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HON. JOSEPH F. MULQUEEN, J
and a Jury.

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Indicted for Grand Larceny in the sec

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

FOR THE PEOPLE.

Frank S. Beard,

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S O P H I A S C H E N K E R, of 1734 Amsterdam Avenue,
a witness called in behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q Where do you live, Miss Sophia Schenker? A 1734
Amsterdam Avenue.

Q And do you go to High School? A Yes, sir.

Q And what business is your father in? A Stationery
business.

Q Has he got a store? A Yes, sir.

Q And where is that store? A At my home address.

Q At the same address? A Yes, sir.

Q And before you go to school in the morning, do you take
care of his store? A Yes, sir.

Q What time do you go to school? A As soon as my father
comes home I get dressed and go to school. He usually reaches
the house and gets through delivering his papers, about half
past seven.

Q He goes out in the morning to deliver papers, and
leaves you in charge of the store until half past seven?

A Yes, sir.

Q And then he comes in, and you go to your High School?

A Yes, sir.

Q Now do you remember the 27th of November, 1915? A Yes,
sir.

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Q And did your father go out to deliver papers that morning? A Yes, sir.

Q And did he leave you in charge of that store? A Yes, sir.

Q And do you remember Marian Chrystie coming into that place on that morning? A Yes, sir; in the presence of Mr. Joseph Brenner.

Q Who came in with her? A Mr. Joseph Brenner.

THE COURT: Is that the male co-defendant?

MR. EDER: Yes, sir.

Q And when they both came into the store -- had you ever seen them before? A I had seen Mr. Brenner before, but not Miss Chrystie. I don't recollect seeing him in my store, but at my paper stand, in front of the store, before that.

Q And on that morning Miss Chrystie and Brenner came in together? A Yes, sir.

Q Did Mr. Brenner say anything? A He said, "Hurry up. We want to catch the car," or something to that effect, and Miss Chrystie said, "All right, I want to look at a birthday card".

Q Please raise your voice. And what did they say to you or either of them? A Miss Chrystie said she wanted to see a birthday card, and I said, "What price?" and she said, "One cent".

Q Now where do you keep those cards? A At the rear end of the store.

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Q And did she go to the rear end of the store with you?

A No, sir; she stood about the middle of the store, with Mr. Brenner, and when I turned around to go up to the front of the store, Mr. Brenner was no longer in the store. And I have three shelf cases in my store, and I put the box of postal cards on the third shelf case, and Mr. Brenner wasn't there then. And Miss Chrystie looked over the cards and said if I had any views, and I took her up to the front of the store where the views were on a rack in front of the store, and she only glanced up and down at them, but did not take any of them in her hand.

And she said, "Oh, I won't take any cards just now. Give me a package of Perfection cigarettes", and took a nickel out of the palm of her hand, and paid for them, and walked out of the store.

and I walked right out after her, and she stood at the curb, and she turned around and looked at me, and walked across the street.

And she only had a nickel in her hand, and when she left the store, I went right back to see if something was missing, but I never looked at my fountain pen case, but only at my watch case, because that was a much smaller case, and everything was in good condition.

And about five minutes later a customer, a gentleman, came in and asked for the change of a quarter, and he put his hand over where the fountain pen case was, and I went and looked

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to see where these people were, and I didn't see them, and the officer came in.

Q Did you see the Chrystie woman at any time after that?

A Yes, she came into my store again, and her friend, Mrs. Brenner, was waiting for her outside.

Q And did you then recognize her as the woman that came in with Mr. Brenner? A Yes, sir; I even called my sister's attention to the fact that she was the girl.

Q And did you say anything to her that day? A No, I didn't. All that I did was to follow her.

Q Now where did you follow her to? A She walked across the street, and I had no hat or coat on, and I walked on this side of the street (illustrating), while she was on the other side of the street, with her friend.

Q Which friend? A Miss Brenner -- Mrs. Brenner -- pardon me, not Miss Brenner -- and they walked up to 147th Street, the two young ladies and they crossed on the side of the street where I was, and we kept on walking, and I stopped at a drug store to look in, because I didn't want them to know I was following them, and one of them said, "I wonder where the fruit store is", just to let me hear that.

And then they went into the confectionery store, and there was an officer on duty outside of the store, and I spoke to him, and he sent me up to the station house to get a policeman, and meanwhile he was watching the girls in the ice cream parlor,

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and the Captain told me --

MR. CHANLER: Objected to.

THE COURT: Sustained.

Q Now did you again see these defendants? A Yes, sir.

Q Where? A They passed by my store, and they were going into a chop suey house and they stopped off, and Miss Chrystie and Miss Brenner turned around and stared at me, and she asked me who I was looking at, and I walked up to her, and my father got an officer, and they were arrested.

Q And when the arrest was made the officer took them into your store? A Yes, sir.

Q Now did you hear the officer speak to either of the defendants? A Yes, sir; in my store.

BY THE COURT:

Q Well, what did the defendant say? A Well, which one?

Q Either of them? A Miss Chrystie said -- the officer spoke to her and he asked her --

Q No, what did she say? I didn't ask you what the officer said. We don't care for that. A In answer to a question of the officer, she said she was never in my store before.

Q Well did she say anything else? A She said she wasn't in my store on the date of the robbery, that's what she said, but she was in my store, though.

Q No. What did she say? ^{we want} That is what you to tell us, not what the officer said. A Well, I am telling you.

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Q No. You say she was in your store. What did she say?

A She said that she wasn't in my store, the day of the robbery, and never was in the store until three days previous to this day when she was in there, the day of the arrest.

Q Well did she say anything else? A And when the officer was there, we explained the way --

Q Now what did the defendants say? I don't care what the officer said. I have told you often enough. Now will you please do what I tell you to do? Or I will tell you to leave the stand. A Miss Brenner said, "You will have to prove that Marian Chrystie was the one that walked out with the goods. Maybe the man did it."

Q Well, was anything else said by them or either of them?

A Marian Chrystie told the officer -- she admitted --

Q No, not what she admitted. What did she say? A She said that she was in my store, and that she did help Mr. Brenner steal the fountain pens.

MR. CHANLER: No, I want the words, your Honor. That is a conclusion.

BY THE COURT:

Q Well now, what did she say? A She said that she had come into the store on the morning of the robbery, and that Mr. Brenner walked out of the store, with the pens, while she stood there and kept my interest on her. And she did say that --

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BY MR. EDER:

Q Now did she say what happened to the pens, what was done with them? A They took the fountain pens to Miss Brenner's apartments, 37 Bradhurst Avenue, where they were living then, and they were taken up on the roof -- Mr. Brenner took them up on the roof -- and broke open the case there, and she said that she gave -- that Mr. Brenner gave Miss Brenner one pen, and she accepted it, and she said that they had -- she said that they had -- that Mr. and Mrs. Brenner had --

MR. CHANLER: Is that binding on my client, your Honor?

THE COURT: No, this statement affects only one of the defendants, the one who made it, after the completion of the alleged crime.

MR. CHANLER: And was the other defendant present?

THE COURT: It is not binding on the other defendant at all, unless the other defendant joined in the conversation.

A (Answer continued) And she said that Mr. and Mrs. Brenner had been in our store -- at least, Mr. Brenner had been in our store a week previous to this robbery, every single night, but didn't have any chance, because there was always more than one person in the store, to take the fountain pen case. But, as they couldn't take it then, and Mrs. Brenner was supposed to take it -- that Marian Chrystie wasn't supposed to help Mr.

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Brenner get away with it -- that Mrs. Brenner was supposed to take it, but she was too nervous to take it, and so Marian came in, the next morning, and she hadn't had anything to eat for a couple of days, and Mr. Brenner said they needed money, and they were all in poor circumstances.

BY MR. EDER:

Q That is what she told you? A Yes, sir; in the presence of the detective and two other officers.

Q Now where did you say those pens were in the store?

A They were on our first case, laying on top of the case.

Q And how many pens had you there? A Well, I couldn't say the exact number, but I know there wasn't less than twenty pens; that I could swear to.

Q And what were the prices of the pens? A Well, the value was \$55. whether it was more or not, I don't know, but the approximate value was \$55.

Q You got that lot of pens in for Christmas? A Yes, sir; well, we had some of them, but we filled out the order.

BY THE COURT:

Q Now which of the women do you say told you all this in the store? Go down and put your hand on her, on the one that made those statements to you? A (Indicating Marian Chrystie) This one.

Q And that is the girl that told you all these things, you say? A Yes, sir. And Mrs. Brenner didn't say any-

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thing there, she didn't say anything to me or to anyone else there. All that she said was, "You will have to prove that this girl here did the stealing. Maybe the man did it."

Q Well now have you told us all that she said? A Yes, sir.

Q And she said nothing else? A No, sir.

BY MR. EDER:

Q Did you see Joseph Brenner at any time after that?

A No, sir; not until in Court, not until I saw him in Court.

CROSS EXAMINATION BY MR. CHANLER:

Q You saw these girls walking by the store, about three weeks after you missed the pens? A No, sir. Three days after they had come into my store -- three weeks after the robbery, you see.

Q Well, then you misunderstood me. How long after the missing of the pens did you see these girls again? A Well, about three weeks later.

Q Yes, that's what I asked you. A But you asked me about passing the store.

Q Well I don't care about that. I asked you if you saw them anywhere? A Yes.

Q And they walked into your store together, three weeks later? A No, sir; Miss Chrystie came in, and the other one waited outside.

Q The same girl that had gone into your store with Joseph

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Brenner before? A Yes, sir.

Q And you saw them again? A Yes, sir; three or four days -- at least, the night of the arrest I saw them, December 31st, passing by. They didn't make a stop then.

Q And you followed them? A No, sir; they stopped off and waited for me.

Q You kept them in sight? A No, sir; they waited for me to go over for them.

Q Well, at all events you saw them? A Yes, sir.

Q Three weeks after the loss of the pens? I am not trying to mix you up, but trying to get it clear in my head.

A Can I just explain?

THE COURT: No; you must answer the counsel's questions.

BY THE COURT:

Q Now the pens were taken on a certain day? A Yes, sir.

Q And three weeks later you saw these women, and followed them? A Yes, sir.

Q And three days afterwards they were arrested? A Yes, sir.

BY MR. CHANLER:

Q Three days after you saw them where? A They were going into a house, and as they were going in, they stopped off and looked at me, and asked me who I was looking at -- I don't know which one put the question to me, but one of them did, and I said, "Will you speak to me a minute, please?" And my father

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went over and got the officer.

BY MR. CHANLER:

Q Now will you speak a little louder? Did you ask your father to get the officer? A No, sir; I had told pa in the store that these were the girls.

Q And you merely talked to the girls while your father got the officer? A Yes, sir.

Q And your father brought the officer back? A Yes, sir.

Q And the officer went into the store with both these girls? A Yes, sir.

Q And the officer asked these girls a good many questions, did he not? A Yes, sir.

Q And it was the answers to the questions by the officer, the answers given by the girls, that you are endeavoring to remember? A Well, not only that officer, but the detectives put questions to them. They were both separated and one in the back and the other in the front of the store. We telephoned for the officers in my own home, and two detectives came.

Q And then the detectives separated the girls? A Yes, sir; there were two detectives.

Q And were you present when each of the girls was being interrogated? A No, sir; I couldn't be. Mrs. Brenner refused to speak.

BY THE COURT:

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Q But you were present when she refused to speak? A Yes, sir.

Q You heard the detectives put the questions to them?
A Yes, sir.

Q And you heard the answers made by one of them? A Yes, sir.

Q And you heard the other one refuse to speak? A Yes, sir; but I wasn't --

THE COURT: Now keep quiet, and just answer the questions of counsel, please. He has a perfect right to ask them.

BY MR. CHANLER:

Q The officer put a great many questions to the Chrystie girl? A Yes, sir.

Q About how many questions did the officer put to this girl?

MR. EDER: I object to that as immaterial.

THE COURT: Sustained.

MR. CHANLER: Exception.

BY MR. CHANLER:

Q Please tell me exactly what was said by the officer to the defendant Brenner, and what was said by the defendant Brenner in reply, if you can recall it? A Why, I was only at one place at one time.

BY THE COURT:

Q Please tell what was said, is what counsel asks you to do. A Well, I was in the back, where the detective was

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speaking to Miss Chrystie.

BY MR. CHANLER:

Q Now please tell us what every policeman there said to these girls, and begin at the beginning. Please state what the policemen said to these girls. A The detective said, "Miss Chrystie, do you know me?" And she said no; she hadn't ever seen him before. And he said yes, he knew her, and he started to tell about different people she was living with, and Miss Brenner, too. And he said he knew where they lived, at 145th Street and Bradhurst Avenue; and Miss Chrystie said her husband was in Boston, and she expected him on for Christmas.

Q Now you were only asked what the detective said to them. Tell everything what was said. A And then he asked her about a sailor and a chauffeur and different people that he thought she knew. Do you want this one detective?

Q No. Give all that any detective said to these defendants, or either of them there. A And another officer said that he knew the girls, too. He said that he had seen them before. And then she said that -- he asked her about the date of the robbery, and at first she denied all knowledge. And then I wasn't in the room at the time, but I was told --

MR. CHANLER: No, then don't tell what you didn't hear, or what was said when you were not present.

THE WITNESS: Very well.

BY THE COURT:

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Q Now what was said further at that time when you were present? A That's all.

BY MR. CHANLER:

Q And did you yourself hear them, the detectives, speak to each of the women? A No, sir; I only heard detective Birmingham speak to Miss Chrystie, but I saw Mr. McCormick speaking to Mrs. Brenner, but I don't know what she said in answer to his questions. I was in the back of the store with Miss Chrystie and the other detective.

Q Now have you told us all that the officer said there?

MR. EDER: Objected to.

THE COURT: Sustained.

MR. CHANLER: Exception. That's all.

THE COURT: Of course, you know what the policemen said is not evidence against these girls. It is only what they said that is evidence, and that is why I have ruled out what the policemen said, with a desire only to protect their legal rights.

MR. CHANLER: I am doing that, your Honor.

THE COURT: No, it is the duty of the Court primarily to do that, to protect the rights of the defendants. I have endeavored to exclude testimony as to what the detectives may have said in the way of questions to the defendants, and to admit only what the defendants answered, because that is the evidence, and not the questions of

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the officers, and I have tried to make that clear.

MR. CHANLER: Well, it may have been clear to your Honor, but it wasn't to myself, and I tried to clear it up in my own mind at least by the questions I asked about the officers.

THE COURT: Well, you understood that we took up this case this afternoon at the request of the District Attorney, because he said that this girl had to pass the Regents' examination next week, and could not be here on Monday or Tuesday, and it was agreed that we should only take her testimony and then adjourn, because I had to attend a meeting of the Judges of this Court on a very important matter. I have assigned you to this case, I think, but I will not assign you to any more. My most important duty is to see that the defendants receive a fair trial.

MR. CHANLER: I think that is my duty.

THE COURT: Well it is my duty as well, to see that they receive a fair trial, a legal trial, and that is the reason why I have excluded as far as possible what was said by the officers. We will suspend here.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Monday morning, January 10th, 1916, at ten-thirty o'clock.)

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TRIAL RESUMED:

New York, January 10th, 1916.

THE COURT: Mr. Chanler, before we take up this case, I want to say that I took great pains to shut out what I deemed illegal and improper evidence in this case, but the complaining witness was rather difficult to handle. She insisted upon mentioning things that were not legal evidence, and which would hurt the defendants, in my opinion, and that is the only reason why I sought to exclude certain evidence. And, besides, the case was taken up under the misapprehension that she could not be here today, and just to give her an opportunity to tell her story.

Now, if you think that anything that has been done or said in any way militates against your clients, why you have a right to have another jury.

MR. CHANLER: No, sir; I don't wish to.

THE COURT: You are willing to go on with this jury?

MR. CHANLER: Yes, sir.

THE COURT: You understand that my desire is to give everyone a fair trial, and I think that is my duty, to see that these women get a fair trial, and to exclude anything that is improper, or anything that may prejudice them, or any defendant. That is the only object I have in the case.

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RICHARD A. BIRMINGHAM, of the Fourth Branch Detective Bureau, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDER:

Q You are a detective attached to the Fourth Branch Detective Bureau? A I am.

Q And do you remember the first time you saw the defendants? A Yes, sir.

Q At what place? A 1734 Amsterdam Avenue, in a stationery store.

Q And that stationery store is owned by the complaining witness in this case, Schenker? A Yes, sir.

Q When was it that you saw them first? A Between half past eight or nine o'clock in the evening.

Q And did you have a conversation with either of them? A Yes, sir; with both.

Q Now tell us what this Chrystie girl said to you and what you said to her?

THE COURT: About this case only, officer. Remember that.

A This defendant, Marian Chrystie, told me she was living at the time of this larceny at 37 Bradhurst Avenue, in a furnished room, with the defendant Mayfred Brenner and a man named Joseph Brenner, the three of them living in the one furnished room, and that the three of them slept in one bed.

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MR. CHANLER: If your Honor please, I object to that.

THE COURT: Yes, strike that out. I said that you were to testify only as to this alleged larceny, officer. Now I again ask you to limit your testimony to this particular charge.

BY MR. EDER:

Q Now what was said about this larceny?

MR. CHANLER: Do I understand, if your Honor please, that this is evidence of one defendant, in the absence of the other?

THE COURT: Well, the only thing we care about is what was said about this case, and it is not binding on the other defendant, because it was after the alleged crime. Now, officer, the jury will not be inclined to believe anything that you say, if you are apparently desirous of bringing in other matters, after I have repeatedly told you to confine yourself to the crime charged here.

BY MR. EDER:

Q State what she said to you about these pens. A^D She said, the day before the larceny, that Joseph Brenner and Mayfred Brenner went to the store, in the morning, and that Mayfred Brenner got nervous, and had to leave the store, and go back again.

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And then she said that the following morning, that Mayfred Brenner asked her to go with Joseph Brenner to the store, and they went there, and she went in and bought a birthday card in the rear of the store, and Joseph Brenner entered at the same time, while she engaged the young girl in the store, and went out, and took the fountain pens, which was in the case.

BY THE COURT:

Q Now which girl told you that? A Marian Chrystie.

Q Well which is Marian Chrystie? Point her out? A The girl on the end there (indicating). And then she met Joseph Brenner, and they went to 37 Bradhurst Avenue.

Q Well did she tell you how many pens were taken? A She did not, but there has been fourteen pens returned. And she then met Joseph Brenner and they went to 37 Bradhurst Avenue to the furnished room, and there met the defendant Mayfred Brenner in the apartment, and Joseph Brenner went to the roof of that apartment house, and broke open the box with the fountain pens in, and brought them down to the apartment, and gave Marian Chrystie one of the pens, and he gave one also to Mayfred Brenner, the other defendant, and that he went out and disposed of the balance of the pens.

BY MR. EDER:

Q Did he tell you what he was to do with the balance -- with the money obtained by the disposal of the balance of the pens? A Yes; she said they were very hard up, and had

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nothing to eat, and he bought food with the money.

Q Did you have any conversation with the other female defendant? A Yes, sir; and she said that she accepted one of the pens, when they brought them into the apartment; and, the following day, Joseph Brenner took it away from her and pawned it.

Q It was Chrystie that gave you the man's name, was it not? A Yes, sir.

Q Told you who Joseph Brenner was? A Yes, sir.

Q Did she tell you where he was? A She told me he was in the City Hospital.

THE COURT: Well, what has that to do with it?

How is that material?

BY MR. EDER:

Q And you then arrested the three of them? A Yes, sir.

Q And were you in the Police Court when this Chrystie woman was arraigned? A I was.

BY THE COURT:

Q You have no personal knowledge of the transaction at all. You didn't see them steal the pens, if they did steal them, and don't know anything about the stealing at all?

A No, sir; I don't.

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CROSS EXAMINATION BY MR. CHANLER:

Q There was another officer with you, was there not?

A Yes, sir; officer McCormick.

Q He stayed with the Brenner girl, while you talked with the Chrystie girl, in another part of the store; isn't that so? A No, sir; not all the time. Sometimes I talked to the Brenner girl and he talked to the Chrystie girl.

Q Didn't the Brenner girl refuse to say anything? A Yes, sir; part of the time.

Q Did you inform either of them as to their rights?

A I did.

Q How long were you in that store, on that occasion?

A About two hours.

Q During those two hours were you talking most of the time to the Chrystie girl? A No. I went to their furnished room, at 503 West 147th Street.

Q And how long were you in that store? Two hours, did you say? A Yes, sir. Detective McCormick was there about two hours and I was there about an hour and a half.

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Q During the hour and a half were you talking most of the time with the Chrystie girl? A Most of the time, yes.

Q Did it take you an hour and half to have the conversation which you had with the defendant, Chrystie? A No.

Q When you came to the store, on that afternoon, you saw the two defendants together, did you not? A I did.

Q Where were they standing? A By the counter, in the stationery store.

Q And who was with you? A The police officer on the post.

RE-DIRECT EXAMINATION BY MR. EDER:

Q You never had any trouble with either of the defendants before, did you? A No, sir.

Q You didn't know them before? A No, sir.

MR. EDER: The People rest.

BY THE COURT:

Q Officer McCormick knows no more about the case than you do? A No, sir. I was assigned to the case first.

MR. CHANLER: Now I ask your Honor to advise the jury to acquit as to the defendant Brenner, first, upon the charge of larceny.

THE COURT: Well, I will have to deny the motion.

MR. CHANLER: And I make the motion separately as to each, first, as to larceny, and, secondly, as to receiving stolen goods.

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THE COURT: I think I will allow both to stand.

MR. CHANLER: Exception.

THE COURT: If the jury find that they were not concerned in the larceny, they may find that they received the proceeds of the larceny, knowing that they were stolen, or they may find that they are not guilty of any crime. I think I will allow the whole indictment to stand. But I am rather vague as to the testimony as to value. The jury will understand that it must be proven beyond a reasonable doubt that the pens were worth more than fifty dollars, before they can convict, if at all, of grand larceny in the second degree; and, if that proof is not clear, they must find them guilty only of petty larceny, or not guilty.

MR. CHANLER: And I formally move that your Honor take away from the jury the charge of grand larceny in the second degree.

THE COURT: Well, I will submit that question to the jury. There is some evidence as to value, and I do not know how the jury may regard it.

MR. CHANLER: Exception. And I move that the Brenner girl be acquitted, on the question of either larceny, or receiving stolen goods. There is no evidence, except a statement by the officer, that she said one end was given to her, and was afterwards taken from her.

THE COURT: Well, if she knew that the pens that

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she received were stolen, that would make her guilty of the crime of receiving stolen goods. It is all for the jury, on the evidence, as to whether the defendants are guilty of any offense whatever; and, if guilty of any offense, whether it was grand larceny in the second degree, petty larceny, or receiving stolen goods, or not guilty.

MR. CHANLER: I except.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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AFTER RECESS.

THE COURT: Now, if you wish to recall the complainant, and further cross examine her, you may do so.

MR. CHANLER: No, sir. I concluded my cross examination on Friday.

THE COURT: On Friday, I told you that we were about to have a meeting of the Judges, and that I wanted you to have the testimony of the witness concluded by 3.45, if possible, but I believe she is here to-day, and you may cross examine her further, if you wish.

MR. CHANLER: No, sir. I am content with the cross examination on Friday.

THE DEFENSE.

J O S E P H B R E N N E R, of 407 West 147th Street,
a witness called on behalf of the Defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHANLER:

Q Brenner, you are a defendant in this case? A Yes, sir.

Q One of the defendants in this case? A Yes, sir.

Q You have pleaded guilty to the theft of those pens?

A Yes, sir.

Q Did you steal those pens? A Yes, sir.

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BY THE COURT:

Q How many pens? A There were about six or eight.

Q Why, they recovered fourteen, the officer says?

A (No answer)

BY MR. CHANLER:

Q You stole the pens? A Yes, sir.

THE COURT: Well, how many is important, now, as to the value.

MR. CHANLER: Well, I am only asking, your Honor, in connection with these women.

Q Did either of these girls have anything to do with the stealing of those pens? A No, sir.

Q Or receive any of them from you? A No, sir.

CROSS EXAMINATION BY MR. EDER:

Q What time in the morning did you go in to get those pens? A I left the house about five o'clock, to look for a job.

Q What time did you get into the store, and take those pens? A I don't remember whether it was seven, or eight or nine o'clock. It was between eight and nine o'clock.

Q Wasn't it seven o'clock in the morning? A I am not positively sure.

Q And how long have you known Marian Chrystie? A Well, I have only known her for a short time.

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Q About how long? A About a month.

Q A month prior to the time that you went into that store; is that right? A Yes, sir.

Q And she lived in the same house that you did; did she?
A She lived on the second floor.

Q On the same house? A Yes, sir.

Q And she was a friend of Mrs. Brenner, your lady friend; is that right? A Yes, sir.

Q Now, you are not married to Mayfield Brenner? A No, sir.

Q And you lived with her, didn't you, in the same rooms?
A Well, not all the time.

Q At any time? A Yes, sir.

Q And did you see Marian Chrystie in that store with you, on the morning that you went in there? A No, sir.

Q You didn't see her there at all? A I met her on the street, on the avenue.

Q At seven o'clock in the morning? A Well, it was between seven and eight, or eight and nine.

Q And you met her on the avenue, and told her that you were going in that store? A No, sir.

Q You knew what you were going there for, didn't you?
A No, sir.

Q Were you ever in that store before? A No, sir.
I had been in the store several times, buying something, yes.

Q And do you know whether Mayfred Brenner was in that store before? A I don't know.

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Q Well, at any rate, you walked into the store with her?

A Yes, Marian Chrystie.

Q And she told you she is going to buy something, didn't she? A Yes.

Q And did she ask you to go into the store with her?

A I asked her whereshe was going, and she said, "I am going up the avenue here, to buy some postal cards."

Q And where did you live then? A 37 Bradhurst Avenue, near 145th Street.

Q And she lived in the same house? A Yes, sir.

Q And where was the stationery store? A 147th Street, I think, two blocks above where we lived.

Q And when she said that she was going to buy some postal cards, what happened? A I said, "Can I go with you?" And she said, "I don't care. You can come along, if you want to."

Q And did she ask for postal cards when you went into the store together? A I don't know, sir, because she was in the back of the store with the girl.

Q And then you stole the pens? A When I saw the pens on the case -- I saw the box on the counter, and I knew that we needed money, and hadn't paid our rent for two weeks, and I walked out with the box.

Q And you went to 37 Bradhurst Avenue with them? A No, sir. I took the pens, and I didn't go home at all all day. I got rid of them, to pay room rent.

Q Didn't Marian Chrystie meet you, and go up to the roof of

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your house with you? A Yes, sir.

Q And then you went up to the roof of the house, and broken open the box? A Well, I was taken to the hospital, and three weeks after --

BY THE COURT:

Q No. What did you do that day? That was the question?

A I went to the hospital three weeks after.

Q You mean you forget what you did on that day? A I wrote a letter to Miss Marian Chrystie --

Q No. On this particular day you didn't go to the hospital, did you? You haven't been in the hospital since you stole the pens? A No, sir.

Q Well, what did you do when you stole the pens? A I pawned some of them, and I got money for room rent, and I paid the two weeks' room rent, which wasn't enough, which was only five dollars, and I went down to my brother's office, and asked him for the money to pay room rent.

BY MR. EDER:

Q How many pens did you pawn? A Four or five I pawned.

Q What did you do with the rest of them? A I gave them to a friend of mine to hold them and loan me some money, a man that I knew from downtown. We went to school together.

Q What is the name? A Henry Arrow.

Q Where did you meet him? A At Third Avenue and 56th Street, downtown.

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Q That morning? A Yes, sir, I was just on my way to my brother's.

Q You met him accidentally? A Well, he works there, 56th Street.

Q Did you know if he worked there then? A No, sir. I asked him what he was doing, and he said, "I work right there."

Q But you met him accidentally? A Yes, sir.

Q Now, the night before, had you slept with this woman, Mayfred Brenner?

THE COURT: Well, we will exclude that. He said he was living with her.

BY MR. EDER:

Q Had you been in the house with Mayfred, the night before? A I didn't come home until six o'clock that day.

Q (Question repeated) A I left the house in the morning.

Q Had you slept in that house that night, I mean, the night before the stealing of those pens; had you been in the house with Mayfred Brenner? A Yes.

Q And did you see Marian Chrystie there? A No, sir.

Q You didn't see her there that night at all? A No, sir.

Q You had been convicted for petty larceny before this, hadn't you? A Yes, not for that, though.

Q And you served three months in the Penitentiary, from the Special Sessions? A Yes, sir.

BY THE COURT:

Q Where did you get the money to buy postal cards, if

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you had no money at that time? A I hadn't any. I had only car-fare to go downtown, and I walked uptown because I couldn't find a job. I couldn't get my room rent, and my brother used to give me my room rent.

BY MR. EDER:

Q When was the last time you worked? A I worked for the International Baking Company, 374 Grand Street.

Q When did you work there? A Well, I worked there about three months.

Q How long ago? A From June -- June, July and August. I don't know exactly though. I worked there about three months.

BY THE COURT:

Q Is that the only job you had? A No, sir, I worked for --

Q No. I mean last fall? A I went in the restaurant business.

Q Were you working for anybody at the time of this larcency?

A Before that?

Q Now, you went into this place and stole some pens, you say? A Yes.

Q Were you working for anybody then? A No, sir, I was out of work.

Q How long had you been out of work? A About three months.

Q And you hadn't done anything in all that time? A No, sir, because I was sick.

BY MR. EDER:

Q And before you received your penitentiary sentence, did

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you work anywhere? A Yes, sir.

Q Where did you work? A I worked in 181st Street, in a garage.

Q What did you do there? A Everything, working on the floor.

Q And how long did you work there? A About eight months.

Q And did you work for anybody before that? A I worked for my sister three years, over three years.

Q Now you are trying to save these two girls, aren't you?
A No, sir, I am telling the truth. They didn't have anything to do with it.

Q Did you give them any fountain pens? A No, sir.

Q And you never told them that you stole these pens?

A No, sir.

Q They never knew it? A After the three weeks I went to the hospital, and I wrote a letter to Marian Chrystie, that I took the pens, but I didn't tell her where, and told her she shouldn't say anything to Mayfred.

Q She didn't ask anything about the pens, three weeks after the stealing; did she? A I haven't seen her. I was in the hospital.

Q How did you come to write her a letter about the pens?
A I just simply told her that I took the pens, and didn't want to keep them for myself, and wanted her to know about it.

Q What occasion had you to write a letter about stealing the pens? Did she ask anything about it? A No, sir.

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Q Well, why did you write her about it? A Well, just I wrote to her.

Q Why? Did you want to tell her that you were a thief?

A I wanted to tell her that that was where I got the money to pay the rent.

Q You wanted to tell her that that was where you got the money to pay the rent? A Yes, sir.

MR. EDER: That is all.

M A R I A N O T T O, indicted as Marian Chrystie, one of the defendants, of 503 West 147th Street, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHANLER:

Q What is your right name? A Marian Otto. Marian Chrystie is my stage name.

Q How long have you been on the stage? A About three years.

Q When were you last on the stage? A Last September.

Q What Company were you playing in? A "Little Miss Broadway" Company. We traveled all over and came to Boston from Montreal. And I left them at New Haven, Connecticut. The Company laid out the weeks in Boston, and I left them in New London, Connecticut, and I went to my aunt's house in Canada. I was gone about ten months, and came back to Boston, last September, and I came to New York on the 13th day of November.

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Q Now, you have heard Brenner testify as to the day on which he stole those pens? A Yes, sir.

Q Now, tell the jury whether or not at that time you were living in the same house with Brenner, and the other defendant, or not? A I was living in 37 Bradhurst Avenue, in the same house with Brenner and Mayfred Brenner, but I was living on the second floor, in a room of my own, and they lived on the floor beneath me.

Q Now, how did you happen to meet Brenner on the day that he stole the pens? A Why, Joseph Brenner left the house, that morning, to go to look for a position, and I went up -- the next day was my little niece's birthday, and I went down there, and got a teddy bear for her, and I went out on that morning to get a birthday card, and I met Joseph Brenner.

And he said that he was out looking for a position, and I said that I was going to Amsterdam Avenue to get a card for the baby's birthday, and he said, "Do you want me to walk up with you?" And I said, "I don't mind."

And he walked as far as the store with me, and came in, and he stopped in front of the store, in the front of the store, and I asked the girl for birthday cards, and she took me to the second counter, and showed me the birthday cards there.

I had a little black purse, and I opened it, and I only discovered that I had five cents in the pocketbook, because,

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the night before I had been out, and I had a big handbag with all my change in it.

And I said to the girl, "Instead of taking a birthday card now, I will take a package of Perfection cigarettes, and come back later."

And while I was talking, Brenner went out of the store, and I didn't see him until that afternoon, when he came home.

Q Now, did you have anything to do with the stealing of those pens? A No, sir.

Q Did you know that he was going to steal them when you went into the store? A No, sir.

Q Did you talk to the girl for the purpose of letting Brenner steal the pens? A No, sir; I went there for the purpose of buying a birthday card for my little niece's birthday.

Q And did you receive any of the money, the proceeds of the stealing of the pens, or any of the pens? A No, sir; and I didn't receive any money from Joseph Br  nner or any of the pens.

Q Now, when you were in the Police Court, you told -- what did you say when you were taken before the Judge? A I told him --

BY THE COURT:

Q No, what did you say to the Judge, you are asked? A Well, he didn't say anything to me, and I didn't say anything to him.

Q What name did you give there? A Marian Chrystie.

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Q Didn't you say your name was Marian O'Neill? A No, sir. Detective Birmingham asked me if I was married, and I said I was, and I gave him that name, Marian O'Neill, as my maiden name, because he thought I was a married woman.

Q The Judge got that name from you, then, Marian O'Neill?

A I didn't speak to the Judge, your Honor.

Q But you were brought before the Judge, were you not? A Yes, sir, but I didn't say anything.

Q What does that say? (Indicating the Police Court papers)

A "I am guilty."

Q You said, "I am guilty."? A Yes, sir. Well, that is what I am trying to explain.

Q Well, you did say that you were guilty? A Yes, sir.

Q Now, then, you may explain it? A I told Detective Birmingham that I never was in a Court before in my life, and I didn't know whether to plead guilty, or not guilty, and he said, "Well, Miss Chrystie, were you in the store at the time that the man was there?" And I said, "Yes."

And he said, "The best thing you can do is to plead guilty."

And I told the man I wasn't guilty of larceny, or helping to steal, but was guilty of being in the store when the man was present.

BY MR. CHANLER:

Q Where was this said? A Before the Clerk.

BY THE COURT:

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Q And you were brought out afterwards before the Judge? A Yes, sir.

Q And the Judge asked you whether you signed this?

A The Judge never asked any questions, your Honor.

Q Do you want the jury/^{to}believe that the judge signed this without asking you any questions? A The Clerk did that. He signed that, the Clerk.

Q Well, the Clerk wrote down your answers to various questions? A Yes, sir.

Q And then you were taken before the Judge? A Yes, sir.

Q And he asked you some questions? A No, sir, he didn't ask me any questions.

Q Then, do you mean to say that the Judge signed a false statement? A No, sir, I don't say that.

BY MR. CHANLER:

Q You have never been in a police court before? A No, sir.

Q And you don't know how hurriedly they do things there?

MR. EDER: Objected to.

THE COURT: Sustained.

BY THE COURT:

Q Didn't you also waive examination? A Yes, sir. The detectives told us to waive examination. And we didn't say we waived examination. It was the detective, Detective McCormick stood up and said we waived examination.

BY MR. CHANLER:

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Q And this happened in court? A Yes, sir.

Q And you were taken out? A Yes.

Q And Mr. McCormick did the counsel for the defense act?

A Yes, he said that we waived examination.

Q Now, Officer Birmingham has testified to a number of statements made by you. How long were you in the store in the afternoon, when Officer Birmingham was there? A It was in the evening. We went in about nine o'clock. In the evening, about nine o'clock, we were passing by the store, and this girl was standing out, talking --

Q The complainant? A Yes, sir, talking to a lady. And she seen us pass by.

And I noticed that, three nights previous to that, this girl followed us, and I said to my friend, "I wonder why that girl is following us?"

And this night, three nights later, she followed us, and we stopped short, and her father came out from the store, and the girl followed him out, and the father said, "Is this the girl?" And she said, "Yes, that is the girl."

And he grabbed me by the coat, and called for an officer, and two officers in uniform came over, and he started telling them about the fountain pens, and they said, "We'll take them into the store."

And the two officers brought us into the store, and one of the officers telephoned to the Detective Bureau, and Mr. Birmingham and Mr. McCormick came up half an hour later.

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And Mr. Birmingham said to me, "What's your name?"
And I said, "Marian Chrystie."

And he said, "All right. Come back here. I want to walk to you."

And he talked to me, and the other officer talked to Mayfred, and we were talking about an hour and a half, and at the end of it, I didn't admit to Mr. Birmingham that I was guilty of being in the store with the man at the time. It was to Mr. McCormick that I made the statement that I was the girl in the store with Joseph Brenner at the time.

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Q Then it wasn't to officer Birmingham, but to officer McCormick that you said you were in the store with the man?

A Yes, it was to officer McCormick, because he was such a gentleman, and spoke like a gentleman to me, and I answered his questions truthfully.

He said, "Miss Chrystie, I'm going to ask you a question" just like a father. I want to know what you did with the fountain pens." And I said, "I didn't have anything to do with the fountain pens, but, as far as that is concerned, I understand Joseph Brenner sold some, and pawned the rest."

and he said, "All right; I'll have to take you to Headquarters." And officer Birmingham said, "I'm sorry, little girl. I'm afraid you got into bad company."

BY THE COURT:

Q How did you know that he had pawned some and sold the rest? A Why, Mayfred told me.

Q And you still associate with her? A Yes, sir. I never was on the street with Joseph Brenner, because he was no friend of mine.

Q Well you say you were in the store with him? A Yes, sir.

Q And you had been in the street together, that morning, before you got into the store? A Yes, sir.

BY MR. CHANLER:

Q Well, were you after -- were you on the street with him after he stole the pens? A No, sir.

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BY THE COURT:

Q Well, wasn't he with you when you were arrested?

A No, sir; he was arrested in the hospital.

BY MR. CHANLER:

Q How many times about did you go by that store, by day or night, with or without this girl, after you and Brenner had been in there? A Why, every day I passed by that store.

CROSS EXAMINATION BY MR. EDER:

Q You say that Brenner told Mayfred, and she told you about those pens? A Yes, sir.

Q Did you hear Joseph Brenner testify? A Yes, sir.

Q And did you hear him say that he wrote you a letter about those pens, and told you not to tell Mayfred about it?

A No, sir; I don't remember hearing him say that. I was sitting there, but I didn't hear him say that. He never wrote me and told me not to tell Mayfred, because Mayfred didn't --

Q You didn't hear him say that? A No, sir.

Q At the time that you were in the store, was it about seven o'clock in the morning? A Yes.

Q Did you ever go out at seven o'clock before that?

A Yes, sir; lots of mornings.

Q You don't work? A No, sir; I don't work, but I used to eat my breakfast at seven o'clock in the morning lots of times.

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Q Well, did you seek any employment? A No, sir; because I only came to New York on a visit.

Q Yet you got up at seven o'clock in the morning to eat your breakfast? A Yes, sir.

BY THE COURT:

Q How long were you in New York at this time? A Since the 12th day of November.

BY MR. EDER:

Q How did you support yourself? A Why I had money sent me from Boston.

Q By whom? A By a friend.

Q What friend was that, who was it? A A gentleman friend.

Q When did you first meet Mayfred Brenner? A In the show business, in the circus business, long ago.

Q And when did you first meet Joseph Brenner? A When I came to New York.

BY THE COURT:

Q You say that you lived upstairs in the same house, above them? A Yes, sir.

Q And why did you say that you lived at 503 West 147th Street? A Because we moved from Bradhurst Avenue before I was arrested. When Joseph Brenner was taken to the hospital, we went to 147th Street, and took a room together.

BY MR. EDER:

Q Now, officer Birmingham didn't know Joseph Brenner's name at the time you were arrested, did he? A No, sir.

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Q And he asked you the name of the man who was in the store, on the morning of the theft of the pens, and you told him?

A No, sir; the landlady told him the name, and he asked Mayfred Brenner if they were married, and she said no, and I said no. And he said, "I thought you said she wasn't married", when he found out the name of Joseph Brenner.

Q Didn't he ask you for the name of the man who was in the store with you? A Yes, sir.

Q And you refused to give it to him? A Yes, sir; and I told him I wasn't the girl that was in the store, that morning.

Q Well you wanted to lie yourself out, didn't you? A It was to detective McCormick I admitted it.

Q Were you afraid to say you were in the store that morning? A No, sir; I wasn't. If he had asked me in a gentlemanly way I would have told him. He came in and demanded it, and I didn't know that I was supposed to answer any of his questions.

Q And you didn't know at that time that he had stolen anything? A Yes, sir; when the officer came to arrest me; yes, I did, then.

Q Didn't you meet Brenner that same morning? A No, sir; I didn't meet him that same morning.

Q Didn't you meet him in the apartment of Mayfred Brenner?

A No, sir.

Q When did you again see Brenner that day? A That after--

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noon.

Q What did he say to you? A He didn't say anything.

Q Did you ask him why he left you so suddenly? A Yes;
and he said he was going downtown on business.

Q When did he say that? A In the afternoon, in the house.

Q Did he say good-bye to you when he left the store?
A No, sir; he didn't.

Q The first thing you asked him for was a birthday card,
is that right? A Yes, sir.

Q And after that little girl bothered around for a card,
you asked for views? A No, sir.

BY THE COURT:

Q Well what did you buy, as a matter of fact? A A package
of Perfection cigarettes.

BY MR. EDER:

Q And all you had was that nickel? A Yes, sir; but I
had been out the night before and I didn't know that I had left
my money in the big pocketbook.

BY THE COURT:

Q Who were the cigarettes for? A Myself.

BY MR. EDER:

Q Now you never had any trouble with officer Birmingham
before this, did you? A No, sir; I never seen him before.

BY THE COURT:

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Q And you never saw that girl in the shop before you went in there? A No, sir; never. Not until that morning when I went in with Brenner.

BY MR. EDER:

Q Did Mayfred Brenner say that she had ever been in that store before? A No, sir; and the girl said she never was in there before, until the night we were arrested.

Q Did you tell officer Birmingham that Brenner took the box up on the roof and broke it open and took out the pens?

A No, sir; I said that he said he went next door to the store, on the roof, and he broke the case open, and with that he went downtown.

Q Now how often had you come down to the Brenner apartment?

A Oh, I would be down there most every day.

Q And when you started your examination you said that Joe Brenner went early that morning to look for work? A Well, I only know what I was told.

Q When did he tell you that? A When I came home from the store I said to Mayfred, "Is Joe home yet?" And she said "No". And I said, "Well, I seen him up the avenue". And she said, "Well, he left here early this morning to look for a job". And that's how I know he went to look for a job.

Q Do you know Mayfred Brenner's business? A I know she was in the theatrical business. When I left it, she was in the theatrical business, two years ago in September, 1914.

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Q Do you know what her business was while you lived in that house? A Why, she used to stay home. She didn't have any employment whatever.

Q Didn't you and she walk the streets? A What do you mean? Night or day?

Q Night and day? A Well, we walked the streets when we had any business to do. We didn't walk the streets, except when we went out on business.

Q Were you out until twelve o'clock at night, walking the streets? A No, sir.

Q Or eleven o'clock? A Yes, sometimes.

Q And you did that every night, didn't you? A No, sir. We did that on occasions; when we went to the theatre we walked the street.

Q She was your constant companion; wasn't she? A Yes, I never went out with no other girl while I have been in New York.

Q Did you ask her how she got her money? A No, sir; I didn't, because I thought she was married.

Q Did she ever ask you how you got your money? A Why, she knew that I had money sent to me. I used to let her read my mail.

Q Who did you get the money from? A Charles Chrystie, a fellow in Boston.

Q Were you married to him? A No, sir.

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Q Are you married? A No, sir; I am not.

BY THE COURT:

Q What did you say about using your maiden name? Didn't you say that you were married? A Well, I told Birmingham that I was married, and gave my name as Marian O'Neill.

BY MR. EDER:

Q Now do you know how many pens he sold or pawned? A No, sir; and I don't know how many he got.

Q At the time that Mayfred told you, did she mention the number of pens he got? A No, sir.

Q Or how much money he got out of it? A No, sir; she never did.

Q And did you receive a letter in which he stated the number of pens he took? A No.

Q Well, what did he state in that letter? A Why, he just stated that he took those pens for room rent.

Q And he wrote you that letter? A Yes, sir.

Q How soon after he had gone to the hospital? A Oh, he wrote a letter to Mayfred, and then wrote me a friendly letter, the same day, and told me about it, maybe a week after he went to the hospital.

Q Didn't you visit him in the hospital? A Yes, the Sunday before he came out.

Q And did he tell you anything about the pens at the hospital? A No, sir.

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Q Did you write him asking whether anybody owed him any money about the pens? A No, sir; I never wrote to him in my life, or asked him about the pens.

REDIRECT EXAMINATION BY MR. CHANLER:

Q Now you are ^{not} living in the same room with Brenner and the defendant Mayfred Brenner, were you? A No, sir.

Q At that time? A No, sir; I wasn't living in the room with them at any time.

Q Now there has been some confusion, in my mind at least, as to the various addresses that you have testified to living at. Now let us clear that up. Where did you go when you first came to New York? A I lived first at 145th Street.

BY THE COURT:

Q What number? A 506, I think it is, 145th Street.

BY MR. CHANLER:

Q And from there where did you go? A To Bradhurst Avenue.

Q And who was living there then? A Mayfred and Joseph Brenner.

Q And how long did they remain there? A Why there were there quite a while before I went there, and the landlady said --

Q Never mind about the landlady.

BY THE COURT:

Q How long did you stay there, he asked you. A About

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three weeks.

BY MR. CHANLER:

Q And then what happened, if anything, after Brenner went to the hospital? A Mayfred was alone then at Edgecombe Avenue, where she lived. She moved from Bradhurst Avenue.

Q When did she move? A She moved from there a week from the day Joseph --

Q And where did you go then? A I stayed at Bradhurst Avenue where I was living.

Q And she left Bradhurst Avenue and went to another place? A Yes, sir; to Edgecombe Avenue.

Q And then Brenner went to the hospital? A Yes, sir; and Mayfred said to me that she was alone, and so we took a room together at 147th Street, while Brenner was in the hospital.

Q Now are all these places that you have mentioned quite near the store? A Yes, sir.

Q In other words you didn't try to run away from the store? A No, sir; I passed the store every day.

RE CROSS EXAMINATION BY MR. EDER:

Q When the little girl said, "That's the girl took my pens", did you hear Mrs. Brenner say, "You have to prove it"?

A No, sir.

Q Did you make that remark? A No, sir; I didn't make that remark at all.

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M A Y F R E D D O D D S, indicted as Mayfred Brenner,
one of the defendants, of 503 West 147th Street, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHANLER:

Q What is your name? A Mayfred Dodds.

BY THE COURT:

Q Why did you give the name of Mayfred Brenner? A Because I
was living with Mr. Brenner.

BY MR. CHANLER:

Q You were living with the defendant Brenner at the time
testified to by Brenner as to his having been to this store
and stealing the pens, were you? A Yes, sir.

Q Did you know anything about his going to that store to steal
those pens, before he went? A No, sir.

Q Had you been to the store the day before, or had you
started to go there, to help him steal those pens? A No, sir.

Q Had you been out of the house at all, the day before?
A No, sir.

Q Or the day before that? A No, sir.

Q Why not? A Because I had been sick in bed.

Q Had you ever refused to help him steal those pens, be-
cause you had lost your nerve? A No, sir.

Q When was the first time that you learned, if ever, that
Brenner had stolen those pens? A On the evening of that day.

BY THE COURT:

Q What day? A Saturday, November 27th.

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Q The day they were stolen? A The day they were stolen.

BY MR. CHANLER:

Q What happened then? A Mr. Brenner came home about six o'clock, and then he told me about taking the pens. He told me he took them in the morning.

Q Did he give you any of those pens? A No, sir.

Q Did you knowingly or wilfully accept any of the proceeds of those pens, knowing that they were stolen by Brenner?

A No, sir.

Q And did you understand that he had a brother who supplied him with funds? A Yes, I understood that.

Q Did you ever ask the Chrystie girl, the co-defendant here, to go out with Brenner and help him steal those pens? A No, sir, I didn't.

Q Did you have anything, directly or indirectly, to do with the stealing of those pens? A No, sir.

CROSS EXAMINATION BY MR. EDER:

Q Was it in the evening or afternoon of that day, that you saw Joseph Brenner? A In the evening, between five and six o'clock.

Q And did the Chrystie girls speak with you that night? A No, sir.

Q And didn't you wake up, and say to her, "I am sick. You go out with him to-day."? A No, sir.

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Q Now, how long had you been living with Brenner? A About five weeks.

Q And how long did you livewith him after he stole those pens? A About two weeks.

Q Even though he told you, that night that he stole those pens, you continued to live with him? A I did.

Q I suppose that they were stolen to help pay your room rent; were they not?

MR. CHANLER: I object to that supposition/

THE COURT: Sustained.

BY MR. EDER:

Q Were they stolen to pay your room rent? A I don't know.

Q Didn't you ask him why he took those pens? A I did.

Q And what did he say? A He said, "Well, we needed the money/"

Q And didn't you ask him how many he took? A I did.

Q And what number did he say he took? A From eighteen to twenty. And he told me he pawned some, and some he gave to a friend.

Q And did he give you any of that money? A Not that I know of.

Q And did he give you any money, that day, at all? A No.

Q Did you see the Chrystie Girl, that morning? A About eleven o'clock, I did.

Q And did she tell you that she was with Brenner? A She told me that she met him on the avenue.

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Q And did she tell you that she went in the store with him? A Yes, she did.

Q And did she tell you that he suddenly disappeared? A She said, "When I went to buy the postal cards, I turned around, and Joe was gone."

Q And she didn't tell you that he took the pens, then? A No, sir.

Q And did you give the name of Joseph Brenner to the police officers? A I did.

Q When they asked who the man was that was in the store with Marian Chrystie, did you say Joseph Brenner? A Yes.

Q To whom did you say that? A Detective McCormick.

Q And did you also tell him that he stole those pens? A I didnot.

Q Did you tell him where Joseph Brenner was? A I did.

Q Now, how long have you been out of work, how long is it since you worked? A Since the middle of October, somewhere around the 13th or 15th.

Q And when did you work before that? A I left the show in Boston in the middle of the year.

Q In the middle of what year ? A 1915.

Q What show were you with? A With the "Babe Marian" Show, a burlesque.

Q And how long were you with that show? A All that season.

Q And did you work before that season? A Yes, sir.

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Q With a show? A No.

Q At what? A I worked in a printing place in Boston, on State Street.

Q And ever since you left that show, you have been living with Brenner? A Yes. I came on to New York when I left the show.

Q Did you know him before that? A Yes, sir.

Q Where did you meet him? A Boston.

Q And he brought you to New York, didn't he? A No, sir.

Q Did you both come together to New York? A No, sir.

Q Who came here first? A I came here, and Mr. Brenner was here.

Q He was here when you came here? A Yes, sir.

Q And did you know where he lived? A I did not.

Q How did you meet him, over here? A I met him through a letter from Boston. A party in Boston sent me his address.

Q And then you went to meet him? A I met him. I wrote to him, and met him.

Q And you both lived together? A Yes, sir.

BY MR. EDER: That is all.

MR. CHANLER: The Defense rests/

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REBUTTAL.

J O S E P H B R E N N E R, being recalled by the
District Attorney for further cross examination,
testified as follows:

CROSS EXAMINATION CONTINUED BY MR. EDER:

Q Now, did you write a letter to Marian Chrystie, telling her that you had stolen the pens, and that she should not tell Mayfred Brenner anything about it? A Well, I told her not to tell anybody about it.

Q (Question repeated) A I told her not to tell anybody about it.

Q And you wrote the letter to her? A Yes, sir.

Q And at that time Mayfred Brenner didn't know that you had stolen the pens; is that right?

MR. CHANLER: I object to that.

THE COURT: Sustained.

BY MR. EDER:

Q You had not told Mrs. Brenner at that time that you had stolen the pens? A I hadn't told anybody.

MR. EDER: The People rest.

MR. CHANLER: We rest, and I renew each and every motion that I make, at the close of the people's case, if your Honor please.

THE COURT: Well, I will submit the case to the jury. I do not think that the proof is clear as to whether the property was worth over

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fifty dollars.

MR. EDER: Very well, sir. We elect then to go to the jury as receiving stolen goods or petty larceny.

THE COURT: Very well.

MR. CHANLER: And I take an exception to your Honor's refusal to take the case from the jury as to either petty larceny or receiving stolen goods.

THE COURT: Very well.

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THE COURT'S CHARGE:

MULQUEEN, J.

Gentlemen of the Jury:

The defendants were indicted with Joseph Brenner, and charged with the crime of grand larceny in the second degree, and also with the crime of criminally receiving stolen property, knowing the same to have been stolen. The first count alleges that, on the 27th of November, 1915, in the County of New York, they stole thirty fountain pens, of the value of two dollars each, of the goods, chattels and personal property of Israel Schenker.

Now, the Statute defining larceny is referred to in the indictment, and it is a very plain law. It says that one who takes the property of another, with the intent to deprive the other of it, with intent to appropriate it to the use of the taker or anyone else than the true owner, steals that property, and is guilty of larceny.

There are two elements, then, in larceny: The taking of personal property, and then the intent of the taker to deprive the true owner of the property.

Joseph Brenner has testified here in corroboration of the story of the complaining witness, stating that he went into that store with the Chrystie girl, and, while she was looking at some postal cards, he stole a box of pens, but I do not think that we were able to get the

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number of pens from him. The complaining witness said they were from twenty to twenty-five pens, and the value was given by her at \$3.75 a pen, to make up a value of \$55. The indictment says that thirty pens, of the value of \$3 each, were stolen.

The value is unimportant, as far as the character of the crime is concerned, because the stealing of one pen, of the value of fifty cents, would be larceny, but it would be petit larceny and not grand larceny in the second degree. If the value of the property was more than fifty dollars, it would be grand larceny in the second degree. But value is an element that must be proved clearly, beyond a reasonable doubt, in determining the degree of larceny committed; and, as I have said, the testimony as to value is so unsatisfactory that we will have to reduce the crime charged to petit larceny; and so it is charged that pens of the value of less than fifty dollars were stolen, and that the offense in that respect committed was petit larceny.

The rule of law is that, if two or more persons combine to commit a crime, and do commit a crime, they are all equally guilty. If two or more persons should agree to break and enter your house, tonight, and two of them stood outside, to watch for the police, while the other man broke in, they would be equally guilty of burglary;

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and, if the man who entered, broke and entered, committed a murder in the house, the others would be equally guilty of murder. That is, if a person agrees with another to commit a crime, and does anything to aid or abet in the commission of that crime, he is equally guilty with the one who actually commits the crime.

So, if these two defendants agreed with Joseph Brenner to commit that larceny, to steal that property, and aided and abetted in the commission of that crime, they are just as guilty as he, even if, as appears here, the Brenner girl did not go to the store, but the Chrystie woman did.

Now, first, it is for you to find out whether there was any larceny committed, and, second, whether Joseph Brenner alone was concerned in it, or whether these two women were concerned with him in it.

You understand that this action is brought by the People of the State of New York. That means organized society, all the people living in the State. The People of the State are organized for their own protection, so that decent men and women may enjoy their lives, may engage in business, and be secure from unjust and unlawful interference on the part of others, and the People of the State of New York owe a duty to that shopkeeper to keep his goods safe, so that he, in his humble way, may

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work out his own salvation, and have the benefit of the sale of those pens for the support of his wife and family and himself, so that the protection of the Government, and the blessings of living in a country like this might be enjoyed by him, and so they make a law that no one shall steal his property, and that, if they do, they must take the consequences, and the consequences are left to the Court, if there is a conviction.

The law asks you to be absolutely honest men, prompted only by your high sense of duty, not partisans of one side or the other. It is the duty of the Court to see that the defendants receive a fair trial, and to instruct you in the law. It is your duty to take the law from the Court, and the facts from the witnesses. You must decide what witnesses, if any, told the truth here, and what witnesses, if any, did not tell the truth, either through accident or intention. If you believe that any witness wilfully made statements which were not true as to a material point in this case, then that witness was guilty of perjury, and you may reject all of his or her testimony.

There is no rigid rule which can be used in determining the credibility of witnesses. The jurors have to use their own good sense and sound judgment. You have to determine for yourselves how much credit you will

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accord these witnesses, how much you will trust them, what witnesses are worthy of your confidence.

You saw the young lady, the complaining witness, on the stand. She told you who she is, that she is working, earning an honest livelihood, and is studying, anxious to get along in the world, and is working for her father in the store, when not attending High School. She told you what she says these defendants did and said at the time of the arrest, and several days before that, and also what the co-defendant, Joseph Brenner did, at the time of the larceny; and that she identified the right people, the People claim, is shown by the fact that she caused their arrest, and that the stolen goods were found by reason of the arrest, and the People claim that she made no mistake in the identity of the thief who stole the pens.

Any statement made by any witness, previous to the trial, may be used at the time of the trial, to show whether that witness made any statement contradictory of their testimony here. You heard the testimony of the police officers, and the complaining witness, as to the statements these defendants made in the store at the time of the arrest. The rule of law is that any voluntary statement made by a defendant, if it is not produced by threats, or force, or coercion, or promise of immunity, is admissible. There is no testimony here

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as to any threat or coercion being used, or promise of immunity being made, and so, if you believe that statements were made, in the presence of the complaining witness, by either of these girls, then you may determine what force or effect you will give those statements in coming to a conclusion as to the guilt or innocence of the defendants. It is your duty, therefore, to take into consideration all the evidence on both sides.

when Joseph Brenner testifies here, you should remember that he is a self-confessed thief, that he has served time before, and that is only on the question of his credibility. The law is that you may consider any vicious, or immoral, or criminal conduct on the part of any witness, in determining his credibility. The woman defendant Brenner lived with Joseph Brenner as his wife, and that you may consider as to whether you will believe her, or the complaining witness, who, as far as appears here, is a decent, respectable girl.

Now, can the police officer claim any credit in this case for the arrest? The complaining witness simply called him in to make the arrest, and it is for you to determine whether he had any motive, whether a desire to claim credit for this arrest or for any other reason, to commit perjury in this case; or whether, if the complaining witness is testifying falsely, she has any motive to do

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that; or whether the defendants, being caught red-handed in the commission of crime, as alleged by the People, have added another crime to that with which they are charged, namely, perjury; and you may consider their character as far as the evidence in this case goes, in determining how much credit you will give them. For that is your great function, you pass on the credibility of the witnesses. You take the facts from the witnesses and pass on the credibility of the witnesses. Select the witnesses that you believe, not arbitrarily, but by a careful analysis of their testimony, or in any other way that appeals to your judgment. In other words, you are to weight this evidence coolly and calmly, without being partisans of either side. You must resolve to render an honest verdict. If you are fully satisfied, as honest men, to a moral certainty, beyond a reasonable doubt, that the defendants are guilty, then you must pronounce them guilty, because then the People have met the burden that is put on them by the law. You know that the rule of law is that the defendants are presumed to be innocent, until the contrary is proved; and, if the evidence fails to satisfy you beyond a reasonable doubt that they are guilty, you must acquit them. But, if the evidence does satisfy you, as honest men, beyond a reasonable doubt, that they are guilty, it is your duty

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to pronounce them guilty, and, otherwise, not guilty.

If you should have a reasonable doubt as to whether or not these defendants were actually concerned in the larceny, if you should conclude that Joseph Brenner alone committed the larceny, then there is the evidence of their alleged admissions that they each got one of these stolen pens. On their own statement, they were familiar with Joseph Brenner's condition, that he needed money to pay room rent, and if they knew that he had stolen the pens, and each of them received one of the pens from him, then they are guilty of criminally receiving stolen property, knowing the property to have been stolen. Our law makes it a crime for anyone to receive stolen property, with the guilty knowledge that it is stolen. If a man should go out, and steal a dozen pens, and bring them back and tell another that he had stolen them, and he should give one of those pens to that person, and that person knowingly received that pen, knowing it to have been stolen, then that person would be guilty of criminally receiving stolen goods.

If you have a reasonable doubt of their guilt under the first count of the indictment, you must acquit them of grand larceny in the second degree. Then you may take up the question of receiving stolen property, knowing the same to have been stolen, and, if you find that they

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each received a pen from Brenner, knowing the pen to have been stolen, you may convict them of criminally receiving stolen property, knowing the same to have been stolen, and, if you have a reasonable doubt on that subject, you should acquit them.

A reasonable doubt is not a surmise or guess, or a doubt based on a desire to avoid doing a disagreeable duty, and these defendants are presumed to be innocent until proved guilty beyond a reasonable doubt by the evidence.
upon

Now, the successful administration of the criminal law depends the welfare of the State, and it is absolutely necessary that jurors should be honorable and honest men in the performance of their very important duty. The facts you take from the witnesses, and you determine their credibility. You determine their character, and what witnesses you will believe, just as you determine the credibility, the character of those with whom you deal in the most important affairs of your own life, and, having done that, weigh the evidence solely with a desire to find the truth, to do your duty, to speak truly, and then, when you have arrived at a firm conviction as to the guilt or innocence of the defendants, speak truly. If you have a reasonable doubt of their guilt of any crime charged in this indictment, acquit them. If you are convinced, beyond a reasonable doubt, that they were concerned in the

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larceny, say so, and find them guilty of petit larceny. If you do not believe them to be guilty of petit larceny, you may consider the question of criminally receiving stolen property, knowing the same to have been stolen, and you can either find them guilty of criminally receiving stolen property, knowing the same to have been stolen, or not guilty, according as you view the evidence. But you have no right to disregard the law or the evidence, or to be swayed by any thought except a desire to do your duty. So then be honest men, conscientious jurors, and weigh the evidence calmly and carefully, and render an honest verdict; and, when an honest verdict is rendered, whether it be guilty or not guilty is immaterial, the law is complied with, and it is conducive to the welfare of the whole State, but otherwise not. So be honest men, and render an honest verdict, either of not guilty or guilty, and, if you find them guilty, fix the crime of which you find them guilty.

MR. CHANLER: I desire, with great respect, to except to that portion of your Honor's charge in which you said, in substance, that the defendants were caught red-handed in the commission of a crime. Their testimony is that they were innocently on the street.

THE COURT: No, I did not say that. I said that it was for the jury to decide whether they were innocent

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persons, telling the truth, or criminals, caught red-handed, and seeking to evade punishment, and that they must determine that question from the evidence.

MR. CHANLER: I except to the use of the word "red-handed".

THE COURT: Well, I will withdraw that expression. But they were caught, they were arrested; and now does the evidence satisfy you, gentlemen of the jury, that they were caught properly? Are they honest women, and, when they take the stand, do they testify truthfully? Are they entitled to your confidence, as truthful witnesses, or are they criminals seeking to avoid the consequences of their crime? That is for you to decide, and decide it as if it affected the most important affairs of your own life, honestly and truly, and without any thought or feeling except a desire to do your full duty. I did not say that they were criminals. I said that it was for the jury to decide whether they were innocent women or criminals caught in the act. You are the sole and absolute judges of the facts, gentlemen. I have nothing to do with the facts. My duty is to see that the defendants receive a fair trial, and they have had a fair trial, and it is your duty to take the law from the Court, and the facts you take from the witnesses.

any requests, Mr. Eder?

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MR. EDER: No, sir.

THE COURT: Any requests, Mr. Chanler?

MR. CHANLER: No, sir.

THE COURT: You may pass out, gentlemen.

(The jury retired at 3:45 P. M.)

(The jury returned at 4:45 P. M., finding the defendants guilty of petit larceny.)

THE COURT: Now, Mr. Chanler, do you want to make your motions now, or on the day of sentence?

MR. CHANLER: On the day of sentence.

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