mr. Donchin is a gambler on the east side.

Q Did Mr. Horowitz say he knew Mr. Donchin? A Yes, sir.

Q How did he happen to know him?

MR. MARSHALL: I object to that as asking for the operation of Mr. Horowitz's mind.

Q You had an attorney, didn't you, Mr. Apfel? A Yes, sir.

Q You consulted him about this case?

MR. MARSHALL: I object to that as having been gone over yesterday.

MR. PALMER: I can go over it again if I want to.

THE COURT: You cannot.

BY MR. PALMER:

Q Mr. Kaplan, you say you sold these diamonds on the 2nd day of October out of a certain lot, is that right?

THE COURT: He did not say he sold them.

MR. MARSHALL: I object to the question.

BY MR. PALMER:

Q At the time the transaction occurred the diamonds were taken out of a certain lot? A Yes, sir.

Q That lot was No. 74? A Yes, sir.

Q Now, on the day, the 28th of October, when you delivered him another bill and your suspicions had already been aroused you delivered him some more diamonds out of the same lot? A No, sir; a different lot.

Q The same lot 74 is written here? A It cannot be again so.

Q See if it doesn't say 74. A You are mistaken because it is a pair of earrings, I think.

Q See lot 74, you know he took on the 28th of October and a pair of earrings, lot 74 he took on the previous occasion were unmounted diamonds? A Yes, sir.

Q Now, as a matter of fact, Mr. Kaplan, isn't it true that that lot 74 consisted of a lot of mounted stones in which those earrings and those rings were and from which you took some of those mountings? A No, sir; they were loose stones.

Q Do you usually have earrings and loose stones in the same lot? A I don't understand.

Q In your business if you sort diamonds do you sort uncut stones, or unmounted stones and diamond earrings in the same lot number? A Yes, sir, the same lot, I do this.

Q Diamond earrings and unmounted diamonds in the same lot? A Yes, sir, some mounted and some loose stones.

Q Are the loose stones known by a different lot number than the mounted? A It is the same lot number.

BY MR. MARSHALL:

Q These diamonds are lotted without regard to their mountings? A Yes, sir.

Q Is that right? A Yes, sir.

Q What do you say? A Yes, sir, if that lot has a lot number ---

BY MR. PALMER:

Q What did Mr. Marshall say that you said yes to just now? A He asked me the lot number 74, that is the number of the lot, that is the lot number.

BY A JUROR:

Q You kept earrings in the same lot with uncut diamonds and called them the same number? A The same number, 74, earrings and loose stones the same.

Q Do you keep earrings, gold earrings with diamonds set in them in the same lot number as you do uncut --- unmounted stones? A Yes, sir.

all
Q You call them, the same number? A 74.

Q Earrings and rings and unset diamonds? A Yes, sir.

Q Is that the idea? A Yes, sir; I have the same number

for the same lot, 74, mounted because I had it in the book
that this pair of earrings is from the lot 74.

BY MR. MARSHALL:

Q The diamonds that were in the earrings came from lot
74, is that what you mean? A I can't give all the lot num-
bers; it is in the book.

BY MR. PALMER:

Q You recall that you admitted yesterday that at
least four times you were in the office of Mr. Marshall for
over an hour?

MR. MARSHALL: I object to that.

THE COURT: We won't go into that at all.

MR. PALMER: I want to know what he was doing
there.

MR. MARSHALL: He was talking to me. What do
you suppose he came in for, to get warm?

BY MR. PALMER:

Q Is Mr. Katz in court? A I don't know.

Q Did you subpoena him? A No, sir.

Q Did you tell Mr. Marshall about Mr. Katz? A I do not
remember; I think not.

Q You didn't tell him about Mr. Katz? A I do not re-
member.

Q You told him the whole story about this case? A I

told to the other District Attorney.

Q I asked you about Mr. Marshall.

THE COURT: He said he does not remember.

Q You didn't ask Mr. Katz to come here? A I don't know where he lives.

Q Did you try to find out? A I was trying because he failed and I was trying to look out for him, I don't know where he lives now.

Q Did he fail before he had the transactions with the defendant or after? A After.

BY THE COURT:

Q Did you ever ask this defendant to return to you the diamonds that he got on October 2nd, 1907? A Many times.

BY MR. PALMER:

Q When for the first time? (No answer)
him

Q When was the time you asked him for the first time to return these diamonds? A In a few days in my place and he told me the story about the goods --

Q A few days after the 2nd day of October? A Yes, sir.

Q So you did speak to him about it before two weeks or three weeks? A He was many times in my place.

BY THE COURT:

Q Now, Mr. Kaplan, you received, from time to time, or on one or two occasions from this defendant after October 2nd,

1907 some money? A Yes, sir.

Q That money was, as I understand you, in part
of certain notes? A Yes, sir.

Q That this defendant had given to you? A Yes, sir.

Q Those notes had no relation to this transaction of
October 2nd? A No, sir.

BY MR. PALMER:

Q Were those the personal notes of Mr. Donchin? A There
is signed another name.

Q Were they Mr. Donchin's notes, made by Mr. Donchin
to your firm? A I saw only that he signed the other side,
endorsed.

Q He only endorsed them and they were not his notes,
were they, other people's notes? A Yes, sir; he told me
there is other people; I was looking in the whole city and I
could not find the man; there was no man of this name at all.

Q Did you consult your attorney about bringing a civil
action against Mr. Donchin to recover the amount of money he
owed you outside of this particular transaction?

MR. MARSHALL: I object to that as utterly
immaterial and incompetent.

Objection sustained.

Q Did you know that an action for conversion in a civil
court could entail with it bodily imprisonment?

MR. MARSHALL: I object to that.

MR. PALMER: I want to find out.

MR. MARSHALL: I object to that question. We are putting the complaining witness through a cross examination.

THE COURT: Objection sustained.

RE-DIRECT EXAMINATION BY MR. MARSHALL:

Q I show you a note dated October 7th and ask you if that is one of the notes given to you by the defendant? A Yes, sir.

MR. MARSHALL: I offer it in evidence.

(The note referred to is marked People's Exhibit 2 in evidence.)

Q Here is another note? A Yes, sir.

MR. MARSHALL: I offer that in evidence.

(The note referred to is marked People's Exhibit 3 in evidence.)

MR. MARSHALL: One note is for \$90, October 7th, 1907 --- two months after date I promise to pay to the order of M. Donchin \$90 at 132 -36 East 113th Street. Signed, G. Pernetti and endorsed on the back M. Donchin.

The other note is People's Exhibit 3 and is exactly the same except that it is for \$85 and is presumably signed by the same man signed by the same man, and endorsed by M. Donchin and S. Kaplan and Company --- the United States

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Mortgage & Trust Company, cancelled.

MR. PALMER: I ask that the words of the District Attorney Marshall "presumably" be stricken out. I don't think Mr. Marshall should comment upon the transaction because it shows unfair bias for the District Attorney to do so.

THE COURT: Not at all.

MR. MARSHALL: Purporting to be signed by a man named G. Perneti.

Q Mr. Kaplan, do you know who the G. Perneti is who signed these notes --- do you know this man G. Perneti?

MR. PALMER: I object to that upon the ground that it is immaterial, incompetent and is not being properly presented.

Objection overruled. Exception.

A No, sir.

Q Did you ever find G. Perneti? A I could not find him.

Q Do you know him?

MR. PALMER: Objected to upon the ground that it calls for a conclusion on the part of the witness.

THE COURT: I will allow him to answer.

A No, sir.

Q People's Exhibit 3 was never presented? A No, sir.

Q Look at it. A No, sir; this one was never presented.

MR. PALMER: Now, I ask that the testimony given by Mr. Kaplan upon the subject of People's Exhibit 3 be stricken out upon the ground that if a note is not presented for payment --- unless notice is given to the endorser in the legal period of time the endorser is not liable. This man testifies he never presented that note.

THE COURT: I don't see how the testimony regarding the notes is material in the case.

MR. MARSHALL: If it is not connected with this defendant ---

THE COURT: I will reserve decision on your motion. I will entertain a motion later on, made by you, to strike out all evidence relating to these notes.

MR. MARSHALL: It was brought out, if your Honor will remember, on cross examination.

THE COURT: I do not pass on it now. I will be very glad to have him make a motion of that kind at the close of the People's case or at the close of the whole case.

Q Did you ever get your goods back that you gave him October 28th? A No, sir.

MR. PALMER: I object to that.

THE COURT: Objection sustained. Strike it out.

MR. MARSHALL: The People rest.

MR. PALMER: I make a motion to dismiss upon the ground that the People have failed to show facts as set forth in the indictment, in view of the fact that the indictment charges the taking of 10 diamonds of the value of \$42 and that the proof shows the taking of certain diamonds of the weight of four and five-eighths carat of the value of \$375; upon the ground further that the People have failed to show by any proof whatsoever that this was a memorandum or that it was anything else but a sale.

Motion denied.

Exception.

D E F E N S E .

M E Y E R D O N C H I N , the defendant, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q Where do you live? A 11 West 114th Street.

Q Mr. Donchin, talk so that every juror can hear what you say. How old are you, Mr. Donchin? A 23.

Q Where do you live? A 11 West 114th Street.

Q New York City? A Yes, sir.

Q How long have you been living there? A The second year.

Q Who do you live with? A My parents.

Q What are your parents' names?

Objected to. Objection sustained.

MR. PALMER: One moment. I have a right to show by this witness.

THE COURT: The objection is sustained. Ask the next question.

BY MR. PALMER:

Q How old is your father or mother?

MR. MARSHALL: I object to that as utterly incompetent and immaterial.

Objection sustained. Exception.

Q Do you support your family?

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

Objection sustained. Exception.

Q Are you married? A Single.

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

Objection sustained. Exception.

Q Where were you born? A Russia.

Q What city? A Lutzin.

Q When did you come to the United States? A 1900.

Q How old were you then? A 14.

Q Did you go to school then or did you go to work? A I
went to work.

Q What did you go to work at? A Eisenstein & Warrenman.

Q Where was their place of business at that time? A 24
Eldridge Street.

Q What position did you occupy? A Errand boy.

Q How long were you employed by them? A Five years.

Q What line of business is that firm in? A Wholesale
jewelers.

Q At the time you left their employ did you have any
unpleasantness with them? A No, sir, I never did.

Q What position did you occupy at the time you left their
employ? A Salesman.

Q Jewelry salesman? A Yes, sir.

Q When you left their employ into whose employ, if any,
did you go? A I went to L. Kroll.

THE COURT: Talk louder so that the jury can
hear you. Your liberty may possibly depend upon
their hearing your story.

BY MR. PALMER:

Q Where is L. Kroll's place of business? A 49 Maiden
Lane.

Q What line of business is Mr. Kroll in? A He is in the wholesale jewelry.

Q Wholesale jewelry? A Yes, sir.

Q What position did you occupy there? A Traveling salesman.

Q Selling what? A Watches, diamonds and jewelry.

Q Did you sell watches, diamonds and jewelry for this firm in the City of New York or without the City of New York?

A All over.

Q Outside the city? A Yes, sir.

Q For how many weeks at a time did you remain away from your employer's place of business? A Every six weeks.

Q During that time did you carry with you any diamonds or jewelry or things of that nature? A Yes, sir.

Q About how much at a time? A \$8,000.

Q How long were you in Mr. Kroll's employ? A About 14 months.

Q Did you leave to enter into business for yourself?

A Yes, sir.

Q When you started in business for yourself did you buy goods from various firms? A Yes, sir.

Q Did you buy goods from 20 firms? A Somewhere around that.

Q In the market, in the jewelry market? A Yes, sir.

Q Did they extend to you credit? A Yes, sir.

Q Did you buy jewelry of any nature or description for any period of time before you began to purchase goods from Mr. Kaplan's firm? A Yes, sir.

Q For how long a period before? A About 14 or 15 months.

Q During the time that you purchased goods from Mr. Kaplan's firm were you buying goods from other firms? A Yes, sir.

Q During the time you were paying Mr. Kaplan's firm money on account were you paying other firms money on account? A Yes, sir.

Q Doing general business, as what? A As a dealer in watches, diamonds and jewelry.

Q You had bills printed? A Yes, sir.

Q Like this (showing witness bills)? A Yes, sir.

Q Those were bills? A Yes, sir.

Q When you went to firms to purchase goods did you give them references as to your previous dealings? A Yes, sir.

Q And places where you worked? A Yes, sir.

Q When you became acquainted with Mr. Kaplan did you give him a reference? A I did.

Q Tell this Court and jury about when and in what manner you first became acquainted with Mr. Kaplan's firm? A In the month of August I met a friend of mine on Maiden Lane and

I was going to see a customer of mine and he asked me to come up and see Mr. Kaplan, being I didn't know him before; he asked me to come up there, he wants to take something there; I went up with him; and meantime he introduced me to Mr. Kaplan as a dealer in watches, diamonds and jewelry. And while Mr. Katz collected the goods there I selected a diamond for \$125 and Mr. Kaplan said "Mr. Donchin, I don't know you, the only thing what I can do for you I will have this charged to Mr. Katz's account and for future business you can leave me some references I will inquire about them and you can stop in some time about next week and I will let you know about it.

Q After that, Mr. Donchin, did you purchase any goods from Mr. Kaplan's firm? A Yes, sir; I did.

Q Before you purchased the second bill of goods had you paid for this bill of goods taken on the 30th of August, the first bill of goods of \$125 you spoke of? A Yes, sir; I had bought it.

Q Did you buy another bill of goods, or did you buy other bills of goods subsequent to this particular purchase before you paid for these diamonds purchased by you on the 30th day of August? A I did buy.

Q When was the second time, was it the 3rd of September? A Yes, sir.

Q For \$92.80? A Yes, sir.

Q At that time did Mr. Kaplan say anything to you about paying for the first bill of goods which Mr. Katz had guaranteed? A No, sir; he never did.

Q The second bill of goods, did he give you a charge slip for that? A Never gave me anything.

Q When you bought this bill of goods for \$92.80 did Mr. Kaplan give you a memorandum similar to the one he has in these books? A Yes, sir.

Q Did you have any conversation with Mr. Kaplan at the time, or any time subsequent to this --- this was the third bill, I believe, it was on the 5th of September about paying for the bill of goods taken by you on the 30th day of August. Did he say anything to you about paying for the first bill? A He never did.

Q Did you buy another bill of goods on the 5th of September for \$90? A I did.

Q At that time did he ask you to pay for the first bill of goods you had taken? A No, sir; he did not.

Q At the time when you purchased this bill of goods did you return to him other merchandise? A I did.

Q What kind of merchandise did you return to him? A I bought a bill of goods for \$90 and I returned on the 5th, two days afterwards, I returned \$23 of merchandise. When I returned that Mr. Kaplan said "I don't accept any

goods for credit but I sell them ---" I told him I don't do any business --- being that I sell to small storekeepers and to private people.

Q What did Mr. Kaplan say at that time in answer to this statement on your part? A He said "I can't accept any goods back at all because if I sell once I don't take them back". So I told Mr. Kaplan "I can't afford to handle any goods that way, being I am a small dealer, the only thing I do business is with other firms, that is I have the privilege of anything that I can't use to return it." And so Mr. Kaplan said "Well, being that you are a small dealer I will let you have two weeks at the latest, if you cannot return in two weeks I will positively --- I would not accept any goods any more."

Q Did he say he would charge the goods up to you except they were returned in two weeks? A Yes, sir.

Q In other words all the goods that you took from Mr. Kaplan from the time you first became acquainted with him until the time you ended your connection with him weretaken then and there and purchased by you with the privilege of return in two weeks? A Yes, sir.

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Q And that was because of the fact that you explained to Kaplan the nature of your business? A Yes, sir.

Q You bought bills of goods afterwards from Mr. Kaplan, after this particular bill? A Yes, sir.

Q Did you have any conversation with him about signing your name to this kind of slip? A Yes, sir; signed the name after the delivery of the goods.

Q What did he say, if anything, about your signing your name to this kind of slip? A I asked him was I signing the name for the bills which I buy and he said, "No, this is only the delivery for the goods".

Q He said this was the delivery of the goods? A Yes, sir.

Q A record of delivery? A Yes, sir.

Q Did you ever, on any occasion, from the time you began to do business with Mr. Kaplan pay him for any particular bill or did you only pay him on account of your general account? A The first two bills I paid him; after the two bills, afterwards I paid him all the money on account.

Q In other words, the bill you paid him was the bill that Katz guaranteed for? A yes, sir; \$125.

Q After that you had a general business with him? A Yes, sir.

Q Did Mr. Kaplan ever give you, at any time, Mr. Donchin,

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any memorandum, any bill other than copies of the bills referred to in People's Exhibit 1? A He never did.

Q He never gave you any bill other than these? A No, sir.

Q Did you consider this a bill? A Yes, sir.

Q You paid from these? A Yes, sir.

Q You got credit from these? A Yes, sir.

Q You kept your records from these? A Yes, sir.

Q You heard Mr. Kaplan testify that he gave you bills other than these on other occasions, is that so, or not so? A Not so.

Q You recall the second day of October, 1907. Do you remember it? A Yes, sir.

Q You have heard Mr. Kaplan testify from the stand about a transaction that occurred, in his place, on that day between you and him. You recall the circumstances surrounding that transaction? A Yes, sir.

Q Would you kindly tell the court and jury exactly what occurred on that day when you went to Mr. Kaplan's place? A On October 2nd, I came into Mr. Kaplan's place and I paid him \$68. for a bill which I bought on September 3rd; and when I paid him this \$68.90, Mr. Kaplan said, "Mr. Donchin, I have a little bargain for you"; I asked him what it was and he showed me thirteen diamonds all mounted. There was a lady's hoop ring,

set in five stones; a lady's brooch and a lady's pair of earrings, and a lady's single stone Tiffany ring; he told me a little bargain, he got these from a customer; I told him I cannot use any mounted goods at all; so he says, "Well, you can stop in in the afternoon, I will have the stones taken out from the mountings then you can see them afterwards;" I told him I will be in in the afternoon. I came in afterwards and he had the thirteen stones out of the mountings; I selected ten stones from the thirteen being that I could not use the other three. So he had them weighed and told me the price will be \$60. a karat. I said, "Mr. Kaplan I could not use them for \$60. a karat, I think that will be a little too much"; he said "Well, you take them for \$58., that is the best I can do on them".

Q What did you say then? A I told him I will take them at \$58. a karat.

Q He sold them to you at \$58. a karat? A Yes, sir.

Q What was the total price of the goods that you took from him on that day? A About \$265., or \$262., I don't remember the exact amount.

Q \$262.82 -- did you hear Mr. Kaplan testify about \$375., is that true? A No, sir; it is not.

Q Tell this court and jury in as unscientific a manner as possible the exact kind of diamonds that that particular lot was made up of?

MR. MARSHALL: I object to that as immaterial.

MR. PALMER: Mr. Kaplan says that these diamonds were \$90. a karat --

THE SEVENTH JUROR: How does the defendant know the amount was \$262.82 since he had no bill for them?

THE WITNESS: That was the weight on it, \$58. a --

Q \$262.80, where does he get the amount?

BY THE COURT:

Q How do you fix the amount? A The parcel was 4 1/2 -- I don't remember the exact weight, but it was \$58. a karat and it amounted to \$262.82.

Q In other words a price was given to you orally by weight, by the karat? A Yes, sir.

BY MR. PALMER:

Q You learned while you were in Mr. Kaplan's place what the weight was? A Yes, sir.

Q You figured it up and it comes to that amount? A Yes, sir.

BY A JUROR:

Q Did you keep a record of your transactions -- did you have books? A Yes, sir.

Q Did you put that transaction down in the book? A Yes, sir.

Q When was that entry made in your book, the entry of the purchase? A On the next day.

Q On the next day after you bought them? A Yes, sir.

BY MR. PALMER:

Q Now, Mr. Donchin, did you buy any goods from Mr. Kaplan, after the 2nd day of October, 1907? A I did.

Q Was that on the 28th day of October, 1907? A Yes, sir.

Q After that did you pay Mr. Kaplan moneys on account also after the 2nd day of October? A I did.

Q And after the 28th day of October? A I did.

Q Did Mr. Kaplan ever come to your house after the 2nd day of October and ask you for money? A He came around to my house after October 28th.

Q What was the conversation, as best you can remember, that took place in your house that day? A On the 15th day of October I came up to Mr. Kaplan's office and I gave him \$100. on account, which I gave him on the notes for \$175.

Q Customers notes given to you? A Yes, sir; and I sold him a clock for \$4. which I told him he should credit this \$4. to my account also. On the 28th of October I bought of him for \$57.50 worth of merchandise. On November 9th he came to my house and asked me if I could spare a little money for him; I told him all I had was \$50., I gave, and told him he should credit it to my account.

Q Did he come up later and ask you for money? A Yes, sir.

Q Did you give him \$65.? A Yes, sir; I gave him \$50. in the month of November -- I gave him twice fifty.

Q Did you give him money in the month of December? A I gave him \$65.

Q Now, please tell this court and jury the conversation that took place in your house at the time when you gave Mr. Kaplan \$65.? A When I gave Mr. Kaplan \$65. I had \$75. in my possession and he asked me that I should pay him because he is in need of money; I gave him some money; I told Mr. Kaplan that business was kind of bad with me, it was at that time in the panic and I told him I think I am going to give the business up and going to work; I told him "I can give you \$50. as \$25. I need for house expenses".

Q For the rent? A Yes, sir; and I am willing to give him some of my -- assign him some of my accounts to him.

Q Your outstanding accounts? A Yes, sir; then he says, "Mr. Donchin, we will have to do a little better than this, if you can spare a few more dollars", so I gave him fifteen more with the fifty that was sixty-five; and he says, "The accounts I don't accept any account, you are good enough for me".

Q Did Mr. Kaplan at any time ever ask you for the return of these diamonds? A No, sir; he never mentioned them.

Q At any time did he ever ask you to whom you intended to sell any bill of goods you took from him? A No, sir; he

never did. Did you ever tell Mr. Kaplan any story about a woman who had taken those diamonds and put them in her husband's safe and the safe was locked and the husband went away on the road?

A I don't know anything about it.

Q Did you ever say that to him? A No, sir; I never did.

Q Did he ever at any time ask you to return these diamonds? A No, sir; he never did.

Q After the 16th of December when you made the last payment of \$65. did you see Mr. Kaplan until February 8th when he had you arrested? A I did.

Q When did you see him? A I saw him in the month of January.

Q Was there any conversation between you and him at that time? A He asked me if I could spare a few more dollars and I told him I can't being that I was engaged in a position now.

Q After that, on February 8th, when you were arrested did you see Mr. Kaplan? A Between when?

Q Between the time when you say you saw Mr. Kaplan and he asked you for some money in January until February 8th when he had you arrested? A I did.

Q When did you see him? A I saw him about the 15th, I believe, I don't remember the exact date, and I did not have any

money to give him and he said, "Well, Mr. Donchin, I would not come around any more to beg you for money, I will fix you for it".

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

Q For whom were you working? A For Stern & Gordon.

Q You had taken a position? A Yes, sir.

Q You had given up the business? A Yes, sir.

Q After that did you see Mr. Kaplan until he had you arrested? A Pardon me.

BY THE COURT:

Q After January 15th did you see Mr. Kaplan until the time you were arrested? A I did not.

BY MR. PALMER:

Q Where were you arrested? A In my house.

Q Who was present at the time you were arrested, was Mr. Kaplan there? A Yes, sir; Mr. Kaplan and the officer.

Q And an officer? A Yes, sir.

Q Did they tell you what you were arrested for? A No, sir; they never did.

Q You were brought down to the police court on a Sunday morning? A To the police court Monday morning.

Q You were arrested on Sunday? A Yes, sir.

Q Where did they take you from your house? A The Tombs.

MR. MARSHALL: Objected to.

Q You were there over night? A Yes, sir.

MR. MARSHALL: Objected to.

THE COURT: Objection sustained.

MR. PALMER: I take an exception.

BY MR. PALMER:

Q. Did Mr. Kaplan at any time before February 8th ever send you to any attorney or directly any letter of request asking you for the payment of the moneys that you owed him?

MR. MARSHALL: I object to that as incompetent.

THE COURT: I will allow it.

A I met Mr. Kaplan once --

Q I am talking about him writing you letters.

(No answer.)

BY THE COURT:

Q Did you ever receive a letter from Mr. Kaplan? A I never did.

BY MR. PALMER:

Q Did any lawyer ever sue you for the amount of money you owed him, on behalf of the Kaplan Company? A Never did.

Q The first time then that any legal prosecution, or any legal occurrence took place was the time you were arrested on Sunday morning, February 8th, when Kaplan and the detective came to your house? A Yes, sir.

CROSS EXAMINATION BY MR. MARSHALL:

Q What did you do with these ten diamonds? A I sold them

to customers.

Q What is the name of the customers? A I don't remember the names; I remember some of them.

Q Tell us the names of some of them? A I sold the stones to Mr. Stern.

Q When did you sell them to him? A I sold to him on October 3rd.

BY THE COURT:

Q What is the full name? A Morris Stern.

Q Where is his address? A 57 East 117th Street.

BY MR. MARSHALL:

Q Does he live there now? A Yes, sir.

Q West 113th Street? A East 117th Street.

Q How much money did you get from him? A I got \$35.

Q What did you do with the \$35.? A Well, I paid some of my creditors.

Q Who was the next one you sold one of those ten stones to?
A I had quite a number of customers; I don't remember exactly.

Q Have you any book or memorandum which you can look at which would refresh your recollection as to the persons that you sold these diamonds to? A I haven't got no book.

Q What is that? A I haven't got any book.

THE COURT: He doesn't mean here in the courtroom.

Is there any book in existence that you can look at that

will refresh your recollection as to the persons to whom you sold the diamonds that you got from Mr. Kaplan on October 2nd?

THE WITNESS: I sold to one party four stones.

BY MR. MARSHALL:

Q What is the name? A Blackman; I don't remember his first initial.

Q Where did he live? A He lived somewhere on 5th Street, I don't know the number.

Q Where did you sell him the goods? A He was working in 118th Street.

Q What is the number? A It is between Lexington and Third Avenue; I don't know the number.

Q What is the business? A He was employed by Robert Corn.

Q For whom? A Corn.

Q Robert Corn? A Yes, sir.

Q What is the business of Robert Corn? A He was manufacturing certain patents.

Q And his place is where? A 118th Street.

BY THE COURT:

Q Where was Blackman when you made that sale? A He was in 118th Street.

Q Where was he? A 118th Street.

Q What number? A I don't remember the number.

Q Between what avenues? A Third and Lexington Avenues.

Q What side of the street, uptown or downtown? A Uptown side.

Q What was his first name? A A, I believe.

Q A. Blackman? A I don't know the first name.

BY MR. MARSHALL:

Q You sold him four stones? A Yes, sir.

Q When? A In the month of October.

Q How much did you get for them? A I sold them by the karat.

Q How much did you get in money? A I sold it at \$63. a karat.

Q How much money did you get from him? A I got \$50. on account.

Q What did you do with that? A I paid some of my creditors.

Q Have you got any memorandum from Blackman showing the sale? A No, sir; I have not.

Q That accounts for five stones? A Yes, sir.

Q What did you do with the other five? A Sold them to different people.

Q Do you remember any more people you sold the other five stones to? A I don't believe I remember any more.

Q How much money did you get for the other five stones; can you remember that? A I don't remember.

Q You don't remember? A No, sir.

BY THE COURT:

Q Have you anywhere any book or memorandum that will give the names of the persons to whom you sold those stones, the dates upon which you sold them and the addresses of persons to whom you sold them and the amounts that you obtained. Do you understand the question? A Yes, sir; I never kept any books, your Honor.

BY A JUROR:

Q Did you have bills printed? A Yes, sir.

Q Did you give those people any bills that you sold diamonds to? A Yes, sir.

Q Have you any copies of those bills?

MR. PALMER: Yes. Here they are.

BY THE COURT:

Q Have you any copies of bills that you made out to persons to whom you sold any of the diamonds that you got from Kaplan on October 2nd? A I have got none, your Honor, I haven't got any copies.

Q What memorandum, if any, did you keep of these transactions? A I kept memorandums only of the people where I bought the goods from.

BY MR. MARSHALL:

Q Never made any memorandum of the goods you sold to

people at all? A Yes, sir; I used to make a little memorandum, but not in any book.

Q Where are those memoranda? A I destroyed them.

Q When? A It was two years ago.

Q What did you destroy them for? A Because I gave up business.

Q When did you destroy them? A In the month of December, I believe.

Q In the month of December? A Yes, sir.

Q You destroyed those things when at that time you still had not made any account to Kaplan for all this stuff that he gave you on the 2nd of October?

MR. PALMER: Objected to.

A I bought these goods of Mr. Kaplan.

Q Yes, that is what you say. He said he gave them to you. I want to find out, have you got anything to show us what you did with those goods? A Well, I sold them.

Q Have you got any memorandums of any one of those bills?

A I haven't got no memorandum.

BY THE COURT:

Q Will you tell us the names of the people to whom you sold them? A I sold them to Blackman and to Mr. Stern and I sold another party, I believe, by the name of Frankel in 117th Street.

Q How many stones did you sell Frankel? A I think I sold him two stones.

BY MR. MARSHALL:

Q What is his name? A Harry.

Q Where does he live? A He lives in 118th Street.

Q Near what? A Between 5th and Madison Avenues.

Q What is his business? A He is a salesman.

Q Employed by whom? A By Stern and Aronvitz.

Q Where is their place of business? A 71 Nassau Street.

Q When did you sell those stones to him? A In the month of November, or the end of October, I believe.

Q 71 Nassau Street? A Yes, sir.

Q How much did he pay you? A I don't remember the amount.

Q About how much, a thousand dollars or two dollars? A I don't remember.

Q Did he pay you in full? A He did not pay me in full.

Q Does he still owe you? A No, sir; he paid me.

Q And Blackman paid you too, didn't he? A Yes, sir.

Q What did you do with all this money? A I had some household expenses.

Q How much did you get in all for the whole ten stones? A I realized somewhere about \$275. to \$280.

Q You gave these notes, People's Exhibits 1 and 2 to Mr.

Kaplan, didn't you?

MR. PALMER: I made a motion to strike out all testimony upon these notes and your Honor said you would hear me on that motion. I contend that they are not in any way connected with this transaction and should not be allowed in evidence.

Objection overruled. Exception.

Q You gave these notes to Mr. Kaplan, that one at least, People's Exhibit 2? A yes, sir.

Q Where did you get it? A What is that?

Q Where did you get it? A In my house.

Q where did you get this note from and from whom did you get it? A From a customer of mine.

Q What is name? A Pernetti.

Q Where does he live? A He gave me his address, Morris Avenue, he used to come to my house for some--I used to sell him goods in my house.

Q Do you know where he lives? A No, sir; I do not.

Q Where is his place of business? A He gave me his address on Morris Avenue; I never came to his house.

Q What did he give you these notes for? A For merchandise.

Q He owed you \$85.? A Yes, sir.

Q And he owed you \$175. on the 7th of October, did he? A Yes, sir.

Q And he gave you these notes? A Yes, sir.

Q What is his first name? A G.

Q What does that stand for? A I don't know.

Q Did you sell him jewelry to the amount of \$175.? A I sold him more than this.

MR. PALMER: I object to this. You cannot make him know if he does not know.

THE COURT: I will allow it.

Exception.

Q You sold him goods worth \$175. and you don't know what his first name is? A No, sir.

Q Do you know where he lives? A I do not.

Q Did you ever know where he lived? A He gave me his address.

Q What address did he give you? A I don't remember the number.

Q When did he give you the address? A Sometime ago.

Q Before he gave you the notes? A Yes, sir.

Q Did you investigate it and find out whether that was his address or not? A No, sir; I never did.

Q You never did? A No, sir.

Q You know Mr. M. Perneti in Mulberry Street, don't you? A Yes, sir; I do.

Q You do know that Mr. Perneti? A Yes, sir.

MR. PALMER: I am entitled to be heard. Your Honor recalls that there were two notes, one note which Mr. Kaplan said he never presented for payment at the place and time indicated in that note. Now, upon that particular note I ask your Honor to strike all the testimony on the ground that a note of that kind, not presented for payment, released any endorser of liability and payment because the duty of a person to whom the note is given is to present it at the time and place where said note is payable.

THE COURT: I am merely allowing the evidence as bearing upon this witness's knowledge of who made the notes. That is all.

MR. PALMER: I take an exception.

BY MR. MARSHALL:

Q What does Mr. G. Perneti look like? A He is an Italian.

Q I presume he is an Italian. What does he look like, how is he built to look like?

Q Describe him to us? A He is a short little man.

BY THE COURT:

Q How old a man? A He must be somewhere about thirty or thirty-five years.

BY MR. MARSHALL:

Q How long have you known him? A For about two years.

Q How often have you seen him? A He used to come around every week.

Q When did you see him last? A In the month of October.

Q What year? A 1907.

Q Since then you haven't seen him at all? A No, sir; I have not.

Q Where was he when you saw him last? A In my house.

Q On the other occasions when you have seen him where was he? A Always in my house.

Q You never saw him anywhere else? A No, sir; I never did.

Q How did you make his acquaintance? A I met him in an auction sale.

Q Whereabouts? A 608 Broadway, Brooklyn.

Q Was he introduced to you by anybody? A No, sir; he had seen me buying goods there and I sold him a couple of articles.

Q As far as you know do you know any other person who knows him? A No, sir.

Q You don't know where he lives? A No, sir.

Q Have you any letters from him? A No, sir.

BY MR. MARSHALL:

Q You sold him goods? A Yes, sir.

Q When did you give him these goods that he gave you these two notes for. When did you give him these goods, \$175.

worth of goods? A When I took the notes, the same day.

Q The same day? A Yes, sir.

Q He gave you no address at all? A No, sir; he didn't give me no address at all; yes, sir; he gave me an address on Morris Avenue.

Q What number Morris Avenue? A I don't remember the number.

Q Did you take a memorandum of that number? A I believe I had a memorandum but I don't know where it is.

Q Between what streets? A I don't know; I am not acquainted around there.

Q When were you notified that People's Exhibit 2 was no good?

MR. PALMER: I object to that upon the ground that it calls for a conclusion. There is no testimony to show that he was notified.

BY THE COURT:

Q Did you ever receive any notice regarding that exhibit?

A (No answer.)

BY MR. MARSHALL:

Q Did anybody tell you about that, whether it was good or bad? A (No answer.)

BY THE COURT:

Q Did you ever hear whether it was good or bad from anybody? A I don't remember, sir.

Q You don't remember that either? A No, sir.

Q Didn't Mr. Kaplan tell you that that note was bad?

MR. PALMER: I object to that. He said he never presented it for payment and I don't see how you can say that.

MR. MARSHALL: I am examining him on People's Exhibit 2.

BY MR. MARSHALL:

Q Didn't Mr. Kaplan tell you when that note was refused -- protested? A Yes, sir; Mr. Kaplan came to my house.

Q What did he say about that note? A He said that the note is going to be due.

Q What did you say? A I said I suppose it will be paid.

Q When was that? A In the month of November.

Q It was due on November 7th, one month after -- didn't he see you after November 7th? A Yes, sir; he did.

Q Why did you make the note payable at your address, where you lived?

MR. PALMER: I object to that. It calls for a conclusion of the witness's mind.

A I used to buy goods from certain firms where I used to make notes in their place.

Q That is the only explanation you can give of whyt you made the notes payable at the place where you lived? A Yes, sir

Q You have not seen Mr. Pernetti since you gave these

notes to Kaplan? A No, sir; I never did.

Q Have you tried to find him? A Yes, sir.

Q What did you do to find him? A I was going around amongst people in the same trade, and asked them if they knew a man by this name and so they told me they don't know him.

Q What kind of goods did you give Mr. Perneti that were worth \$175.? A I sold him all kinds of merchandise, watches and diamonds.

Q At one time, the same day? A Yes, sir.

Q He came into your house; you didn't know what his name was; you did not know where he lived; you gave him \$175. worth of jewelry and he walked out with the jewelry and gave you these two notes.

MR. PALMER: I object to that.

THE WITNESS: I sold him goods before too.

BY THE COURT:

Q You had known him before? A Yes, sir.

Q How long? A For about a year or a year and a half.

Q During that year how frequently about had you seen him? He used to come to my house once a week, sometimes twice, sometimes once a month.

Q Who introduced him to you, if anybody? A He was attending an auction sale, I was there and I met him up there in the auction sale and I bought \$500. worth of goods.

Q Who bought? A I did.

BY MR. MARSHALL:

Q How did that interest him? A He was there too and he seen when I took the goods out and he asked me if I would sell him a couple of articles; of course, I didn't care to sell him anything in the auction room and I gave him one of my cards that he should come to my house and since then he used to come quite often to my house and I used to sell him goods.

Q He signed this note in your presence? A (No answer.)

Q Did you see him write his name to it? A I made that out.

Q Who signed the name? A I did.

Q You signed his name to that? A Yes, sir.

Q Why didn't he sign his own name? A I signed that; he wanted to sign it in Italian and I thought that wouldn't be legal and I signed it myself.

Q You signed the whole business, you wrote out the whole business? A No answer.

BY THE COURT:

Q Did you write the name of G. Perneti? A Yes, sir.

Q Did you write that (showing witness the name of G. Perneti.) A Yes, sir.

Q Couldn't Perneti write? A Yes, sir; he could; but not English.

Q He couldn't write in English?

BY MR. MARSHALL:

Q Did you ever see anybody write in Italian? A Write in Italian.

Q Did you ever see a man write an Italian? A Yes, sir.

Q You know the letters are just the same as they are in English? A I don't know.

Q You don't know that? A No, sir.

Q You haven't seen him from that day to this? A No, sir; I never did.

M A R C U S T A G E R, a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q What line of business are you in? A Builder.

Q Are you acquainted with the defendant Mr. Meyer Donchin?

A I am.

Q How long have you been acquainted with him? A Well, since he came over, about nine years.

Q During that time have you had occasion to visit at his home? A Yes, sir; we lived in the same house for a number of years.

Q You knew his parents? A I do.

Q Do you know of Mr. Donchin's character? A Yes, sir; I

do.

Q What, in your opinion, Mr. Tager, is the character of Mr. Donchin? A Well, I know him to be an honest man; he has always been working and doing some business for himself; he was never in any trouble to my knowledge;

Q You know that he supported his family? A Yes, sir.

Q Did you know that he supported his family?

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

THE COURT: I sustain the objection.

MR. PALMER: Exception.

BY THE COURT:

Q You know this defendant, do you? A Yes, sir.

Q You know other people who know him? A Yes, sir; I know other people who know him.

Q Do you know other people that know this defendant? A Yes, sir; I do, yes, sir.

Q Do you know what his reputation is among those people for honesty and truthfulness? A I do, yes, sir.

Q What is it, good or bad? A Good.

(No cross examination.)

N I C O L I D E L S O N, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q Where do you live? A 25 East 115th Street.

Q What line of business are you in? A Jewelry business.

Q Are you acquainted with Mr. Donchin, the defendant in this action? A I know him.

Q How long have you known him? A I can't say exactly, possibly about three years, maybe more or less.

Q During that time do you know that Mr. Donchin has been dealing with various firms in the jewelry business? A Yes, sir.

Q Do you know people who know Mr. Donchin? A Yes, sir; a good many people.

Q What is your opinion of the character of Mr. Donchin. What do you know about the character of Mr. Donchin?

THE COURT: No.

BY THE COURT:

Q You know other people who know this defendant? A Yes, sir.

Q Do you know what his reputation is among those people for truth and honesty? A Yes, sir.

Q What is it, good or bad? A Very good.

Q What is it? A Very good.

BY MR. PALMER:

Q You are in the jewelry line -- how long have you been in the jewelry business? A From 1891.

Q From 1891? A Yes, sir.

Q You are acquainted with the various methods of business transacted in the jewelry line? A Yes, sir.

Q Will you be kind enough to tell us what the custom is in your line of business with respect to selling goods to people and making these memorandum slips?

MR. MARSHALL: Objected to.

Q (Continuing) People's Exhibit 1.

THE COURT: I will allow you to ask him what a memorandum transaction is.

BY MR. MARSHALL:

Q Do you know anything about this particular transaction in this case?

THE COURT: He says he has been in the jewelry business.

BY THE COURT:

Q How long have you been in the jewelry business? A From 1891.

Q Have you heard the words "memorandum transactions" used in the jewelry trade? A Right along.

Q What does it mean as used in that trade? A Memorandum means when you give out anything on memorandum, and if he doesn't sell, bring it back again and you have to get the receipt back, if anybody comes down and tells he bought it, he gets another writing on it, -- if the memorandum isn't considered for anything he gets a bill for it.

BY MR. PALMER:

Q In other words, it is simply a delivery? A (No answer.)

R O B E R T C O R N, a witness on behalf of the defendant,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q Where do you live? A 71 Nassau Street.

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

Q For the last twelve years? A Yes, sir.

Q What do you do, what is your particular line in the jewelry trade? A Watches, diamonds and jewelry.

Q You sell watches, diamonds and jewelry, your trade, your business is selling something like Mr. Kaplan's business? A Well, I sell diamonds and Mr. Kaplan sells diamonds only where I sell watches and jewelry too.

Q Do you know Mr. Kaplan? A Yes, sir.

Q Now, do you know, from your experience in the jewelry

business -- will you kindly state to this court and jury what is meant by the general term memorandum? A The general term means if anybody buys diamonds or watches and he is afraid he should not be left with it, so he should be able to return them, he simply takes them on memoranda, but if he did not trust anybody he would not trust on memorandum, he would not trust them on a bill; if we give anybody a memorandum we give it to him simply because we trust him, we think he is good; otherwise we wouldn't give it to him at all.

BY THE COURT:

Q When articles are taken on memorandum does the title to the articles remain in the person who has turned it over to the parties who receives the memorandum or does the title pass to the person who signs the memorandum. Do you understand that?

A The title is with the person who takes it. I will show you an instance.

Q The title is with the person who takes it?

A Yes, sir.

Q Suppose a man comes into your place of business to get diamonds on what you call a memorandum, and he signs what you call a memorandum and takes the diamonds out, what is the customary understanding in the trade as to whose those diamonds are yours or the man's? A The man's because if he says he sold it I shall charge it to him, I charged to him, I will just give you an instance. I was short in some size of diamonds.

Q You are under oath, sir and you are telling us what the custom of the jewelry trade is? A Yes, sir; exactly, and I can prove it and convince you right now. I was out of some sizes of diamonds and I went into a man, an importer, who had those sizes and I took those diamonds on memorandum. Now, those diamonds are mine, that is the way the custom is on memorandum; I can do with those diamonds anything I please; all that I have to tell the man is that they are mine and until now I have the privilege to return them in case I don't want to have them on my hands so I have a right to return them; if I want to keep them I simply tell the man "Charge them, they are mine".

BY A JUROR:

Q Do I understand that the diamonds are yours after you tell the man that you have sold them and not before?

A They are mine.

Q Are the diamonds yours before you have told the man from whom you got them that you had a purchaser or that you wanted to keep them? A The diamonds are mine only I have the privilege to return them. Once I take the diamonds they are now mine, I can sell them to you or I can keep them, do anything I want with them, but I have the privilege to return them in case I don't want them.

CROSS EXAMINATION BY MR. MARSHALL:

Q And the custom in your line simply varies as to the amount of time in which you can return them? A Yes, sir, -- here are diamonds which I can prove, which Mr. Kaplan will prove are genuine diamonds which I got and which I can keep or not, that is my privilege.

Q Then the only difference in your line would be that various people have different times in which the diamonds can be returned? A That is the only difference.

(The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until 2 o'clock).

After recess.

NATHAN DONCHIN, a witness for the defendant,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q Where do you live? A 11 West 114th Street.

Q Mr. Donchin, the defendant is your son? A Yes, sir.

Q He lives with you, doesn't he?

MR. MARSHALL: I object to that.

A Yes, sir.

Q He supports you, doesn't he?

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

THE COURT: Objection sustained.

Exception.

Q Do you work? A No, sir; he supports me.

MR. MARSHALL: I move to strike out the answer as
not responsive.

THE COURT: Strike it out.

Q Does your boy, Meyer, live with you and your wife,
his mother? A Yes, sir, we live together.

Q He is not married, is he?

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

THE COURT: Objection sustained.

Q Has your boy, Meyer, been a good son to you?

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

THE COURT: Objection sustained. What do you want to get from this witness?

MR. PALMER: As far as he can tell us, as far as he is competent to show the good character of the boy, the way he comes home and all that sort of thing --

THE COURT: You may examine him as a character witness if you see fit to.

BY THE COURT:

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

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for truth and honesty? A Yes, sir; he is my son.

Q What is it, good or bad? A Good; he has a good character, he supports me well and the mother.

THE COURT: I do not think you ought to ask him anything more.

MR. PALMER: Mrs. Donchin please take the stand.

THE COURT: You have had enough now on character. I won't receive any more testimony. You only propose to call her as a character witness. You have called now enough character witnesses, that is to say, all that I customarily allow.

R O B E R T C O R N, a witness for the defendant,
recalled:

BY MR. MARSHALL:

Q Mr. Corn, is Corn your right name? A Corn.

Q Did you ever have your name changed? A No, sir.

Q At any time? A No, sir.

Q That was your name when you were born? A Yes, sir.

Q What is that? A No, sir.

Q What was your name when you were born, what was your
name before?

MR. PALMER: I object to that.

THE COURT: I will allow it.

Exception.

Q What was your name before. Speak up. I want to
hear it?

THE COURT: When you do give your answer speak
so that everybody hears you.

THE WITNESS: My name is Corn.

Q What was your name? A It was also Corn but the first
initial was different.

Q Where did you change your name, when did you change it?
A I did not change it legally.

MR. PALMER: I object to that on the ground
that it is irrelevant and immaterial.

THE COURT: I will allow it.

Exception.

Q You did not change it legally? A No, sir.

Q How did you change it, what was your name?

A My name was Corn, L., now it is M., -- R.

Q Now it is Robert? A Yes, sir.

Q You changed it from L. to R.? A It was to do
business.

Objected to. Objection sustained.

MR. PALMER: You want to ask the question after
the Judge throws it out.

Q When did you change it?

Objected to. Objection overruled. Exception.

Q When did you change it? A Does that have anything
to do with this case.

THE COURT: Answer the question?

THE WITNESS: I have answered it.

BY MR. MARSHALL:

Q You can answer it so that the 12 men will hear you?

When did you change it? A About 12 years ago.

Q About 12 years ago? A Yes, sir.

Q You know a man named Blackman, don't you?

A I know Blackman.

Q Where is Blackman? A I don't know where he is now.
have

Q How long since you have seen him? A About a year and a

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half.

Q A year and a half? A Yes, sir; somewhere around there.

MR. PALMER: I renew my motion about striking out the testimony as to the notes.

Motion denied. Exception.

MR. PALMER: Do you rest?

MR. MARSHALL: No.

R E B U T T A L.

A L I C E G R E E N M A N, a witness for the People in rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q Where do you reside? A 947 Miller Avenue.

Q Employed by Mr. Kaplan? A Yes, sir.

Q In what capacity? A Bookkeeper.

Q Bookkeeper? A Yes, sir.

THE COURT: Try and rise your voice if you will.

BY MR. MARSHALL:

Q You have made the entries -- you were employed by him on the 2nd day of October, 1907? A Yes, sir.

Q Were you not? A Yes, sir.

Q You made the entries in this ledger of that transaction?

A Yes, sir.

Q Did you hear any conversation between Mr. Kaplan and the defendant after the 2nd day of October, about this transaction?

MR. PALMER: I object to that as calling for a conclusion on the part of the witness "about this transaction".

THE COURT: Objection overruled.

Exception.

THE COURT: I will allow her to state the conversation.

Q What was the conversation?

THE COURT: I will allow this witness to state what conversation she heard between this defendant and Mr. Kaplan.

Q What did you hear in the month of October? A Well, in the month of October I called him up myself on the 'phone.

Q What was the conversation? A Mr. Donchin, -- Mr. Kaplan asked him where is the goods, to return the goods and he said that he gave the goods to somebody and the husband put the goods in the safe and he went away, he left the city, and his wife wife does not know the combination of the safe and he cannot get the goods back.

Q How long after the 2nd of October was this?

A I can't tell you exactly.

Q How many days? A It was a few days, I think.

Q It was more than one day? A Yes, sir.

Q Did you ever hear any conversation with Mr. Donchin about this? A I wrote him a letter.

Q Did you have any talk with him? A Yes, sir; I met him always in the business and spoke to him "Where is the goods" and he told me the same thing.

Q He told you the same story? A Yes, sir.

Q When did he tell you that story, after he talked with Kaplan? A I can't tell you that exactly; I think it was after that.

Q After that? A Yes, sir.

CROSS EXAMINATION BY MR. PALMER:

Q You are a sister of Mr. Kaplan, the complaining witness?

A Yes, sir.

Q Did you ever talk to Mr. Kaplan about this case before you came on the stand to-day? A I did not; I know the case just as good as he does.

Q You never spoke to Mr. Kaplan, to your brother, about this case? A He told me different times to write letters to Mr. Donchin and I know all about it.

Q You never spoke to him about this case personally?

A Certainly, we spoke this morning when we went to court that we are going for this case.

Q Were you ever in Mr. Marshall's room? A Yes, sir.

Q With your brother? A Yes, sir.

Q Did your brother tell Mr. Marshall about the story of the closed safe and the husband going away? A I don't remember that.

Q Did your brother tell you about that? A Well, I heard it myself as good as he did.

Q I believe you said that you called up Mr. Donchin on the telephone and this was a conversation over the telephone, is that right? A No, sir; this was a conversation in the office but I called him up once and told him "You come up" and he said he would come to the office, he made an appointment and he never showed up and then he came two days later.

Q He called you up? A Yes, sir.

Q Did you call him up before that? A Yes, sir; I think I called him up, I had the telephone number.

Q Where did you call him up? A In a drug store near that place.

Q Near what place? A Near his place.

Q Did he ever give you the telephone number of the drug store? A Yes, sir.

Q He gave it to you? A Yes, sir.

Q Now, you heard your brother testify on the stand this morning, did you not? A Yes, sir.

Q You heard your brother say, did you not, that it was

not for two or three weeks afterwards that he made any mention after the second day of October, of the non-return of these diamonds to his place. Did you hear him testify to that?

A Well, I heard that, I don't remember when it was, I don't remember when it was.

Q Are you sure that it was or two days after the 2nd of October? A I am not sure how long that was; I can't remember two years ago.

Q You are sure about what Donchin said to your brother?

A Yes, sir; I know that.

Q Sure that he said that the diamonds were in the safe?

A Yes, sir.

Q So the lady said? A Yes, sir.

Q And the safe was locked and the combination was with the husband on the road? A Yes, sir.

Q Sure about that? A Yes, sir.

Q Not so sure when he said that? A No, sir; I don't remember.

Q It might have been three weeks after the 2nd of October? A I don't remember.

Q Do you know what your brother asked him before he told that story to him? A I heard the whole conversation.

Q Tell what your brother asked him that led Mr. Donchin to make this explanation about the disappearance of those diamonds? A He asked him where is them goods he took on

memorandum and he said this story that I told you just now.

Q He told that story? A Yes, sir.

Q This was within a day or two after the 2nd day of October? A I don't remember when.

Q When Mr. Marshall asked you -- A It was more than a day that is what I said.

Q Was it a week? A I don't remember.

Q It might have been two weeks? A I don't remember, I can't tell you.

Q It might have been three weeks? A I can't tell you.

Q Are you sure. You know this is very serious business?

THE COURT: Ask a question.

MR. PALMER: I withdraw that.

Q Are you sure he said that, Mrs. Greenman?

A Yes, sir.

Q Sure of that? A Yes, sir.

Q Not sure when he said it? A When, I don't know.

Q Mrs. Greenman, do you sell the goods to people that come into the place? A No, sir, Mr. Kaplan makes the sales.

Q Is it a custom with you to listen to everything that goes on between the men? A Yes, sir.

Q Your brother tells you to listen to everything that is said? A Yes, sir.

Q Were you ever a witness in court before? A No, sir.

Q What is the reason that your brother wants you to

listen to everything that is said between him and a customer?

A I am sitting in the same room with him.

Q That was a large room, wasn't it? A It wasn't very large; we have another room now and when he talked it was a very small office and I was right near his desk.

Q You are positive he made this statement? A yes, sir.

Q Now, your brother told you to write, to make entires of Mr. Donchin's transactions with him in this ledger?

A Yes, sir.

Q At one time? A Yes, sir; as many times as he made a sale with him.

Q Were all these items posted at one time? A No, sir.

THE COURT: Now you are referring to the entries in the ledger?

MR. PALMER: Yes, sir.

Q Were the items --

THE COURT: Are you referring to the entries in the ledger?

MR. PALMER: Yes, sir.

Q You heard your brother testify this morning on the stand? A Yes, sir.

Q Your brother said that all the entries in this book, the ledger, as to bills rendered, were made by you on one day, he dictated them to you on one day? A Not all of them.

Objected to. Objection sustained.

Q Were you present at any time when Mr. Donchin gave money to your brother? A Yes, sir.

Q You know that he gave moneys to your brother after the 2nd day of October, don't you? A I can't tell you everything that he -- it is entered in the book -- everything he told me.

Q You kept those books. Now tell me how many times, after the 2nd of October did your brother receive cash money from Mr. Donchin? A Everything that shows on the book, I will tell you. October 15th we received two notes.

Q I am talking about money? A Two notes, \$85 and \$90 and October 2nd we received a check of \$45 and cash \$23.90 and October 15th we received \$103.

Q In cash? A In cash, yes, sir.

Q Did you receive any money December 15th?

THE COURT: Let her go on and answer you.

A Here is \$13.85 that Mr. Donchin said he paid in to the concern, that we had to buy a present for a man, for commission, so I gave him a credit for that because he told me he paid that concern. It was a clock and afterwards I found out he never sent that clock.

THE COURT: Strike that out.

Q I am asking you about the cash he gave you. Just

give us the facts? A November 29th cash \$50; December 16th cash \$65.

Q Didn't he give you on the 9th of November \$50 also?

A The 29th \$50.

Q Didn't he give you money on the 9th also \$50?

A No, sir.

Q Your brother testified he did? A I can't remember it. He always tells me, he doesn't keep it on his mind.

Q He tells you afterwards to put it in the book?

A The minute he gets money he tells me to put it in the cash book.

BY THE COURT:

Q The entries that you refer to now in the ledger which is before you are payments by this defendant -- are entries that you have taken from the cash book? A Yes, sir.

Q The entries in the ledger of merchandise delivered to this defendant are entries which are taken in part from the memorandum book and in part from the day book?

A No, sir; excuse me; these are not from the day book.

Mr. Kaplan made a mistake in calling that the day book; this is the sales book.

BY MR. PALMER:

Q When Mr. Kaplan, your brother, received money at the house of Mr. Donchin did he tell you about it? A Yes, sir.

Q You did not enter it there? A Yes, sir; \$65; each

time he received money.

Q Two occasions one \$50 and one \$65? A \$50 and \$65 I entered upon the book the minute he received that he told me.

BY THE COURT:

Q When the defendant called on the occasion of October 2nd and diamonds were shown to him were those diamonds mounted or were they unmounted? A Those diamonds were picked out from a parcel.

Q Were they mounted or unmounted? A They were unmounted.

Q That is on the 2nd of October? A On the 2nd of October it was unmounted.

Q On October 2nd when the defendant came in were the diamonds that he got on that day mounted or unmounted?
A Unmounted.

BY MR. PALMER:

Q Sure about that? A Yes, sir.

Q What made you say mounted before? A Because I didn't hear the question; I said unmounted.

Q Why did you say mounted, because you didn't hear the question? A Because I didn't hear the question.

Q That is why you said mounted? A Yes, sir.

BY MR. MARSHALL:

Q You referred to goods he got on the 28th? A On the

28th.

Objected to. Objection sustained.

BY MR. MARSHALL:

Q What did you refer to when you said that the two diamonds given this defendant were mounted? A That was later that he took on memorandum two diamonds that he picked out from a parcel and were mounted for him; we never gave him a memorandum goods without the amounts charged to him; we wrote it right on the memorandum.

M I C H A E L P E R N E T T I, a witness for the People
in rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q Where do you live? A 15 1/2 Mulberry Street.

Q Where do you live, where is your home? A Uptown,
303 West 111th Street.

Q Where did you live in October, 1907? A Uptown,
in the same place.

Q What is the number? A 303 East 111th Street.

Q East 111th Street? A Yes, sir.

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

Q Where did you meet him? A Well, sometime,

MR. PALMER: I object to that on the ground that it is irrelevant, immaterial and incompetent.

Objection overruled. Exception.

A Some time, he came in my business.

Q What is your business? A Jewelry business and he brings me some jewelry there, to sell it to me.

Q When was that? A That was about a couple of years ago.

MR. PALMER: I object to that upon the ground that the testimony of this witness is irrelevant, and I don't know whether the witness has got anything at all to do with the indictment. If he has anything at all to do with the indictment he should be asked on that particular point.

Objection overruled. Exception.

Q Do you know a man named G. Perneti? A No, sir.

Q Have you got any brothers? A No, sir, only sisters.

MR. PALMER: I object to that on the ground that it is immaterial and irrelevant.

Q Mr. Perneti, on the 2nd day of October, 1907, did you give that check to this defendant?

MR. PALMER: I object to that upon the ground that it is irrelevant, incompetent and immaterial. It is trying to inject false issues into this case.

Objection sustained.

No cross examination.

MR. MARSHALL: The People rest.

MR. PALMER: I renew the motion made at the end of the People's case to dismiss upon the ground that the People have failed to make out a case in this particular transaction and upon all the other grounds mentioned in the Code.

Motion denied. Exception.

MR. PALMER: I ask your Honor to direct the jury to bring in a verdict of acquittal.

Motion denied. Exception.

Mr. Palmer then closed the case on behalf of the defendant.

MR. PALMER: I ask that the closing address of the Assistant District Attorney be taken down by the stenographer?

THE COURT: Yes.

Mr. Marshall closed the case on behalf of the People as follows:

May it please the Court and you Gentlemen of the Jury:

This man is charged, perhaps you may have forgotten it, with the crime of grand larceny in the second degree, that is the stealing of property of more than the value

of \$25.

Now, what is the evidence? Kaplan swears that he gave this man on what he calls a memorandum, what is called a memorandum, and which is marked in evidence as People's Exhibit 1 and which I already read to you and I will read it again. This is the documentary evidence in the case.

"New York, October 2nd, 1907. To Mr. Donchin.

The S. Kaplan Company, importers and cutters of diamonds, 51 & 53 Maiden Lane, New York and 54 (a French name) Antwerp.

These goods sent for your selection and remain our property.

Sale takes effect after approval of your selection when a regular bill will be rendered, which bill only will be proof of sale and until you receive such a bill of sale these goods are consigned or held subject to our order to be returned to the S. Kaplan Company on demand".

That is the ordinary form of a memorandum transaction in the jewelry trade Mr. L. or R. Corn to the contrary notwithstanding.

Now the rest of the document reads: "10, -- 74 -- 4 3/8ths and 3/64ths, --" I presume meaning the number of karats.

Then there is a sign which means "at" and there was no price fixed and it is signed "M. Donchin".

Now that much for the documentary evidence in the case.

Kaplan swears that he gave these diamonds to the defendant on his statement that he wanted them to show to a customer, and the customer was to look at these stones and he was to bring them back and in case she wanted them a price would be made and he could sell them to her.

That story is corroborated by the bookkeeper, Mrs. Greenman.

Now, the issue for you is a very simple one, notwithstanding the enormous amount of fog that has been thrown into this case. It is my business, if I can, to clear out the fog, blow it away and get down to really what you are trying.

Now, Kaplan's statement is simply this -- Kaplan talks very fast and Kaplan was a little bit rattled on the stand, there is no doubt about that -- but in substance his statement is that he gave this man these goods on his story that he was going to take them and show them to a woman. That is corroborated by Mrs. Greenman and it is uncontradicted that the diamonds were never returned and that no money was ever forthcoming for those diamonds.

That is established in the case.

Now, the question is, as it is in each of these cases, who are you going to believe. That is what you are called here for, to find out who you are going to believe. The Judge can say, as a matter of law, whether there is a prima facie case here but he cannot tell you, he cannot say to you, "You must believe this witness and must not believe the other" that is your job, and my job is to present this thing to you just as carefully as I can and as straight as I can. If I did not take Kaplan and his witnesses up into my room and talk this matter over with them then I would be a fool. If I were to put the Greenman woman, Mr. Kaplan and Mrs. Perneti and the other witnesses on this stand without talking with them and knowing what they had to say I would not have this job and I would not hold it, either one way or the other.

Now that much for that.

Now, the question is, who are you going to believe?

Kaplan story is not broken down; it is not contradicted. There is no question here but that there were considerable dealings between these two people but if this man took these diamonds on a false story, where the title remains in the Kaplan Company, and if he took them

and appropriated them to his own use then he is guilty of larceny under the law of this State, that is all. The cry in this class of cases or the defense is always the same. It is that this is a commercial transaction and that I am being used as a tool in a commercial transaction and am locking up an innocent business man because it is a commercial transaction. That defense is as old as the crime of larceny. But what are the men in the jewelry trade going to do, how are they going to get away from this defense, because anybody can go into your place and say "Let me have these diamonds for a few days, I will show them to a man I think is going to buy them, if not I will return them". That is the understanding. Any one who know the jewelry trade knows that goods on memorandum means just that and means nothing else. And then I walk around the corner and pawn those diamonds and put the money in my pocket and walk away. The jeweler says "Where is my property"; "Why" I say "I am responsible for it, I owe you the money." What does the jeweler do? He does just what any other citizen does when he is being robbed. He goes out and has me arrested. I come in and say, "Yes, I owe you the money, but you are using the District Attorney's office and the People of the State of New York and the criminal process to collect

that money. What have I done?" I haven't done anything but steal the man's diamonds; that is all I have done; nothing else and I am hiding behind a commercial transaction in order to befog a jury into telling me that I have not done what the law calls stealing.

Now if you believe this defendant's story that is an end of this case and you will turn him out. Turn him out into the jewelry trade to work this same game on somebody else.

MR. PALMER: I object to that.

THE COURT: That particular statement may be stricken out.

MR. MARSHALL: Well, you turn him out and you don't think he would do this again. That is for you to determine.

MR. PALMER: I object to all this.

THE COURT: Do not interrupt.

MR. PALMER: He is getting around your Honor's previous ruling.

THE COURT: Do not interrupt. Proceed, Mr. Marshall.

MR. MARSHALL: Now, we will take up the defendant's story. First, do you believe this tale told by him in regard to these diamonds. He says himself that the next day he sold one of those diamonds for \$35. to a man

named Morris Stern; and sometime afterwards he sold four to A. Blackman and two to a man named Frankel. By the way Blackman is supposed to be employed by Robert Corn, this witness who was on the stand here. He sold two to a man named Frankel and he leaves three of the diamonds unaccounted for. He cannot remember what he did with those but the fact remains established in the case that he never returned them and never paid the money for them. He cannot remember what he did with them.

But the most startling statement that he did make was in relation to these two notes of the 7th of October. The whole works are in the handwriting of this defendant. If he had signed G. Perneti's name why didn't he sign it the way he signed his name on the back. Why did he change this "G. Perneti". Why did he utter notes unsigned by a man whose first name he didn't know and whose address he did not know and who he has not seen from that day to this. If you ^{can} believe a man that testifies to a tale like that I say turn him out. It is your responsibility and not mine. I only got those notes in for the purpose of showing you whether the defendant was a liar or not. If I have not proven he is a liar why he is not guilty; that is all there is to that. Can you believe him? Look at these notes and see how the G. Perneti is

written. He did not tell Kaplan that he signed the name G. Perneti to these notes. You will notice that the Perneti is signed in different writing from the rest of the body of the notes and the endorsement on the back. Counsel made a tremendous amount of excitement about the other note not having been presented. It has nothing to do with this case -- this is the two months note and People's Exhibit 3 is a one month note. After one of these notes came back N.G., they couldn't find the man, nobody could find him -- and as a matter of fact there isn't any such man as G. Perneti.

MR. PALMER: I object to that. There is no such testimony in the case. You are going outside of the evidence.

THE COURT: When the District Attorney is through you can then take an exception.

MR. MARSHALL: You make notes of what you don't like and then object all at one time and it may save a great deal of trouble.

The real Perneti that he meant, that he intended to palm off I called to the stand here. How is it possible for me to prove that there is not any such man as G. Perneti. I cannot prove it. I cannot call the four or five million people of this city, produce them here

and have each one of them say that he is not G. Pernetti but can you believe that he would deliver \$175,000 worth of goods to a man when all he knew about him was that his name was Pernetti or two, as Kaplan called them, two bum notes. They are bum notes when he didn't know where Pernetti lived and never knew where he lived. He saw him in his house every week and he made these notes payable, signed by G. Pernetti, at the house where he lived. Now, if a man can come in and get away with a tale like that before a jury of 12 business men in the City of New York, that are presumed to have brains enough and to be sensible enough to be jurors, there is no use of my trying these fellows, -- I might just as well turn them all out.

Now, that is the case.

I might talk for an hour and I could not throw any more light on it. It is up to you. I cannot produce any more evidence than I had. If I have not shown you that this transaction is stealing, or if this defendant's actions and his story convince you that this was an honest transaction then turn him out but I claim that I have shown here that these transactions smell of thieving all the way through, all the way through. He took these diamonds and hides behind the civil transaction and produces

these two ridiculous notes which he got for a debt. Then he comes in here with a perfect cloud of fog and hides behind the fog of a civil transaction to get away with it.

Now, the responsibility is entirely with you. This kind of thieving is a terrible menace to the jewelry trade and any one who knows anything about the jewelry trade ought to know that. It ought to know that it is a menace to the community and the full responsibility of it rests with you now and not with me.

MR. PALMER: I take an exception to the District Attorney's charge as not being supported by proof and ask that the remark made by him in respect to the notes be stricken out and also his remark about the menace to the jewelry trade and things of that kind.

Motion denied. Exception.

TESTIMONY CLOSED.