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COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York, Part VI.

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THE PEOPLE

vs.

Before: HON. OTTO A. ROSALSKY, J.

JULIUS SENOWITZ

New York, May 18th, etc., 1915.

Indicted for grand larceny in the second degree.

Indictment filed November 25th, 1913.

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

ASSISTANT DISTRICT ATTORNEY THERON R. STRONG, FOR
THE PEOPLE.

FRANK MOSS, ESQ., FOR THE DEFENSE.

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TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

Per Court.

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THE PEOPLE'S TESTIMONY.

HERBERT FRANKEL, of 251 West 92nd Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business, Mr. Frankel? A Commission merchant and jobber in live poultry.

Q Where is your place of business? A In West Washington Market.

Q And where is that located, that market? A Why, it's about 12th Street and the North River.

Q And that is in the city and county of New York; is it?

A yes, sir.

Q You know this defendant sitting here (indicating)?

A Yes, sir.

Q And his name is Senowitz, is it? A yes, sir.

Q Julius Senowitz? A yes, sir.

Q How long have you known Senowitz? A Oh, about five years.

Q And was he a customer of yours? A On and off, yes.

Q Now, do you remember when he purchased goods from your concern prior to October, 1913? I mean, before the month of October, when did he last purchase goods from you? A Why, the previous week; I don't remember the date.

Q But I mean before the month of October, do you remember

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when he purchased goods from you last? A No. It may have been September. I know he purchased goods for a while from us, and then there was a lapse of about six months.

Q And did he purchase any goods during those six months?

A No, sir.

Q Then you say he started up, and purchased goods again in September or October? A Yes, something like that.

Q Now, did you see him on October 13th, 1913 -- or, just a minute -- yes, 1913? A Yes.

Q And about what time did you see him on that day? A It was about eleven o'clock in the morning.

Q Did you have some conversation with him at that time?

A Yes, sir.

Q And will you relate what conversation you had with him at that time? A Why, he came in to our place, and he spoke to our salesman, and he was turned over to me by our salesman.

Q Yes? A He had requested --

MR. MOSS: Wait a minute.

BY MR. STRONG:

Q Just what he said to you. We can get the rest, later. What you said to him and he said to you? A I said, "Senowitz, I understand you want a load of poultry", and I said, "How much do you want?"

Q Yes? A I don't remember what he told me as to the number of coops. I said to him, "Have you got a check for me?"

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So he said, "Yes". "Well", I said, "Then you had better give it to me", and we were right at the door of the office, and we went into the office, and he gave me a check.

Q Yes? A So I asked him questions about his business.

Q And what were those questions that you asked him about his business? Can you give me your best recollection on the subject? A I asked him how he was doing, and how his competition was in Brownsville there.

Q Where? A Why, in Brownsville, I believe they call it.

Q In Brownsville? A Yes, sir.

Q That's where he had his place of business before? A Yes, sir.

Q What was said about that? A And he told me he was doing fairly well. And then I again asked him what he wanted, and he told me, and I said, "Well, if this check is good, why, I'll give you a load of poultry."

Q Yes; and what did he say to that? A He said, "You needn't worry about my check. Why, there is lots of money in bank. That check will be paid", and I said, "Well, if that is so, you will get a load of poultry."

Q And what did you do then? A Why, I then instructed my salesman to --

Q Was he there? A Nom he was outside.

Q He was outside? A Yes, sir.

Q Was there any poultry delivered to him? A Yes, sir.

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Q And how much? Do you know?

MR. MOSS: Wait a minute. I object to it in that way.

BY THE COURT:

Q Do you know that of your own knowledge? A Oh, yes.
That there was poultry delivered?

Q Yes? A Yes.

THE COURT: You may tell.

BY MR. STRONG:

Q How much poultry was delivered to the defendant?

A I don't know the quantity, but I know poultry was delivered.

MR. MOSS: It stands to reason, your Honor, that he can't know, because he says he knows some poultry was delivered, but not how much. It stands to reason, then, that it was delivered by some one else.

THE COURT: Yes; I sustain the objection. Strike that out.

BY MR. STRONG:

Q And who delivered the poultry to the defendant? Do you know?

MR. MOSS: I object to that.

THE COURT: Well, it is a conclusion of fact, who delivered it. Objection sustained.

BY MR. STRONG:

Q Where was the defendant's place of business at that time; do you know? A I don't know the address.

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Q Do you know whether he waited for the poultry or not?

A Yes, sir.

Q He waited for it? A Yes, sir.

Q Did you see any -- did he have a vehicle? A Yes;
at my place of business.

Q He had a vehicle there? A Yes, a wagon.

Q What was it? A A wagon.

Q Did you see any goods placed on his wagon? A Yes,
sir.

Q And what were the goods that you saw placed on his wagon?

A I think about 12 coops of fowl, I think it was. I am not
quite sure of the number.

Q And you saw that yourself, did you? A yes, sir.

Q What was your salesman's name? A Mr. Cohen.

Q Mr. Cohen? A Yes, sir.

Q And he present? A No, he isn't here.

Q Is he still in your employ? A Yes, sir.

Q Were those some of your coops of fowl that were put on
his wagon? A They were all mine.

Q They were all yours? A Yes, sir.

Q And how much were coops of fowl worth per coop on that
day? A Well, that is pretty hard to say; About \$25 a coop.

Q On what day of the week was this on? A This was Monday.

Q And do you remember whether or not that was a holiday?

A Why, that was a legal holiday; Columbus Day having fallen

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on Sunday, the day before.

Q And what did you do with the check that you received from this defendant? A Why, I instructed my bookkeeper to put it in the bank the next day.

Q Did you see the check after it had been sent to the bank? A After it was returned to me, yes.

Q You saw the check then? A Yes, sir.

Q And did you get the money?

MR. MOSS: I object to that as incompetent, in that form, of proof.

THE COURT: Sustained.

MR. STRONG: I am asking the witness if he received the money as the proceeds of the check.

THE COURT: You will have to prove it in a different way.

MR. STRONG: I can have the man from the bank here, but I haven't him here now.

THE COURT: I cannot help that.

MR. STRONG: I am asking whether he received the money at any time, your Honor, whether he received the money on the check.

THE COURT: It may have been credited to him. I will sustain the objection.

BY MR. STRONG:

Q Did you see the defendant at any time after that? A Yes, sir; in the police court, I think.

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Q Did you have any talk with him? A No.

MR. STRONG: That's all.

CROSS-EXAMINATION BY MR. MOSS:

Q Was this transaction near some Jewish holiday? A I believe about a month prior to it; I am not quite certain of that.

Q Wasn't the Jewish holiday very near? A I couldn't say for a certainty, because it is a few years ago.

Q Well, what was October 11th? A Why, I don't know.

Q Do you know the day of Atonement? A Yes, but it falls differently in every year.

Q Wasn't the Day of Atonement on October 11th? A It may have been.

Q Have you no recollection? A No, sir.

Q Was October 15th the Feast of the Tabernacles? A Why, I don't know for a certainty whether those were Jewish holidays.

Q Have you no recollection in connection with this transaction that there was a Jewish holiday near by? A I thought they fell about a month later than this transaction. That's the best of my recollection.

Q Are there any Jewish holidays in November? A Well, they may fall in November, depending upon the year. They are different every year.

Q Do they ever fall in November? A Why, I believe so;

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I don't know, though.

Q Well, have you any recollection whether or not Mr. Senowitz was buying poultry in connection with Jewish holidays?

A No, I don't know.

Q Will you try to think whether or not he was preparing a stock of poultry to be sold on the Jewish holiday, or in connection with the holiday? A Well, if he had -- he may have, but if he had, I wouldn't have known of it.

Q Well, doesn't your selling of poultry increase with certain holidays? A Yes, sir.

Q That is why I asked you if you haven't some recollection about that in connection with this case? A I couldn't say whether that was the time of the Jewish holidays or not.

Q Well, you say the conversation occurred about 11 o'clock in the morning, as I understand? A About that time, yes.

Q Do you remember testifying before the Magistrate in this very proceeding? A Yes, sir.

Q Were you asked this question, and did you answer as follows: "Q Did you see him on October 13th? A Yes, sir.

Q Where and what time on that date. Be sure as to the time."

"A Sometime after about four o'clock in the afternoon."

A Why, delivery was made of the goods at that time.

Q You were asked whether you had a conversation with him and you testified it was about four o'clock in the afternoon?

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A That may be so. I was in the place all day.

Q Well, was it 11 o'clock or four? A I am quite sure that when I saw him it was about 11 o'clock.

Q But I am asking you about the conversation which you have detailed? A It was sometime after 11 o'clock.

Q Do you remember that, in the affidavit you made in the proceeding, you said it was 11? A No, I don't remember.

Q And that you corrected it from 11 o'clock to four, when the matter was fresh in your mind? A I don't remember that.

Q Do you recall that you testified in this way: "You said in your affidavit it was 11 o'clock. Try to show why you are now changing your testimony? A Yes. You see, in the hurry down at the market things go so quickly that one really cannot remember the time. I wasn't sure at the time I made out that affidavit when it was. I went back to business, though, yes, sir, and I still recall the time at which this transaction occurred.

"Q Did you have a conversation with him then? A Yes.

"Q You now say it was four o'clock in the afternoon? A Yes, sir." Do you remember that? A I am recalling it now, yes, sir.

Q And do you remember in your testimony, given in October, 1913, that you changed the hour of the conversation from 11 o'clock to four; do you remember that now? A I remember

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that now, yes.

Q But, today you give it as 11, do you? A I haven't given the thing any thought since that time.

Q Well, you were cross-examined on that very subject at considerable length, weren't you? A I believe so.

Q For instance, Mr. Rose asked you the first question of his cross-examination: "Q What time of the day did you first see the defendant at your place? A I should judge it to be about four o'clock in the afternoon"? A (No answer).

Q Now, do you remember, at another time, stating that the first time you saw him was at two o'clock? A No, sir, I don't remember the time.

Q Now, Mr. Frankel, you have dealt with Mr. Senowitz, or, rather, he has dealt with you, a good many years; hasn't he? A Yes.

Q Will you say as much as five years? A Yes, I think so.

Q Buying poultry? A Well, he hasn't bought anything in the last two years.

Q But during the five years he bought poultry from you? That was the occasion of his dealing with you, was it not? A Well, when I said five years, I meant five years ago. He has only dealt with us for about three years.

Q And he had bought poultry up to about three, or four or five hundred dollars worth, hadn't he? A Yes.

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Q He always paid his bills, didn't he? A Yes.

Q Up to this time? A Yes, sir.

Q You gave him a week's credit, didn't you? A Yes.

Q You say there was a period of six months in the year 1913, when he hadn't bought. Was that the period from March to August? A Well, I can't just say the exact dates, but I know there was some time when he didn't buy.

Q Well, may I perhaps refresh your memory (indicating some papers)? From about March 21st to August 1st, would you say? A Yes.

Q Between June, 1912 and October, 1913, have you sold him over \$6000 worth of poultry that he paid for? A I can't say right now.

Q Don't you think it would amount to that? A Why, I suppose so. He has bills for it, it surely amounts to it.

Q Well, on any previous occasion, when you delivered him a bill of goods, and he paid you for the preceding week, did you ask him if his check was good? A No, sir.

Q But you say you did on this particular occasion; do you? A Yes, sir.

Q Now, did Senowitz give you that check? A He laid it on the desk in the office.

Q Well, did you take it from the desk? A No, my book-keeper took it.

Q What time was that? A I don't recall the time.

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Q Well, was it at 11 or 4? A Well, I thought it was at 11 o'clock, but from that --

Q You think it was 11? A I thought it was about 11 o'clock, yes.

Q Well, now, let me see if I can refresh your recollection by reading to you these questions and answers on your previous examination: "Q Did you receive the check personally, or was it given to the cashier? A To the cashier.

Q You don't know what time in the morning it was given to him? A I know it was not given in the morning." Do you remember that? A I suppose so; I can't recall the time of day it was.

Q And, in answer to the questions put to you right there, on October 17th, 1913, did you say that the check was given about 2 o'clock in the afternoon? A What did you say?

Q You say it was given about 2 o'clock in the afternoon? A I can't recall the time of day that this check was given. It happened about two years ago, and I can't remember that.

Q Well, don't you remember that, on that occasion, you gave different hours, 11 o'clock, and 2 o'clock, and 4 o'clock, after having originally sworn in your affidavit that it was 11? A No, I can't remember that. If I did swear to it, I suppose it was so, but on Monday of every week I receive quite a number of checks, and I can't recall the time of day when

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this happened.

Q Well, was this check delivered at the time that you had that conversation? A Yes, sir.

Q At the very time? A Yes, sir.

Q Why, let me ask you this, and see if I refresh your recollection. Did you not have a conversation with the man, and hours afterwards wasn't the check received by your concern? A No. We first spoke to him outside, that is, on the floor, then we went into the office.

Q Now, your charge in this case is with regard to the goods which you delivered to him on that day; is it? A How is that?

Q Is your charge in this case with reference to the poultry that you delivered to him on that day?

MR. STRONG: I object to that. We are making the charge, not this complainant. The People of the State of New York are making the charge.

THE COURT: I sustain the objection.

MR. MOSS: I will change the form of my question.

Q Was the charge that you made before the Magistrate a charge concerning the poultry that was delivered by you to him on the day that he gave you that check?

MR. STRONG: One moment. I make the same objection. The People are making the charge.

THE COURT: I will sustain the objection to the form of

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the question. I notice that this indictment is not drawn under section 1293, but is drawn under the ordinary larceny section, whereby the pleader charges the defendant with the crime of larceny by false pretences.

MR. MOSS: I think you will find that the allegations follow the section which your Honor has just quoted, and I think you will find the section endorsed upon the bill. I think the pleader had in mind to follow that section.

THE COURT: But he did not. It is an ordinary larceny by false pretences. Is it not so endorsed?

MR. MOSS: My copy does not bear the endorsement. I think the original does bear that endorsement.

THE COURT: Under section 1293, an express representation is unnecessary. I will sustain the objection.

MR. MOSS: Well, speaking of the indictment, where it sets up the check, you will notice that the first count does not allege a delivery of the check, and it is made to the order of Sol Frankel, not Sol Frankel, Incorporated, but only Sol Frankel.

THE COURT: I think, under the Meade case, 200 New York, it is immaterial.

MR. MOSS: There is no allegation of any delivery. That is the proposition I make.

THE COURT: There is an allegation that it was produced and exhibited to the corporation. We will suspend at this mo-

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ment.

(The Court adminished the jury in accordance with section 415 of the Code of Civil Procedure, and took a recess until ten minutes past two o'clock).

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AFTER RECESS.

HERBERT FRANKEL on the stand.

MR. STRONG: I would like to ask a question or two that I did not ask on the direct.

MR. MOSS: Very well, but I haven't finished my cross-examination.

BY MR. STRONG:

Q Did the defendant ever pay you for the consignment of poultry which you gave him on the 13th of October, 1913?

A No, sir.

MR. MOSS: If your Honor please, the answer came before I could interpose an objection. If your Honor please, I object to it as immaterial, irrelevant and incompetent. He is not charged with larceny in that way.

MR. STRONG: It's exactly what we do charge in the indictment. We allege larceny of poultry.

MR. MOSS: This is not a suit to recover money. It is a charge of the larceny of goods.

THE COURT: What is the date in the indictment?

MR. STRONG: October 13th, 1913.

THE COURT: And the date of the charge?

MR. STRONG: October 14th, 1913. The indictment charges the defendant with obtaining a consignment of poultry on October 13th, 1913, by means of a check, by making false representations as to the check. I have asked the witness whether

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the defendant paid for the poultry that he received on that day.

THE COURT: I will allow that.

MR. MOSS: Exception.

THE COURT: You see, there are three counts here. The second count comes within section 1293, Mr. Moss.

MR. MOSS: Yes, sir. Well, I think that I would like to ask the District-Attorney at this time, so that the issue may be as clear as possible, and so that we may expedite the trial, which of those counts does he stand on?

MR. STRONG: Whichever count the proof substantiates, at the end of the People's case.

THE COURT: You see, in either event, there must be an obtaining of property. Either under the first or second count, the check must be given with the intent to defraud the complaining witness out of property or money. Now, under either the first or second count of the indictment, it is necessary to the People to show that property was obtained.

MR. MOSS: But they have not yet proven that the property was delivered.

THE COURT: No.

MR. STRONG: Oh, yes, I have.

THE COURT: No, you have shown the chickens were put on the defendant's wagon.

MR. STRONG: Well, that's a delivery, isn't it? Other-

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wise, I don't know what a delivery is.

THE COURT: They may have been taken off again, Mr. Strong.

MR. STRONG: Oh, there might have been a thousand things, but that is a matter for the defence to prove. I have proven that they were put on the defendant's wagon, delivered to him, and what became of them afterwards is a matter for the defendant to show.

MR. MOSS: Well, I only mentioned the latter point as an incident. I am not resting my defence on that point.

THE COURT: Proceed.

MR. MOSS: Exception.

BY MR. STRONG:

Q I show you a check, and ask you whether that is the check which the defendant laid on your desk? A Yes, sir.

MR. STRONG: I offer that in evidence.

MR. MOSS: I object to anything that is written on that check, which was not on the check when it was laid upon the desk in front of this witness; in other words, I object to anything that was put on it afterwards.

THE COURT: Mark it for identification.

(It is marked People's Exhibit 1 for Identification).

MR. STRONG: Of course, the People don't claim that the defendant was bound by anything that happened to the check subsequently, after it was given.

THE COURT: Well, mark it for identification for the

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present.

MR. STRONG: Yes, sir; that's all.

CROSS-EXAMINATION CONTINUED BY MR. MOSS:

Q What was the day of the month on which you had this conversation with the defendant? A Monday.

Q No, what was the day of the month? A The date?

Q Yes, the date? A I believe it was the 13th.

Q Are you sure it was the 13th? A Yes, I am quite sure.

Q Now, we were talking about the holidays, this morning, and the holidays with reference to the chicken business. Do you keep the holidays yourself? A Yes, sir.

Q So undoubtedly you kept Yom Kippur that year? A yes, sir.

Q And the Feast of Tabernacles? A Yes, sir.

Q And Succoth? A Well, I don't keep them all; I keep some of them.

Q Well, you keep those three? A Yes, sir.

Q Don't you sell largely to Jews, to Jewish dealers? A Yes, sir.

Q And don't your sales have reference to those holidays? A Yes, sir.

Q Do you remember, in the Police Court proceeding, that, after you were cross-examined by the defendant's counsel, you were examined again by the District-Attorney on re-direct.

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examination? A Why, I suppose so; it is there; I don't remember it, though.

Q Well, see if you recall these questions and answers:

"Q (By the Court) Do you know what time the cashier got this check? A Sometime in the afternoon, one or two o'clock.

Q Who brought the check to your attention? A The cashier.

Q What did he say about it? A He handed it to me. Q What did he say about it? A He said, 'Here is a check that Senowitz gave'." Do you remember those questions and answers?

A Something like that; I suppose so.

Q Well, you said today that you were present when that check was given? A That's right; I was there.

Q Well, then, if your answers today are true, how can the answers that you gave before be true? Can you explain that? A I think they both can be true.

Q Well, let's see.

MR. STRONG: I think the witness ought to be allowed to complete his answer.

MR. MOSS: I thought he had completed it.

THE COURT: Go on and complete your answer.

A (continued) You see, the procedure in our business is, just before the cashier goes home, he takes certain checks and mails them to the bank, after consulting me as to which check shall go to the bank by mail, and I don't recall whether or not he asked me specifically as to this check, as to whether that

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was to be mailed, but I believe that is why he called my attention to this check.

BY MR. MOSS:

Q But here is the question: "Q Who brought the check to your attention? A The cashier. Q Do you know what time the cashier got this check? A Sometime in the afternoon, one or two o'clock." Do you still say, today, that you were present when the cashier received that check from Senowitz?

A Yes.

Q And the conversation which you have detailed occurred at that very time? A Yes, sir.

Q Now, let us see. In the same examination by the Court, this was the question: "Q What did you say? A I sent after him. He came to me for poultry. Q What did you say at 2 o'clock that afternoon? A What did I say? Q Yes? A I said, 'Senowitz, you gave me a check'. Q Did you have the check in your hand at the time? A No, it was in the office. Q What did he say? A He said, yes. Q Yes? A I said to him, 'Is that check good?' He told me not to worry, that the check was good, that he had three times that amount of money in the bank. Q Was that all that was said? A I told him that was all, and we separated." A He didn't get his poultry until about two hours after the conversation about the check.

Q No, I am asking you if you remember this testimony

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which I have read? A I recall it now, I think.

Q Now, you said this morning that you had your conversation at the time the check was given? A Yes.

Q But here you told the Court, first, that the bookkeeper called your attention to a check that he had received at two o'clock, and that, at four o'clock, two hours later, you had a conversation with Senowitz as to whether the check was good? A Well, when the cashier called my attention to that check, he called my attention probably to several others, as to whether to do with it.

Q Well, then you testified that he called your attention to it at 2 o'clock, as the time when the transaction occurred?

A He was there when the check was laid on the desk.

Q And you testified here, today, that it was 11 o'clock when he gave the check? A Well, I told you that I am not certain of the time of day.

Q Well, but you are sure, today, that it was in the morning? A No, I am not sure of that.

Q But you were, this morning, when you testified? A I first testified that I thought it was 11 o'clock in the morning, but since you have read my testimony, taken in the Police Court, or wherever it was, I said that I don't recall exactly what time of day the check was given to me, but, at the time the check was given to me, my bookkeeper or cashier, was present.

Q Well, doesn't the testimony that I have called your

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attention to before the Magistrate show that the conversation about the value of the check was had at least two hours after your talk with the cashier? A No, sir.

Q That is incorrect? A Yes, incorrect. I am trying to make clear that the conversation occurred at least two hours before the delivery of the goods.

Q But here you are, on page 16, as I had read it to you, talking about your conversation with the cashier at two o'clock, and on page 18 talking about the important conversation with the defendant at four o'clock, while you have already sworn in the information on which the proceedings were begun, that it was 11 o'clock, and here today, you say it was 11 o'clock?

A Well, I thought so.

Q Well, the information was made on the 14th of October, the day after you received the check? A No, not the next day.

Q And on the very day when the check was dated? A No, not the next day.

MR. MOSS: I think that the original information before the Magistrate was dated October 14th.

MR. STRONG: I don't know about that; I haven't looked that up.

BY MR. MOSS:

Q Well, you said you were not clear about the dates this morning? A yes, sir.

Q Have you since conferred with any one about the dates?

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A I believe with Mr. Strong, a month or two ago.

Q Have you talked with anybody else about this case than Mr. Strong? A Immediately following the events, I spoke with my attorney about it, yes.

Q Didn't you speak with your attorney today? A Yes; I had lunch with him.

Q Yes, with Mr. Jacobson, right here (indicating)?

A Yes, sir.

Q He is your private attorney; isn't he? A Yes.

Q And he has been trying to collect this amount, hasn't he? A No, sir.

Q Do you know of any propositions that were made for a settlement of this litigation by the payment of money? A What's that?

Q (Question repeated)? A Ed Mr. Senowitz, sent some men to me -- I believe they came from him -- asking me if I would settle this case.

Q Hasn't it been just the other way? Hasn't it been proposed on your part that, if he would pay a certain sum, this proceeding would be dropped? A No, sir.

Q Do you know of any proposition made on your behalf to Mr. Rose, this gentleman sitting here (indicating), A No one was authorized to make any proposition for the settlement of this case. I went into the thing because I wanted to stop this very thing that is going on in the live poultry business.

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Q Does your concern belong to what is called the Live Poultry Trust? A Yes.

MR. STRONG: I object to that question, and move to strike that out, the answer.

THE COURT: Objection overruled.

BY MR. MOSS:

Q Didn't you say yes? A Yes.

Q What did you mean by that?

THE WITNESS: Your Honor, may I continue?

THE COURT: Yes; he may explain.

THE WITNESS: I suppose you mean the concern that existed five years ago, but doesn't exist now, and didn't exist at the time of this happening.

BY MR. MOSS:

Q Senowitz was not a member of it, was he?

MR. STRONG: I object to that.

THE COURT: Sustained.

BY MR. MOSS:

Q Haven't you and certain gentlemen in the business, who have been associated together in a combination of the poultry business, been interested in putting out of the business men like Senowitz, who are outside of the combination?

MR. STRONG: Objected to.

THE COURT: Allowed.

A No, sir.

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BY MR. MOSS:

Q Have you ever been convicted of violating the business laws? A No, sir.

Q Or any member of your firm? A My father was, but he is dead.

Q Was he convicted before -- at least, was he accused -- was he a member of your firm and accused of having violated the business laws, was he convicted before -- at least, was he accused -- was he a member of your firm when accused of having violated the business laws, before you signed the information in the Police Court against the defendant?

MR. STRONG: One moment. I object to that, was he accused?

MR. MOSS: I mean, legally accused.

THE COURT: Objection sustained.

BY MR. MOSS:

Q Did you know that there was any accusation against any member of your firm for an alleged violation of the business laws, prior to the time when you signed a complaint against this defendant, in the Police Court?

MR. STRONG: I object.

THE COURT: Sustained. For your information, Mr. Moss, I will say that the defendants were tried and convicted in 1911, August, 1911, and as I understand, the complaint here was made in 1913.

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MR. MOSS: Yes, sir.

Q Did your firm maintain business relations with the firm of Norris? A Just what do you mean by business relations?

Q Well, in the buying and selling of goods together?

MR. STRONG: I object to that, unless the date is fixed.

BY MR. MOSS:

Q Prior to the date when you signed the information in this case, October 14th, 1913?

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

THE COURT: Objection overruled.

A I bought very little from Norris.

Q Well, you bought some, did you? A Yes, I bought some.

Q And, prior to this date, did you or your firm confer with the Norris Company regarding the fixing of prices for poultry?

MR. STRONG: I object to that.

THE COURT: Is that going to be an issue here?

MR. MOSS: I expect that there will be something connected with the Norrises in this case.

THE COURT: Well, how will it bear on the issues in this case?

MR. MOSS: Well, I am trying to show the motive which actuated this gentleman in making a complaint on which this

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proceeding was begun, and his motive as a witness in this case, a motive of hostility towards the defendant, for trade reasons. I want to show that there was a combination which had to do with the fixing of prices, and the persons who have been named in connection with this case were in combination with this witness' firm, and that they were on one side and the defendant on the other, and that there was a motive for giving the testimony which the witness gives, and other witnesses may give on the same line.

THE COURT: The evidence is competent, Mr. Strong.

MR. STRONG: Certainly, sir. As Mr. Moss has adopted that theory, it is competent, on the question of motive. Of course, I didn't know that this was to be an outcropping of the difficulties between the Chicken Trust and the jobbers. I didn't know that before.

MR. MOSS: No; it is a very small incident, because this defendant is a small individual.

MR. STRONG: I hope they will prove it.

THE COURT: Of course, the witness will be instructed that he has a right to decline to answer any question which might tend to incriminate him.

MR. STRONG: Well, of course, I don't think that this witness has any connection with it, even if his father did.

THE COURT: Well, this is subsequent to that time entirely.

MR. STRONG: And his counsel informs me that this witness

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will not decline to answer any questions.

THE COURT: All right, but I wanted to warn him.

MR. STRONG: And I might state that his counsel is in court here, to protect the rights of the witness, and I think properly so.

Q (Question repeated by the stenographer)? A No, sir.

Q Well, did you know of any arrangement by which the Norrises, with whom you say you had some business dealings, received from the poultry dealers half a cent a pound, besides \$100 a week? A For your information, the firm of Sol. Frankel, Incorporated, is not the firm that is mixed up in this Poultry Trust.

Q Well, what change took place? A The firm is incorporated. The corporation was formed to carry on the business of dealing in live poultry. The firm was entirely changed.

Q But did you deal with Norris, after the corporation was formed? A When we ^{needed any} ~~were in~~ live poultry, we bought some from him.

Q And did you consult with him? A Oh, yes, at times.

Q And did you know that they were receiving half a cent a pound over the New York price, and \$100 a week, in addition?

A I know positively that that is not so.

Q Well, how do you know that Mr. Norris wasn't receiving that? A Because there was no organization to pay that.

Q I said from the dealers; I don't mean from you, but

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I mean from such dealers as Senowitz? A Oh, I misunderstood. No, I don't know anything about that.

Q Did you know of any arrangement by which dealers, like Senowitz, had to take ducks in addition to the chickens, a certain percentage of ducks? A They were more than pleased to do so, sir.

Q (Question repeated)? A No, sir.

Q Well, were they obliged to take ducks also? A They were never obliged to do anything that they didn't want to.

Q You are speaking of your firm now, are you not? A Yes. I don't know what was done anywhere else.

Q You know the firm of Westernberg, or the business kept by Mr. Westenberg? A yes, sir.

Q Did you have dealings with him? A I don't think so.

Q Did you ever buy or sell with Westenberg? A No, I don't think so.

Q Did you ever talk with him about business matters or poultry affairs? A Oh, yes.

Q And do you know whether or not Mr. Jacobson is the attorney for each of the concerns that I have mentioned? A I don't know.

Q Have you no knowledge on that subject? A No, sir.

Q Weren't they jointly indicted with your father? A Yes.

Q Didn't he defend them? A There were quite a number

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of law firms. I don't know.

Q Didn't he argue the appeal in the Court of Appeals on that conviction? A Well, there were quite a number of lawyers there; I don't know.

Q Well, didn't he argue it for you? A Yes.

Q Well, now, wasn't it one of the points upon which you and Norris and Westenberg conferred, about putting dealers like Senowitz out of business? A No, sir.

Q Now, you have given a conversation this morning and this afternoon, which you say you had with the defendant. I ask you if, in the proceedings before the Magistrate, in October, 1913, you said this: "I believe he said something to the effect that the check was all right." A I know he said it.

Q Well, let me read you the answer: "A Yes, I came up to him and said, 'Do you want to buy some poultry?' And he said, 'Yes'. I believe he said something to the effect that the check was all right. I said, 'You gave a check', and he said, 'Yes.' I said to him, 'Is that check good?' And he said, 'Don't you worry. That check is good. I have three times the amount of money in the bank.' And he said something about I shouldn't worry about it. I then turned to my salesman to give him a certain amount of poultry." Did you say that? "I believe he said something to the effect that the check was all right'?" A Why, I know he said that.

Q No, did you say that?? A If it is there, I suppose

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I did.

Q Well, even in that answer it appears, does it not, that the check that you were talking about had been given sometime before; doesn't it? A That occurred about four days later, I believe, than the check was given.

Q Four days later? A I got the check on a Monday; I don't think I got it back from my bank before Wednesday, and that surely could not have occurred before Thursday of the same week.

Q Now, listen to this: "I came up to him and said, 'You want to buy some poultry'? And he said yes. I believe he said something to the effect that the check was all right", and you said he gave a check, in that answer you recognize the fact that the check had been given sometime before? A No, sir.

Q Now, listen to this: "I came up to him and said, 'Do you want to buy some poultry?' And he said, 'Yes.'" I believe he said something to the effect that the check was all right. I said, 'You gave a check?' And he said, 'Yes'".

A I had three or four conversations with him that day. He was in my place all the afternoon.

Q You didn't tell us that this morning? A Why, you didn't ask me.

Q You were asked for everything? A What's that?

Q You were asked for everything by the District-Attorney?

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A Well, he didn't ask me.

Q Now, do you say that this talk about the check was several hours after you had already got the check? A No; right at the time I got the check. But Mr. Senowitz didn't take the goods that I wanted to give him. He picked out something that would suit him. When you buy poultry you buy the sort of goods you want.

Q Now, when did you get the check back? A Why, I think it was on Thursday morning. I think my bank notified me on Wednesday, and I got it back from the bank on Thursday, following this Monday.

Q But you gave your information in the Police Court on October 14th? A I don't believe I did.

MR. MOSS: I think your Honor has the original affidavit there.

THE COURT: October 17th.

MR. MOSS: Then all the statements that I have made about the 14th of October will be considered to apply to the 17th, according to the original, which is in your Honor's hand?

THE COURT: Certainly.

MR. MOSS: That's all.

J O H N R. M O H R, of 447 Ridgewood Avenue, Brooklyn,

a witness called on behalf of the People, being duly sworn,
testified as follows:

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DIRECT EXAMINATION BY MR. STRONG:

Q What is your business, Mr. Mohr? A Bookkeeper in a bank.

Q What bank? A 26th Ward Bank, Mechanics' Bank of Brooklyn.

Q Were you connected with that bank on the 13th day of October, 1913? A Yes, sir.

Q Have you with you a transcript of Julius Senowitz' account? A Yes, sir.

Q Is that taken from the books of the bank? A Well, as near as possible, yes, sir.

Q I show you People's Exhibit 1 for identification, and ask you whether you have seen that before? A Yes, sir.

Q Can you state whether or not that check was paid? A No, sir, it was returned.

Q Returned for what? A Not sufficient funds.

Q Now, will you state all the funds this defendant had in your bank, starting on October 11th, 1913? until his account was closed? A On October 11th, 1913, his balance was \$805.52, and, the same day, a check was paid for \$650, leaving his balance \$155.52, at the opening of business on the 14th.

Q There were no transactions between October 11th and 14th? A No, sir, not outside of that one check. His balance was \$155.52 at the opening of business on the 14th. A deposit was made on the morning of --

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Q By the way, on October 11th, can you tell who cashed a check for \$650? A It was payable to M.J. Senowitz.

Q Did it give the first name? A Minnie, I presume.

MR. MOSS: I object to that, to that presumption on the part of the witness.

THE COURT: Yes; objection sustained. Strike it out.

BY MR. STRONG:

Q Go on? A A deposit was made on the morning of the 14th of \$1153.16, in cash.

Q Do you know at what time? A I presume about 10 o'clock.

MR. MOSS: I object to that presumption, also.

THE COURT: Yes, strike it out.

BY MR. STRONG:

Q Can you state at what hour it was deposited? A About 11 o'clock, and a few minutes afterwards, a check for \$1000 was presented for certification.

Q Was it certified? A Yes, sir.

Q And to whom was the check made apayable? A To a man named Goldman. And that was certified, and that left a balance of \$308.67.

BY THE COURT:

Q How much was the balance? A \$308.67. Then this check came in the afternoon for \$643.57.

BY MR. STRONG:

Q The check which you hold in your Hand, People's Exhibit

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Exhibit 1 for Identification? A Yes, sir; and not alone this check, but some others with it.

Q And can you tell how many others came in? A Well, I should say four or five at least that I know of.

BY MR. MOSS:

Q What day was that? A The 14th of October.

BY MR. STRONG:

Q I show you a check, and ask you whether that check was presented?

MR. MOSS: I object to that as irrelevant, immaterial, and not connected with the issues.

MR. STRONG: It is on the question of intent, your Honor.

THE COURT: Let me look at that check.

MR. MOSS: The transaction upon which this indictment is predicated has already been proved, everything that relates to that has come in, and I object to what is now offered as being immaterial and irrelevant to the issues.

THE COURT: The People have a right to show, as bearing upon the knowledge of the defendant, as to the condition of his bank account, the number of checks which he had issued that day. It is admissible on that ground. It is admissible, also, if the District Attorney intends to prove other acts. Do you intend to prove other acts?

MR. STRONG: Yes, sir.

THE COURT: Based on these checks?

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MR. STRONG: Yes, sir.

THE COURT: Objection overruled.

MR. MOSS: Exception.

A Yes. This check was returned, not sufficient funds.

MR. STRONG: I ask to have it marked for identification.

(It is marked People's Exhibit 2 for identification).

BY MR. STRONG:

Q Now, I show you another check, and ask you whether that was presented? A Yes, this was also presented and returned.

MR. STRONG: I ask to have it marked for identification.

(It is marked People's Exhibit 3 for identification).

Q I show you another check, and ask you whether that was presented? A Yes, that was also presented and returned.

BY THE COURT:

Q All on the same day? A yes, sir, all on the same day.

MR. STRONG: I ask to have that marked for identification.

(Marked People's Exhibit 4 for identification).

Q I show you a check for \$102, and ask you whether that check was presented on that day? A This was not presented on the 14th.

Q When was that presented? A That was presented on the 16th of October.

Q And was it certified? A Yes, it was certified on that

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day.

MR. STRONG: I ask to have that marked for identification.

MR. MOSS: That was certainly long after.

THE COURT: Do you object to proof favorable to the defendant?

MR. MOSS: No, sir; if the District Attorney insists upon offering it.

THE COURT: The point is this, Mr. Strong. This check was presented to the bank subsequent to the 14th.

MR. STRONG: Yes, surely. And there was enough money in the bank all the time to certify a check for \$102, but not \$2000. I will show the whole transaction.

THE COURT: Very well.

(It is marked People's Exhibit 5 for identification).

BY MR. STRONG:

Q I show you another check, and ask you when that was presented? A On the 16th day of October, it was certified.

Q It was certified on that date? A Yes, sir.

MR. STRONG: I offer that for identification.

(It is marked People's Exhibit 6 for identification).

Q And you have referred to a check cashed on October 11th, and I ask you whether that is it (indicating a check)?

A Yes.

(It is marked People's Exhibit 7 for identification).

Q I show show you a check for \$1000, and ask you whether

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that is the check that you say was certified for one Goldman?

A Yes, this was certified on the 14th.

(It is marked People's Exhibit 8 for identification).

Q I believe, before I interrupted you, you were testifying about -- you testified that there was a balance of \$308.67 at the close of business on October 14th? A Yes, sir.

Q Now, will you continue giving a statement of the account from that time on? A The 14th, I believe, in the afternoon, a check was paid for \$10.40, and that left a balance of \$298.27, at the opening of business on the 15th.

On the 15th, five checks were paid, for \$42.19. That left a balance of \$256.08.

On the 16th two checks were presented for certification, one for \$102 and another one for \$125, and that left a balance at the opening of business on the 17th of \$29.08.

Q And can you tell by whom those were presented for certification, if you know? A Oh, that I couldn't say. On the 23rd of October a check was paid for \$15, leaving a balance of \$14.08, at the opening of business on the 24th of October.

The account was closed February 10th, 1914, with a check of \$14.08.

Q Can you tell me when this defendant's account was balanced, prior to October 14th, 1913? A Offhand, I couldn't say. These checks came in in the afternoon, these checks that

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I identified, and we telephoned Mr. Senowitz.

MR. MOSS: Now, this witness must not testify to what he doesn't know. I object.

MR. STRONG: No; that's all.

CROSS-EXAMINATION BY MR. MOSS:

Q I understood you to testify that the reason why the check for \$643.57 was not paid was because \$1000 had been certified? A Yes..

Q And you said that \$1000 was certified a few minutes after \$1100-and odd dollars was deposited? A Yes. I saw the slip, to post it, and a few minutes after I got the slip to post it --

Q Do you mean to say that you did it personally? A Yes.

Q Now, did he personally deposit the \$1100; do you know that? A No, sir.

Q And you don't know who presented the check for \$1000, do you? A No, sir.

Q Do you know whether it was Mr. Goldman himself who presented that check for certification? A I don't know Mr. Goldman.

Q You don't know what arrangements Mr. Goldman and Mr. Senowitz might have had about that \$1000 check, do you? A No, sir.

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Q Well, Mr. Senowitz has an account with you in your bank for about six years? A About six years?

Q Six years steadily? A Well, off and on, I suppose.

Q Well, didn't he have a continuous account for six years? A Well, I wouldn't say six years; about six years, I would say.

Q Well, that was one account, was it not? A Yes.

Q A continuous account for six years? A Yes.

Q It was a business account, was it not? A Yes.

Q In which he made his deposits and drew his checks, in the regular business way? A Yes.

Q And it came to an end, I suppose, in these transactions which you have testified about? A Well, no, not until February 10th, 1914. We ended the account in February of the following year.

Q Was there money in the account up to February 1914?

A We notified him to take it out.

Q (Question repeated)? A Yes, \$14.08.

Q And you notified him to take it out? A Yes.

Q Now, that \$1153, was it in cash, deposited on the morning of the 14th? A Yes.

Q Now, you say it was before 11 o'clock; what is your best impression as to that? A Because the slips are posted between 10 and 11.

Q Is that the nearest you can come to it? A Yes, sir.

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Q You don't know whether it was deposited on the minute of ten, or later, do you? A No.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q Did you have any conversation with the man who had the check for \$1000 certified? A No, sir.

M O S E S J. C O H E N, of 121 West 114th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business, Mr. Cohen? A I am a salesman for the Sol. Frankel Company.

Q And how long have you been a salesman? A Well, I started there a good many years ago. I have been selling stuff for a good many years; for over 20-odd years. I been working there ever since I was a boy.

Q No one can hear you, talk up, please. Do you know his defendant, Senowitz? A Yes, I do.

Q And do you remember him coming to your place of business, or Mr. Frankel's place of business, on or about the 13th of October, 1913? A Yes.

Q And did you have any talk with him? A Well, about the same as with any other customer.

Q Well, can you remember substantially what occurred be-

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tween you? A Well, he said he wanted to get some stuff, and I told him he had to see Mr. Frankel.

Q And you took him in to Mr. Frankel? A Yes.

Q And what was the time, about? A Well, somewhere around the middle of the day. I couldn't say just when, because it was a very busy day.

Q When you took him in to Mr. Frankel, what occurred there? A I left him there and Mr. Frankel and he came out together, and Mr. Frankel said, "You can give him some stuff."

Q Do you know how much you gave him? A Yes.

BY MR. MOSS:

Q Pardon me; was it this Mr. Frankel here (indicating)?

A Yes.

BY MR. STRONG:

Q Do you know how much poultry you gave the defendant that day? A Yes; he got a load of stuff.

Q Well, do you know how much the load consisted of?

A Well, I have my book here.

Q Well, you may look at it, to refresh your memory. Did you make the memorandum at the time? A I made it at the time. He got 16 coops of stuff off us, 7 coops of fowl, and 8 of ducks.

Q Yes. And do you know the reasonable market value of that stuff that you gave him on that day? A Well, the market varies within a cent or half a cent a pound on poultry.

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Q Well, what was the reasonable market value on that day?

A 16 1/2 cents a pound.

Q And how many pounds? A Well, 1245 pounds of fowl, and 1380 pounds of chickens, and ducks, 141 pounds. Those ducks were high-price ducks. Those were spring ducks. The price was 21 cents. It was on the ticket.

CROSS-EXAMINATION BY MR. MOSS:

Q Did you sell the stuff without the price, and fix the price at the end of the week? A Not at that particular time.

MR. STRONG: Just a second, Mr. Moss. I think I neglected to get the price of the chickens and ducks.

BY MR. STRONG:

Q What was the price of the chickens? A I can't recollect just what the price of the chickens was. I recollect the fowl price.

Q Well, the fowl was 16 1/2? A Yes, sir.

Q And the ducks? A 21 cents. That class of ducks.

Q Can you refer to your memorandum in any way, and tell what the approximate price of the chickens was on that day?

A Well, I presume it was pretty nearly the same as the fowl. At that time they were on the same basis as fowls, on the same footage, half a cent one way or the other.

Q What would be the lowest market price at that time?

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A Well, according to the quality. We could sell them as low as 15 cents.

CROSS-EXAMINATION CONTINUED BY MR. MOSS:

Q Weren't you in the habit of selling him goods without fixing the price, and then afterwards fixing a price, at the end of the week? A Not on that particular day.

Q Well, prior to that day? A I don't believe I did.

Q Did you ever do that? A At the time of the combination, yes.

Q And when did you cease doing that? A When the combination ceased to be in existence.

Q That is not the question. When the combination ceased -- that is not my question. The question is, when did you cease the custom of giving him goods without a price, and fixing the price after you had given the goods? A I can't recollect ever selling him goods without a price on the stuff.

THE COURT: That is something we did not know in the Chicken Trust.

MR. STRONG: I know, your Honor, and this witness is telling all that he knows.

MR. MOSS: Well, he has answered my question, and I am content.

Q Did you know anything about the bills that were sent out? A Yes; I looked at the bills that were sent out.

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Q Was this bill sent to Mr. Senowitz (indicating the bill)? A Yes, sir.

Q Does that represent the goods that you sold him, as you have just testified? A Yes.

MR. MOSS: I ask to have that marked for identification.

(It is marked Defendant's Exhibit A for identification).

Q And is this which I show you the original bill for the preceding week for stuff? A Yes.

MR. MOSS: I would like to have that marked defendant's Exhibit B for identification.

(It is so marked).

Q Now, look these over, and see whether they are bills sent to Senowitz for preceding weeks, for goods sent to Senowitz? A Yes. These are nearly all for 1912. Very few for 1913.

Q Well, just look them over; are they what I ask you?

A Yes. But there are very few for 1913.

(A number of bills are marked Defendant's Exhibit C for identification by consent).

THE COURT: Now, the check was given on the 13th, and dated on the 14th, was it not?

MR. STRONG: Yes, sir, because the 13th was a holiday.

THE COURT: Then it becomes a promissory note, does it not?

MR. STRONG: Oh, if your Honor pleased, I have carefully examined the authorities on the subject, because I was informed

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that the check was post-dated. But when there is a representation made, that at the present time there is enough money to meet the check in the bank, that doesn't affect the issue.

MR. MOSS: Well, suppose we had made the statement on the 13th that the check was good, and deposited on the 14th, at the opening of the bank, money that would make the check good?

THE COURT: The point is, that it becomes a very important matter, if the check was postdated.

MR. STRONG: I understand that thoroughly, and I have looked up the matter thoroughly. But there was a present representation made that there were sufficient funds in the bank to meet the check.

THE COURT: Well, I think you will have to proceed under the first count, and not under the second.

MR. STRONG: I have got a count in the indictment covering that.

THE COURT: Well, I will hear you at the end of the whole case.

MR. MOSS: Now, I will read Defendant's Exhibit A to you, gentlemen of the jury.

(Mr. Moss reads Exhibit A to the jury).

Q Did you have a custom in dealing with Mr. Senowitz of giving him a week's credit? A We gave him a little credit. Whenever he bought some stuff we gave him a little credit, if he paid last week's bill.

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Q Well, whenever he bought he bought one week and paid the next, didn't he? A Yes.

Q That was the custom, wasn't it? A Yes, that was the custom.

Q So that you understood that the payment of the previous week's bills largely came out of the sale of the goods that he was just buying? A No, sir. I don't understand you; I can't understand that question.

Q You don't understand it? A No, sir.

Q Well, you would give him a week's time when he was buying, wouldn't you? A I would give him a week's time?

Q Yes? A When he bought the stuff, he would pay me the following Monday.

Q So he would really pay the previous week's bill out of the sale of the present week's goods, wouldn't he? A No, sir. If he took that stuff this week, he would pay up for the next week.

Q Well, but he bought about once a week, when he was doing business, didn't he? A Well, if he took the stuff this week, he would pay for it next week.

Q Did you know that he was buying stuff from other dealers in the market? A I guess he must have bought all around, besides us.

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

MR. MOSS: I offer in evidence this batch of 21 bills,

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if your Honor please, now marked Defendant's Exhibit C for identification.

(They are admitted, without objection, and marked Defendant's Exhibit C in evidence).

MR. MOSS: That's all.

W I L L I A M H. N O R R I S, of Sea Cliff, Long Island,
a witness called on behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q Mr. Norris, what is your business? A Commission
jobber in live poultry.

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

Q Senowitz? A Yes.

Q How long have you known him? A Oh, I should judge
about six years; maybe seven.

Q Do you remember some transaction with him on or about
October, 1913? A Yes, sir.

Q Will you just tell us about that transaction with hi,
Mr. Norris, so that all these gentlemen can hear easily?

MR. MOSS: I object to that as immaterial, irrelevant
and incompetent, and outside of this indictment.

THE COURT: What is the date?

MR. STRONG: October 13th, 1913..

THE COURT: Objection overruled; it is permissible,

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under Meyer against the People, and Kindred cases, to show both prior and subsequent transactions of this character.

MR. MOSS: Exception.

A In 1913, I was manager and vice-president of James M. Norris, Son & Company. On October 13th, 1913, Mr. Senowitz come up in the office and asking for a blank check; he said he wanted to pay his bill and get some goods. The bookkeeper got a blank check, and he told him to fill it out, which he did, and Mr. Senowitz signed it, and I asked him if it was all right and he said yes.

Q Now, I show you the check, People's Exhibit 3 for identification, and ask you if that is the blank check that he filled out, or that was filled out there, and that this defendant signed? A Yes, sir.

Q Then, after giving you the check, were goods delivered to him?

MR. MOSS: The same objection.

THE COURT: Objection overruled.

MR. MOSS: Exception.

THE COURT: Well, perhaps the form of the question is objectionable.

MR. STRONG: Well, it is only whether the witness knows or not.

Q Do you know whether the goods were delivered to him or not? A The goods were delivered to him on October 14th.

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Q The goods were? A Yes, that is, the last bill of goods.

Q Well, who delivered them, do you know? A A man downstairs, who does the weighing and delivering.

Q Is he here? A Yes.

THE COURT: Well, now, is this check dated the 14th also?

MR. STRONG: No, sir, this check is dated October 13th, your Honor.

BY MR. STRONG:

Q Did you get this check back again? A Yes.

Q And have you received the \$613.13 mentioned in this check? A No, sir.

CROSS-EXAMINATION BY MR. MOSS:

Q Mr. Morris, how long were you selling --

MR. STRONG: Just one more question.

BY MR. STRONG:

Q You were one of the men that were defendants in the case which is commonly known as the Chicken Trust case? A Yes, sir.

Q And were you convicted? A Yes.

CROSS-EXAMINATION CONTINUED BY MR. MOSS:

Q How long have you been selling goods to Senowitz?

A I should judge about two years; up to that time, about two

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years.

Q About every week? A Off and on.

Q Well, in that two years, probably, in weekly purchases you sold him more than \$25,000 worth of poultry? A I couldn't state that.

Q Well, what is your best opinion? A Well, that's very hard to tell. You see --

Q Now, to be fair to you, I have taken what purported to be your bills here, and gone over them, and upon that basis I ask you if you didn't sell him in that period practically \$25,000 worth of goods? A Well, I am willing to take your statement, if those are our bills.

Q Well, look over them, and see whether they are your bills? Do they appear to be your bills? A Yes, they do.

Q Well, you gave him a week's credit generally, didn't you? A Yes.

Q You knew that, when he took a bill of goods from you, he would sell those goods, and he would pay the bill, partly, at least, out of the proceeds of your goods that he had sold out in the meantime? A I knew he paid the following week, Monday.

Q Well, but it must necessarily come out of the sale of the goods that you gave him? A Well, I don't know how they run that end of the business. I sold him and he paid me the following week.

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Q Well, didn't you think that he was paying you out of the proceeds of the goods that you sold him, along with others?

MR. STRONG: I object. How can this witness testify out of what fund the defendant paid him? Maybe he has millions of dollars in different banks.

THE COURT: Well, if he knows. I think you had better re-frame the question, and ask him what he knows.

MR. MOSS: Well, I want to put the question that way. I want to get the witness' mental attitude, what he thought when he was extending a week's credit on all these transactions.

MR. STRONG: Certainly, that isn't binding upon the People, what he thought.

THE COURT: Well, he is one of the People's witnesses. I will allow that, if that is your theory.

(Question repeated by the stenographer).

A Well, I wouldn't have -- he might have paid part of it, but my understanding of that end of the business is that the butchers wouldn't pay these people until they started in on the next week's business, on Thursday, but we always ask for our money the following week, before we loaded up again.

BY MR. MOSS:

Q Well, all these transactions were paid up? A Yes, sir.

Q And you never had anything like this before the 13th

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of October, 1913? A No, sir.

Q You never had any such trouble with him before that, did you? A No, sir; not with Senowitz.

BY THE COURT:

Q How many times during the time that you had transactions with the defendant did he pay you by check? A Always.

Q Did you ever have any talk with him about checks before this time? A I think about six months before, I charged stuff up to his son, it went along for a while, and everything seemed to be all right.

Q But, outside of that you never had any occasion to question him, whether the check was good or bad? A Yes; I think I had one or two checks come back, that I had put through.

BY MR. MOSS:

Q How long before was that? A I am not sure about that; I wouldn't swear to that, but I am pretty sure.

Q Well, you had a check come back on you; how far back of October was it? A That I couldn't state.

Q You had other transactions with him after that, didn't you? A Yes; and I had checks come back for the simple reason, that, for some time, I charged the goods to his son, and I presume I did it, in fact I know I did it, because the checks came back.

Q Well, how long was that before October? A Oh, a

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long time.

Q Six months before? A yes, or a year.

Q And had you ever before asked him whether the check he gave you was good? A Had I before?

Q Yes? When he gave you a check, did you ever before ask him if the check was good? A I don't remember whether I did or not.

Q Do you remember your testimony in the Police Court?

A No.

Q Did you ever, before the 13th of October, ask him if his check was good, when he gave it to you? A I think probably I have, on account of having some checks come back.

Q Have you any memory on the subject? A Have I a memory?

Q Yes, on that subject? A Well, it would be very hard for me to state when, it's so long ago.

Q Now, you know the firm of James N. Norris, Jr., don't you? A yes.

Q And was he buying poultry from that firm at the same time, practically weekly? A I believe he was, yes.

Q And from January, 1912, do you know whether or not he bought over \$27,000 worth of poultry from that firm? A I don't know anything about that. We have nothing to do with that.

Q And do you know whether he was getting a weekly credit

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there? A I surmised he was, but I have nothing to do with that at all.

Q Wasn't it generally understood in the market, among the dealers, that he was doing business on a week's credit? A Well, practically all of our business is done that way.

Q Practically all? A yes, sir.

Q Did you know he was buying from Frankel? A Well, I didn't until this affair happened, of course.

MR. MOSS: That's all.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q Oh, by the way, you know Mr. Westerberg, of Westerberg & Company? A yes, sir.

Q In what business is he? A In the same business, jobbing, commission business.

BY THE COURT:

Q Well, what relations existed between you? That of debtor and creditor? You always extended credit for a week, did you not? You extended to him credit, did you not; is that right? A Oh, yes, sir.

Q You did not rely upon the representations made by him that his check was good in giving him credit, did you, that particular week? A Why, yes, your Honor, we did, because we wouldn't load up anybody unless they paid for the previous week. It was at a time of the year when poultry receipts are

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very heavy, at the time of the Hebrew holidays, and naturally, all the trade buys more poultry than at any other time of the year; probably twice as much.

Q Well, then, did you take the precaution of asking for cash? A Well, that's one thing we see very little of.

Q In other words, you felt that, during the holiday season the firm was not disposed to extend heavy credit to a butcher, is that right? A Yes, sir; not two weeks.

Q Not two weeks' credit? A No, sir.

Q Well, why should you have questioned a man as to whether he had money in the bank at that time, when he gave you a check, when you say he never paid in cash? A Well, because, as I stated before, it was the holiday time, and the buyers all load up very heavily.

Q Well, but he always paid you by check? A Yes, but I had, as I said before, had a little trouble, off and on, with his checks.

Q But the checks were paid ultimately? A Yes, sir.

Q This jury would like to know what was the particular occasion for asking the man whether his check was good, whether he had funds in the bank to meet it? A I asked him if the check was all right, because, as I stated, it was holiday time, and their bills run very high, maybe not only off me, but they bought very heavily.

Q But, according to the statements read by Mr. Mohr,

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you sold this man a large quantity of poultry? A He is not what we call a big operator.

Q Well, but you sold him a large quantity of poultry?

A yes, but that extends over some years.

MR. MOSS: From 1912, January, to October, 1913.

THE COURT: What was the total amount?

MR. MOSS: I figured it up as over \$25,000.

THE WITNESS: In nine months?

MR. MOSS: No; in about two years.

THE WITNESS: I should say his bill would average a week, anywhere from eight to nine hundred dollars. A wagonload of poultry amounts to about \$700.

MR. MOSS: Well, here is a bill for over \$900.

THE WITNESS: Yes, that's what I say.

CROSS-EXAMINATION CONTINUED BY MR. MOSS:

Q Now, did you say that Mr. Senowitz asked for a check, and drew a check for you? A No, the bookkeeper drew the check.

Q I understood you to say that he drew it? A No, Mr. Senowitz signed it.

Q Now, was Mr. Senowitz ever a member of the combination for which you were convicted? A I don't know.

MR. STRONG: I object to that.

THE COURT: I sustain the objection as to whether the de-

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fendant was or not. Strike out the answer.

BY MR. MOSS:

Q Was the defendant ever a member of the combination of poultry dealers of which you were a member?

MR. STRONG: I object to that.

THE COURT: That I will allow.

A That I don't know.

BY MR. MOSS:

Q You never knew he was, did you? A I never knew either way. That part I don't know.

Q Well, did you know whether or not the Norris firm were charging Mr. Senowitz half a cent a pound higher than the New York price? A No, James N. Norris, Son & Company never done that.

Q Well, your brother's firm, then? A I don't know anything about that; I don't know what arrangements they had over there.

Q Well, didn't you have conferences with your brother's firm? A Why, I may have had, but, over there they had -- he bought a slaughter house over there, and I don't know what arrangements he had over there.

Q Well, didn't you have any conferences with your brother about ways and means of keeping the slaughter house dealers in line?

MR. STRONG: I object to that.

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A No, I had nothing to do with that at all.

BY MR. MOSS:

Q Just this question: Where is your brother?

A He is out west.

Q He will not be a witness here? A No; he hasn't been here for two years.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q He hasn't been here since when? A I think it's going on two years now.

G U S F E R N S C H I L D , of 62 West 100th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business? A Weightmaster and delivery clerk.

Q For whom? A James N. Norris.

Q Were you in that position on the 13th of October, 1913, working at that job?

A Yes, sir.

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

Q Did you make any deliveries to him on the 13th or 14th of October of that year? A Yes, sir.

Q And what were they? A 6 coops of chickens and two

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coops of ducks.

Q And do you know what the prices were on that day? A 14 1/2 cents for chickens, 16 1/2 for ducks.

Q And have you got it in pounds? I don't know what a coop is? A The net weight of the chickens was 946 pounds; ducks, 341 pounds.

CROSS-EXAMINATION BY MR. MOSS:

Q Now, I notice that there were six coops of chickens and two coops of ducks, is that right? A Yes, sir.

Q When Mr. Senowitz wanted to buy two coops of ducks from you, didn't you compel him, if he would take those ducks, to buy six coops of chickens also? A That I don't remember. I am not selling any stuff.

Q Wasn't that your custom? A I am just delivering the stuff.

Q But you saw it done? A I am delivering the stuff.

Q Well, not only Senowitz, but all slaughter house people, when they wanted ducks, didn't you also force them to take chickens in ratio of three to one? A No, sir.

Q You are sure of that? A Yes. When they buy chickens they get them, and when they buy ducks, they get them.

MR. MOSS: I offer these bills in evidence, the bills of Norris & Company. They have been examined by the District-Attorney, and he consents to their being admitted in evidence.

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THE COURT: Then they may be marked in evidence.

(Marked Defendant's Exhibit D in evidence).

MR. STRONG: I want to recall Mr. Frankel, for one question.

H E R B E R T F R A N K E L, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q Mr. Frankel, you need not answer this question -- don't answer it until you find out whether there is an objection to it. You were asked on cross-examination by Mr. Moss whether this was the only occasion on which you asked this defendant whether this check was good. Now, will you tell me why it was that you asked him on this occasion whether or not his check was good?

MR. MOSS: Go ahead; no objection.

A Several slaughter house proprietors had come to me, that is, those to whom I had sold poultry, came to me, the latter part of that week preceding October 13th, and told me that Senowitz was selling poultry below cost, that is, below the price that I had sold him the goods, and naturally, when he came to me -- that is, not naturally -- but when he came to me, I thought it was peculiar that he should sell poultry below what I had sold it to him, if everything was all right, and that is why I asked him whether or not his check was good.

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Q And that was the week before October 13th that you received that information? A Yes, sir.

CROSS-EXAMINATION BY MR. MOSS:

Q Now, let us hear about that; when ~~you~~ did you think of that? You didn't testify to that before? A It wasn't asked of me until just this minute.

Q I know, ~~but~~ when did you think of it, when did you remember it? A When did I remember it?

Q Yes? A The District Attorney has just asked me about it.

Q Now, you say that the thing that prompted you was the statement of some dealers that Senowitz was selling his poultry cheap; are you sure of that? A Yes.

Q Well, why didn't you ask him if he was selling his poultry cheap? A I didn't have to; I knew it for a certainty.

Q Well, if you knew he was selling his poultry below cost why did you give him any time at all? A What's that?

Q (Question repeated)? A That's a matter of business, which rests entirely with the man who gives credit.

Q What? A Yes.

Q Mr. Frankel, you were giving that man credit, and you are used here as a principal witness to put him into State prison, because you say he misrepresented things to you., You

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understand that, don't you? A Yes.

Q Now, you say that you had warning before you delivered him that load of goods, that he was selling lower than cost?

A Yes.

Q And, having that warning, which you believed, that he was selling lower than cost, nevertheless you gave him the goods, did you? A I was willing to take a chance with any man that I have sold poultry to for three years or more; I was willing to give him a week's credit.

Q You were? A Yes.

Q Well, why didn't you ask him about these rumors, and why he was doing it? A I don't know why I didn't ask him.

Q Did you suppose he intended to sell the goods for less than he paid you for them? A I couldn't govern his selling price.

Q Well, you were the credit man of your concern, at least, you were giving credit? A Yes.

Q And did you think you were taking a chance when you sold him that last week's bill of goods? A Well, if he had told me the check was no good, I certainly wouldn't have given him the goods.

Q Well, if you knew that a man was selling -- under-selling the market, especially in view of the big sales of the holidays, do you believe that you would risk your money on the chance that he would tell you the truth about the check?

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A I would take a chance with him for one week's credit, yes.

Q Well, I don't think you catch my question. Why didn't you speak to him about selling poultry so cheap? A Because I didn't think it was necessary.

Q You remember that your memory, today, has been just a little bit defective? A Do I remember that?

Q Yes? A No, sir.

Q Hasn't your memory been a little bit defective as to hours and days of the month? A As to hours, yes.

Q Now, isn't it possible that you think you heard him say -- that you think you heard these rumors about his selling poultry cheap, and he mistaken about it? A No, I am not mistaken about it.

Q Was that very prominent in your mind? A Yes.

Q But, somehow, it didn't come out this morning? A You didn't ask me about it.

Q No, nor did the District Attorney? A No, sir.

Q Did you talk with Mr. Jacobson, your attorney, at lunch today? A Yes.

Q You talked about this case? A No, sir.

Q You avoided it altogether? A Oh, we joked about it, and hoped it would be soon over.

THE COURT: Have you read the case of Lesser against the People, Mr. Strong?

MR. STRONG: No, sir, I don't believe so. I just want to

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ask one more question.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q I call your attention to page 16 of the stenographic proceedings in the Magistrate's Court, and ask you whether you gave that same information to the Court there that you are giving to the Court now on the witness stand, about the rumors of the defendant under-selling poultry? A yes, sir.

Q It is in the minutes then? A yes, sir.

RE-CROSS-EXAMINATION BY MR. MOSS:

Q There is no doubt that you had some doubts about the financial responsibility of the defendant? A No, sir, I hadn't. A man is supposed to have capital to run any kind of business.

Q Didn't you have some doubt as to the check being good? A yes, after that check.

Q Yes; and that's why you asked him about it? A Yes.

Q And you took your chance on it, didn't you? A Yes, on one week.

MR. MOSS: All right, that is all.

THE COURT: Let me ask a question or two.
BY THE COURT:

Q What was the true, the real inducement that moved you to sell the defendant a bill of goods on October the 13th?

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A TThe fact that he had paid for the previous week's bill.

Q Well, because he made a representation as to the check being good? A Yes, sir.

Q Was that the sole inducing cause? A Yes, that was the sole reason why I gave him a week's credit.

Q Why did you ask him, on that occasion, as to whether the check was good, as to whether he had money in the bank?

A Why, several slaughter house dealers in Brownsville came to me and said --

Q I know, but how would the fact of underselling affect the situation? A Why, it would seem that he wasn't making a living. You can't sell goods --

Q Well, you know frequently in the chicken business that butchers are compelled to sell below the cost price? A Butchers, but not slaughter house men.

Q The commission men have had to sell below cost? A Only when the market drops.

Q And so do jobbers? A Well, they are all one now.

Q Well, I mean in 1913? A Only when the demand was less than the supply, or vice versa.

Q Did you ever question this defendant about any checks prior to that time? A I simply questioned him, from time to time, as to --

Q He paid his bills by check? A Yes, sir.

Q Were the checks paid? A Yes, sir.

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Q Now, this check is dated October 14th, and the transaction took place on October 13th. What representations did this defendant make, if any, on October 13th concerning the check? A He said that the money was in the bank -- he said that the check would be good, and I shouldn't worry, because the money was in the bank for two or three times that amount.

Q Did he make any other statements as to his financial standing and ability? A No, he said --

Q He only referred to the condition of his bank account? A yes, and he said I shouldn't worry, he is all right.

Q Did you notice the date of the check? A yes, sir.

Q Did you notice that it was dated October the 14th? A Yes, sir.

Q Did you say anything to him about that date? A No, sir, because it is a custom in our business, when there is a holiday of that kind to have the check dated on the day when it will be presented to the bank.

Q Well, why? A Simply a custom.

Q You knew that under the Banking Law a check postdated is merely a promissory note, a promise to pay, didn't you? A No.

Q Don't you know that, as a business man? A No, sir; I only know, as a business man, that you can't collect a check that is dated on a holiday until the next day.

Q yes, but in taking a pos-dated check, it constitutes

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a promissory note? A I didn't know that.

THE COURT: Have you read the Lesser case now, Mr. Strong? I handed it to you. The question is an important one. Have you any case to sustain your theory?

MR. STRONG: This case sustains my theory, as I understand it. It was a representation that there was money in the bank at the time the check was given.

THE COURT: That is not enough. You see, where it is a post-dated check, as it was in this case, the representations were made as to the financial means of this man aside from his bank account.

MR. STRONG: But here the representation was that the money was in the bank. We have proved it, the representation.

THE COURT: I do not know of a case that bears out your theory, Mr. Strong.

MR. STRONG: Well, I have cases, and I will produce them. I had my authorities, but I think I have lost the slip on which they were mentioned. No, here they are. Now, I have got Lesser against the People.

THE COURT: Well, that does not sustain your theory.

MR. STRONG: Well, I think so, your Honor. I have the Rothstein case.

THE COURT: No, that does not sustain your position. There is was unnecessary for the People to show that the representations were made in writing.

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MR. STRONG: Have you read the Lesser case, your Honor?

THE COURT: Certainly; I called your attention to it.

MR. STRONG: Does your Honor care to read it aloud? I would rather read it carefully, if your Honor please, myself. I can get a copy of it upstairs.

c THE COURT: A man can remain silent. If I present a check, I have an account in A's bank, and I pass that check, and I remain mute, I do not make any representations, yet the act is a crime, if there are no funds in the bank, and a drawer knew he had no right to draw on the bank.

THE THIRD JUROR: May I ask you a question, your Honor?

THE COURT: Yes.

THE THIRD JUROR: I am 12 years in business, and I am interested to know whether the presentation of a check on a legal holiday is lawful. Many times people have wanted to give me a check on a legal holiday, and I ask them to make it the next day. Now, am I wrong about that, your Honor?

THE COURT: It is not a question of being wrong. Whenever you draw a check and post-date it, it constitutes a promise to pay, in other words, that you have not got funds that day, but will have them on the day mentioned in the check.

THE JUROR: Well, I would like to know that.

THE COURT: Yes, it makes a promissory note, unless, as I asked Mr. Frankel, they had a conversation, in which he said, "Well, today is a holiday. Make it due on the next business day." That would be different.

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MR. STRONG: Does your Honor care to read that Lesser case?

I think that, if you will read it over again, I would like to discuss it here, because I think it sustains our contention, and I thought so when I read it before.

THE COURT: I have read it, but I will read it again. Here is the point in the Lesser case (reads). You may go ahead with your proof. I will take that matter up later.

MR. MOSS: Section 321 of the Negotiable Instruments Law, says, defining a check (reads).

THE COURT: Yes, and it becomes a promissory note when nothing is said about it.

MR. STRONG: I offer in evidence People's Exhibit 1 for identification.

(Marked People's Exhibit 1 in evidence).

MR. STRONG: And I offer People's Exhibit 2 for identification at this time.

(It is marked People's Exhibit 2).

MR. STRONG: And People's Exhibit 3 for identification.

(It is marked People's Exhibit 3).

MR. STRONG: People's Exhibit 4 for identification.

(It is marked People's Exhibit 4).

MR. STRONG: And People's Exhibit 5 for identification.

(Marked People's Exhibit 5).

MR. STRONG: And People's Exhibit 6 for identification.

(Marked People's Exhibit 6.)

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MR. STRONG: And People's Exhibit 7 for identification.

(Marked People's Exhibit 7).

MR. STRONG: And People's Exhibit 8 for identification.

(It is marked People's Exhibit 8).

MR. STRONG: May I just make this point, make this suggestion to your Honor?

THE COURT: Yes.

MR. STRONG: After looking up the law on the subject, it appears to me to be this: That, where a man gives another man a post-dated check, he represents that, at the time the check is presented to the bank for payment, there will be money in the bank to meet it. But, where a man obtains property on a post-dated check, and he represents that at that time he has money in the bank to meet that check, that that is a false representation, on which larceny can be predicated. That is just a suggestion of the distinction, at least, that I believe I have discovered in the law.

Now, if your Honor please, there was one more witness that I intended to call that has been on the telephone calls -- at least, we have telephoned his place of business and his house -- and we have been unable to secure his attendance up to this time, although I understand he has been notified.

This case, as your Honor knows, has been on the calendar many times, and it is necessary for the People to have their witnesses mostly on telephone calls, and I failed to get him.

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He is an important witness for the People.

MR. MOSS: It is possible that I may concede that, if he were here, he would testify to certain things.

MR. STRONG: No, I don't think so.

MR. MOSS: Is it Mr. Westerberg?

MR. STRONG: No, it is Mr. Adler. I think I will have have the to/witness. I have told Mr. Moss privately what I want to prove by him, and Mr. Moss may go on with the defence.

MR. MOSS: Well, I have some motions to make, and my motions are fundamental, and the presence of Mr. Adler would not change the status of the case, if the Court is convinced of the correctness of my motions, Mr. Adler wouldn't be needed.

The motion which I would make would be for the direction of an acquittal in the regular legal form, based not only upon the matters that have been discussed in our remarks to the Court, but upon the proposition that there is a failure to make out a case under this indictment of the larceny from the person mentioned in the indictment, under the circumstances mentioned in the indictment.

The witness Frankel is a principal witness. He represents the person whose property is supposed to have been stolen.

The very last questions I asked of him produced this testimony, that when he delivered these goods to the defendant, he had some doubt of the defendant's responsibility, and I asked him the question, "then you took a chance on that check"?

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And he answered, "Yes, for one week"; and that is re-inforced by the fact that, on the 17th of October -- the crime they elect to have occurred on the 13th -- on the 17th of October, in the regular course of business, his firm sent out a bill to Senowitz for this very account, sent out a bill for the purchase which is charged to have been made fraudulently, together with the account of the preceding week.

Now, in view of the testimony that Frankel gave here, that he took a chance on that check for a week, and that, on the 17th of October, he sent a bill to Senowitz for that very week, for that very amount, it seems to me that, in morals as well as in law, there is a fatal weakness in this case, and it might well be disposed of without requiring anybody to come here again. Mr. Adler's testimony could not reach this point.

It must appear in this case, before it can be submitted to the jury, that the complainant relied absolutely upon the representations in connection with that check, relied upon them absolutely, in extending that credit.

Then you have a statement here, practically the last question I put to him, that he took a chance on that check for a week, supported by his own bill, sent out on the 17th of October.

Now, if that is a fundamental weakness, the testimony of Mr. Adler could not repair it.

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THE COURT: You say that Frankel says that he did not rely -- that he took that chance and did not rely on the representations of the defendant as to the check?

MR. MOSS: Yes, sir, the very last question I asked him.

THE COURT: What do you say to Mr. Moss' point?

MR. STRONG: Well, he said he gave him a week's credit, took a chance on it. I know what he meant by that.

MR. MOSS: Well, did he rely on that check, if he took a chance on it for a week?

MR. STRONG: I think it is perfectly plain what the witness said, if the stenographer will read the testimony.

THE COURT: Yes, I would like to have the testimony read.

(The testimony is repeated by the stenographer).

MR. STRONG: That is perfectly plain, it seems to me.

Here were people doing business on a week's credit, and an old customer comes in to them, and says, "Here, I am giving you a check for last week, the same as I have always done before."

The complainant has heard that the fellow has been under-selling the market, and he says, "Is this check good?" And the fellow said, "Yes, the money is in the bank for it", and he believes that he has been paid the preceding week's bill, and, on account of the representation that the customer makes to him he gives him credit for another week.

THE COURT: Now, let me understand. On what count do you intend to go to the jury, Mr. Strong?

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MR. STRONG: Well, I haven't examined them carefully yet, your Honor, but I can examine them now, as the case is almost concluded. My contention is that, when a man says he has money in the bank to meet a check that he gives, it is a representation of an existing fact.

THE COURT: There is no doubt of that, if the check is dated the same day, that that is the case, there is no question that your understanding of the law is correct, because no representation is necessary, because, if I lay down a check, and I am mute, and I buy a suit of clothes, and give a check in payment, and don't say a word, there the law imputes to the man who gives the check in payment knowledge as to his financial condition in that bank.

Now, you have got a different proposition here. You have got a post-dated check, which, under section 1293, would be absolutely valueless, because it is a promise to pay. It makes no difference whether a holiday intervenes or a Saturday or a Sunday.

Now, in addition to the post-dated check, you have got a representation as to what? Not that you own a tenement house, not that you own a large business, like the Schneider case, if you remember, but that you have money in the bank. Then why post-date the check?

MR. STRONG: Why post-date it?

THE COURT: Yes.

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MR. STRONG: Well, because there are lots of people that post-date checks when they give them on a holiday. There are lots of people in this very court-room who believe that to give a check on the holiday nullifies it.

MR. MOSS: Why didn't he make out the Norris check on the 13th? That's dated the 13th.

MR. STRONG: Because it was made out by Norris' bookkeeper, not by him.

MR. MOSS: He didn't make out either of them. That check was made out by his daughter; he can't write, except his name.

MR. STRONG: My contention is, that when a man makes a representation as to an existing fact, in addition to giving a check, no matter whether it is post-dated or dated at the present time, when he makes the representation that he has money, or property, or anything else to meet it, it is a representation as to an existing fact, and not something to be done in the future; that that is a representation on which a man can safely deliver property, and rely on that, and, if the man's representation is false, then he is guilty of larceny.

MR. MOSS: That brings us down to the fundamental proposition I made a moment ago. The indictment charges that, in selling the last week's goods, the complainant relied on the check for the preceding week's goods, and relied on that as being a valid check.

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Now, here we have had him saying in the words that were read to your Honor, "I took my chance for a week", and, therefore, he did not rely on the check as the indictment charges. His testimony in that respect is corroborated by the fact that, four days later, he sends out a bill for those very items.

THE COURT: Of course, on the proposition raised by Mr. Moss, aside from the question to which I have referred, the jury will have to find the following essentials: First -- that the defendant gave the checks with intent to defraud; that it was a false pretence made as to the existing facts, and that he had knowledge of its falsity; and, thirdly, that by means of the false representations, a fraud was committed; and, fourthly, the complainant relied upon the representations made by the defendant, to his damage.

MR. STRONG: Exactly.

THE COURT: Now, if he relied upon any other matter --

MR. STRONG: He has testified that he relied upon this defendant's statement, that that check was good.

THE COURT: But he also said that he took a chance in giving him the credit.

MR. STRONG: Well, if your Honor is going to put that technical construction on his giving him credit, taking a chance, then it is useless to proceed.

THE COURT: Well, it is for the jury to determine what

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was the true cause that moved the complaining witness to extend credit to this man, and sell him the poultry.

MR. STRONG: What were Mr. Frankel's answers to your Honor's questions on that subject?

"Did you rely on the statements that the check was good?" And he said "Yes, sir." And then Mr. Moss said, "Did you give him credit?" "Yes." "Did you have any doubt about it?" "Yes, that the check was good."

But, that asking him about it, he decided to give him credit on the representation that the check was good.

THE COURT: Then I will deny your motion for the present, Mr. Moss.

MR. MOSS: Now, has the District Attorney determined upon which count he will stand?

MR. STRONG: On the first count, anyway. I will just reach over the second count.

THE COURT: I think, if you go to the jury on the first count, it is the proper count.

MR. STRONG: Yes, but I was just reading the second count, because the representation alleged in the second count is the representation that for the sum of -- that the check was delivered, and was then and there worth the sum of \$643.57.

THE COURT: The first is the proper count. The second, under the evidence, cannot be submitted to the jury. Now, the third?

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MR. STRONG: I would just like to read the third now.

Yes, I will go to the jury on the first count.

Now, with the exception of that one witness, the People rest, your Honor.

MR. MOSS: I would prefer not to open until the case is in for the People.

THE COURT: Well, then, this case will have to go over until Friday morning.

MR. MOSS: Yes, sir. I couldn't save more than 20 minutes' time, and I really feel that I would like to know all the People's case before I go into the defence.

THE COURT: Very well.

Gentlemen of the jury, there are some of the jurors who observe tomorrow and the following day as a religious holiday, and it has been the custom in this court to give every man here, who serves as a juror, an opportunity to observe his holidays, and I shall therefore continue this case until Friday morning.

(The Court then admonished the jury in accordance with Section 415 of the Code of Civil Procedure, and adjourned the further trial of the case to Friday morning, May 21st, 1915, at 10:30 o'clock).

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TRIAL RESUMED.
New York May 21st, 1915.

MR. STRONG: I think there was a motion undisposed of at the adjournment.

MR. MOSS: No, I think not. I think that was disposed of.

THE COURT: Now, so that the jury may understand the issue clearly to be submitted to them, the first count in the indictment is the only count which now remains, namely, larceny by false pretenses, and that the defendant made certain representations, with intent to defraud, and that the complaining witness relied upon those representations, and that a fraud was committed thereby.

MR. MOSS: Yes sir.

J A C O B A D L E R, of 138 Watkins Street, Brooklyn,
a witness called in behalf of the people, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business, Mr. Adler? A Live poultry.

Q In October 1913 in what business were you? A
Live poultry dealer.

Q And did you know the defendant at the time? A Yes
sir.

Q And how long had you known him at that time? A Oh,
about seven or eight or nine years.

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Q And what business was he in, do you remember, at that time? A He used to sell poultry too. Killed and live.

Q In the market? A Before that he used to be a butcher, and only sold killed stuff, at the market himself.

Q Well, what business were you in at that time, in October 1913? In the retail or wholesale business? Were you in the wholesale or retail business? A Wholesale and retail.

Q Both? A Yes sir.

Q And in what branch of the business was he? Wholesale or retail? A The same thing, wholesale and retail.

Q Did you meet Senowitz on or about the 13th day of October 1913 in the market? A I met him several times in the market, but I couldn't say whether this was on the 13th or 14th, because I didn't take special notice of the dates; but, whenever I was there in the market I met Mr. Senowitz too.

Q And do you remember Columbus day in that year?

A Yes sir.

Q That was the 13th of October 1913? A Yes sir.

Q And do you remember meeting him on that day or the day following? A Maybe a day or two, or may be a day or two after this, because Columbus Day -- I don't exactly remember that was Columbus day, but I only remember buying stuff at that time. There was in the meantime a holiday

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of the Jews.

Q Well that is perhaps a better way of fixing the date. There was some Jewish holiday about that time? A Yes sir.

Q And what the days of the Jewish holiday? A We are generally buying the stuff two or three days ahead of the holidays, because we have got to have time, the day before the holiday, to sell the stuff.

Q So can you fix it with reference to those Jewish holidays as to when you met the defendant? Was it before or after the holidays you met him in the market? A A couple of days before.

Q Did you have some talk with him? A Sure.

Q What was the talk that you had with this defendant just before the holidays? A I can't remember it now exactly. It is nearly two years ago.

Q Can you give me the substance of the conversation, as well as you can remember?

MR. MOSS: I object, unless the conversation occurred prior to the date of the indictment. He hasn't given the day, and it may be before or after. I don't know.

BY MR. STRONG:

Q Well, were the holidays before or after Columbus Day? Do you remember? A I can't say for sure. It is only if I can count two or three days before our holidays.

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Q Yes. And do you remember what the date of your holidays was? A By my calendar I would find that out exactly.

MR. STRONG: I think probably we will have to get a Jewish Calendar for 1913, your Honor.

THE COURT: Send for Mr. Rosenthal or Mr. Fischer. I think that one of them has a Jewish calendar for that year.

THE TENTH JUROR: The World Almanac for 1913 will give it to you, your Honor.

THE COURT: When was Columbus Day in that year?

MR. STRONG: On February 13th, and celebrated on Monday.

MR. MOSS: Well, an almanac will be surer than anything I submit.

THE COURT: Yes, send for Mr. Rosenthal.

MR. STRONG: Well, if the Interpreter will tell us when it was, I will concede it, or I will take your statement, Mr. Moss.

MR. MOSS: I prefer to have it stated accurately by the interpreter from his calendar.

THE INTERPRETER: (Mr. Rosenthal) In 1913 Yom Kippur was on Saturday October 11th, and Succoth was October 16th starting from Thursday. That is the Feast of the Tabernacles.

MR. MOSS: On the 16th and 17th?

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MR. ROSENTHAL: Oh, no. It lasts eight days.

Succoth, or the Feast of the Tabernacles began on Wednesday night.

BY MR. STRONG:

Q Now can you fix the date, after hearing the dates of the holidays, when you had your conversation with the defendant? A That was on a Monday.

Q That would be the 14th then? A I think so, yes. I met him on a Friday before.

Q Now Monday would be the 13th then? That's the date set in the indictment? A I met him on Friday, and also on Monday, because on Saturday I never go to the market.

Q And did you have some talk with him on Monday when you met him? A Well, I have in the market all kinds of different talks.

Q Well, I want your best recollection as to what your talk with the defendant was about the chicken business, on Monday? A I can't say exactly what I spoke to him and what he spoke to me. I can't recollect exactly the words what I spoke to him or what he spoke to me.

Q Well, I want you to give your best recollection on the subject? A Generally, when we are meeting one another --

MR. MOSS: I object to what was done generally?

THE COURT:: Sustained.

A (Continuing) Well, when we are meeting one and the other

--

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MR. MOSS: Objected to.

THE COURT: Sustained.

BY MR. STRONG:

Q Can you give me your best recollection on the subject of what took place on that day; what you said to him and what he said to you? A I can't remember.

Q Don't you remember saying anything to him? A We spoke about business.

Q Well, I want to know what you said to him about business, as nearly as you can recollect it? A I can't remember sure what I spoke to him, when it is a year ago.

Q No, this is two years ago? A Well, two years ago I can't remember so that I can tell what he said and I said.

Q Do you understand my questions? A Yes, I understand them.

Q What was he doing there in the market that day?

A He bought stuff, he loaded stuff on his wagon.

Q Yes, and did you see him selling any stuff? A Not there, in West Washington Market.

Q Well, perhaps I got the wrong place. Did you see him selling any stuff around that time? A In Brownsville, where we are living.

Q Do you remember having a conversation with him in Brownsville? A Yes.

Q Now will you tell me on what day that was? A That

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is on Tuesday morning, about 11 o'clock, when the business was over. So I went for collections from my customers, a butcher.

MR. MOSS: I object to any conversation on Tuesday.

THE COURT: What date is that?

MR. STRONG: Immediately after he bought the poultry. He gave the check on the 13th, and this is the 14th the date on which the check was dated, showing what the defendant did on that day, to prove intent.

THE COURT: I think your indictment requires you to show his intent at the time of making the representations, not what his intent was thereafter.

MR. STRONG: No, no, also at that time. It is part of the res gestae in the transaction, what he did with those chickens.

THE COURT: Well, if you can show, you have a right to show prior and subsequent acts of a similar character.

MR. STRONG: I am not showing acts. I am showing a conversation, indicating intent.

THE COURT: You better disclose that to the Court privately before I rule. I cannot tell what you mean.

(The District Attorney confers with the Court)

THE COURT: I will allow this evidence. Objec-

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tion overruled.

BY MR. STRONG:

Q Now, just go ahead and tell what occurred, what you observed with regard to this defendant, and what conversations you had with him? A I met Mr. Senowitz riding around in a carriage and he stopped, and he said, "Well, Adler, how goes the business?" And I said, "You know much better just how the business goes than I do".

And I said, "How are you able to sell, if this is true, that my butchers brought me sales tickets--" They sell the stuff by sales tickets -- and after that they are making out from those tickets the bills, you know -- "They brought me the tickets and say that you are selling--"

MR. MOSS: I object to the matter of the tickets. All we want is the conversation.

THE COURT: Yes, strike out all about the tickets.

A (Answer continued) And I said, "They tell me that you are selling cheaper all the stuff, that you are selling for fifteen cents. Now, how is it possible when we are paying 16 1/2 cents" -- I paid that, that morning, for my stuff -- "How are you able to sell for 15 cents? Can you tell me how it is possible? If you haven't got any different stuff if you bought from a farm or something then you may be able to sell that way."

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He said, "Well, this is my business," and I said, "There is only one thing, that you are going to fail," and so I left him."

And so he says, "This is my business, what I am going to do", and that's all I had to say and I went away. Then after I heard that Mr. Senowitz --

MR. MOSS: I object to that. Wait a moment I move to strike that out.

THE COURT: Strike that out.

MR. STRONG: Yes, I consent.

Q Did you say anything to this defendant about selling below cost other than what you have told us? A That's what I said to him, what I explained here to the Court.

Q Did you have any talk with him after his arrest?

A No sir. I had many times conversations.

Q Well, that's what I say. You had some conversation with him after his arrest, did you? A I had conversations but I never spoke to him about these things.

Q Do you know a man by the name of Goldman? A There is many Goldman's. I don't know which Goldman.

Q Do you know a man connected with this defendant in some way, by the name of Goldman? A I don't know.

Q Do you know a saloon keep er by the name of Goldman? A In Thatford Avenue?

Q Yes, that's the man? A Yes.

Q And did you ever talk with this defendant in reference to Goldman, or have any conversation with him? A No.

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sir.

MR. MOSS: I object to that. No, he says

no. I will withdraw the objection.

BY MR. STRONG:

Q Did you ever have any conversation with the defendant in reference to depositing some money in a certain bank? A I don't remember, no.

Q In reference to the depositing of a thousand dollars

A No, I never asked him about that.

MR. STRONG: That is all.

CROSS EXAMINATION BY MR. MOSS:

Q Did you ever sell chickens for less than they cost you? A When they are seconds, we got to sell them cheaper.

Q Exactly. And you will sometimes find seconds, wont you? A Oh, sure.

Q You may get a load of chickens, and there will be some firsts and some seconds? A Oh, there is always between a load of poultry, you can find a hundred or two hundred pounds, between 2000 pounds, which we call seconds.

Q Yes, and do Spring chickens cost as much as other chickens? A Sometimes they cost more and sometimes less.

Q But in that month, October? A October they are coming equal, but sometimes they are half a cent higher for the same grade.

Q Well, at the time we are talking about, is 1913?

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A Well, I don't remember exactly.

Q Were you a competitor in business with Mr. Senowitz?

A He was in the business and I was in my market and he was in his market. I don't know whether he was a competitor or not.

Q Well, weren't you a competitor? A No, I tried to get a customer, and he tried. Its the same thing.

Q Well, wasn't it even a little bit more than that? Was there not a particular rivalry between you and Senowitz?

A (No answer)

BY THE COURT:

Q Now, Mr. Adler, you know that there is competition, and very keen competition, in the chicken business? A Sure.

Q Now the point is whether you were a competitor of his? A (No answer)

Q Where do you keep? A In Watkins Street.

Q And where is the defendant's business? A Oh, he was in East New York, far away from me.

Q Well were you in the East New York Section? A No.

Q Where is Watkins Street? A Its in Brownsville.

Q And where is East New York? A It's further out than Schenck Avenue. He is about a mile away from me.

Q But it is a part of Brownsville, is it not? A Yes.

BY MR. MOSS:

Q Well, didn't you receive a weekly allowance from an association of chicken dealers there, in order that you

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shouldn't compete with them? A Well, when they had those companies, always I used to be the smallest dealer.

Q Well, how much did you receive in order that you should not compete with that association, how much a week? A They enforced a standard price, sometimes more or less.

Q Well, were you acquainted with James J. Norris? A Yes

Q Did you do any business with him? A Oh, when he was in Brownsville, that time, in the combination they had made up with him, to receive his stuff.

Q Well, you were a friend of James J. Norris, weren't you? A It was only a business friendship; that's all.

Q And wasn't he receiving \$100 a week to not compete with these other chicken dealers? A He drew first \$30, but he finished with a hundred.

Q Now, did you get a portion of that? A Oh, I never had no partners with him. I was an individual, a small dealer. So they paid me \$12 for the working man, that I shouldn't compete with them in prices.

Q Well you were against Senowitz, weren't you? A I don't see why.

Q Well, I am asking you. Weren't you? A No sir.

Q Well, did you tell people that he was going to fail?

A Yes, I said that.

Q Did you tell Mr. Gordon that he was going to fail?

A I said openly, in West Washington Market, to all the people, "It looks to me like Senowitz is loading stuff like he's

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going to fail." I said that.

Q Then you spread a rumor around that Senowitz was going to fail, didn't you? A Well, I don't understand you.

Q Well you spread the news around that he was going to fail? A When I see Mr. Senowitz loads 90 or 100 coups that day, and I know that Mr. Senowitz sells thirty or forty, I said, "It looks to me that Senowitz is going to fail."

Q Then you know all about his business, don't you? A Sure.

Q Well, didn't you think that, did you spread around the rumor that he was going to fail, he would be very likely to fail? A Well, I don't know about that. I don't think it can make a man fail, if somebody speaks about it.

Q But do you think that to tell other business men that a gentleman is going to fail, does him any good? A I don't know that.

Q Well, he failed very soon after you began to tell the news didn't he? A I don't remember that.

Q You told the District Attorney that what troubled you was how he could sell chickens for 15 cents a pound? A Yes, that's what I said to the District Attorney.

Q Well, those 15 cent chickens might have been seconds might they not? A I aint watching his place. I don't know how they look. Only I see him loading the stuff of the same quantity and quality that everybody had.

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Q Well, you bought a lot of chickens yourself? A Yes.

Q You bought a great many coops? A Thirty or forty a week. That's my limit.

Q Didn't you buy more at the holidays? A No, thirty or forty, too.

Q Well was Senowitz doing more business than you were?

A He used to get the same \$12 a week from the combination what I used to get and he used to sell the same kind of stuff that I sold, but that day I loaded thirty or forty coops at the highest and he loaded ninety or a hundred, and that brought me to suspicion him, and tell him right to his face "It looks to me, Senowitz, that you are going to fail, " or something like that. "What do you want to do?"

Q Well do you think a man would buy more chickens than he could sell? That wouldn't do him any good, would it?

A I know --

Q Now listen to me. (Question repeated) A So he's got something in his mind.

Q Well he wasn't selling chickens for ten cents a pound was he? A No sir.

Q The cheapest rate that you discovered that he was selling was 15 cents? A What my butchers said, yes.

Q That was ^{the} cheapest rate? A Yes.

MR. STRONG: The people rest. Oh, just a minute. Is Mr. Jacobson here? No, I learn he isn't here. That's all.

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MR. MOSS: I want to renew my motion to the Court.

If your Honor please, the defendant moves for a direction of a verdict of not guilty, on these grounds:

First -- The first count of the Indictment, which is the only one left in the case, doesn't state facts sufficient to constitute a crime.

Second -- There is no proof in the case that the defendant made any fraudulent representations of any actual existing facts.

Third -- There is no proof that misrepresentations, if they were such, were knowingly made by the defendant.

Fourth -- There is no proof that any witness relied solely on these representations in parting with the property set forth in the indictment.

Fifth -- The complaining witness' own testimony shows that he doubted the representations, and was willing to take a chance.

Sixth -- The testimony of the complaining witness shows that the representations if made, were of a promissory nature.

THE COURT: I received your note, Mr. Moss, in which you said that on page 4 of the minutes, the complaining witness testified: "You need not worry about my check. Why, there is lots of money in bank."

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The check will be paid, and I said, 'Well, if that is so you will get a load of poultry.'" Is that all the testimony on that subject?

MR. MOSS: That is all at the beginning of the testimony, but at the close of the testimony, he said that he would take a chance on the check for a week.

THE COURT: In a case of this character, the Court of Appeals held --, it is an old case, but it is still the law- In the case of the People against Haynes: "It is not necessary to a conviction that the pretenses proved to be false should be the sole and only inducement to the credit or delivery of property. It is enough if they had some material an effect in producing the credit or inducing the delivery of the property that, without their influence upon the mind of the party defrauded, he would not have given credit or parted with the property."

The same principle was enunciated in later cases, among others in the People against Mayer, 80 N. Y. which is one of the leading cases on the subject of larceny by false pretenses.

Of course, it will be for the jury to say whether or not the defendant made any representations as to an existing fact, namely, as to whether he had sufficient funds in the bank to meet this check.

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Secondly -- That he must knowingly made a false representation as to an existing fact;

Thirdly -- That he must have made it with the specific intent to defraud the complaining witness.

Fourthly -- That in making these representations, the complaining witness relied upon them, and that a fraud was committed thereby.

All of those elements must be found by the jury against the defendant, beyond a reasonable doubt, before they can convict.

On the other hand, if nothing was said about the financial standing of the defendant, and if the defendant, in giving a check, intended to meet the obligation when presented at the bank, that he had no intent to defraud, then the jury must acquit him. I shall deny your motion.

And, gentlemen of the jury, in denying the motion made by the learned counsel for the defense, the Court expresses absolutely no opinion, either as to the guilt or innocence of the defendant.

The Court merely rules as a matter of law, but there are questions to be submitted for your consideration and determination .

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THE DEFENSE.

LOUIS RATNER, of 341 Stone Avenue, Brooklyn,
a witness called on behalf of the defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Ratner what is your business? A Building
business, real estate.

Q Where is your place of business? A 341 Stone
Avenue, Brownsville.

Q And how long have you been in business? A About
twenty five years.

Q Do you know this defendant Mr. Senowitz? A Yes sir.

Q How long have you known him? A About fifteen or
eighteen years.

Q In what way have you known him? A In the business
that he is in now, the chicken business.

Q And have you known him socially, too? A Yes.

Q And you have known other people who know him? A Yes
sir.

Q And you know what his reputation is for truth and
honesty? A Yes sir.

Q What is it? A Very good. Pretty fair.

CROSS EXAMINATION BY MR. STRONG:

Q What is that? Pretty fair? A Yes, very good.

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EXHIBIT

Q. Do you know what his reputation is for paying his bills?

MR. MOSS: I object to that. Wait a minute.

THE COURT: Sustained.

S O L O M O N L E I B O W I T Z of 124 Eastern Parkway
Brooklyn, a witness called in behalf of the defense
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business Mr. Liebowitz? A Builder.

Q How long have you been a builder? A Fifteen years.

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

Q How long have you known him? A About fifteen
or sixteen years.

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 Very good.

CROSS EXAMINATION BY MR. STRONG:

Q Is he a customer of yours? A No, I am a customer
of his.

MR. MOSS: I recall Mr. Louis Ratner.

L O U I S R A T N E R, being recalled by the counsel
for the defendant testified as follows:

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MR. MOSS: I withdraw my objection to the District Attorney's question.

MR. STRONG: To what question?

MR. MOSS: You asked him what was said about his reputation for paying his bills. I withdraw that objection, and you can ask him that question.

MR. STRONG: You can ask him. You objected.

MR. MOSS: I say I withdraw my objection.

MR. STRONG: Well, I didn't recall the witness.

MR. MOSS: What funny practice. Well I'll ask him the question.

Q What is his reputation for paying his bills? A Very good.

HENRY SEINFELT, of 1509 Eastern Parkway, Brooklyn, a witness called in behalf of the defense being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Seinfeld what is your business? A I am Assistant Superintendent of a Life Insurance Company.

Q What company? A John Hancock Company.

Q How long have you held that position? A Twenty years, this week.

Q Do you know the defendant? A Yes sir.

Q How long have you known him? A Twelve or thirteen years.

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Q Do you know him well? A Yes sir.

Q And you know others who know him? A Yes sir.

Q And do you know what his reputation is for truth and honesty? A Yes sir.

Q What is it? A Good.

CROSS EXAMINATION BY MR. STRONG:

Q Have you done business with him? A Never.

Q Just a social friend of his? A Well, more than that. We belong to the same Congregation, where I have been secretary for the last nine years.

Q Yes. Do you know anything about his business dealings with other people? A Well, not closely.

Q You don't know anything about that, do you? A No.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q What is the Congregation of which you are the Secretary? A It is a religious congregation.

Q What is the name of it? A The Congregation Oh Sholem

Q Where did it meet? A 133 Thatford Avenue. Its a synagogue.

M I N N I E K A P P E L, of 1784 Bergen Street, Brooklyn
a witness called in behalf of the defense being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

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Q Are you the daughter of the defendant? A Yes sir.

Q What is your age? A 20 years

Q Have you recently been married? A I have been married a year ago.

Q Have you been working for your father? A Yes sir.

Q How long have you worked for your father? A Why, ever since I graduated from the public school.

Q How many years is that? A Six years ago.

Q Were you receiving any salary from your father?

A No.

Q What kind of work did you do? A I did the book-keeping, salesmanship and general work around the place.

Q Was your father an educated man? A No.

Q Does he read and write? A No.

Q Can he sign his own name? A Yes.

Q Who wrote out the checks that were written out?

A I did.

Q Did your father ever sign checks in blank? A Yes.

Q Who filled them in? A I did.

Q And from what did you fill those checks? How did you get the memorandum or facts to put in checks? A Why bills were given to me that had to be paid.

Q You had charge of all that, had you? A Yes.

Q And so you would fill in the checks for your father as they were required? A Yes.

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Q And you had instructions from him to draw checks?

A Yes sir.

Q In May 1913 and prior to that time had you been engaged to be married? A Yes.

Q Did you receive from your father any check at or about that time? A Yes.

Q When did you receive the check? A I believe it was the middle of May.

Q 1913? A Yes, 1913.

Q And how much was that check? A \$650.

Q What did you do with that check? A I kept it.

Q What way did you keep it? A I was instructed by my father to keep it.

Q I know, but how did you keep it? Did you keep it in a drawer or box or what? A In a box.

Q Where did you keep the box? A In my closet with several other trinkets that I had there.

Q Did I understand you to say that you were instructed by your father to keep the check? A Yes.

Q That is you were not to cash it? A No.

Q Well, what were you to do with the check ultimately?

A I don't understand you.

Q What were you to do with the check? A I was to keep it until he would tell me to deposit it and get the money on it.

Q To whose order was it drawn? A My order.

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Q Well, what was it given to you for? A Well, \$500 was given to me to furnish a home, and \$150 for part of my trousseau and expenses of my wedding.

Q Now, when this trouble came to your father in October 1913 had you used that check? A Yes.

Q That particular check that you had drawn in May? A No.

Q Well, what did you do with regard to that check in October 1913? A I don't understand your question.

Q What did you do with reference to the \$650 in October 1913? A I had a blank check signed by my father, and I wrote it out to my order, and cashed it.

Q You say you had a blank check? Where was it? A I had it in a box in my closet, in May.

Q What? A I had the check in my box in May 1913.

Q Was that the \$650 check? A Yes sir.

Q Well, you said you had a blank check signed by your father? A Yes.

Q Where was that? A In my possession.

Q And what did you do? A Being that I had lost the other check in some way, I don't know how -- I had gone to the country in July and when I came back in the end of July my box was missing.

Q Yes? A So I wrote this check, among several other checks that he had signed. I took this check and wrote it out to my order for \$650. knowing that there would b

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be lots of money in the bank, more than at any other time of the year, being that it was the holiday season, and profits were biggest, too.

Q Now, you said you had several blank checks, and these other checks were filled out. Do you remember how they were filled out, to whose order? A For bills coming in, when my father was present, For instance, for feed, or generally a laborer had to be paid, and I paid with a signed checks that I had.

Q Did you ever tell your father anything about having filled out this blank check? A No sir.

Q What did you do with the blank check that you had filled out? A I cashed it.

Q Did you go to the bank yourself? A Yes.

Q And cashed it? A Yes.

Q And you got the \$650 out of the bank? A Yes.

Q Did your father know that you did that? A No.

Q What did you do with the money? A I kept it, and later gave it to my fiancée.

Q And, later, did you marry that man? A Yes sir.

Q Now, I show you the check which the District Attorney has put in evidence, People's Exhibit 4, and ask you whether that is the check which you have just testified about
A Yes.

Q This check is dated May 10th, 1913, and I notice that a number has been written above there. Will you explain the date of the check and the number on that check?

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A When the check would come back with the vouchers from the bank, I didn't want my father to know that I had lost the previous check, and therefore I dated this check back to the month that I had gotten the check, and as far back as the number of the other check, as far as I could remember, so as for him not to know that I lost the check. I never told him about the box that I had lost.

Q Now have you ever seen this check from the time you cashed it until I show it to you to-day? A No.

Q Now, with reference to the way your father did business. Do you remember what concerns he bought from? A Yes.

Q Name them? A James N. Norris, Jr., James N. Norris Son & Company, Sol Frankel, Westerberg, and a good many other concerns. Shall I name them?

Q Well, have you named the principal firms, the most important ones, the one from whom you got the most goods?

A Why no.

Q Well? A Samuel Werner, and several other firms. I can't remember them.

Q And were these goods bought on credit? A Yes.

Q On what length of time? A From 7 to 10 days.

Q And were the bills of these concerns paid by checks?

A Yes.

Q And were those checks drawn upon a bank? A yes sir.

Q What bank? A 26th Ward Branch, Mechanics Bank.

Q All on that same bank? A Yes.

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Q Was your father a depositor in that Bank all the time you were working for him? A Yes.

Q Did you draw all these checks? A Yes.

Q Were those checks always paid? A Yes.

Q Have you any recollection of any of the checks coming back at any times not good? A Possibly one or two.

Q How long before, how long before February 1914?
A Probably a year or so.

Q Well, what was done in those one or two cases where checks were returned not good? A They were sent back to the bank by the holder of the check and paid.

Q The same checks were paid? A Yes.

Q So that, if I understand you correctly you maintained that regular checking account all the time? A Yes.

Q And the checks issued on that account were paid?
A Yes.

Q What was the reason those checks came back? A I believe there were uncollected deposits.

Q That is, deposits had been made, but had not been collected, checks? A Yes.

THE COURT: We will suspend now, Mr. Moss.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess until 2 :15 P. M.)

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A F T E R R E C E S S

M I N N I E K A P P E L, her direct examination being continued testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. MOSS:

Q On the 13th day of October did you have any communication with Mr. Norris? A Yes.

Q At what time; do you remember? A Sometime in the morning, I believe it was.

Q And what was that communication? A My father had given him a check on his way to the market in New York, and I telephone, asking him whether he would send me goods, thinking that my father's wagon wouldn't be back from the market in time to get the goods from him.

Q And what did you say to him? A I merely asked him if he could send me goods by his wagon, and he answered me probably, yes.

Q And how many coops of poultry came? A I think seventeen coops.

Q I am speaking now of James N. Norris. Are you speaking of the same person? A Yes, James N. Norris, Jr.

Q Did you have any communication with him after the goods arrived? A The goods arrived towards evening. I telephoned to him because one of the wagons had come from New York, and I had sent my wagon out to get the poultry, instead of him sending his wagon to bring me the poultry that was coming to us.

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So I telephoned to him and told him that I had sent my wagon out, and for him to give him -- to give me the share of poultry that was coming to us.

Q After the poultry had arrived? A No, that is before the poultry had arrived.

Q But I am asking you if you had any communication with him after the poultry had arrived? A Well, I told him to send back my wagon empty, because I had enough poultry from what he had sent me

Q Did he send the wagon back, empty? A No sir, with 9 coops of chickens, and he should have given me seven coops from the former car and he gave me nine or ten.

Q In other words you had many more chickens than you desired? A Yes.

Q And more than you had asked for? A Yes, more than we needed.

Q Well, did you have any communication with Mr. Frankel on the 15th of October? A Yes.

Q What was that? A Mr. Frankel called up, in the afternoon, asking if we needed stuff, and I told him no, that we had stuff left yet.

Q Was that the 15th? A I believe it was the 15th.

Q Well, was it? A I know it was after the sale of the poultry.

Q Now do you know anything about a deposit of money which came from Mr. Goldman? A Yes.

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Q State what you know about that? A My father told me, Sunday night, that I was to get a check from Goldman, on the following banking day, and for me to go to Mr. Goldman's place of business, get the check and deposit it.

I went, on Tuesday morning, with my little brother, to Mr. Goldman's place, and asked Mr. Goldman for the check which he gave me -- that is asked Mr. Goldman for the check, and he went to Max Kobre's Bank and cashed the check, and I gave it to my little brother to deposit.

Q How much was that cash? A His check was \$1000 .

Q Did you add anything to it? A Yes, from collections.

Q How much? A I think over a hundred and fifty dollars.

Q Did you know anything regarding the giving of a check to Mr. Goldman? A Yes.

Q Did you draw a check to his order? A Yes.

Q How much was that check? A A thousand dollars.

Q What did you do with that check? A Gave it to Mr. Goldman.

Q Was there any conversation between you and Mr. Goldman when you gave it to him? A No.

Q Was that in pursuance to a conversation which you had with your father? A Yes.

Q Did you know anything at all about Mr. Goldman's

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presenting that thousand dollar check for payment?

Did you have anything to do with that? A No.

Q Was anything said to you by Mr. Goldman about your father as to when that check for a thousand was to be presented? A I understood -- I knew, as is always done --

MR. STRONG: I object to that.

MR. MOSS: Well, I consent that that be stricken out.

THE COURT: Strike it out.

BY MR. MOSS:

Q Had you on other occasions received checks from Mr. Goldman? A Yes.

Q And given him a check in exchange? A Yes.

Q And deposited his check? A Yes, cash.

Q Deposited cash? A Yes. Mr. Goldman would change his check into cash.

Q Would Mr. Goldman hold the check for a while?

A Yes.

Q So the object was to get the benefit of the cash that Mr. Goldman loaned you, and he would draw it afterwards?

A Yes.

Q How long had that been going on; do you know? A I believe for about three years.

Q Do you know Mr. Goldman well? A Yes.

Q Was he a friend of your family? A Yes.

Q Do you remember when your father was arrested?

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A Yes.

Q Were there still chickens unsold then? A Yes.

Q Where were these chickens? A In our place of business, 661 Ashford Street.

Q Do you remember about how many chickens there were, or what quantity there was, still unsold? A There were about fourteen or fifteen coops.

Q Fourteen or fifteen coops? A Yes.

Q Well, what became of those chickens? A Why most of them died. My father was in jail for over a day. he had the key with him. The place was closed. When he came back, the same day, he was too tired to attend to the place, and, on the following day when we went in, most of the poultry was dead.

Q Well, had poultry of this lot, that had been brought on the 14th -- on the 13th of October -- had some of that been sold to dealers? A Yes.

Q And were their dealers who had not paid for their chickens at the time your father was arrested? A Yes.

Q Were there dealers who didn't pay for them at all?

A Yes.

Q Some that had never paid? A Yes.

Q And did your father have, -- did he have any notice that he was to be arrested? A No.

Q Do you remember how he was taken? A Yes.

Q State how he was taken? A The lieutenant, the po-

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lice lieutenant, Monahan, and Mr. Westerberg and James Norris Jr., came into the house and told him that he was arrested-- at least Policeman, Lieutenant Monahan told him that he was charged with a felony. My father then asked him what a felony meant.

Q Well, I don't call for a conversation. But was he taken in the automobile? A Yes, Mr. Norris' automobile.

Q When he was arrested, did you remain at home or go with him? A No, I remained at home.

THE COURT: Mr. Foreman you may ask a question of the witness if you desire to do so.

BY THE FOREMAN:

Q This check, which you had received for \$650, that was supposed to be a dowry, and was supposed to be lost, was payment stopped on that? A No sir.

Q What was done with it? A Nothing.

BY MR. MOSS:

Q When did you tell us that you had lost that original check? A When I came back from the country about the end of July. I went for two weeks on a vacation.

Q Where did you keep it? A In a box in the closet in my room.

Q Was the box gone? A Yes.

Q The whole thing? A Yes.

Q Was that check drawn to your order? A Yes.

Q Had you ever endorsed it? A No.

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CROSS EXAMINATION BY MR. STRONG:

Q That check which you lost was a blank check, wasn't it? A Yes.

Q Didn't have your name on it, did it? A No.

Q It just had your father's name on it, didn't it?

A Well, what do you mean? I don't understand you.

Q Well, you say it was a blank check, signed by your father? A Yes.

MR. MOSS: The check that was lost?

MR. STRONG: I can examine her, Mr. Moss, without assistance from you.

MR. MOSS: I am simply asking you, as a matter of courtesy, a question.

MR. STRONG: All right.

Q The check that you lost, was that a blank check?

A No.

Q That check was filled in for \$650 was it? A Yes.

Q And you wrote it out, did you? A Yes.

Q And you wrote out the number "650" on it? A Yes.

Q And the words six hundred dollars? A Yes.

Q And you entered it on a stub of your check book, did you? A I believe so.

Q What? A Yes, I believe so.

Q Did you or didn't you? A Yes.

Q And got your father to sign it, did you? A Yes.

Q After you filled it in? A Yes.

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Q You are sure of that? A Yes.

Q And he told you to make it out for \$650? A Yes.

Q And afterwards you put that in a box, and didn't get it cashed? A Yes.

Q And he told you not to get it cashed until he told you to get it cashed? A Yes.

Q Now did he tell you when he was going to allow you to get it cashed? A Yes.

Q When did he say? A As soon as he could.

Q Well now he drew that check in May, didn't he? A Yes

Q And he had money in the bank, more than \$650 between May and October, didn't he? A Yes.

Q And was that to be cashed after you were married or before? A Before I was married. It was to cover my wedding expenses.

Q Yes? And when were you married? A I was married last June.

Q And you got it cashed on October 11th, 1913?

A Yes.

Q And you were married last June? A Yes.

Q So you got it cashed -- What was it? A Year before you were married? A No.

Q Or a year and eight months? A Yes, about that time, but I expected to get married in November.

Q Now, after you lost the check -- by the way do you know the number of that check? A No, I don't.

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Q After you lost it, did you look it up on the stubs of the check book? A No.

Q What? Didn't look up the number of that check on the stubs of the check book? A No.

Q And didn't go to the bank to stop payment on it?
A No.

Q And you mean to say that you made out a duplicate of it? A Yes.

Q And you got your father to sign that duplicate?
A No.

Q Well, he did sign it, didn't he? A He signed a blank check, several blank checks in fact.

Q And you filled it in for \$650, did you? A Yes.

Q Had you changed the number on the blank check before your father signed it, or after? A No, after.

Q You mean to say that you crossed out the number on the blank check that your father signed, and put another number in? A Yes.

Q Did you change the balance of your account in your check book, A No.

Q Did you balance the check book from week to week?
A No, not necessarily.

Q Did you balance it from month to month? A That is, the bank did.

Q Did you balance your check book? A I kept a balance as near correct as I could, but at other times I would just let it go. I am not a graduate of book-keeping.

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Q Well, you graduated from the public schools, didn't you? A Yes.

Q And you transacted business in your father's place for seven years? A Yes. Seven years.

Q And you were competent to transact business? A Yes.

Q And you know something about book-keeping don't you?

A Yes.

Q And you know how to balance your check book, don't you?

A Yes.

Q And did you tell your father that you had lost the check? A No sir.

Q You were afraid to, weren't you? A I was.

Q Did you tell your father that you were going to cash the check? A No.

Q And, in spite of the fact that he told you not to cash it before he told you to? A Yes.

Q What did you think you were doing when you did that?

A I was urged by my fiancée to do so.

Q Who is your fiancée, your present husband? A My present husband.

Q So he is the cause of all this trouble, is he?

MR. MOSS: I object to that question in that form.

THE COURT: Sustained.

MR. STRONG: I withdraw it.

Q I don't suppose you knew it was wrong to do such a thing, did you? A No, he had promised it to me.

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Q But I mean to cash it with out his knowledge, when he told you not to do so? A No, I didn't think it was wrong.

Q And who did you talk over this case with before you came into court? Anybody? A My lawyer.

Q Who is he? A Mr. Rose.

Q And you didn't testify in the Magistrate's Court, did you? A No.

Q But you told him about this occurrence before the proceedings in the Magistrate's Court, didn't you? A Yes.

Q You were not afraid to tell it to Mr. Rose; were you? A Well, it was known. Mr. Norris had told my father.

Q About what? A About this check.

Q Mr. Norris had? A Yes, Mr. James N. Norris Jr.

Q About this check? A Yes.

Q Did he cash it for you? A No, but when he came to arrest my father, my father said, "Despite the fact that Mr. Goldman's check of \$1000 was drawn still a check, one of my creditor's checks, should have gone through," and Mr. Norris then told him that I had cashed a check of \$650.

Q At the bank? A Yes. That where he heard it.

Q That very morning? A Oh, no.

Q Well, I mean on the 11th? A No, this was when Mr. Norris arrested my father.

Q I understand. And he told your father -- A That I had cashed a check on the 11th.

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Q That you had cashed a check on the 11th? A Yes.

Q He found that out from the bank, didn't he? A Yes.

Q When he went there to get his money? A Yes, probably.

Q And then you owned up to your father? A Yes.

Q Have you ever found that other \$650 check? A No.

Q Did your father use to look over the balances in the check book? A No.

Q Did you use to tell him what they were? A Yes.

Q And how often did you use to tell him? A As often as he would ask me.

Q And, before going out to buy large consignments of poultry, he used to ask you didn't he? A Before paying his bills he would ask me.

Q No, before buying he would ask you? A Before buying?

Q Well, didn't he ask you when he was about to buy them? A Well, his paying would come sometime before his buying.

Q Well, didn't he ask you before buying? A In that way he did, yes.

Q Now young lady will you kindly tell us about the trip that you made with your little brother to get the check from Mr. Goldman? A Yes.

Q Your father didn't go with you? A No.

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Q How old is your little brother? A Fourteen.

Q Is he here? A Yes.

Q And how old are you? I forgot? A Twenty.

Q And you were married two years ago, were you A
No, last year, last June.

Q Engaged when you were seventeen? A Yes.

Q Graduated from school when you were how old? A 13.
14 almost.

Q And since you were fourteen years of age you have been
in business, is that right? A Yes, I have been in the place

Q And now you are in business with your mother in
the poultry business? A No.

Q Is it your other sister? A No.

Q Oh, you were, weren't you? A I was, but not now.

Q And this extra poultry was turned over to your mother
and yourself, after your father failed? A Yes.

Q And you sold it didn't you? A Yes.

Q And all the money that he collected from his bills
was turned over to you and your mother? A All the money
that he collected from his bills?

Q Yes, all the money collected from the sale of
this, poultry that he got on the bad check? A No sir, he
kept the money and he paid various bills with it.

Q But not the people that he got the poultry from?

A No, there were other bills to be paid.

Q No, he took the oldest creditors and paid them

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first? A Why, they arrested him.

Q Oh, he didn't pay the men that arrested him, as you say? A No.

Q Of course not, he didn't pay them.

MR. MOSS: I object to that.

THE COURT: How material is that, Mr. Strong?

MR. STRONG: Why, this young lady transacted all the business, and --

THE COURT: Well, how is it material whether he paid or not?

MR. STRONG: Well, I simply wanted to find out what the defendant did in the way of making restitution, etc.

MR. MOSS: Well, of course, if that is the object I don't object.

THE COURT: Well, it is not material, but the objection is withdrawn.

MR. MOSS: No, I don't wish to withdraw my objection now. I renew it.

BY MR. STRONG:

Q You say he paid other creditors with the money.

MR. MOSS: Objected to.

THE COURT: Sustained. That would not be any defense, anyway. The Court of Appeals held that in a recent banking case in Brooklyn.

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BY MR. STRONG:

Q On how many occasions did you go to Mr. Goldman yourself for money? A Several times.

Q And when was the first time that you went to Mr. Goldman? A I can't remember.

Q Oh, please try? A I am sure within the last three years, that is, before this trouble started.

Q And how long before your father was arrested did you go to Mr. Goldman for the first time? A I can't remember.

MR. STRONG: I ask to have the witnesses excluded

MR. MOSS: Isn't it rather late?

THE COURT: The witnesses are excluded.

MR. MOSS: The reason why I objected was that Norris and Frankel remained in Court while witnesses were being examined, and it is rather late to start that rule, but I don't care, though the prosecutions case should have the same burden as we have.

MR. STRONG: Well, you didn't make any motion.

MR. MOSS: No, I didn't think of it, because I didn't say anything about it.

BY MR. STRONG:

Q Now, will you kindly try and remember when the first occasion was before your father was arrested? A Probably seven months.

Q And how much money did you get on the first occasion? A I can't remember.

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Q And how many times did you go altogether to Goldman?

A Very few; probably three or four.

Q Four at the most? A Four at the most.

Q And how much did you get at the time, before this last time from Goldman. A I don't remember.

Q Did you get a thousand dollars from him before?

A I don't think so.

Q Well, how much was the largest amount you ever got from him? A A thousand dollars.

Q And this was the largest amount, this time? A Yes; but we had got the same amount from Goldman, at the holiday season, several times before.

Q Did you get a thousand dollars twice? A No, more than twice.

Q Three times? A Probably, I can't say.

Q Well I mean the times that you went there personally?

A Oh, personally?

Q Yes? A I do believe it was the first time I went there to get a thousand dollars.

Q This was the first time you ever went? A For a thousand dollars.

Q Well, did you ever go to get money at any time before

A Yes, three or four times before.

Q And how much did you get on any of those prior occasions? A I can't remember the exact amount.

Q And how many times did your father go to Goldman's

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altogether? A I believe every week.

Q He went every week to make up money? A Yes.

Q Have you got your checkbook here? A I don't know.

Q What? A I don't know.

Q Haven't you got the check book that you made out these checks from? A I don't know whether it is in Court.

Q Who did you give it to? Where is it? A I don't know whether it is in court. It may be with one of the lawyers

Q Which lawyer? A Mr. Rose.

Q Which lawyer did you give that check book last to.

A I don't know.

Q Did you give it to anybody? A I may have given it to Mr. Rose.

Q Will you tell me whether you ever gave that checkbook to anybody or not? A I don't remember. I may have given it to Mr. Rose.

MR. STRONG: I ask for the production of the check book, the check book containing the checks in question.

(Mr. Rose produced a book)

BY MR. STRONG:

Q Is that the check book? A Yes.

Q Is that the check book which you drew the check out of which you lost? A No.

Q Where is it? A This is July 15th.

Q Where is it? A I don't know.

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Q What did you do with the check book that you drew the check out of that was lost? A We never kept out check books after the vouchers were returned, and the check book was all used up.

Q Didn't you keep them for six years? A No sir.

Q When did you destroy it? A I don't know. I didn't destroy any check book. We just put them in the store, with a lot of other little pad books.

Q Is it in the cellar now? A We don't live in the same house. We have moved twice since that time.

Q When you left that house did you take the check book with you? A No sir, we didn't take any of the check books or pad books with us, because we thought they were immaterial.

Q Now you didn't go to the bank to deposit that thousand dollars, did you? A No.

Q You gave it to your little brother to deposit, \$1150? A Yes, and he had had larger sums than that to deposit.

Q You didn't take Goldman's check to the bank, did you? A No.

Q You took the cash? A Yes.

Q And why didn't you take the check? A Goldman had always cashed his checks since we had trouble with that Norris about an uncollected deposit.

Q And did you go with Goldman to cash this check? At his bank? A Yes.

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Q What day was that? A Tuesday October 14th, I believe

Q What time in the morning? A Several minutes after

9.

Q Nearly ten, wasn't it? A No, it wasn't.

Q Where is Goldman's house? A Goldman's place of business is on Thatford Avenue.

Q Where did you see him that morning? A I saw him at his place of business, and I walked down with him, because I took the car.

Q Now where did you leave him that morning. A Thatford Avenue and Pitkin Avenue.

Q Was your little brother along with you? A No.

Q When did you meet your little brother then? A When he came back from the bank I was in the place.

Q No, I don't think you understand me. You went to Goldman to get the check cashed, didn't you? A No.

Q Well, to get Goldman's check? A Yes.

Q And you went with Goldman to the Bank, so he could cash his check? A Yes.

Q Is that true? A Yes.

Q Was your brother with you at the time? A My brother rode down with the wagon, and he was outside.

Q He was outside on the wagon? A Yes sir.

Q Now after Goldman had his check cashed at what bank did he have it cashed? A Max Kobre's.

Q What did you do then? A I walked down to the

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car.

Q What car? A Ralph Avenue car.

Q With your brother? A No, he was on the wagon, going to the bank.

Q And did you give the money to your brother then?

A Yes.

Q Well, now, you haven't told me that. I asked you what you did. A Oh, I gave him the money.

Q After you got the check cashed with Goldman what did you do. A I gave the money to my brother on the wagon, handed him in a bag, all wrapped up.

Q And how far is it from this bank where you got the check cashed to the bank where the deposit was to be made?

A About ten minutes ride, I should think.

Q On the wagon? A Yes, on the wagon; ten or fifteen minutes I think.

Q What did Goldman do after he left the bank? A He walked down with me to Thatford Avenue and Pitkin and I walked down as far as Thatford Avenue and Rockaway to take the car, and he went down Thatford Avenue where his place of business is, between Pitkin and Belmont.

Q And was that in the same direction your brother was going? A No, he had gone in the opposite direction.

Q When did you next see your brother? A When he got home from the bank, I was in the place.

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Q How far is your place away from the bank? A Also about fifteen minutes ride.

Q What time was it you say you got this check cashed at this bank with Goldman, got the check cashed. A Several minutes after nine.

Q Wasn't it after ten? A No.

Q What time did the bank open? A Nine o'clock.

Q So you are sure it was not before nine? A No.

Q Did you get there before nine? A No, the bank wasn't open before nine.

Q Well, but did you get there before nine and wait for it to open? A No.

Q Did you see Goldman again? A When do you mean?

Q That day? A No.

Q When was the next time you saw him? A When we moved to Belmont Avenue. I believe that was the very next time I saw him.

Q How long after you got the money from him? A About three weeks, two or three weeks.

Q You had the \$650 that you drew out of the bank on the 11th in your possession, didn't you? A No.

Q Your fiance had it? A Yes.

Q Did you ask him to give it back to you? A No.

Q Did you tell him that it made a deficiency in your father's bank account? A Yes.

Q And did you ask him for it back? A No, not then.

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Q Did you try to get it for your father? A Not then, no.

Q Did you go to the bank to find out why that thousand dollars had not been paid on the checks that your father had drawn, or that you had drawn for your father? A Why we knew of it, the very next day, when Mr. Norris came to our place, on Wednesday.

Q You knew that Mr. Norris didn't get paid? A Yes sir, and we also knew from what Mr. Norris told us that Goldman had gone and cashed this check.

Q He hadn't cashed it, had he? A He had certified it.

Q Yes, had certified it? A Yes.

Q Had Goldman ever certified any of these checks before? A No.

THE COURT: The Goldman check was not cashed but was only certified.

MR. STRONG: Yes, certified. But he was entitled to the transfer of the money on the certification. The bank holds itself liable after certification is made.

THE COURT: But there is no transfer of the money.

MR. STRONG: No sir, but there is a transfer of title..

THE COURT: The bank merely certifies that there is so much money on hand in the account of that person.

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MR. STRONG: Yes.

Q Do you know?

THE COURT: Was the certified check paid that day?

MR. STRONG: I don't know when it was paid, your Honor. It was simply certified. Goldman got the money back though.

MR. MOSS: I think the check is here and will probably show whether it was paid or not on that day or on what day.

MR. STRONG: It was paid later on, sometime; not for a number of days. It was held at the bank, as I understand.

Q Now you say your father doesn't read or write?

A No, only he can tell numbers.

Q He can read numbers? A Yes.

Q Knows how much checks are made out for, doesn't he? A Yes.

Q And where did you use to keep your check book?

A Oh, in the desk.

Q Yes? A On the desk.

Q And is this the check book that you drew out this duplicate check from? A Yes.

Q I suppose that is entered in there isn't it? A No, that check isn't entered in there.

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Q No? A No. It had been entered in the former one already.

Q Well, after you had lost this, -- when you entered it in the former check book, did you deduct \$650 from the amount? A No, I just entered the check there.

Q And didn't subtract it when you balanced your check book? A No I hadn't taken the cash out for it.

Q And so you just put it down in the stubs here \$650? A Yes.

Q And, when you came to the balance the checkbook at the end of the month -- you balanced it every month? A Well according to the bank, I checked off the checks.

Q To see whether your balance agrees with them? A Yes. And sometimes I would just leave it go, because I had really little things to attend to, and I depended upon the bank to balance the book.

Q Then you would not check up the bank? A No, not always.

Q But usually? A Yes.

Q When you had time, you would go over it, to see whether the bank was right? A Sometimes, yes, not always.

Q And this \$650 check you never entered at all did you A Not in this book.

Q You entered it in the other book and didn't deduct it from your account? A Yes, I said that.

Q And, when you went to cash the \$650, it would

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leave a discrepancy of \$650 in your bank book wouldn't it? A Yes.

MR. STRONG: That's all.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Just wait a minute. Mr. Strong seems to have some idea that you are immature. Are you the mother of a child already? A Yes

MR. STRONG: Why, I think she is very mature, and that is why I dealt with her as such.

BY MR. MOSS:

Q I think that Mr. Strong unconsciously made an error in computation. From October 13, 1914 to June 1914 would be 8 months, instead of one year and eight months, wouldn't it? A Yes.

MR. STRONG: Then I stand corrected.

MR. MOSS: That's all.

M A X G O L D M A N, a witness called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A I am a hall keeper and saloon keeper.

Q Where is your saloon? A 105 Thatford Avenue, Brooklyn

Q How long have you had that saloon? A January 17th will be ten years.

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Q How long have you known the defendant Mr. Senowitz?

A About eight years. I believe.

Q Do you remember an occasion in October 1913 when you exchanged checks with him, or exchanged checks or money, some transaction that you had with him? A Yes, I do.

Q What was the date? Do you remember? A I gave a thousand dollars in cash to him to deposit.

Q Have you the check which you drew? A Yes.

Q Produce it here, please? A Here it is, sir.

MR. MOSS: I offer it in evidence.

THE COURT: On what date was that check deposited,

MR. STRONG: It was drawn on October 14th. It wasn't deposited, sir but was cashed.

THE WITNESS: I cashed it myself.

MR. MOSS: Well, I will ask you a question about that. I will just offer it in evidence now.

MR. STRONG: Yes. I just want to look at it. No objection.

(Marked Defendant's Exhibit E.)

THE COURT: Who is the drawer of the check, Mr. Moss.

MR. MOSS: It is drawn by Max Goldman to the order of Max Goldman and endorsed Max Goldman, and stamped "paid" indicating, I take it, that it was paid at the cashier's desk.

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Q Now, at the time, or about the time, had you received from Mr. Senowitz his check, which the people introduced as People's Exhibit 6? A yes sir.

MR. MOSS: Perhaps the Court would like to see those two checks.

Q What conversation did you have with Mr. Senowitz with regard to those checks? A He comes down to me by Sunday I believe.

Q Sunday? A Yes. And I can't recollect exactly, but I think it must be Sunday, and asked me if I can give him a thousand dollars, and I says "You don't need it to-day, do you?" And he said, "No, but I have to have it to make a deposit."

And I said, "To-day is Sunday and tomorrow is Monday, a holiday, and tomorrow the bank is closed, and to-day it is closed, and Tuesday I will be able to give it to you."

And he said, "When on Tuesday?" And I said, "Any time after nine o'clock". And he said All right, and he took a cigar and went away.

About Monday evening, he was around again, and he said, "I want to be sure, he said, because I have got to go to the market" and I said, "Yes, tomorrow morning, you'll get it."

Q That is, he spoke about going to the market, you

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say? A Yes.

Q And he wanted to be sure of it? A yes sir and so he said "I'll send Minnie up or the boy" and I said, "All right".

And, the next morning, the two of them came around the boy and the girl, and at the time of Monday I had some checks and cash, which, in the morning, I made a deposit in Kobre's Bank. I always belonged to the State Bank, and then I was a depositor in Kobre's Bank, too.

Q Keep your voice up? A And I never had much money in Kobre's, just a little, but that morning I made a deposit and checks that I cashed Saturday and Sunday, and I made out a check to myself for a thousand dollars, and I went with the boy and the girl to the bank and drew out a thousand dollars. Five hundred dollars in tens and five hundred dollars in fives, making three packages, and I gave it to the girl wrapped up in newspaper, and she took the bag and put in some more money -- what it was I don't know -- and she gave it to the boy, and he went to the bank, and I went home again.

Q And now when did you receive that check for a thousand dollars from Senowitz? A The girl brought it to me.

Q And she gave it to you? A Yes, before I gave her the cash.

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Q And what was said between you and Senowitz about holding that check? A I told him I would hold it for a few days.

Q And was that your intention, to hold it for a few days when you received it? A Yes, I always did that.

Q And how often had you done that transaction before? A Every week, but not as much as a thousand dollars.

Q How long a period had you been doing that? A Sometimes I used to change a check on Monday, so he deposited the cash; and, if it happened, that I hadn't been in the place on Monday, when I gave him on Tuesday, he went to the bank with the cash and deposited in cash.

Q Well, what sums had you advanced him in that way before? A \$300 or \$350 or \$450 -- about \$450 was the highest, with the exception of the holidays.

Q And what did you give him at holiday time? A A thousand dollars always.

Q And were those checks which you received from him always paid? A Always good, they were always paid. It happened sometimes when I was short of cash by Thursday I used to go into him and take \$100, and he would give me the difference in a check, if I was short of cash and then he would give me a check for \$300, say, where it was \$400.

Q Now you didn't hold this check for three or four days. Why was that? A Because I heard a rumor that

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Senowitz had failed, or was going to fail, and I run down and had the check certified, because I knew there was money in the bank.

Q And how did you know that there was money in the bank

A There is a big chicken market three houses away. All the big drivers of the trucks and automobiles that deliver the fish and the chickens and things from the market, they come into my place for a drink, and there was a rumor that before the holidays Senowitz is going to fail. I had the check in the drawer -- I had a drawer in the back of the bar -- and I looked at the check and I didn't know what to do.

Then I figured to myself, "I run down and have the check certified knowing that the money was there yet."

There was a small wagon right across the street from where I was, and I said, "Can you give me that horse and wagon for five minutes?" "I'll be right back." And he said, "Where are you going?" And I said, "I've got to see somebody" and I went down to the bank.

Q You borrowed the horse and wagon and went down to the bank? A Yes; because it is a good distance. I didn't know how many blocks. And I come into the bank and I asked the young man to certify the check and he looked at it and he said "It isn't good. Not enough money in the Bank."

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And I said, "This morning a deposit, I understand was made, to-day," and he said, "How do you know?" And I said, "Well, I know that there has been a deposit made. If you don't mind, please look over in the book". And he went over and looked in -- I don't know what he looked in -- in a book or whatever it was, and he comes back and he says "It's all right", and certified the check, and I went back and deposited it in Kobre's Bank.

Q In your own bank? A Yes.
when.

Q And did you have that check certified do you remember? A Oh that was before dinner.

Q How much before dinner? A It must have been around 11 o'clock or a little before or after.

CROSS EXAMINATION BY MR. STRONG:

Q Did you telephone the defendant before you went to the bank? A What do you say?

Q (Question repeated) To have the check certified?
A No sir.

Q He telephoned you and told you he was going to fail, didn't he? A No sir, he didn't.

Q Didn't you get a telephone message from this defendant on Tuesday morning? A No, I didn't.

Q What time did you go to the bank to get your check certified? A Around 11 o'clock. Before 11 o'clock I believe. I didn't look at the time, but I believe, accord-

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ing to what I remember, it must be before 11.

Q Wasn't it as late as 12 o'clock? A No, it was before.

Q What time did you go to your bank to get the money?
A After 9, before 10 o'clock. Between 9 and 10.

Q Between 9 and 10 you got the money? A Yes.

Q And after you got the money, what did you do with it?
A I give them the money, and -- I went back to my place.

Q Who did you give the money to? A To the girl and a boy. They were inside in the bank.

Q Did you know whether they were going to deposit it?
A Yes.

Q Where? A In the Mechanics Bank.

Q How far was that? A From the Bank I was in?

Q yes? A I couldn't say. That's a good distance.

Q Fifteen minutes drive in a wagon wasn't it? A I couldn't say. No, I don't think it was that much. I think you can walk there in about ten minutes.

Q Did you always draw out the cash when you gave it to Senowitz? A No.

Q Didn't you always give him cash? A No, always a check.

Q You always gave him a check? A Yes.

Q But on this occasion you gave him the cash? A No, not he, I gave it to the girl and the boy. They wouldn't get that money in that bank, Kobre's bank, because they

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weren't known.

Q Well, was there any reason why your check couldn't have been deposited in Senowitz bank? A Well, the bank wouldn't pay out on check, until they were collected.

Q Did you leave them right away, or did you walk some place with them? A I went right back to my place.

Q Didn't you walk down to the corner with the young lady who was on the witness stand? A No. She went her way and I went my way.

Q Didn't you walk down to the car with her? A No.

Q You left her right at the bank? A I give her the money and I went right home, because I left my wife in the place alone.

Q You put the check right in the drawer, didn't you? A I put the check in the drawer before I went out from the place, before I went to draw the cash.

Q No. When you came back, what did you do with Senowitz check? A It was in the drawer laying when I came back.

Q You had that already? A Yes, she gave me the check the second she came in, the girl did.

Q I know, and you left that in the drawer? A Yes.

Q How long did you stay in your place? A No t long.

Q How long? A Well, different kind of people come in, and I had to attend to my business, and I couldn't say how long it took.

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Q An hour? A No, less than that.

Q Half an hour? A Something around that neighborhood. I couldn't say.

Q And then, after half an hour was over, you went down to the bank? A No; those people which come down from the trucks and wagons, when they come in and had a drink, they were talking amongst themselves -- there was quite a few of them, you know -- then I heard some kind of conversation that they knew Senowitz was going to fail.

Q Did you ask them how they knew it? A They said they heard it in the market.

Q What did you hear? A What did I hear?

Q Yes? A They told me they heard in the market that Senowitz was going to fail.

Q Well, didn't you hear why he was going to fail?

A No, I didn't ask nothing.

Q Well, you didn't believe them did you? A Well, I didn't want to take no chances on a thousand dollars.

Q You didn't believe them that Senowitz was going to fail because you knew you put money in his bank that morning, didn't you? A Well, I didn't know whether I believed them or not, but I wanted to be on the safe side.

Q So you went right down to the bank? A Yes, I opened the drawer and I looked at the check and I said to my wife, "I'll be right back" and I went out, and it was too

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far for me to walk and I saw the horse and wagon on the other
side and I --

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MR. MOSS: That's all.

RE-CROSS EXAMINATION BY MR. STRONG:

Q Wait a moment. Where is the check book from which this check, Defendant's exhibit B was taken from? A The check book is at my place.

Q What date was that paid by the bank? A October 14th. I drew cash on that on October 14th. This is the thousand dollars I give him.

Q Well, how do you know by looking at that check?

A Why, I can recognize my writing.

Q You say your check book isn't here? A It's at the place. I can produce it to you at any time. I've got the book.

Q What's the number of that check? A 808.

Q There is nothing on it showing when the bank paid it is there? A Well, this is a stamp "Paid" on October 14th. It stamped out paid.

Q Well, the date has been torn off that check, the date it was paid? A No, it isn't.

Q Where is it? A Here it is (Indicating) Anybody can see it. It is a little rubbed off, because I had it in my pocket.

Q Well where is it dated when it is paid? A Well I goes over to the window with the check, and he pays me the cash on it, and he don't have to stamp "paid" on it. I can

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produce the book to you at any time.

Q These other checks were drawn on a different bank, weren't they? A Yes, on the State Bank.

Q All, to the order of Senowitz? A Yes.

Q Is this the only check you got cash for Senowitz on?

A On Kobre's Bank yes. I always gave checks on the State Bank, but this is on Kobre's bank, because the daughter and son weren't know at Kobre's Bank. That's why I went there.

Q Didn't you have any account in the State Bank on October 13th, 1913? A Yes.

Q Well why didn't you give a check on the State Bank?
that

A Because I didn't have much money in the State Bank, and had more money there in Kobre's Bank.

Q Did you have a thousand dollars on deposit in the State Bank on October 13, 1913? A I did and more than that.

Q And a great deal more than that hadn't you? A I couldn't say.

Q Did you have more than a thousand? A I couldn't say. I don't remember.

Q You had your check book there to find out, didn't you? A Where?

Q At your place of business when you drew this check?

A Well I rather had drawn it on the Kobre's Bank, because I didn't want to keep so much money in Kobre's Bank. I never trusted them too much money.

Q Well only on this one occasion you thought you had

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not enough money in the State Bank, and you drew it on your other bank? A Well, it being holidays time, I didn't want to keep the checks that I had cashed around me and so I put them in Kobre's Bank that morning.

MR. MOSS: Your Honor will remember that the young man from the bank testified that \$1153.15 I think it was, was deposited in the bank on that morning by the defendant.

SAMUEL FINKLESTEIN a witness called on behalf of the defendant was not sworn, but affirmed, and testified he lived at 39 Thatford Avenue, Brooklyn.

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A I am a Rabbi.

Q And are you in charge of a congregation? A Yes.

Q Where is that congregation? A 135 Thatford Avenue

Q How long have you been there? A About thirteen years.

Q Do you know the defendant Julius Senowitz? A Yes, I know him about twelve or thirteen years.

Q Do you know others who know him? A Yes.

Q Do you know what his reputation for truth and honesty is? A yes.

Q Well, what is it? A Well, I know he is an honest man that's all.

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CROSS EXAMINATION: None.

JULIUS SENOWITZ, of 1784 Bergen Street,
Brooklyn, the defendant being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Senowitz how old are you? A 52.

Q How long have you been in business in New York?

A Sixteen years.

Q And what has been your business in the last few years

A Poultry business.

Q Retail or wholesale? A Retail and wholesale.

Q And where has been your place of business? A My
place of business was in 661 Ashford Street.

Q And how long have you had that business there?

A Five years.

Q Now were you in the habit of buying poultry from
dealers in West Washington Market? A yes sir.

Q And selling it to your own market? A yes
sir.

Q And have you, during that period, bought and sold
a great deal of poultry? A yes, from \$1700 to \$2000
a week,-- from \$1300 to \$2000 a week, according to as
the market was standing.

Q And were you running your business on the credit sys-
tem? A yes sir.

Q How much time did you usually have to pay for your

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goods? A From seven to ten days.

Q And you were a customer of Frankel were you? A Yes sir.

Q And of other men in the market? A yes sir.

Q You bought your poultry where you could get it?

A yes sir.

Q At the prices you could I suppose? A Yes, according to market price.

Q And, during this period, did you have a bank account?

A Yes sir.

Q And your bank account was used in these transactions wasn't it? A Yes sir.

Q You paid for your goods by check, and your checks were paid till this trouble came? A yes sir.

Q Now, I want to ask you about an arrangement with Mr. Goldman in October 1914, about the exchanging of those checks. Please tell the jury, and speak loudly, so that they can hear you, just how that came about, and what you did? A It was in October ^{10th} 1913 I made a deposit in the bank of about \$1400, and then I had to give out some check and I give out checks, and then, when the checks were due, I asked my daughter how much money we have got in the bank left and she told me we have over \$800, pretty near \$900.

Q Did she tell you on the 10th? A On the 10th of October.

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Q That you had pretty near \$900, clear? A Yes, when the sale was done for the Day of Atonement.

Q Yes? A That I had \$900 in the Bank. Then I told her I wouldn't have enough money to cover the bills. "Well", she said "I think you have enough".

And then, on Saturday, my bills comes in. That was the Day of Atonement -- yes, Saturday, I think -- and I went to the Synagogue and I didn't talk about business on that day, but Sunday I asked her how many bills we got in, and she said, "About \$2000."

And I said then, --I told her, "I have to go to Goldman to get a thousand dollars, or I wouldn't have enough to cover the bills."

Then I asked her, "Whose bills is coming in"? And she told me "J. N. Norris, Jr., and William Norris and Sol. Frankel's bills." I beg pardon. J. N. Norris Jr. and Sol. Frankel's bill, and Westerberg's bill. And so I went to Goldman's place and I said, "Can't you do me the favor of lending me a thousand dollars to pay my bills?" And he said, "Well, I can't give it to you to-day. This is Sunday. But on Tuesday I will give it to you."

And, when I come home, Sunday night, I told her to make out checks for them three bills, and to date them on the 14th, she should date the checks on the 14th.

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Q Why did you want her to date them on the 14th? A Because I wasn't sure I did have money on the bank.

Q You were then trying to get the money from Goldman?
A Yes, from Goldman. She gave me the checks, and I went to the market, in the morning.

Q Now wait a minute. What directions did you leave about money, money from Goldman? A Well, I went to Holdman, and he promised me he would give me that check on Tuesday morning.

Q And did you send him a check for \$1000? A No I didn't sign it. I didn't sign the check for him that day.

Q When did you sign it? A Monday night. And I told my daughter she shall go in the morning to Goldman, and get a thousand dollars for me.

Q And you left that dealing with her? A Yes sir.

Q And you believed that thousand dollars would be deposited, did you? A I believed so.

Q Did you at that time know that she had drawn \$650 on any check? A No, I didn't know that.

Q When did you first learn that? A I know it in the minute when I was locked up. Mr. J. N. Norris Jr., told me that.

Q Now Mr. Senowitz I want you to tell just in your own way what transpired, what you did from the time you went into the market there on the 13th day of October, in your dealings with Mr. Frankel? A On the 13th day of October?

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Q Yes. Now speak up? A In my dealings with Mr. Frankel.

Q Yes? A I went in when I come over to New York.

Q I don't hear you. Speak up. A From Brooklyn, From Brownsville to New York. It was about ten o'clock in the morning and I give over my wagon to my driver, and I went into Mr. Sol Frankel's in his office, and handed him a check for \$640 -odd dollars.

Q That was the check for the previous week's goods wasn't it? A yes sir.

Q Now was that the Frankel who testified? A No, I didn't see him at all.

Q You didn't see this man at all? A No sir.

Q What Mr. Frankel did you see? A The old man, Mr. Frankel.

Q The one that's dead? A Yes, the father.

Q Now, the check is made out Sol Frankel, not Sol Frankel Incorporated? A Yes.

Q And did you give that check to Mr. Sol Frankel?

A No, I gave it to Mr. Waldo, the cashier, the book-keeper.

Q But did you have any conversation with Sol. Frankel?

A Yes. Well I went out I met Sol Frankel on the floor of the stand, and he wishes me a Happy New Year, because it was after the Day of Atonement.

And he asked me if I needed some stuff, and I told him, "I need some stuff, but you aint got it,"

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And he said, "Later in the afternoon I will have a car from Mr. Weingartner, the shipper, and he has good poultry, and he says he will give it to me alone.

And I had two wagons over there, and I go to buy poultry at another place. I buy poultry from Fleck & Hellman.

Q Who else did you buy poultry from? A From nobody else except Fleck & Hellman. And, in the afternoon, Mr. Sol Frankel showed me -- I was standing across the way talking with people, and a lot of poultry comes in and he called me up and he said, "Senowitz this is good poultry. Take it. How much do you want?" And I said, "All right". I looked around the poultry and I took 13 coops.

Q And who was your talk with? A Mr. Sol Frankel.

Q With the old man? A Yes.

Q Did you have any conversation with this young man, Mr. Frankel, who testified? A No sir, I didn't see him at all all day.

Q You had no talk with him? A No, I didn't see him to talk to.

Q Now, you saw this man Norris on the stand, and you heard his testimony, didn't you? A Yes, I saw him. I saw him in his office.

Q On that day? A Yes.

Q Will you state any conversation you had with him?

A With Mr. Norris, I didn't have no conversation at all.

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I went in and asked for my last bill -- I had no bill from him -- and I said to the book-keeper, "Why didn't you send me a bill?" And he said, "Well, I can make out the bill right away."

And I said, "What's the use of making out a bill? I aint got no money, " and he said, "All right. Make out the check and I will keep it until Wednesday, and Wednesday you will have plenty of money to cover it."

And he made out the check on a strange blank, too, because I didn't have no money."

Q Is this the check, the Norris check? A Yes.

Q It isn't made out on your plank is it? A No.

MR. MOSS: "The Mechanics Bank" is written in there, dated October 14th.

BY THE COURT:

Q What did you say to Mr. Norris about that check?

A I said to him, "I can't give you no check, to-day- because I aint got no money to pay, and I aint got no bill, " and he said, "Never mind. That's the bill, and you sign a check, and I am going to keep it, and Wednesday or Thursday I will have plenty of money, and you come in and pay it."

BY MR. MOSS:

Q Now you say you had received no bill from Mr. Norris?

A No sir.

Q And then he told you the amount in the office, and wrote

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out this check, and told you to sign it? A Yes sir.

Q And said they would keep it until Wednesday? A Yes sir.

Q And you say you had no such conversation as this Mr. Norris testified to on the stand? A No, I only asked him if he will have some stuff, to-day.

Q Now were you asked by anybody on that day, whether your check was good? A No sir, they never asked me that.

Q It never occurred in all your business did it? A Eh?

Q It never occurred at any time? A No sir.

BY THE COURT:

Q Did Mr. Norris ask you whether the check was all right, and did you say yes? A No sir.

MR. STRONG: I think the defendant just testified that his conversation was with the book-keeper of Norris.

MR. MOSS: No he said he had a talk with the book-keeper of Frankel.

MR. STRONG: No, with the book-keeper of Norris.

BY MR. MOSS:

Q Did you have any talk with Mr. Norris on the 13th of October? A No; I only asked him if he will have some stuff, and he said, yes, later in the evening or in the morning.

Q Well, who told you that he would keep the check until

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Wednesday? A The book-keeper.

BY MR. STRONG:

Q What is the book-keeper's name? A I don't know.
They used to call him "Sid".

BY MR. MOSS:

Q Now did you know that Mr. Goldman was presenting his
check at your bank at all? A No.

Q Did you know that Mr. Goldman was presenting a check
for \$1000 against you, when it was done? A Yes.

Q When did you know that? A I know that, because
I gave the order to give Mr. Goldman a check for \$1000.

Q No. I mean that he had presented it at the bank,
or was going to do so? A No sir.

Q Did you know that he had had his check certified?
A No sir, Mr. Goldman promised to wait for that check for
three or four days.

Q And when you gave a check to Mr. Frankel's concern,
did you believe that you had the money in your bank to meet
that check? A Yes sir.

Q At the time you were arrested, Mr. Senowitz,
did you still have chickens unsold? A Yes.

Q What became of those chickens? A Most of them died
off. When I come over, they were locked up from Thursday
night, and I did took care of them up until Saturday about
9 o'clock in the morning, and, when I come in, I find some of
them dead.

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Q You were not doing any business? A No sir.

Q Well, how were these chickens kept? Are they kept in the coops? A In the coops, yes.

Q So that they are all crowded together? A yes sir.

Q And they have to be handled quickly? A Especially in this month, in October and November, they fall like flies.

Q At that time were you selling chickens at 15 cents a pound? A Yes sir.

Q What chickens were you selling at fifteen cents a pound? A Spring chickens and fowls. It is no one price in the market for selling fowl or poultry.

Q Well, were you selling chickens for less than you paid for them? A No sir. Sometimes for more, and sometimes for less, because we want to get rid of them, so they shouldn't die.

Q And you are not allowed to use chicken that die, are you? A No.

Q Well, at the most of your chickens were you selling them above the price you paid for them? A Yes, above, and sometimes the price that we paid for them.

Q Well, -- A According how the market is standing.

Q Were there some Spring chickens? A Yes.

Q And some seconds? A Yes. Spring chickens were cheap at that time.

Q And seconds? A Oh, yes. This month it is pretty

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near all seconds.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. STRONG:

Q Now, Mr. Senowitz you say you can't read or write?

A Yes.

Q You can't read or write? A No.

Q And you don't know anything about this check book?

A I know that's my check book.

Q You can't read any figures in it? A Figures I can, yes.

Q Would you be able to tell me the balance in your check book at any date that I asked you? A I might. I'll try.

Q Are you able to do the arithmetic in this book?

A Not very good.

Q But you can do it? A Yes, but I mix it up.

Q You allowed your daughter to attend to the books?

A Yes.

Q Did she make any mistakes? A She used to make, but I used to keep that in my head, and, if she made a mistake, I would tell her to make that over again.

Q So you used to keep the figures in your head, check up how much money you had on hand? A Yes sir.

Q And so you knew at the time, October 13, 1913, how much money you had in the bank? A October 13?

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Q Yes? A I had pretty near \$900? Not quite \$900.

Q Just what the young fellow from the bank testified to is that right? A I don't know. I don't remember what he testified to.

Q Well, October 1th, it was \$805.52, is that right?

A It might be.

Q Your daughter told you that, didn't she? A Yes.

Q Now between October 11 and October 14th, no money was deposited in the bank was there? A It was a holiday.

Q Well, you knew that no money was deposited in the bank

A No, not until October 13th.

Q And you signed that check on October 13th, 1913 didn't you? A I signed it on the 13th. I handled it on the 13th, made out for the 14th.

MR. STRONG: Referring to People's Exhibit 2.

Q You signed that check on the 13th, didn't you?

A Yes.

Q Who was that to? A I don't know. That day I think that is Mr. Westerberg, \$517. I remember that.

Q Then you can read that check, can't you?

A No, it is only I know the figures what I owed him. I remember that.

MR. STRONG: Referring to people's Exhibit 4.

It is to the order of E. Westerberg & Company.

Q And you signed this check on October 13th and dated it October 14th? A Yes, I signed all my checks on October 13

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MR. STRONG: Referring to People's Exhibit 1.

Q And you signed this check, did you? A Yes, this is mine, the signature is mine.

Q When did you sign it? A I can't tell you when I signed that check, because this check -- I had blanks signed in the place, to pay out little small bills, and my daughter used to pay those. I don't know when I signed that check.

Q Was that check attached to the ^{book} check when you signed it? A Maybe it was in the checkbook/ I don't know. I don't remember.

Q Were these checks that you signed in blank attached to the check book when you signed it? A Yes; I signed in the book a couple of blanks, five or six, according I see how many checks have to be paid out, and, when the bills come in, my daughter used to pay the bills with a check.

Q Will you please answer my question and not talk so much? When the checks were signed by you, were they attached to the check book, or torn out? A Some was and some wasn't.

Q Mr. Senowitz, when you signed the checks did they have the amounts written on the stub, opposite the checks in the check book? A No, I used to sign plenty of blanks.

Q Would you sign several pages of checks, without having anything written on the stubs? A Yes, because I didn't know how much she had to pay.

Q How did you know how much money you had in the bank

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then? A Well, I used to make a monthly balance about,

Q A monthly balance of your check book? A Yes.
And then I used to check up the checks.

Q Do you mean to tell me that you used to go and buy goods for three weeks, without knowing how much you had in your bank? A Mostly I didn't know.

Q You never knew how much you had in the bank? A Mostly I didn't know.

Q Well, I thought you kept that in your head? A Well, maybe I made a mistake of a hundred dollars.

Q And you never made a mistake of more than \$100 in your life, did you, so far as your finances are concerned?

A (No answer)

Q Did you ever make a mistake as to how much money you had in the bank, more than \$100? A I don't remember. Maybe I did, and maybe I didn't.

Q Well do you know whether any check amounting to more than about \$100, came back to you as not good, or not sufficient funds? A Yes.

Q Did you ever know checks for more than a hundred dollars to come back insufficient funds? A No sir; but because they aint collected deposits yet, the checks what I deposited.

Q Well, did you or did you not make a mistake in your life during your computation? A I couldn't tell you whether it was \$100 or \$500. Sometimes I make a mis-

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take of \$500.

Q When was that? A Only when I need the money, and I figures I had it in the bank.

Q And you don't know whether that was attached to the check book or not? A No sir.

Q Did you ever sign a check to your daughter for the sum of \$650? A Yes sir.

Q Did you take that into your computation as to the amount you had in your bank? A I didn't take it off from the amount what I had in the bank. I told her she shall not deposit until I tell her to deposit it.

Q When did you first learn of the fact that checks were not being paid that you had given on the 13th of October?

A I learned that on the 14th of October, in the evening.

Q In the evening? A Yes sir.

Q Did you call up Goldman? A Eh?

Q (Question repeated) A No, I didn't call nobody. B cause one man, Charles Westerberg came over to me, to my place and he says "Your check is bad," and I said, "It's impossible, because I know I had money to cover them three checks, and Morris promised to keep that check."

Q And his check was for \$617. A Yes sir.

Q And on October 14th, 1913 you signed a check for \$643.67 for Sol. Frankel, is that right? A Yes.

Q And for Westerberg, for \$517.49? A Yes.

Q And for James N. Norris, Jr., for \$803.74, is

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that right? A Yes.

Q And at that time you knew you had only \$805 in the bank did you not; you knew that you had on October 11th and you had made no other deposit since; isn't that so?

A Well, I figured I had over there about 900, and then I deposited on the 14th of October in the morning, I deposited \$1153.

Q \$153 besides the thousand dollars that Goldman lent you? A Yes.

Q Yes. That was the thousand dollars that Goldman says he lent you, and \$153 in addition? A Yes.

Q Now how long did Norris say he would hold up this check for you, or his book-keeper? A Until Wednesday.

Q His book-keeper said that, did he? A Yes sir.

Q And what is his book-keeper's name? A I know they used to call him "Sid".

Q And they all know him by that name over there? A Yes by that name.

Q Did you make any memorandum that it was not to be cashed until Wednesday? A That's what he told me. I took his word for that.

Q But it was dated October 13th? A I didn't recognize that.

Q Well you read the check before you signed it, didn't you? A I only saw the figures. I can't read.

Q Well you can read figures, can't you? A Yes, but

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I didn't see the date.

Q And, although you talked about not having it cashed for two or three days, you didn't have the date changed? A Well, many a time I used to give them a check and dated it the same day, and they would keep it.

Q Did you tell him that you didn't have the money in the bank at that time? A Yes, I told him I didn't have no money. In the first place, I hadn't figured up the bill, and, in the second place I said, "To-day I aint got no money".

BY THE COURT:

Q With which Norris did you have the conversation, with the father or the son? A With the son, William Norris I didn't have no conversation with him at all, only asked him if he has got any stuff, or if he will have any stuff, and he says he thinks he will have it in the night or in the morning.

Q What's the father's name? A James N. Norris, Sr.

Q And the one who was a witness here, was that William Norris? A Yes, William Norris.

Q William H. Norris? A Yes..

MR. MOSS: If your Honor please the conversation about holding the check was with the book-keeper.

THE COURT: Yes.

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BY MR. STRONG:

Q Did you give a check to Fleck & Hellman for \$482.73

A No sir.

Q I can't hear you? A No sir, I didn't give it.

Q You bought that amount of goods from them? A Yes, but I didn't pay for it.

Q When did you buy those goods? A The 13th and 14th. Them two days.

Q Did you give them a check for your previous week's balance? A To who?

Q To Fleck & Hellman? A I don't think so, no; Because I didn't bought from them that week before.

Q But you bought good amounting to \$487.76 from Fleck & Hellman on that day? A Yes, on that day.

Q Now, how much goods did you get on that day? A From who? From Fleck & Hellman?

Q No, from everybody, all told. A I ha d from the New York Market, and Sol. Frankel, and Norris, 14 coops. That amounts from twenty two to twenty four hundred pounds.

Q Where did you get goods from? A From Fleck & Hellman.

Q How much? A 13 coops I think

Q Anybody else? A Nobody more.

Q Westerberg? A No sir.

Q You didn't get any from Westerberg on the 13th?

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A No sir; even not on the 14th.

Q When did you get Westerberg's goods. A I had that the week before, on the 6th or 5th.

Q Well you gave Westerberg a check on the 13th? A Yes I paid him for the previous bill.

Q But you got no goods from him? A No.

Q And how much did you get from Norris on the 13th?

A Nothing.

Q How much did you get from James N. Norris Jr., on the 13th? A I don't know. My daughter can tell you.

Q What? A My daughter can tell you. I think it was about 17 coops.

Q So that you did get some coops from somebody else, didn't you? A Yes, but he sent me more stuff than I needed.

Q Well, how much did he send you? A My share was three coops from each car. I had to take them.

Q Well, how much was your share, how much did he expect from you? A Three coops from every car.

Q How much was that? A That would be from 1700 to 1800 pounds, and he had three cars and I took nine coops and he sent me 17 coops.

Q And those were the only people that you got chickens from? A On the 13th, yes.

Q Did you get any on the 14th? A I had from J. N. Norris Son & Co. and from J. Fleck.

Q Did you sell any on the 14th? A No sir.

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Q And the 15th? A The 14th and 15th were the same.

Q And you were not going to sell any on the 16th? A On the 16th I was locked up. I wasn't allowed to sell it on the 16th; I was locked up.

Q The 16th was a holiday? A Yes.

Q And you didn't sell on the 16th? A Yes.

Q And you finished your sale then on the night of the 15th? A Yes.

Q Everything that you had on the night of the 15th was surplus? A Yes, there was from fifteen to eighteen coops left over.

Q But that was all surplus? You were not going to sell those, were you? A Positive I would sell them.

Q You were going to keep them over until after the 17th weren't you? A Yes, I was going to keep them over.

Q And you prepared them in such a way that they would keep? A No, they didn't was prepared in that way, because on the 17th -- that was Friday -- then on Friday the second day of the holiday, we used to kill chickens and sell them anyhow.

Q In other words you finished your sale of live chickens on the night of the 15th? A Yes sir.

Q And on the 16th was a holiday? A Yes.

Q And on the 17th it was your custom to kill? A Yes it was the custom to keep open on the 17th, but I couldn't be there, because I was locked up.

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Q Your place was there, wasn't it? A Yes.

Q And your daughter had the key? A No sir. I forgot the keys and I had them over there in the jail.

Q Nothing prevented your sending the keys over? A I didn't have nobody to send it.

Q When did you first see anybody after you were locked up? A It didn't was in my mind, when I was locked up.

Q Why, you let them know that you were locked up right away when you were locked up, didn't you? A They took me from my house.

Q Well, they knew you were locked up? A Yes.

Q And there was nothing to prevent your giving the keys over to your family was there? A I took them in my pocket and I forgot to give them to my family.

Q Did you offer to return these chickens that were left over to anybody? A I offered them on the 15th. Mr. William Norris and Mr. James N. Norris came over and asked me for money, and I said, "What can I do? The stuff is standing, and I don't make no collections. Wait a couple of days, and I will go out and I try to make all fair and square, I'll straighten it up," and he says "Well, I can't wait, " and he went away, and then the second day, in the evening he comes over with a policeman and arrests me.

Q But at what prices did you sell those chicken that you bought? A Different prices.

Q Now what did you sell them for on the 14th? A Spring

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chickens, we sold them for 16 cents a pound.

Q And what did you buy them at? Will you please tell me? How much did you pay for them? A 14 I think, or 14 1/2. I can't remember.

Q Well now please try to remember? A Well, Mr. District Attorney, can I remember a thing what was two years ago

Q Well, but haven't you looked it up in the preparation of your case? A Well, the bills shows. We have got bills.

Q Now are you sure that you sold them for 16? A Well, that were 14, maybe too.

Q Do you remember having a talk with Mr. Adler?

A No.

Q He didn't tell you that you were going to fail?

A Mr. Adler said here that I told him -- that was 11 o'clock on the 14th -- and I will prove that was in the West Washington Market, with a team of horses and a wagon.

Q Then you didn't have any talk with Mr. Adler about your failure? A No.

Q And you didn't have any conversation with him about selling below cost? A No.

Q And then he didn't know, of course, that you were about to fail? A What do you say?

Q I will withdraw that. You didn't have any talk with Mr. Adler about selling below cost; did you? A No sir.

Q Did you have any talk with anybody about failure?

A No sir I never had in mind to fail.

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Q But on the 13th you paid out -- you drew checks for a larger amount than you had in the bank, did you not?

A No, I think I had in the bank as much as I give out checks

Q Well, now you know that isn't so, don't you? A Well the figures show.

THE COURT: The Norris and Westerberg checks amounted to --

MR. STRONG: About \$2500.

THE COURT: The first check was for \$613?

MR. STRONG: Yes, I think so. \$803.74 is the check to Norris Jr. I think.

BY THE COURT:

Q Are the father and son in business together? A No; the son used to keep over there in Brownsville.

THE COURT: Very well. I have it. Proceed.

BY MR. STRONG:

Q You drew checks on that day for over \$2500, didn't you? A Yes, but one check \$613, Mr. Norris Son & Company that had to be deposited on the 15th of October, and would come in on the 16th, when I will have money in the bank. That's what he promised me; that's all.

MR. MOSS: The defense rests.

MR. STRONG: I want to get the clerk that was referred to from James N. Norris as to the holding up of that check. I think that's a matter of great importance, and I have sent for him and I expect him

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here.

THE COURT: Have you any other witnesses to call?

MR. STRONG: I think I may have one or two others. I'll tell your Honor in a moment. I want to offer the check book referred to in evidence.

(It is admitted and marked People's Exhibit 9)

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R. E B U T T A L.

S I D N E Y G. H O A R E, of Richmond Hill, L. I.

a witness called in behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business? A Book-keeper.

Q Whereabouts? A West Washington Market.

Q Do you know James N. Norris? A (No answer)

BY THE COURT:

Q By whom are you employed? A James N. Norris.

BY MR. STRONG:

Q Do you know where James N. Norris Jr. is? A I do.
St. Joseph Missouri.

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

Q Did you see him on or about October 13th, 1913?

A Yes sir.

Q I show you People's Exhibit 13 and ask you whether you know the circumstances under which that check was made out? A I made out the check.

Q All of it? A All but the signature.

Q And, after making it out, what did you do with it?

A What did I do with the check?

Q Yes? A Deposited it.

Q Who signed it? A Julius Senowitz.

Q And after he signed it, do you remember when you

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deposited it? A The same day.

Q That was on Columbus day? A Oh, yes, it must have been the following day, then. I don't keep checks as a rule.

Q Did you have any conversation with the defendant about when you would deposit it? A Not that I remember.

CROSS EXAMINATION BY MR. MOSS:

Q You are not very sure in your memory about the check are you, whether you deposited it that day or the next day? A Yes, I always deposit checks the same day I receive them.

Q And you have no clear recollection of what was said; have you? A No, only I remember making out the check. I made it out.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q Was anything said about when you should date it? A I couldn't remember that.

Q Did this defendant tell you that he had no money in the bank at the time you make out that check for him and did he tell you not to deposit it before wednesday of that week? A No sir.

Q He didn't tell you that? A No sir.

Q Or anything to that effect? A Not that I can remember.

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Q Well, can you remember whether he did or not? A I don't think so; I don't remember.

Q What is that? A I don't remember

Q Well don't you remember whether he told you that or not? A I wouldn't be certain; I wouldn't say yes or no to it.

Q If he had told you that wouldn't you have held it up?

MR. MOSS: Objected to as hypothetical.

THE COURT: Objection sustained.

BY MR. STRONG:

Q Has he ever asked you to hold up depositing checks before?

MR. MOSS: I object to that.

THE COURT: Sustained. The important question is whether he asked him on this occasion.

MR. STRONG: That is all.

MR. MOSS: That is all.

MR. STRONG: We rest. Just a moment.

J O H N R. M O H R, of 447 Richmond Avenue, Brooklyn, being recalled by the Assistant District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q Do you know how long it was after the \$1150 .15 was deposited that somebody came to have the Senowitz check certified?

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MR. MOSS: I object to that.

THE COURT: Sustained. The record shows that.

BY MR. STRONG:

Q Well I didn't know whether I had gone over that. If I have, that is entirely satisfactory.

THE COURT: Yes. The witness said he made a memorandum of the time, and it was shortly after the deposit was made.

MR. STRONG: Well then, that is all. we rest.

MR. MOSS: We rest, and renew the motions made at the close of the People's case, on the same grounds.

THE COURT: Denied.

MR. MOSS: Exception.

(Mr. Moss summed up for the defense, and Mr. Strong closed the case for the People)

(The Court then charged the jury)

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