

START

1082

CASE

1047

CASE #1082

-: INDEX :-

	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-D.</u>	<u>RE-C.</u>
Louis Simon	2	7		
Philip Posner	9	16	49	
Jacob Levy	51	55	92	93
Alfred J. French	94	98	116	117
Dinah Posner	118	130	154	156

CASE #1082

1049

I N D E X.

	Direct	Cross	Re-direct	Re-cross
David Kapochelsky	157	163	193	193
Jacob Levy	193	194		
Alfred French	199			
Marie Rubinstein	199	206		
William J. Hennessy	247			
William Lippman	252	258	263	
Louis Saks,	263	278	301	

.....

CASE #1082

INDEX.

	Direct	Cross	Re-direct	Re-cross
Israel Budnik	303	306		
Charles Beller	314	316		
Becky Goldman	322			
Samuel Goldman	327	334	345	
Becky Goldman (recl'd)	347	350		
Fanny Hochfeld	361	363		
Morris Reissman	364	367		
Louis Brumberg	371			
Harry Zabransky	376	392		
Alexander Ziman	415	417		
Araham Davis	422			
Philip Posner	424			
Jacob Levy	425			
Alfred J. French	426			
Louis Simon	427			
Peter Seery	428			
Herman W. DeMalignon	429			

CASE #1082

1050

1051

COURT OF GENERAL SESSIONS OF THE PEACE
CITY AND COUNTY OF NEW YORK, PART V.

----- X
THE PEOPLE
against
HARRY ZABRANSKY
alias
HARRIS ZABRANSKY.
----- X

Before
HON. JAMES T. MALONE, J.,
and a Jury.

Tried, New York, January 13, etc. 1910.

Indicted for Arson in the third degree.

Indictment filed December 30, 1909.

A P P E A R A N C E S.

ASST. DIST. ATTY. OSWALD N. JACOBY, for the People.

NATHANIEL LEVY, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

CASE # 1082

Trial resumed.

New York, January 14, 1910.

MR. LEVY: May I ask your Honor, before we proceed, to direct that the witnesses on both sides will be excluded?

MR. JACOBY: If your Honor please, there is one witness here, the assistant Fire Marshal who will not be a witness in the case, but I may find that I would like to consult with him, during the trial, and therefore, I would like to have him remain in the room, if counsel does not object.

THE COURT: Is that satisfactory to the defense?

MR. LEVY: No, sir; I would prefer that all witnesses or persons at all interested in the case, be excluded.

THE COURT: Very well then. All witnesses on both sides will step outside, and wait until they are called.

THE PEOPLE'S TESTIMONY.

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

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Simon, how long have you been a resident of the county of New York? A About --

Q How long have you lived in this City and County?

A About fifteen years.

CASE # 1082

1052

Q About fifteen years? A Yes, sir.

Q What is your business now? A Wheelwright, blacksmith and wheelwright.

Q How long have you been in that business? A The last four years.

Q And for the last four years where have you been in business? A I have been down there at First avenue.

Q What? A At 1924 First avenue.

Q Now between what streets is that? A Between 99th and 100th.

Q On which side of the avenue? A The east side.

Q That is the side nearest the East River? A Yes, sir.

Q And the side away from Second avenue? A Yes, sir.

Q What is the next street east of First avenue, the next up and down street, east of First avenue? A Well, there is the river there; there is no street there.

Q First avenue is the street next to the river?

A Yes, sir.

BY THE COURT:

Q Your place is on First avenue? A Yes, sir.

Q On the avenue? A Yes, sir.

Q Between what streets? A Between 99th and 100th.

BY MR. JACOBY:

Q And how long have you been a tenant there? A Well, three years over there, in that place.

Q That is, you have been a tenant of 1924 First avenue

CASE #1082

since January 1, 1906? A Yes, sir.

Q Do you mean that? Or do you mean January 1, 1907?

A I guess, 1907.

Q Do you remember what month you moved in? A I moved in there about February.

Q About February? A Yes, sir.

Q So that it is about three years ago that you moved in there? A Yes, sir.

Q And you have been in there ever since, up to the 24th of September of 1908? A Yes, sir.

Q And since then? A Yes, sir.

Q Now do you remember anything happening there on September 24, 1908? A Yes, sir.

Q What happened there? A Fire.

Q Whattime did you get to your place, after the fire started? A I got there at six o'clock in the morning when the fire was over.

Q You did not hear of the fire until early in the morning? A No, sir.

MR. LEVY: Now, if your Honor please, I object to Mr. Jacoby leading the witness.

MR. JACOBY: Oh, I have not let him ask anything material.

THE COURT: No, I do not think you have. Proceed.

1051

CASE #1082

BY MR. JACOBY:

Q What time did you get there after the fire? A On the 24th of September, in the morning. The fire was all over at that time.

Q Now in what condition were the premises? A It was all burned up.

Q Was the whole building burned up? A Pretty near the whole building.

Q Was the inside of the building burned? A Yes, sir, the inside.

Q Now, tell the jury what sort of stuff, what sort of materials, you had in the premises, the evening before, when you went home from work? A Well, I had wagons there; I had wood material; and finished wagons, new wagons.

Q Any paint or pitch? A No, not much paint.

Q Well, any? A Well, I had about a gallon of varnish, and a gallon of turpentine and oil. That's all I had there.

Q Were any of these things burned? A No; the varnish and the oil was left.

Q Any paint burned? A Dry paint was spoiled, but it wasn't burned.

Q Were any of the wagons or other things burned? A Yes, sir; the wagons were burned.

Q And the building itself? A And the building itself.

Q What did the building consist of, what was it made of?

CASE #1082

A A wooden shanty.

Q A wooden shanty? A Yes, sir.

Q One or two stories? A One story.

Q Nobody lived in it during the night; did they?

A No, sir.

Q Nobody slept there? A No, sir.

Q, Was there another building in the rear of your blacksmith shop?

MR. LEVY: I object to that, if your Honor please.
Under the form of the indictment that is objectionable.

We have nothing to do with any other building than the one in question.

MR. JACOBY: We do not claim that the other building was burned, your Honor. I shall connect it afterwards.

MR. LEVY: I object to it.

THE COURT: What difference does it make, counselor?
Can you indicate to me in any way how you may be prejudiced by that?

MR. LEVY: I think that I will insist upon my rights, your Honor.

THE COURT: Then you may take your exception, and I take it.

MR. LEVY: I take an exception.

BY MR. JACOBY:

Q Was there any building behind your shop, your blacksmith

CASE #1082

shop? A yes, sir; a stable.

Q Do you know a man named Jacob Levy? A Yes, sir.

Q State whether or not he stabled his horses in that stable?

A Yes, sir.

Q I mean the stable back of your blacksmith shop?

A Yes, sir.

Q During this period, September 1908? A Yes, sir.

Q What was his business at that time? A An expressman.

Q An expressman? A Yes, sir.

MR. LEVY: No questions. Oh, just one moment.

CROSS EXAMINATION BY MR. LEVY:

Q Mr. Simon, this was a very low shanty; would you say? A Yes, a little shanty.

Q A wooden shanty? A Yes.

BY THE COURT:

Q A one story structure? A Yes, sir.

BY MR. LEVY:

Q In other words, a sort of shack? A Yes, sir.

Q And you didn't have any insurance? A No, sir.

Q You couldn't get any; could you? A I could, but I didn't.

Q Now you don't know this boy; do you (indicating the defendant?)

CASE #1082

MR. JACOBY: I object to the question on the ground that it does not appear that he is a boy.

THE COURT: Yes, the form of the question is bad.

MR. LEVY: Well, then, I will reframe the question.

BY MR. LEVY:

Q You don't know the defendant; do you? A I have seen him a couple of times.

Q But have never spoken to him? A No, sir; never had any business with him.

BY THE COURT:

Q Did you see him before the 24th of September 1908?

A That day?

Q No, before that? A Yes; a few times.

BY MR. LEVY:

Q You are not unfriendly to him; are you? A No, sir.

Q And you don't bear him any ill will?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent, whether he bears him any ill will or not. He has not testified to anything against the defendant.

THE COURT: Well, I will take it.

BY THE COURT:

Q Do you bear him any ill will? A I couldn't understand that.

BY MR. LEVY:

Q You are not bad friends; are you? A No, sir.

CASE #1082

Q And he is not your enemy; is he? A I couldn't say as to that.

Q Well, are you his enemy? A No, not at all.

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

THE COURT: Well, I will allow the answer to stand.

PHILIP POSNER, of 85 East 113th street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Posner, where do you live now? A 85 East 113th street.

Q 85? A Yes, sir.

Q Is that a tenement house? A Yes, sir.

Q With whom do you live? A With my wife and baby.

Q Has your wife a little sister, too? A Yes, sir.

Q What is her name? A Marie Rubenstein.

Q Does she live with your wifeno? A No, sir.

Q Did she live with your wife, in September, 1908?

A Yes, sir.

Q How long have you known the defendant, Harry or Harris Zabransky?

BY THE COURT:

Q You do know him; do you? A Yes. About two years

CASE #1082

now.

BY MR. JACOBY:

Q About two years now? A Yes, sir.

Q So that you met him first early in the year 1908?

A Yes, sir.

MR. LEVY: Now, if your Honor please, I object to Mr. Jacoby leading the witness.

THE COURT: Oh, why should he not repeat it? He is practically only repeating the testimony of the witness on that point. There is no harm in that. The counsel for the People simply translates practically, the answer of the witness.

MR. JACOBY: That is all, sir. I shall not endeavor to lead the witness in any material matter.

THE COURT: Well, I do not think that is at all harmful. Proceed.

BY MR. JACBOY:

Q How many times did you see the defendant from the time that you first met him up to January 1, 1909, would you say? A About every other day or evening.

Q You saw him often? A Yes, sor.

Q Now did you ever have any conversation or conversations with the defendant with relation to this building 1924 First avenue? Yes or no. A I don't exactly know the number of the place.

1066

CASE #1082

Q Well, about any building in First avenue, in that immediate neighborhood? A Well, about a building in First avenue, between 99th and 100th streets, or, rather, a store. There is no building -- no store -- there. There is just the wooden place built there for business.

Q Do you know who occupied that building in 1908?

A A gentleman by the name of Simon had the place, as --

Q Now state when the defendant and you first talked about that building? A Well, about six months previous to the time I know that the fire was in First avenue.

Q Where was this conversation? A At 101st street and First avenue, in a saloon.

Q State what the conversation was, what he said and what you said? A We were speaking about different things, and I asked him what he was doing at the time, and he said that he is doing different things, but there was one special Mr. Marx offers him fifty dollars to make a fire at Simon's wheelwright place, and that he wants \$100 for it, and he don't think he will do it until he settles down to the price. That's what he told me, at that time.

Q Did he tell you anything else at that time? A Well, he was telling me about some horses that he had poisoned there, for different persons.. He didn't mention any people.

Q Was that about all the conversation as far as it relates

CASE # 1082

to this blacksmith's shop? A Yes, sir.

Q Did you say anything to him at that time? A No, sir.

Q When next, if at all, did you have any conversation with him about the blacksmith shop?

MR. LEVY: I object to that. He said that was all the conversation he had with him.

MR. JACOBY: At that time.

THE COURT: And now he is asking him for some other and later conversation, I presume.

MR. JACOBY: Yes, sir.

BY MR. JACOBY:

Q When next did you have any conversation with him about the blacksmith shop? A We had the next conversation about three weeks after. That was in the early part of September, 1908.

BY THE COURT:

Q Prior to the 24th of September? A Yes, sir.

BY MR. JACOBY:

Q Where was that conversation? A That was in the Queens county jail.

BY MR. LEVY:

Q Where? A In the Queens county jail.

BY MR. JACOBY:

Q In the Queens county jail? A Yes, sir.

CASE #1082

Q Were you locked up there, at the time? A Yes, sir.

Q Did he go over there to see you? A Yes, sir.

Q Now what did he say and what did you say, so far as it relates to the blacksmith shop of Louis Simon? A Well, I asked him if he could do anything for me in regard to getting me a bailer.

Q Getting you what? A A bondsman.

Q Were you under arrest, and under a charge there at the time? A Yes, sir. And he told me he had no money at the time, but he had settled down to make this fire at Simon's place, for \$75, and that he expects to make it in a day or so, and, whenever he makes it, he will try to do something for me.

Q What did you say, if anything? A Well, I asked him if he could, that he should try. That's what I told him.

Q That he should do what? A That he should try to help me out in getting a bailer.

Q Is that all that you can remember that was said by him in regard to the blacksmith shop in that conversation?

A No. That was all.

Q That was all? A Yes.

Q Now when, if at all, did you see him after the interview early in September? A I have seen him, I think it was, in the early part of October.

Q Might it have been any earlier than that? A No, sir,

CASE #1082

that was the visiting day in Queens county jail.

Q You were still there? A Yes, sir. He come to visit me there again.

Q You were still in the Queens county jail? A Yes, sir.

Q And had not got out yet? A No, sir.

Q And he came to visit you again? A Yes, sir.

Q Now what did he say in regard to the blacksmith shop of Louis Simons, on this occasion? A At that time I didn't ask him any help, because I knew I was going out of the charge, and he himself said, "Do you know the fire I have been talking about? Well I have made that, and I expect to get the money, on Saturday next. I got some part of it already, but I have spent that, and, when I get the balance, I'll see if I can help you in any way".

Q Did he say how much he had actually got? A He told me he got \$25, or so, and there was some more coming.

Q Did he tell you anything about the result of the fire? A He told me that, when he got away from there, he thought that he was being chased; that's what he said; that he was nearly burned there, that he had a chance to lose his life there, the way he set the fire, because he told me he used some kerosene oil that he put on some wood that was laying there next to the window, and, when he put fire to the oil, the flame busted out and he nearly lost his own life.

Q Did he say anything about what kind of wood there was

CASE #1082

lying around the place? A He told me they were all sweepings of the day's work; that they sweep up, in the evening, and they put it in the corner, and it just happened to lay there.

Q What are you doing now, if anything? A I am working.

Q What kind of work? A Cutter, on cloaks and suits.

Q For whom? A Well, I would like to keep the name of my employer out of court, if possible.

Q It is impossible, because you will have to tell the name of your employer? A Well, Clotz Brothers.

Q Where is their place of business? A Bleecker and Greene.

Q How do you spell Clotz? A C-l-o-t-z. (The witness spells the name.)

Q And how long have you been working for them? A Well, I have been working for these people about eight months ago, and, in the slack season, I am laid off, and I went back to work last week.

Q Last week? A Or, rather, this last Tuesday.

Q When were you laid off? A I was laid off by those people, eight months ago, and then I worked again for different people, for Harry Kitzinger & Co.

Q Where is their place of business? A 14th street and Fifth avenue.

Q Now, did the defendant tell you anything about seeing your wife, that night, the night of the fire? A He didn't mention

CASE #1082

anything in particular.

Q He didn't mention that? A No, sir.

CROSS EXAMINATION BY MR. LEVY:

Q Where did you say you were born? A In England.

Q In England? A Yes, sir.

Q What part of England? A London.

Q When did you come to this country? A I come here the 14th of July 1906.

Q July 14th? A 1906.

Q And where did you enter this country? At New York or any other place? A At New York.

Q New York? A Yes, sir.

Q Did you come alone? A I come with my father-in-law and brother-in-law.

Q What was your father-in-law's name? A Jacob Rubinstein.

Q And what was your brother-in-law's name? A Isaac Rubinstein.

Q Who else came with you? A Nobody, at that time.

Q Were you married at that time? A Yes.

Q Where was your wife? A She was in England.

Q She remained in England? A Yes, sir.

Q How long did you remain -- how long were you in New York or in this country -- before your wife came here? A About

CASE #1082

six weeks.

Q Six weeks? A Yes, sir.

Q And your wife came over here alone? A Yes, she come alone. I sent for her.

Q Wait a minute. You say that you have a child?

A Yes, sir.

Q How old is the child? A A year and ten months old.

Q A year and ten months? A Yes, sir.

Q Was that child born before or after this fire?

A Why it was born before the fire.

Q How long before? A I don't know exactly how long, but I think it was a few months.

Q A few months before? A Yes, sir.

Q You are quite sure of that? A Yes, sir.

Q Where was that child born? A New York City.

Q I know but where, what address? A At 101st street.

Q What is the address? A 321 East 101st street.

Q 321 East 101st street? A Yes, sir.

Q You lived there with your wife at that time? A Yes, sir.

Q How long did you live there? A Quite a few months.

Q Well, about how many months? A About four months.

Q What was your business at that time? A I was a cutter on cloaks and suits.

CASE #1082

Q For whom? A I wasn't working at that time.

Q Well, how long before that time did you work? A About three or four months.

Q So that you were idle three or four months up to the time your child was born, is that so? A Yes, sir.

Q You have testified you were under arrest in the Kings county jail. When was that?

MR. JACOBY No, the evidence is, if your Honor please, that he was under arrest in the Queens county jail, in Long Island City.

MR. LEVY: Then I will amend my question.

THE WITNESS: Queens county jail, Long Island City.

BY MR. LEVY:

Q When was that? A That was in the late part of July 1908, when I was arrested.

Q And you had a trial; didn't you? A Yes.

Q And you were convicted? A I was not.

Q What? A I was not.

Q You are quite sure you were not? A I am.

Q Were you ever convicted of any crime? A No.

Q Did you ever spend any time in jail for any crime?

A No, sir.

Q Aren't you out now on a suspension of sentence?

A No, sir.

Q You are quite sure of that? A I am.

CASE #1082

Q What were you arrested for then? A On the charge of burglary.

Q Burglary? A Yes.

Q Weren't you charged with breaking open a safe? A No, sir.

Q Who was the complainant in your case? A Why, I don't exactly remember the name. Some name -- Abraham something -- I don't remember exactly the name of the complainant. I wasn't much interested to know the name.

Q Where did your trial take place? A In the Queens county court house.

Q What court? A I don't know what court. It was before Judge Humphreys.

Q Now was there a verdict of the jury in that case?
A No, sir.

Q There wasn't? A No, sir.

Q Are you sure of that? A I am sure of that.

Q Were you tried by a judge and a jury? A I was not.

BY THE COURT:

Q Were you not tried before a jury and before that Judge that you have named? A No, sir; I wasn't tried at all.

Q You were not tried at all? A No, sir; I was charged, but I wasn't tried.

Q You mean that it came before Judge Humphreys? A It did, yes, sir, but there was no trial.

Q And you discharged upon your own recognizance; were you? A I was discharged.

CASE #1082

Q You were discharged? A Yes, sir.

BY MR. LEVY:

Q How long were you in jail? A Three months.

Q Three months? A Yes, sir.

Q Now when did you come out of jail? A I come out on the 30th day of October, 1908.

Q The 30th day of what? A Of October, 1908.

Q Now were you ever convicted of a crime in any other country? A No, sir.

Q When you came out of Jail, on October 30, 1908, did you meet this defendant anywhere? A Well, I have seen him around, but --

Q Yes or no. A I did.

Q Where did you meet him? A In 101st street.

Q When? A About two or three days after I come out.

Q What did you say to him? A Nothing.

Q Didn't you say anything at all to him in regard to his relations with your wife? A No, sir.

Q While you were in jail? A No, sir.

Q Are you sure of that? A I am positive.

Q Did you know at that time that he had had relations with your wife?

CASE #1082

MR. JACOBY: I object to that, on the ground that it assumes a fact not proven.

MR. LEVY: Well, I will take a ruling, your Honor?

THE COURT: Well, the objection, I think, is well taken, but, at the same time, I think I will let you have an answer to the question, because the longest way around is not the shortest way home. You may ask it.

A What was the question?

(The question is repeated by the stenographer.)

A Yes.

BY MR. LEVY:

Q You did know at that time? A I did.

Q And how many times did you meet him after October 30, 1908? A Well, I met him a few times.

A Well, how many times? A dozen times? A Well, I didn't count the times. I met him quite often, every day.

Q Where did you generally meet him? In saloons? A No; I met him passing in the street, in 101st street and Second avenue.

Q What business was the defendant engaged in at that time? A I don't know what business he was engaged in. He wasn't doing anything, to my knowledge.

Q Didn't you see him doing anything? A No, sir.

Q Are you sure of that? A I am positively sure of that.

CASE #1082

Q Didn't you know at that time that he was a peddler?

A No, I did not.

Q Didn't you see him driving a horse and wagon, with vegetables on it? A No, sir.

Q Are you positive of that? A Yes, sir.

Q Didn't he sell you and your wife vegetables? A No, sir, he didn't.

Q Will you swear to that? A I'll swear.

Q Now when did you have your first conversation with him, after you were discharged from jail? A About three or four days after I was discharged.

Q In other words, in the early part of November, 1908; is that so? A Of October -- yes, of November, rather.

Q Now tell the Court and jury what that conversation was? A He was asking me how I made out in jail, and I told him that I was discharged.

Q Yes, and he congratulated you, did he? A I beg your pardon?

Q And did he congratulate you upon your discharge? A He did; yes.

Q Well, go on and tell us all that happened, all that took place? A Well nothing took place.

Q Well, what did you say? A I didn't say anything. I was passing him, and that was all we said between us at the time.

CASE #1082

Q And you stopped him, and told him you were discharged from jail? A I didn't stop him exactly. We just met each other, as I and you would.

Q That's all you said to him, that you were discharged from jail, and he congratulated you? A Yes.

Q That was all? A Yes.

Q And you are sure of that? A I am sure of that.

Q Now when did you see him next? A About two or three days later I seen him again.

Q Now, the first time you saw him was about the 3rd of November, the next time you saw him was about the 6th of November, is that it? A Well, I don't remember the date, but I know it was two or three days later.

Q Well, now, let's see if you don't remember the date. You say you were discharged on October 30th, 1908, and the first meeting between yourself and the defendant was about two or three days after that? A Yes, sir.

Q That brought you down to November 3rd; didn't it? A That might be.

Q And you say you had the second meeting with him two or three days after that, and that would bring you down to the 5th or 6th; wouldn't it? A Yes.

Q Now then tell the Court and jury what was said between you then? A Well, we were speaking of different things.

Q Wait a minute. And where did you meet him, first?

CASE #1082

A At Second avenue and 99th street.

Q You and he were alone? A Yes, sir.

Q Now what did you say to him? A I didn't say anything.

Q Talk a little louder, so that we can hear you? A I didn't say anything. He spoke to me.

Q Oh, the defendant spoke to you first? A Yes, sir.

Q What did he say to you? A He asked me what I was doing, and I told him I was looking for a job, and that I expected to get one in a short time.

Q That's all that was said? A That's all.

Q You are sure of that? A I am sure of that.

Q How long were you with him then? A Oh, a few minutes.

Q Now when did you next meet the defendant? A I don't think I met him after that any more.

Q You are sure that you never met him any more after that? A I don't suppose I did; I don't remember whether I did or not.

Q Now have you told us all that took place between you and the defendant from the time you came out of jail until the present time? A Yes, sir.

Q And you are sure that nothing else happened? A No, sir.

Q And nothing else was said by you or by him? A No; I am sure that there was nothing said by me.

CASE #1082

Q What? A I am sure that there was nothing said by me, because I didn't meet him --

Q And you have told the Court and jury everything that took place between those times? A Yes, sir.

Q Between the meetings and at the meetings? A Yes.

Q And you can't be mistaken? A No, sir.

Q Your memory is good on the subject? A Yes, sir.

Q Now when did you first find out that your wife was having illicit intercourse with this defendant?

MR. JACOBY: Now, I object to the question on the ground that all that the testimony so far shows is that he knew that his wife had relations with the defendant, and now the counsel is attempting to characterize it by calling it illicit intercourse. I think the question should be first asked whether he knows that the defendant had illicit relations with his wife.

THE COURT: Objection overruled. I will take it.

A What was the question, please?

(The question is repeated by the stenographer).

A I don't know the meaning of the last word.

BY MR. LEVY:

Q Well, I'll explain it to you. When did you first find out that this defendant was staying with your wife, while you were in jail? A I've never heard that question before.

Q What? A I never heard of it before.

CASE #1082

Q Well, you know it now; don't you? A No, I don't know it now. This is the first time I ever heard it.

Q Are you sure of that? A Yes, I am positively sure of it.

Q Well, then, what did you mean when you said in the previous part of your examination, this trial, that you knew that your wife had had intercourse with this defendant?

MR. JACOBY: I object to that. He did not say anything of the kind.

BY MR. LEVY:

Q Well, that he had had illicit relations with her. What did you mean by that? A Well, he and she came over to see me together, and I told my wife to speak to the defendant, and ask him to see whether he could do anything for me.

BY THE COURT:

Q Is that what you meant by the answer that you gave as to the defendant and your wife having relations with each other? A Yes, sir; leaving the place that I was in together, and coming over together.

Q And is that all that you intended to say, or that you intended to convey to the jury? A Yes, sir; they were friendly when I was out; that is, he would meet her at the same time he would meet me, and that was all to it.

BY MR. LEVY:

Q Weren't you told by certain persons that this defend-

CASE #1082

ant was having sexual intercourse with your wife? A No, sir.

Q While you were in jail? A No.

Q And that he was supporting your household? A No, sir.

Q Are you sure of that? A I am sure of that, because --

Q Now you have answered. That's an answer.

MR. JACOBY: One moment. Let the witness finish the answer. May he finish it, your Honor?

THE COURT: No, he has answered it, and is now attempting to give a reason for it.

BY MR. LEVY:

Q Didn't you personally have conversations with this defendant in regard to his relations with your wife, and his supporting your household while you were in jail? A No, sir.

Q Didn't you have conversations with him, after you came out of jail, with regard to his having supported your wife while you were in jail? A No, sir.

Q Are you sure of that? A Positively sure.

Q Now will you tell this Court and jury how your wife and child and her sister lived while you were in jail? A Well my father-in-law --

Q If you know? A Well, I do know. My father-in-law is a carpenter by trade, and he earned at the time about \$25 a week, I think.

Q No, no. I don't want that.

MR. JACOBY: Now let him finish. He has asked the

CASE #1082

question, if your Honor please, and I think he should be allowed to answer it.

THE WITNESS: Well, I just want to explain.

MR. LEVY: No, no. I want an answer to my question.

(The question is repeated by the stenographer.)

THE COURT: I think your question is broad enough to permit the witness to answer it, Mr. Levy.

MR. LEVY: Well, but --

MR. JACOBY: If your Honor please, there has been a grave attack made upon the character of the witness's wife.

MR. LEVY: I object to the remark of the District Attorney.

MR. JACOBY: And I think the witness ought to be allowed to explain as to how his wife was supported while he was in jail, in view of that attack.

THE COURT: Yes, in view of that part of the cross-examination I think he should be allowed to do so, in view of the character of this question.

MR. JACOBY: Well, then, I object to the remark of the District Attorney, and I withdraw the question.

BY MR. LEVY:

Q Did you personally provide for the support of your wife and child and her sister while you were in jail? A No, I did not.

Q That's enough. That's an answer. A No.

CASE # 1082

Q At the time you were arrested, and put in jail, you were out of employment; is that so? A Yes.

Q And had been out of employment for some time? A Yes, for about three months.

Q Have you had any conversation with anybody in regard to this case? A Yes.

Q With whom? A With the watchman of the Harlem Market.

Q What is his name? A His name is Alfred French.

Q Did you have any conversation with this defendant in this city, prior to --

MR. LEVY: May I see the original papers in the other case?

MR. JACOBY: These are all the papers here. Having seen them, will you now return them to the Clerk of the Court?

MR. LEVY: Is there any reason, if your Honor please, why Mr. Jacoby should not let me have them here? I will not steal them.

MR. JACOBY: But this is another indictment, your Honor.

THE COURT: Do you want to use them for the purpose of cross-examination?

MR. LEVY: Yes, sir, I do.

THE COURT: Then you may have them there, while you cross-examine, of course.

CASE #1082

BY MR. LEVY:

Q Did you have any conversation with him prior to the time you complained against him in the Harlem Police Court on the charge of burglary?

MR. JACOBY: I object upon the ground that it does not appear that the witness ever complained of him on a charge of burglary.

THE COURT: Isn't that sound criticism, counsel, of your question?

MR. LEVY: Well, perhaps it is. I will reframe the question.

Q Now you were a witness in the Harlem Police Court against the defendant on another charge? A No, sir.

Q Weren't you in court? A No, sir.

Q Didn't you see the defendant at that time? A No, sir.

Q Didn't you speak to him? A I spoke to him, but not in court.

Q Well, where did you speak to him? A In the street, as I stated.

Q Didn't you make some threat to him at that time? A No, sir.

Q That you would have him arrested for burglary, on account of his illicit relations with your wife? A No, sir.

Q Weren't you near the court house at that time, and

CASE #1082

didn't you threaten him, after he was discharged on the complaint up there, that you would have him arrested for arson, and that you would make the complaint against him? A No, sir.

Q Didn't you say that to him? A No, sir. I never saw him. This is the first time I saw him since.

Q And you never made that statement? A No, sir.

Q Wasn't your wife a witness in that case up in Harlem?

A She was.

Q Weren't you with her at the time? A No, sir.

Q Where were you? A I don't remember, but I wasn't with her.

Q Were you living with her at that time? A Yes, sir.

Q And did you discuss that case with her at that time?

A Yes.

Q Did you go to court with her? A No, sir.

Q Were you ever in that court?, A No, sir.

Q Did you have any conversations with the officers in that case, at that time? A No, sir.

Q You are sure of that? A I am sure of that.

Q Do you know Meyer Tolchinsky? A No, sir.

Q Do you know him? A No, sir.

Q Do you know Officer Jesse Brenner? A Yes.

Q Did you have any conversations with him at that time in regard to that other complaint? A No, sir.

Q Did you have any conversations with him in regard to

CASE #1082

this case? A No, sir.

Q What conversations did you have with him? A Nothing about the case.

Q You are sure about that? A Yes, sir.

Q Where did you see him? A See who?

Q Officer Brenner? A When?

Q Whenever you did see him? A I have seen him down in the court.

Q That's the only time you have seen him? A And I saw him up in the house.

Q Up in your house? A Yes, sir.

Q Did you have conversations with him there? A No, sir. He come up to get some things on the charge you are talking about.

Q Yes, but you had no other conversation with him?

A No, sir.

Q Were you present when he had a conversation with your wife? A Yes, sir.

Q Was it in relation to this case? A It was in relation to the other case which you have got in your hand now.

Q It was in relation to the first case? A Yes, sir.

Q Now did you have any consultation with the District Attorney in regard to the first case? A No, sir. I don't know which you mean by first or second.

Q I am talking about this burglary case.

CASE #1082

BY THE COURT:

Q Did you have any conversation in regard to a burglary charge against the defendant? A No, sir.

BY MR. LEVY:

Q You did not? A No, sir.

Q Did you ever have any conversation with the defendant after your release from jail, in which you threatened him with revenge for his relations -- because you heard that he had had sexual intercourse with your wife? A Why, no.

Q You are sure of that? A I am positive.

Q And you never had any conversations with him, or any other persons on that subject? A No, sir.

Q And you were --

MR. LEVY: And may I see the indictment in this case, the original papers in this case?

MR. JACOBY: Here they are.

THE COURT: Have you not a copy of this indictment?

MR. LEVY: No, sir, I have not.

THE COURT: Well, the District Attorney ought to have one.

MR. JACOBY: I have one, but he said he wanted to see the original. I will let him see my copy, of course.

THE COURT: Yes. I would prefer to keep the original before me here.

MR. LEVY: Well, I will use the copy, then.

CASE #1082

BY MR. LEVY:

34

Q You were a witness before the Grand Jury in this case; weren't you? A Yes, sir.

Q Who sent for you to come down there? A Well, the District Attorney.

Q Well, did your wife tell you to go down there? A She didn't tell me.

Q Did you tell your wife to go down. A No.

Q How did you come to go down there first? A Because I found a subpoena in the house.

Q What is that? A There was a subpoena for me, and I had to come down.

Q Now, before you came down, did you have any consultation or talk ~~in~~ with anybody else up at your house? A No, sir.

Q Did you have any talk with the Fire Marshal? A No, sir.

Q At no time? A No, sir.

Q You are positive of that? A Positive. I was subpoenaed -- I was at the Fire Marshal's office, and made a statement there.

Q Yes, you made a statement there? A Yes. It's a year ago or more.

Q And that was at the time of the Police Court proceedings in Harlem; isn't that so? A I don't know anything

CASE #1082

about any Police Court proceedings, anything in the Police Court.

Q And you made that statement in the Fire Marshal's office, after October 30, 1908? A Yes.

Q And a few days after that? A I don't know how long; maybe two weeks after; about that.

Q And that was the only time you were in the Fire Marshal's office? A I was up there once after that again.

Q That was twice then? A That was the second time; yes.

Q And that was a short time after the first time? A I think it was the next day.

Q The next day? A Yes, sir.

Q And since that time you haven't been there again?

A No, sir.

Q Now, since the second visit, did any one from the Fire Marshal's office come to your home? A No, sir.

Q Did you have any conversations with the Fire Marshal in this building? A No, sir.

Q At the time you went before the Grand Jury? A Not nothing regarding the case.

Q You are sure of that? A I am positive of that.

Q Did you have any conversations with your wife with regard to this case? A No, sir.

Q At anytime? A No, sir. Well, we were speaking about being a witness, and my losing time coming down here, but nothing

CASE #1082

about talking, or anything like that.

Q That's all you said to your wife? A We didn't rehearse the thing, but all we were speaking about was my losing time. Only this morning, we were saying I might lose my position, coming down here as a witness in the case, every day losing a few hours. That's all we were speaking about the case.

Q Were you working anywhere on December 1st of this last year, of 1909? A December?

Q Yes, were you working in the month of December?

A How long ago was that?

Q That was this last month, sir? A Yes.

Q And you were not working last month? A No, sir.

Q And you are not working now? A I am, yes.

Q When did you get your last employment? A Last Tuesday.

Q And prior to last Tuesday you were out of work?

A Yes, sir.

Q You were not working? A No, sir.

Q And you know when this indictment was found; don't you? A I don't remember the date.

Q December 30, 1909? A I suppose so, if it's there.

Q And, still you spoke to your wife of losing time, when you were out of employment? A That was the time of the case going on.

CASE #1082

Q Yes or no? A At the time of the case going on.

BY THE COURT:

Q When was that? A Well, all this week. Tuesday I come down.

Q And you started in to work on Tuesday? A Yes, sir; and that's the day I started in to work.

Q And you say you talked with your wife about losing time then? A Yes; I've been coming down here since last Tuesday.

BY MR. LEVY:

Q And did you have any conversation with your wife before last Tuesday about this case? A No, sir; not until we were subpoenaed.

Q And when you got a subpoena, you and she, what did you say to her? A She showed me the subpoenas when I come home, and she said we were subpoenaed to come down as a witness in the case, and I said I didn't like the idea of doing it, but I suppose I had to, if I got a subpoena, because I read on the back of it that witnesses are fined, if they don't come down.

Q And that's all she said to you and you to her? A Yes.

Q You are positive of that? A Yes.

Q And you didn't tell her what to say? A No, sir.

Q And she didn't tell you what to say? A No, sir.

Q And you didn't talk about the circumstances of this arson case at all? A We did not ..

CASE #1082

Q And you are positive about that? A Positively.

Q And so you went down with your wife, after you got the subpoena? A No,,sir.

Q You went separately? A I went to work.

Q And your wife came down to the Grand Jury alone?

A To the Grand Jury, I think we come down together.

Q well, after you got the subpoena, and she got the subpoena- - they were subpoenas from the Grand Jury, weren't they? A Yes, sir.

Q And did you both come down to the Grand Jury together? Yes or no? A If I am not mistaken, I think yes.

Q So you didn't go to work that morning? A I wasn't working, that time.

Q So you went direct to the Grand Jury room in this building with your wife? A I think so; yes.

Q Now at that time you lived where? A At 123rd street, 414 East 123rd.

Q And which way did you come down to this building?

A We took the 125th street "L", and got off at Canal street.

Q And at no time you spoke to your wife, and told her what to say before the Grand Jury? A No.

Q You are sure of that? A I am sure of that.

Q And your wife didn't tell you what to say? A No, sir.

Q Did you talk over the case at all? A No, sir.

Q You are positive of that? A I am positive of that.

CASE #1082

Q Now who went in before the Grand Jury first, you or your wife? A I think it was my wife.

Q You are not sure about that? A Well, I think it was her first.

Q After she came out of the Grand Jury room, did you have any conversation with her? A No, sir.

Q After you came out of the Grand Jury room, did you have any conversation with her? A Yes.

Q Where? A Outside of the Grand Jury room.

Q Well, what did you say to her? A I told her that they had asked me about whether I am working, and whether I ever was arrested, and I told them, I spoke the truth, also, about whether I was a confederate, and I told them no, that I only got mixed up with those fellows, being out of work at the time, and didn't do anything wrong.

Q This is what you told your wife? A Yes, sir.

Q And what did you do then? Go home? A Yes, sir.

Q You went home with your wife? A Yes, sir.

Q Did your wife say anything to you? A No, sir.

Q On the way home? A No, sir.

Q She didn't say anything? A She had the baby; she had trouble with the baby.

Q That's an answer. You say she didn't say anything?

A No, sir.

Q Who is Marie Posner? A Marie Rubenstein.

CASE #1082

Q Who is she? A My sister-in-law, my wife's sister.

Q Well, is she known as Pogner? A No, sir. There was a mistake there.

Q Her name appeared on the back of the indictment as Posner? A Yes, her subpoena was Posner, and we have it changed here for the right name, Rubenstein. There was a mistake made there.

Q Do you know Jacob Levy? A No.

Q You don't know him at all? A I heard his name called out in court, when he got up, yesterday.

Q That's all you know about him? Never met him? A Well, I met him in Harlem, too, just passed him. Seen him by sight.

Q Never spoke to him? A Once I was engaging him to make a moving job for me, and we didn't agree for the price. I believe that's about all we had had between us.

Q But you know him, don't you? And you have spoken to him? A Just once in a while.

Q And you have had conversations with him? A No, not --

Q Well, did you have conversations with him with regard to this case? A No, sir.

Q Or any other case? A No, sir.

Q Have you spoken to him at all about his testimony in this case that he was to give? A No, sir.

Q Or have you spoken to him with regard to the testimony

CASE #1082

that you were going to give in this case? A No, sir.

Q You are positive of that? A Positive.

Q And you have had no occasion to talk to him since you came out of jail? A Well, I think I did. I've seen him in court, every morning, here, for the last few days.

Q And did you talk to him then? A Yes.

Q Well, what did you speak to him about? A Well, we were speaking. I told him I was working now, and that I keep away from 101st street, where all those bums are, and I am quite satisfied, and different things about working, and all them things.

Q Yes. You told him that you were formerly associating with those bums up there in 101st street, did you?

A Yes.

Q And you told him you were not associating with them any more? A I was satisfied that I wasn't; yes.

Q That was at the time you were out of employment, you say? A That was here in court.

Q I mean at the time you were associating with the bums? A Yes, about a year and a half ago.

Q Now, was that all you had to say to Mr. Jacob Levy in this court room? A Well we were speaking, and I don't remember just exactly what he said or what I said to him.

Q Now when did you have the last talk with Jacob Levy, in this court room? A I think, yesterday.

Q What did he say to you and you to him? A Well I said

CASE #1082

that I came down here from work, and I would have to be around here three or four hours, and I would have to make up the lost time in the evening, and work it out.

Q What did you say to him on the previous occasion?
Was it the day before that? A Well, I suppose it was.

Q Well, don't you know whether it was the day before yesterday? A I think it was.

Q Where did you meet him then? A In the court room here.

Q What did you say then? A There was nothing much spoken, because there were the orders of the court, and we were not saying anything.

Q And you say that nothing was said, the day before that, in connection with this case? A No, nothing was spoken in connection with the case.

Q Well, what was spoken about? A That I am losing time.

Q The same thing you told him the day before? A Yes, the same thing; that I am coming down here, and that I have, when I come down, to work at the dinner time or in the evening until eight o'clock, and make up the time.

Q Where did you tell him that? A Outside of the court room there (indicating).

Q Not in the court room? A No, sir.

Q How long were you in his company, outside of the

CASE #1082

court room? A A few minutes.

Q Anybody else there at the time? A No, sir.

Q Did you speak to him, the day before that, three days ago? A Well outside. We was in court, because I never meet him anywhere else.

Q Can you remember what you said then? A No, sir. There was nothing interesting me what we were speaking. We were speaking of the different things what I --

Q Didn't you speak to him about this case? A No, sir.

Q Did he to you? A No,,sir.

Q And you are positive that you didn't speak to him about his or your testimony in this case? A No, sir.

Q Or any of the circumstances of the case? A No, sir.

Q Well, what did you speak to him about?

MR. JACOBY: I object. I think this cross-examination has gone far enough in this direction.

THE COURT: Isn't that so, counsel? Hasn't it gone far enough in this line? I have permitted a great deal of latitude, counsel, and I want to give you a great deal of latitude, but, at the same time, do you consider that that is material? If you do, I will let you have it, but I cannot see that it is, in view of your previous cross-examination.

MR. LEVY: Well, I look upon this witness as probably the most important witness, and, therefore, I would like to

CASE #1082

proceed in this line a little further.

THE COURT: You may, if you view it as important.

BY MR. LEVY:

Q Now tell us what you said to Mr. Levy then? A Well, I don't remember what I spoke. If I meet a man, and I don't know him, and I am not a friend of him, and I only pass a few words with him, I can't remember that.

Q Did you meet him up in the Grand Jury room? A Yes.

Q Did you have any talk with him then? A Maybe I spoke to him, but I don't remember what was said.

Q When was that? A When we were subpoenaed down for the indictment.

Q Well, don't you remember the date? A No, I don't remember the date.

Q Well, it was in the month of December; isn't that so? A Well, I don't know. Last month, I suppose.

Q About sixteen days ago? A I don't know how many days ago.

Q It was less than thirty days ago? A Yes.

Q And you can't remember what was said then? A I can't remember, because there was nothing interesting that I should take it in my mind, and remember it.

Q You are quite sure of that? A Yes, sir.

Q That you can't remember anything that you said to him

CASE # 1082

or he to you? A Well, if it was important, I would remember it, but nothing important passed between us.

Q Well was it anything in connection with this case at all?

A No, sir.

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

Q Did you leave the building together? A No.

Q Did you leave the Grand Jury ante-room together?

A No.

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Posner, so far as you have ever known, or heard, or believed, or had any idea, your wife is a good and faithful wife; isn't she? A Yes, sir.

Q And has always been so? A Yes.

Q And you never intended to convey any other meaning to this jury; did you? A No, sir.

MR. LEVY: That's all. Oh, may I ask the Court's indulgence? I would like to ask him some questions about this man Marx. I forgot about that. May I recall him from the corridor?

THE COURT: Oh, yes, he may come back.

MR. LEVY: And may I now ask that the witnesses be kept apart, after they have testified?

THE COURT: Well, I do not see how I can control that. I have put them out of the room for you, counsel, and that is as much as I can do.

CASE # 1082

MR. LEVY: I ask it in the name of justice, your Honor, to secure a fair trial for this man.

THE COURT: Oh, I will do anything that I can, counsel, so that the testimony given here will not be vitiated in any way by improper inferences; and, if you think it will do any good, I will instruct the witnesses not to speak to each other.

MR. LEVY: No, sir, I don't think that will be necessary.

PHILIP POSNER, being recalled for further cross-examination, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q Do you know Mr. Marx, Mr. Posner? A I think I do.

Q What is his first name? A That's the only name I heard people call him.

Q Now you say you think you know him. How do you know him? A I have seen him in a saloon in 101st street.

Q When have you seen him? A I have seen him -- that was, I think, the late part of September, 1908.

Q The last part of September? A The late part, yes.

Q What year? A 1908.

Q You are quite sure of that? A Yes.

Q What did you say to him? A I had nothing to say to him.

CASE #1082

Q What did he say to you? A We wasn't speaking together.

Q How did you know it was Mr. Marx? A There was a party with him that kept saying, "Marx".

Q Is that the same person that you referred to in your testimony, earlier, in answer to questions put to you by Mr. Jacoby? A I think, yes.

Q You are sure of that? A Yes.

Q And is that the name that you referred to? A Yes, sir.

Q Will you describe to this jury that man? A Yes.

Q Go ahead then? A According to my memory-- I didn't look at him -- I think I seen him maybe twice -- he isn't quite as tall as myself, and a little fuller, more stout than I am. He's a blacksmith by trade, at the same place where this Simon keeps, the fellow that his place was burned down.

Q What's that? Raise your voice? A He is a blacksmith by trade, and he keeps a business near this place of Simon that was burned down.

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

Q And you have seen him in his place of business? A I think I did.

Q Where is his place of business?

MR. JACOBY: I object. Ask him where it was at that time.

BY MR. LEVY:

Q Well, at the time you saw him in the saloon, or at any

2801
CASE #1082

other time, where was it? A I've seen him in the saloon --

Q No. Please answer my question. Where is his place of business? A In First avenue it was at the time.

Q When? A In 1908, the late part of 1908.

Q Well, did you know his full name? A No.

Q And do you know where his place of business is now?

A I don't.

Q Did you make any inquiry? A No, sir.

Q Did you find out, or did you try to find out, where his place of business was? A No, sir, I didn't. I wasn't interested.

Q Did you try to find out where he lived? A No, sir.

Q Did you tell the District Attorney about Mr. Marx?

A No, sir.

Q Are you positive of that? A Yes, sir.

Q Now how near to Simon's shanty was this man Marx's shanty? A I couldn't tell you, sir, exactly.

Q Did Marx have a shanty, too? A I don't know. I think it was. I didn't look at the building.

Q How many times were you in his shop? A Never.

Q Why, you have just testified that you were in his place of business in First avenue? A No, I wasn't never, no. I didn't say that. I just passed there, and saw him in there.

CASE #1082

Q Near what street was his place on First avenue?

A I don't exactly remember near where. Either -- between 97th and 100th street -- between those blocks. I don't exactly remember where.

Q And where did you live then? A At 96th street and Second avenue.

Q And what brought you up in that neighborhood at that time? A I was going upto a friend of mine's that lived in 100th street.

Q What was his name? A Weinstock.

Q And how many times did you call on Weinstock? A I used to go there every evening.

Q How do you know that that blacksmith shop belonged to Marx? A Because I have seen him right there, working around.

Q Is there a sign on it? A I didn't see any. I didn't look for any.

Q And because you saw him in there, working in the place, you thought he owned the place? A Yes.

Q Did you talk to him, and did you ask him whether he owned the place? A No, sir, I didn't.

Q Do you know whether the defendant knows Marx; do you know that of your own knowledge? A Of my own, I don't, no.

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q Just one moment, Posner. Do you know how the author-

CASE #1082

ities came to get your name as a witness in this case? If you know, tell me? A Well, there was a watchman up in the Harlem Market --

MR. LEVY: Now, I object to that. That's entirely immaterial.

MR. JACOBY: I submit it is very material. It has been intimated that this witness has some personal spite or enmity against the defendant, and is persecuting him, and has made up a story against him, and I think it is proper to show how he became connected with the case, how he came to be a witness in the case.

THE COURT: Well, he said he was subpoenaed.

MR. JACOBY: But I asked him how the authorities got his name, if he knows, in order to serve the subpoena.

THE COURT: Yes, you may have that.

MR. LEVY: I except.

A Well, there is a watchman in the Harlem Market by the name of Albert French, and I knew him before I got into the trouble I was in, in Queens County Jail.

BY MR. JACOBY:

Q Well, did you give him your name as knowing something about the case?

MR. LEVY: Now, don't lead the witness, please.

A After I came out, he asked me about the trouble I had.

MR. LEVY: Now, I object to any conversations be-

CASE #1082

tween a third party and himself.

THE COURT: Yes, I will sustain that objection. Perhaps we may assume, then, counsel, that the knowledge that he knew anything about the case, and which resulted in his being subpoenaed, came to the authorities through this man French?

MR. LEVY: Yes, I am willing to assume that, to save time.

MR. JACOBY: Then I am satisfied. And that is all with this witness.

THE COURT: Now, witness, you will go to the back of the court room, and sit in the last seats there, out of hearing of what occurs here. Is that satisfactory, Mr. Levy?

MR. LEVY: Entirely, sir.

W A C O B L E V Y, of 331 East 101st street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY :

Q What is your business, Mr. Levy? A Moving business.

BY THE COURT:

Q Moving business? A Yes, sir.

Q Expressman? A Yes, sir.

BY MR. JACOBY:

Q Public truckman? A Yes, sir.

CASE # 1082

Q And was it in September, 1908? A (No answer).

Q Was it the same business in September, 1908? A Yes.

Q For how long before that had you been a public truckman?

A I have been in it for the last twelve years.

Q September, 1908, did you own your horses and trucks?

A yes.

Q How many horses? A Two of them.

Q And where did you stable your horses in September, 1908?

A 99th street and First avenue.

Q And did you stable them back of a blacksmith shop there?

A Yes, back of Mr. Louis Simon's shop.

Q Is that the shop was burned down? A Yes, sir.

Q Did you see it burned down? A Yes, sir.

Q What date was it that it burned down? A I couldn't tell you the date, in fact.

Q Well, was it burned down? A It was all burned down, yes.

Q About when was it burned down? A About -- I can't exactly tell you the date.

Q Well, can you tell me as near as the month? Do you remember what month it was in? A What month?

Q Yes, what month in 1908? A I think it must have been around the 15th.

Q What month? January, February, March, April? What month of the year? A I couldn't exactly tell you.

CASE #1082

Q Can you remember whether it was in the spring or fall?

A Yes, it was in the spring. It was warm when the thing happened.

BY MR. LEVY:

Q It was in the spring? A Eh?

Q In the spring? A In summer.

BY MR. JACOBY:

Q In summer? A Yes, sir.

Q Now don't you know that it was in September? A It was kind of warm, anyway.

MR. LEVY: I object to that last question as leading, if your Honor please.

THE COURT: Well, he says it was warm when it happened.

MR. LEVY: Well, I'll withdraw the objection.

BY MR. JACOBY:

Q Well, was there only one fire there? A Yes, that's the only fire that was there.

Q That's the only fire that was there in 1908? A Yes, sir.

Q And you don't remember exactly the date? A No, sir.

Q On the night that the fire took place, were you out with your team? A No, sir, I was inside.

Q Had you been out, that night, with your team, before it happened? A Yes; I'd been out in the country, to do a job.

CASE #1082

Q And what time did you get back from the stable? A I got back to 99th street and First avenue, the stable, at one o'clock.

Q That is the stable where you stabled your horses?

A Yes, sir.

Q Did you drive in? A Yes, sir.

Q Was there an alleyway? A Yes, sir.

Q On one side of the shanty, the blacksmith shop? A Yes, sir.

Q And in the back was the stable? A Yes, sir.

Q You drove in there with your horses and your wagon?

A Yes, sir.

Q And what did you do with them? A I backed the wagon in, and took the horses in the stable, and started to go out.

Q Did you feed the horses? A Yes, sir.

Q How long after you drove in there, did you start to go out? A About half past one. About half an hour I was in there.

Q In other words, it too you about half an hour to stable the horses, and fix them up? A Yes, sir.

Q Now tell this jury what, if anything, you saw and heard after you came out of that stable? Tell them in your own language? A I was going out of the stable, at half past one, and I heard a noise in the shop, the blacksmith shop,

CASE #1082

and I stopped for a moment and I listened to the noise that was going on, and then I walked to the front of the gate, and I seen a man leaping out of the front window, and running, and, about five minutes afterwards, the fire broke out.

Q Now did you see that man's face? A Yes. I know the man for pretty near a year and a quarter.

Q Well, what man was it? A This man sitting here (indicating the defendant).

Q The defendant here? A Yes, sir.

Q What kind of light was there there? Moonlight, or what? A An electric light on the corner, about twenty feet away.

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

Q You can't be mistaken about it? A No, sir.

CROSS-EXAMINATION BY MR. LEVY:

Q Where had you been with your horses and truck, that day? A I had been out to Rockaway Beach.

Q When did you go out there? A That afternoon.

Q At what time? A I couldn't tell you the time exactly. It was after dinner.

Q Do you know the date? A I couldn't remember the date .

Q Did you have any record? Did you have a job at Far Rockaway, or Rockaway Beach? A Yes, just an ordinary job.

CASE #1082

Q A moving job? A Yes.

Q And your stable was away up in Harlem? A 99th street and First avenue.

Q And which way did you go to Rockaway Beach? A Took the 99th street ferry.

Q And did you come back the same way? A No, sir, I come back to 92nd street way..

Q What did you move down to Rockaway Beach? A Furniture.

Q Well, how many loads of furniture?, A One load.

Q Where did you move the furniture at Rockaway Beach to?

A I can't remember the place.

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

Q Do you know the name of the party for whom you did the moving? A That I couldn't tell you either, because I don't keep no books.

Q Well, did you ever move anybody else down to Rockaway Beach? A No, that was the only job.

Q And you don't remember the man's name? Was it a man or woman? A It was a woman.

Q What was her name?, A I don't know. She come to the corner, and she told me --

Q Where did you move her to? A I can't remember where, it's so long ago.

Q When did you arrive at Rockaway Beach on that afternoon? A At one o'clock in the morning.

CASE #1082

Q No, at Rockaway Beach? A No; from Rockaway Beach.

Q No, when did you arrive there? A I can't remember that exactly.

Q And when did you leave Rockaway Beach? What time?

BY THE COURT:

Q You say you got back at one o'clock? Give the jury some judgment as to when you left Rockaway Beach, reaching home at one o'clock? Now go ahead? A I can't exactly mention the time, because we never ~~take~~ took the time.

Q Well, you can use some judgment, can you not, as to how many hours it did take you to get up? A It would take about five hours to go there.

Q About five hours? A Yes, sir.

Q It took you to make the trip? A Yes, sir.

CASE # 1082

BY MR. LEVY:

Q About five hours to go there? A Yes, sir.

Q Now can you give us some idea of what time you left your stable in the afternoon? A It was right on the corner where I stand all the time, not the stable.

Q And when did you leave the stand? A About ten o'clock.

Q That was the time you were engaged to go down to Rockaway Beach? A I was supposed to go to 94th street, to put the job on.

Q 94th street? A Yes, sir, to put the job on.

Q You took a job on at 94th street? A Yes, sir.

Q Did you go to 94th street? A Yes, sir.

Q Who did you see there? A I see the woman there.

Q And you were to move her from that place? A Yes, sir.

Q What was the number at 94th street? A 94th street?

Q yes. A I think it was 230.

Q Eh? A I think it was 230; something like that; I couldn't remember.

Q Do you know her name? A No, I couldn't tell you.

Q Did you ever go there to find out who she was? A No, sir.

Q What time did you go to this place in 94th street? A I went there at half past ten.

Q In the night? A In the morning.

Q And you got the order then? A Yes; I went over --

CASE #1082

Q And then you started the job in the afternoon? A Yes.

Q Now what time in the afternoon, about, did you start it?
About two o'clock? A No, about 12 o'clock.

Q About 12 o'clock? A Yes, sir.

Q Now, what did you have to move? A The floor of furniture.

Q The whole floor of furniture? A Yes.

Q Who helped you move that furniture? A The two working mens.

Q What were their names? A I know them just by their nicknames. The names I don't know, because in our business we use different working mens, every day.

Q I know, but they were men that were in that neighborhood?
A Yes.

Q And you generally employ men that you know very well?
A Yes.

Q Now give us the nicknames of the men that you know very well, and were employed on that job at that time?
A I can't mention the names.

Q What? A I can't mention the names. It's quite a long time ago since they worked for me.

Q Now, you came down to the Grand Jury, last month, didn't you? A Yes, sir.

Q And you knew what you were called there for, didn't you?
A yes.

CASE #1082

Q And you refreshed your memory as to everything that happened in this case; didn't you? A Yes.

Q And you knew all about this 94th street job then, didn't you? A Yes.

Q And you knew that you would be asked about that; didn't you? A I didn't know.

Q Didn't you tell the Grand Jury, or the District Attorney, that you went to Rockaway Beach on a job, that day? A Yes.

Q And you knew that you would be questioned about that; didn't you? A Yes.

Q Now then tell us the names of the parties that were with you on that job? A Well, I can't remember the names. It's quite a long time since they have been working for me.

Q Didn't you make it your business to find out who they were? A No, sir; I didn't make it my business.

Q Did you make any attempt to find those men? A No, sir.

Q Now how many men were there? A Two.

Q Have you seen those men since you moved that job?

A No, sir.

Q Did they leave your employment, that very night?

A They left me a day or two later.

Q A day or two later? A Yes, sir.

Q Now, how long did it take you to load up? I withdraw that. Did you have two horses? A Yes, sir.

CASE #1082

Q A two horse truck? A Yes, sir.

Q And you started to load about what time? A About dinner time.

Q Well, it was after twelve o'clock, wasn't it? A About 12 o'clock.

Q Well, how long did it take you to load up? A About an hour.

Q Where did this woman live? On what floor? A On the ground floor.

Q Even with the street? A Yes.

Q Was it a store? A No, sir; it was rooms.

Q What? A They were rooms.

Q Rooms on the ground floor? A Yes, sir.

Q No store there? A No, sir.

Q Between what avenues is that? A That's between First and Second avenues.

Q Now it took you an hour to load your trucks? A Yes.

Q Quite sure of that? A Yes.

Q That brought you down to one o'clock; did it? A Yes.

Q Now you started from that house at one o'clock?

A Yes, sir.

Q And you say it took you five hours to get to Rockaway Beach? A Yes, sir.

Q And into what kind of premises did you move that stuff?

A Into a little cottage.

CASE #1082

Q Into a little cottage? A Yes, sir.

Q Now, after you moved the stuff into the cottage, did you start off directly to go home? A Yes, sir.

Q Did you stop anywhere to get refreshments or anything to eat? A No, sir.

Q You are sure of that? A I am sure of it, because I wanted to get home.

MR. LEVY: I ask that the last remark be stricken out, if your Honor please.

MR. JACOBY: I object to it being stricken out.

THE COURT: Strike it out.

BY MR. LEVY:

Q The two men that you were working with at the time returned with you on the wagon; didn't they? A No, sir; they went back on the El, on the train.

Q They went back on a -- A On the train. I drove back myself.

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

Q Now when did you see these two men again. The next morning? A The next morning.

Q Did you have any conversation with them? A No, sir.

Q Did you tell them about the fire? A No, sir.

Q Didn't you tell them that you saw somebody burn that place up? A No, sir.

Q Didn't you tell them that you saw this defendant do the

CASE #1082

job? A They seen the fire --

Q Yes or no? A No, sir.

Q They saw the fire, you say? A Yes, sir.

Q Did you talk to them about the fire? A Yes; and after that I told them about it.

Q Yes, you told them all about it? A Yes, sir.

Q And you told them that this defendant did the trick?

A Yes.

Q Is that the language that you used? A No, sir.

Q What did you say? A I said that I seen the fellow come out of there that set the place on fire.

Q And told them who it was? A Yes.

Q What did you say to them? A What did I say to them?

Q Yes. A And I said I had all I could do to get my wagon and horses out of there.

Q Is that all you said to them? A No, sir.

Q Did you mention his name to them? A No, sir.

Q Are you sure of that? A Yes.

Q Did you know his name then, the defendant's name?

A No, but I knew him by the looks.

Q But you knew him by the looks? A Yes, sir.

Q And you are sure that you didn't know the defendant's name at that time? A Yes.

Q And at the time you saw this defendant, were there any flames there? A At the time, yes.

CASE #1082

Q Yes. A Yes.

Q Now describe to the jury what you saw at that time?

A Well, I seen after he --

Q Was the place burning up? A After I seen him running, the whole place was up, inside of ten minutes.

BY THE COURT:

Q When he got out of the window, as you say, did you see any flames or was it later? A Right after he jumped out, I seen the flames go up .

BY MR. LEVY:

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

Q Now, the flames burst right out? A Yes, sir.

Q Now where was this window you are talking about?

A Right on the street, right on the sidewalk, the entrance to the sidewalk.

Q Did you ever see that window before? A Yes, sir.

Q Was it always open or closed? A Always open , kept open.

Q And did you see the window -- did the window remain open after you saw the defendant? A Yes, sir.

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

Q Now, after you moved your hoses and truck what did you do? A Well, I started in to get somebody else's horses inside out, and then somebody come along, a man, and rang for the fire engine, while I was getting the other horses out,

CASE #1082

and, after I had some of the horses out, the fire engines come along, and I stood outside. They wouldn't let me go inside, and so I watched my horses on the street.

Q And that was all you did? A Yes, sir.

Q And that the time you saw the defendant jump out of that window, you thought it was a peculiar thing? A Yes, sir.

Q You thought it was very strange; didn't you? A Yes.

Q Especially when you saw the flames? A Yes.

Q And you saw the flames, and this man, at the same time?

A Yes, sir.

Q This defendant? A Yes, sir.

Q And you thought it was a very strange thing? A Yes, sir.

Q Did anything occur to you at that time? A No, sir.

Q Did you see any police officer at that time? A No, sir.

Q Did you see any firemen? A I seen the firemen when they came to the fire.

Q You were there when the firemen arrived? A Yes, sir.

Q Did you have any conversation with any of the firemen?

A No, sir.

Q Did you tell anybody what you saw, at that time? A No, sir.

Q You are sure of that? A I am sure of that.

Q Or any other time? A No, sir.

Q And you kept that to yourself? A Yes, sir.

Q When was the first time you ever told anybody what you saw? A When I was brought down before the District Attorney's

CASE #1082

office.

Q Before the Grand Jury or before the District Attorney?

A Before the District Attorney.

Q Do you know the name of the District Attorney to whom you spoke about it? A The name is Jacoby, I think.

Q What? A Jacoby.

Q This gentleman here (indicating Mr. Jacoby)? A Yes, this District Attorney.

Q And the first time you ever said anything to anybody about what you saw, on that occasion, when Mr. Jacoby sent for you?

A Yes, sir.

Q Is that so? A Yes, sir.

Q Now when did Mr. Jacoby send for you? Please tell the court and jury that? A I have been here about seven times, seven or eight times.

Q No. But he sent for you in this month; didn't he?

A Yes.

Q You are sure of that? A Yes.

Q Now how many days ago? To-day is the -- the 14th of the month? A I have been here about a month ago.

Q No. I asked you when you first came down to this building to see Mr. Jacoby, this month? A I can't remember the date.

Q Eh? A I can't remember the date.

Q Now, I don't want you to tell us the date. Tell us

CASE #1082

the number of days. Was it one day or two days, or ten days ago?

A It was about eight days ago, I think.

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

Q About eight days ago? A Yes, sir.

Q That was the first time you ever told anybody what you saw? A Yes, sir.

Q It might be ten days ago; mightn't it? A I don't know; I couldn't properly tell you about the dates.

Q I don't ask you the dates, Levy. I ask you for the number of days. Now was it ten days ago or five days ago, when you first came down to see Mr. Jacoby, and told him about what you saw, that morning, or that night? A About ten days ago, yes.

Q Ten days ago? A Yes, sir.

Q Now, it could not have been more than ten days ago?

A I don't think it is.

Q Eh? A I don't think it is.

Q Do you know when Mr. Jacoby became a District Attorney; don't you? A Yes.

Q When did he become one? A The day after New Years.

Q The day after New Years? A Yes, sir.

Q So that it must have been after that that you came down to see him? A Yes.

Q Now can you tell us how many days ago, about, with any degree of certainty? A (No answer.)

CASE #1082

Q Well, bever mind if you can't remember. Now, after you saw Mr. Jacoby, you went before the Grand Jury? A Yes, sir .

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

Q Do you know what the Grand Jury room is? A Yes, sir.

Q And as a result of your conversation with Mr. Jacoby, and what you told him, he sent you before the Grand Jury?

A Yes, sir.

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

MR. JACOBY: Now, I object to this, because it is already clearly in evidence that the defendant was indicted before the first of January.

MR. LEVY: Now, I object. That is unfair, your Honor.

THE COURT: Yes. Disregard it entirely, gentlemen. It is an improper remark. Go ahead with your cross examination.

MR. LEVY: Now, Mr. Jacoby, will you let me see those papers you have in your hand?

MR. JACOBY: Certainly.

BY MR. LEVY:

Q Now, did Mr. Jacoby go with you before the Grand Jury?

A No, sir.

Q Did he go into the Grand Jury anteroom with you?

A No, sir.

Q Did you write out any papers for him? A No, sir.

Q Did you sign any papers for him? A No, sir.

Q Did he write out any statement of yours? A Yes.

CASE #1082

A Did you see him do it? A Yes.

Q Did you sign it? A No, sir.

Q Was there a stenographer there, or did Mr. Jacoby do the writing? A No, sir; there was a stenography .

Q What is that? A There was another man with him.

Q You know what a stenographer is, don't you? A Yes.

Q A gentleman like that one writing over there (indicating the stenographer)? A Yes.

Q And you saw him write shorthand? A Yes, sir.

Q And he was in the room with Mr. Jacoby and yourself?

A Yes, sir.

Q And then, after you had made that statement, you went before the Grand Jury? A Yes, sir.

Q And that was the first time you went before the grand Jury in this case? A Yes, sir.

Q You can't be mistaken? A Yes.

Q You are sure of it? A Yes.

Q Before you came down to Mr. Jacoby's office, did you have any conversation with anybody with regard to what you knew in this case? A No, sir.

Q Were you ever subpoenaed to go to any other place?

A I was subpoenaed to the Fire Marshal's office.

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

Q Then you had a conversation with the Fire Marshal?

A Yes, sir.

CASE #1082

Q Do you know the Fire Marshal's name? A I couldn't tell you his name.

Q When did you go down to see the fire marshal? A Oh, that's pretty near a year ago.

Q About a year ago? A Yes, sir.

Q That was over a year ago and you were never there since?

A No, sir.

Q Did you make any statement at that time to the Fire Marshal? A Yes.

Q And was it written down? A Yes.

Q Did you sign it? A No, sir.

Q Did you ever read it? A No, sir.

Q Was it ever read to you? A No, sir.

Q At that time what did you say to the Fire Marshal?

A I told him the same thing that I said just now.

Q Now didn't you tell the jury, a little while ago, that you never told anybody about this case; didn't you? A Yes.

Q Now did you go down to any other office with regard to this case? A No, sir.

Q Did you have any conversation with any police officers? A No, sir.

Q Did you have any conversation with any of the witnesses in this case? A No, sir.

Q Did you have any conversation with Mr. Simon? A No, sir.

CASE #1082

Q Or Mr. Marx? Do you know Mr. Marx? A Yes, I know Mr. Marx.

Q Who is Mr. Marx? A He is a blacksmith also.

Q Where is his place of business? A 98th street and First avenue.

Q You had your wagon repaired by him several times, didn't you? A Yes.

Q Where is his place now? A The same place now, 98th street and First avenue.

Q Same place now, 98th street and First avenue? A Yes, sir.

Q And do you know what his first name is? A I don't know his first name.

Q Eh? A I couldn't tell you his first name.

Q Now, you say you told Mr. Jacoby, only ten days ago, all you knew about this case? A Yes.

Q Is that so? A Yes, sir.

Q Did you tell him about Mr. Marx? A No, sir.

Q Why didn't you? A Because it wasn't my business to tell him anything about Mr. Marx, because I don't know anything about him.

Q Did you have any conversation with Posner? A No, sir.

Q That man in the back of the room there (indicating Posner)? A No, sir.

Q Do you know him very well? A I know him just by looks.

CASE #1082

Q Did you have any dealings with him at any time? A No, sir.

Q Did you ever have any dealings with him in your life?
A No, sir.

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

Q Did you ever have any business transactions with him in your life? A No, sir.

Q Did you ever do any jobs for him in your life?
A No, sir.

Q You are positive of that? A No, sir.

Q Did any of your workmen do any jobs for him? A No, sir.

Q They couldn't do it without your knowledge? A No, sir.

Q You are quite sure of that? A Yes, sir.

Q Did you ever stable your wagons or trucks with Mr. Marx?
A No, sir.

Q Did you ever have any conversation with Marx with regard to this case? A No, sir.

Q Or with regard to this defendant? A No, sir.

Q Did you ever have any conversation with this defendant?
A Just by the looks, that's all; just good morning".

Q Just passed him and said good morning? A Yes, sir.

Q And what business was the defendant in when you passed him, and saw him by his looks? A I couldn't tell you.
One day I seen him working on a peddling wagon, off and on like that.

CASE #1082

Q And you saw him driving a pedler's wagon, and selling from a pedler's wagon in your neighborhood? A Yes.

Q Did you ever know that he stabled his horse and wagon in the same place that you did? A He did.

BY THE COURT:

Q Did you know him to speak to him, when you met him on the street? A Yes.

Q You had met him often enough for that? A Yes.

Q And he would speak to you? A Yes.

BY MR. LEVY:

Q And you knew him well enough to speak to him? A Yes.

Q And you spoke to him? A No, only "hello," or "Goodby", and that was all.

Q That was before and after the fire? A Yes, sir.

Q Now what did you say to him after the fire? A I didn't say anything at all to him after the fire, because I didn't see him for a year after that.

Q Well, how many times did you see him after the fire?

A I didn't see him for pretty near a year after the fire.

Q Did you just say that you saw him after the fire, and said "Hello" to him? A (No answer.)

BY THE COURT:

Q Did you see him after the fire, Mr. Witness? A No, sir, I didn't see him for pretty near a year.

THE COURT: He said that, prior to the fire, he met

CASE #1082

him.

MR. LEVY: Yes; and after the fire, too.

THE COURT: Well, I did not so understand him.

MR. LEVY: May the stenographer repeat his evidence on that point?

THE COURT: Yes.

((It is repeated by the stenographer.))

BY MR. LEVY:

Q Well, when did you meet him a year after the fire?

A Well, he started in again in the neighborhood to peddle.

Q And he stabled in the same place with you again?

A No, sir.

Q And how often would you see him peddling?

THE COURT: You mean after the lapse of a year?

MR LEVY: Yes, sir.

A Oh, pretty near every day, or every week or so, he used to show himself up there.

Q And were you living in that same neighborhood all the time? A Yes, sir.

Q And you say that a year elapsed before you saw this defendant? A Yes, sir.

Q Will you swear to that positively, Mr. Levy? A Yes, sir.

Q Didn't you stable your horse and wagon in the same stable with him, ~~later~~ during that entire time? A When this accident

CASE #1082

happened?

Q yes? A No, sir.

Q Or after the accident? A I had did -- I have been in the stable for years.

Q What accident are you referring to? A This fire.

Q Was that an accident? A I think so.

Q Well, what makes you think it was an accident?

BY THE COURT:

Q Do you know what that means, an accident? What do you understand is an accident? A I don't thoroughly understand you.

THE COURT: I think that perhaps the witness does not get the full meaning of the word.

MR. LEVY: Well, I'll see if we can get at it, I'll assist the court and jury in trying to get at it.

BY MR. LEVY:

Q What is your idea of what an accident is? A Well, I told you the fire would be an accident.

Q No. Talk a little louder. We are not going to bite you. The jury want to hear.

MR. JACOBY: Now, I object to that statement of counsel. He was just going to give you an answer when you interrupted him.

BY MR. LEVY:

Q (Question repeated). A Well, an accident is where

CASE #1082

a fellow gets hurted on the street.

Q And it happens without anybody's fault? A Yes.

Q Nobody is responsible for it? A Yes.

Q And it is a misfortune? A Yes.

Q And that is how this fire happened; isn't it?

MR. JACOBY: I object to that. How does this witness know how it happened?

THE COURT: Yes. He can only testify to what he saw.

BY MR. LEVY:

Q Now, Mr. Levy, did you have any conversations with Philip Posner at any time? A No, sir.

Q Now, I am going to ask you another question, and I want you to be careful what you say.

MR. JACOBY: I object to the statement of counsel, as eminently improper.

THE COURT: Yes.

BY MR. LEVY:

Q Did he ever employ you in his lifetime? A No, sir.

Q Did you ever move him, or do any work for him at any time in your life? A No, sir.

Q You are positive of that? A No, sir.

Q Had you any acquaintance with him? A No, sir.

Q Did you ever talk to him? A No, sir.

Q You didn't know him at all until you came down and met him here? A No, sir.

CASE # 1082

Q Before that time he was an utter stranger to you?

A Yes, sir.

Q A total stranger to you? A Yes, sir.

Q You know what I mean when I say that to you? A Yes, sir.

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

THE COURT: And I will ask you, Mr. Witness, not to speak to anybody about this case until you are through here.

THE WITNESS: All right, sir.

CASE # 1082

(After Recess.)

J A C O B L E V Y, his cross examination being continued
testified as follows:

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q Will you be kind enough to describe to this court and jury just where that window that you spoke about is located in that shanty that you spoke about? You said it was on the front?

A Yes, sir.

Q Now please describe the front of that shanty? A The front of the shanty was right on the sidewalk.

Q Yes, we understand that. I am talking about the front wall? A The front wall?

Q Yes. A Well, it was about the middle of the blacksmith shop where that window was.

Q About the middle of the building, the shack? A Yes.

Q Facing the street? A yes.

Q In the front? A Yes.

Q And how large was that window? A Well, it must have been about four foot broad, four foot wide.

Q About four feet high and four feet wide? A Yes, sir.

Q How near the sidewalk was it? A About five feet.

Q About five feet from the sidewalk? A Yes, sir.

Q This blacksmith shop was used to pull wagons in there, wasn't it, to be repaired? A yes, sir.

Q And you have seen , on a number of occasions, wagons

CASE #1082

and trucks in that shanty? A Yes, sir.

Q And, in order to get those wagons in, they opened two wide doors; don't they? A Yes.

Q You are sure of that? A Yes.

Q Now was this window above those doors? A Yes, sir.

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

Q Now how wide was each one of those doors? A About three feet wide each.

Q Each one of the doors? A Yes, sir.

Q So that both doors were six feet wide? A Yes, sir.

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

Q How wide was the shanty? A The shanty -- I don't know as I can exactly tell you how wide it was.

Q Well, the front of it on the street, howwide was that?
A I couldn't tell you.

Q Eh? A I couldn't tell you.

Q Well, you saw that shanty a great many times; didn't you? A Yes.

Q You saw it nearly every day? A Yes, sir.

Q Twice every day? A Yes, sir.

Q Sometimes more than twice a day? A Yes, sir.

Q Now how wide was the front of thatshanty, from one side of it to the alley way through which you went to the rear stable? A About fifteen or twenty feet.

Q About fifteen or twenty feet? A Yes, sir.

CASE #1082

Q Fifteen or twenty feet wide? A Yes, sir.

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

Q How wide was the alley way through which you drove your trucks and your horses? A How wide?

Q Eh? Didn't you hear me, Mr. Levy? A Yes, sir.

Q Then please answer my question? A About fourteen feet.

Q About 14 feet wide? A Yes, sir.

Q Was the alleyway on the south side of the shanty, or the north side of the shanty? A (No answer.)

Q You know what I mean by that; don't you? A On the uptown side.

Q The uptown side is the north side; isn't it? A yes, sir.

Q Now on what side of the shanty was the alleyway through which you drove your horses and trucks?

MR. JACOBY: He said it was on the north side.

MR. LEVY: Now pardon me, I am examining the witness, Mr. Jacoby.

Q Will you answer my question. A What side --

Q Yes. A On the north side, right next to the corner.

Q And what was north of the alleyway?

BY THE COURT:

Q Did the alleyway lead right straight to the corner?

A No, sir; there was a little two story brick house next to the

CASE #1082

alley.

Q Running north of the alley?

A Yes, sir.

BY MR. LEVY:

Q Now was there a large yard between the rear stable and the shanty in front? A Yes.

Q How large was the rear yard, from the rear wall of the shanty to the front of the stable in which you stabled your horses?

A Pretty near a hundred foot deep.

BY THE COURT:

Q The lot was a hundred feet deep; was it?

A From the blacksmith shop to the back of the lot, it was a hundred feet back; it's a deep lot; it runs away back.

BY MR. LEVY:

Q And in the rear of the shanty is the stable?

A Yes, sir.

Q Now you used to keep your trunk in that shanty; didn't you?

A No, sir; out in the lot.

CASE #1082

1

Q Out in the hundred foot lot? A Yes, sir.

Q Now, where did you say this shanty was located?

A In 99th street and First avenue.

Q In the middle of the block? A Right near 99th street.

Q Well, how many doors from 99th street? A About two doors.

Q About two doors? A Yes, sir.

BY THE COURT:

Q That is, on the east side of the lot? A Yes, sir.

BY MR. LEVY:

Q And was there an alleyway also on the south side of the shanty? A No, sir.

Q It was an empty lot; wasn't it? A No, sir; next door was a chicken market.

Q A chicken market? A Yes, sir.

Q Also a shanty? A Yes, sir.

Q And beyond the chicken market, south, there was another shanty? A Yes, sir.

Q Was there? A Yes, sir.

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

Q Now, you say that you returned to the stable at 1 o'clock? A Yes, sir.

Q Then you unharnessed your team? A Yes, sir.

CASE #1082

Q Took them in the stable? A Yes, sir.

Q And took the harness off the horses? A Yes, sir.

Q Now, did you clean your harness? A No, sir.

Q Did you put your harness away? A Yes, sir.

Q Where did you put your harness? A Hung it up on the hooks.

Q And what did you do after you hung up your harness?

A I put the halters on the horses.

Q Yes? A And I went right home.

Q Well, didn't you feed your horses? A I generally fix the stables in the morning.

Q I didn't ask you that?

MR. LEVY: I ask that that be stricken out.

THE COURT: Motion granted.

BY MR. LEVY:

Q Now, I ask you what did you do on this occasion. Did you feed the horses? A Yes, they were fed.

Q Did you feed them on that occasion? A Yes, sir.

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

Q Now did you water your horses? A Yes, sir.

Q Now, when you left the house at 94th street with the load, and you got down to Rockaway Beach, how long did it take you to unload the furniture? A I couldn't tell you; because we had to go up two pair of stairs, and we had some trouble

CASE #1082

down there taking the furniture upstairs, because it was very narrow stairs.

Q Well, did it take you a couple of hours? A Yes; something like that.

Q And after that, then you--while you were unloading the truck, did you unharness your team? A No, sir.

Q They were still attached to the truck? A Yes, sir.

Q You were unloading that truck until about six o'clock in the evening, weren't you? A What?

Q It took you five hours? A I don't know about that.

Q Well, it took you an hour to load up in New York?

A Yes.

Q And it took you five hours to go down there? A We had to wait for the ferry, 99th street ferry. It runs every hour.

Q What? A She runs every hour.

Q And so it was two o'clock before you got on the ferry-boat? A Yes, sir.

Q Now, it took you five hours to get down to Rockaway Beach. That made it seven o'clock; isn't it so? A Yes.

Q And it took you a couple of hours to unload your stuff, and move it up to the second floor, and that made it 9 o'clock; isn't that so? A Yes, sir.

Q Now, after that what did you do? Did you immediately drive home? A Right home straight.

CASE #1082

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

Q You say that your two men that worked for you, you sent them back on the train? A They went back themselves on the train.

Q But you told them to go that way; didn't you? A No, sir.

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

Q And did they go back to your stable, after they left you? A No, sir.

Q When did you see them again? A Next morning; next day.

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

Q And how long do you say it took you to drive back from Rockaway Beach to New York? The same length of time it took you to go; didn't it? A No, sir; I come back a little lively, because I had no load on.

Q And it probably then took you half an hour less?

A I couldn't tell you.

Q Well, give us your idea of it. Did it take you four hours to come back? A I don't know; I couldn't tell you exactly.

Q Well, now tell the jury what road you took back?

A It's a pretty long time since I went down there, you know. I couldn't tell you the roads exactly, because I never was down there before, and--

CASE #1082

Q And you had to ask the roads? A Yes.

Q And it took you longer than ordinarily on that account; did it? A Yes.

Q And you did nothing after you left Rockaway Beach, except to drive home, stopping occasionally to inquire which way you should go? A On the way going I asked.

Q But now we are talking about your return trip, not when you went out. Don't look at Mr Jacoby. Look at me. Did you understand my questions? A Yes.

Q We are coming back from Rockaway Beach now? A Yes; and coming back I didn't ask nobody, because I come the same roads.

Q How did you come? A I went through Jamaica and Flushing, and then I come on the Merrick Road.

Q The Merrick Turnpike? A Yes, sir.

MR. LEVY: Your Honor, may I make a statement now? And I hope I am not doing anything wrong in this, but I've got a gentleman here in the room, who is familiar with that road, and I want him to hear that testimony only. I hope that I have done nothing improper.

THE COURT: I do not know why you should make any distinction as to him, as between other witnesses and himself. Do you consider it important? The witness says it was his first trip there, and he made inquiries going down, as to the road, but that he was not obliged to make

CASE #1082

them coming back.

MR. LEVY: But it was on the question of time, your Honor.

THE COURT: Well, he says that he came back quicker than he came down, but he is not able to tell you what length of time it took him, but he is rather clear on the statement that it took him five hours to go there.

MR. LEVY: Well, if you don't think it is important, I will not call that witness.

THE COURT: Of course, you may do as you please as to that, Counsel. I do not wish to make any suggestion intimate to you. I merely wish to ~~make~~ the Court's view of the matter.

MR. LEVY: I thank, your Honor.

BY MR. LEVY:

Q Now, Mr Levy, can you give us any idea of how long it took you to get back from Rockaway Beach? A Something like three hours.

Q Were your horses galloping on the way back? A They went on a pretty good trot on the way back.

Q On a pretty good trot? A Yes, sir.

Q Now, do the same roads lead to the same ferry?

A No, sir; there is different ways.

Q And so you didn't take the same roads that you went out on? A No; I changed off the road, because I had to

CASE #1082

go through a big empty lot.

Q And you say it took you about three hours when you got to the 92d street ferry, on the other side? A Yes, sir.

Q Now, what time was that? A When I got to 96th street and First avenue, I seen the car stable clock--

Q Now, I will withdraw that question. Was there a ferryboat at the slip at the time you came back to the river?

A No, sir; I had to wait a while.

Q How long did you wait? A I waited about five minutes.

Q Now, before you left Rockaway Beach you are sure that, after unloading, you drove right back? A Yes, sir.

Q Did you feed your horses, or water your horses, down at Rockaway Beach after you got through with the job? A Yes, sir; I fed them while taking the load off.

Q You are sure that they were feeding at that time?

A Yes, sir.

Q And they were feeding at the time you finished the job? A Yes, sir.

Q Is that so? A Yes, sir.

Q And, after you got started, did you commence to go back at a good lively trot; is that so? A Yes.

Q Now, will you state--you said there was an electric light there. Where is that electric light that you spoke about? A About 20 feet away from the corner.

CASE #1082

Q From the corner? A Yes, sir.

Q North of the corner? A Yes, sir.

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

Q Twenty feet north of 99th street? A Yes, sir.

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

Q Now, which way did you see the person run whom you saw?

A Down towards downtown.

Q That was towards 98th street? A I don't know what street he ran in. He was going down past, down First avenue from 99th street.

Q How far down was he when you first saw him? A About the 99thbstreet corner.

Q And was he running in that direction? A Yes, he was running down that way.

Q You are sure of that? A Yes, I am sure.

Q You can't be mistaken? A No, sir.

Q And was he running toward 99th street? A Yes, sir; downtown.

Q Oh, was he running through 99th street or through First avenue? a A All the ways down First avenue, right down.

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

Q Now, how far away from 99th street was he when you saw him first.

CASE #1082

A He was about 20feet away from me.

Q About 20 feet away? A Yes, sir.

Q When you first saw him you saw him running? A Yes, sir.

Q Is that so? A Yes.

Q Is that the first time you saw him? A No, sir, the first time I saw him he was going out of the window.

Q Then, after that you saw him running? A Yes, sir, after that.

Q Now, which way did he go when you saw him start to run? A Down First avenue.

Q In what direction? A Eh? Start off right down First avenue, downtown on First avenue.

Q Now, Mr Levy, did you speak to the party? A No, sir.

CASE #1082

Q Didn't say a word? A No, sir.

Q Did you ever speak to this defendant after that?

A No, sir.

Q You are quite sure of that? A Yes, sir.

Q Did you ever threaten this defendant? A No, sir.

Q You know what I mean by the word threaten, don't you?

A Yes.

Q Were you present when Posner threatened this defendant?

A No, sir.

Q Were you present at any conversation between the defendant and Posner? A No, sir.

Q Didn't you hear Posner threaten him for staying with his wife? A No, sir.

Q Didn't you threaten to do him some violence, together with Posner? A No, sir.

Q Can you described how the person was dressed that you saw running away? A That I couldn't exactly tell you, because I didn't --

Q You couldn't exactly tell? A No,, sir.

Q Why? Because it was dark? A No, he was going so fast that I didn't notice his clothes at all, what clothes he had on.

Q How near were you to him when you saw this person climbing out of the window? A I was about three feet away from him.

CASE #1082

Q As he came out of the window? A Yes.

Q And you say you got a good look at him? A Yes.

Q And you couldn't say how he was dressed? A No, sir.

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

Q Well now did he have his hat on or off? A Eh?

Q Did he have his hat on? A I think he had his hat off.

Q You think he had his hat off? A Yes, sir.

Q Did he have his coat off? A No, sir.

Q Did he have an overcoat on? A No, sir.

Q Did he have any other kind of clothes which you took notice of? A No, sir.

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

Q Now what kind of a hat did he have? A I couldn't tell you the hat he wore, that day.

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q Now after you had got off the ferry with your team, and were driving from the ferry to the stable, state whether or not you saw a clock on the car barn? A Yes, sir, I seen the clock.

Q Where was that clock? A 96th street and First avenue.

Q And what time did that clock say? A One o'clock.

MR. LEVY: I object to that, if your Honor please.

I didn't cross-examine as to that at all.

CASE #1082

MR. JACOBY: Yes, sir, he did. He drew it out by his questions as to how he knew what time it was, and then he shut him off when he attempted to tell how he knew the time.

THE COURT: Well, we will take the fact that he saw a clock, and that it was one o'clock by that clock, and the clock may not have been correct. The clock may have been stopped.

MR. LEVY: That's very true, your Honor. I am satisfied with that statement by the Court.

BY MR. JACOBY:

Q Now how far was the car barn from the stable?

A About three blocks.

Q Was there any outcry or pursuit, any outcry or chase after the defendant, as he was running down First avenue?

A No, sir.

MR. LEVY: I object to that as leading. Let him state what he saw.

THE COURT: Well, he has answered.

BY THE COURT:

Q You did not cry out when you saw this man jump out of the window and run down the avenue, as you claim? A No, sir; I run right inside, and got my horses out.

RE-CROSS EXAMINATION BY MR. LEVY:

Q Now do you know Mrs. Posner? A No, sir.

CASE #1082

Q Never saw her? A Well, I seen her in court, by seeing her come to the trial; that's all.

Q And you never moved her furniture; did you? A No, sir.

Q Sure of that? A Yes, sir.

Q And never had any conversation with her, or any member of the family? A No, sir.

Q Or her sister? A No, sir.

BY MR. JACOBY:

Q About how away from you was the defendant running when you first saw the flame? A About three feet.

A L F R E D J. F R E N C H, of 1901 Wallace avenue, Bronx, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. French -- A Yes, sir.

Q Are you a citizen of the United States? A Yes, sir.

Q Born in this country? A Yes, sir.

Q How old are you?, A 29 years.

Q And what is your present business or profession?

A Night watchman.

Q And was such in September, 1908? A (No answer).

Q You were a watchman in September, 1908? A Yes.

Q And before that? A For fourteen years.

CASE #1082

Q You have been a night watchman altogether fourteen years?

A Yes, sir.

Q And you began then at 15 years of age to be a night-watchman? A Yes, sir.

Q Do you remember anything out of the ordinary happening to the blacksmith shop at 1924 First avenue, on the night of September 24, 1908? A Yes, sir.

Q What happened to the blacksmith shop? A I see it all in a flame.

Q Now did you see the defendant at any time, that night? A Yes, sir.

Q Tell us when and where and how you saw him? A Around between one and two in the morning, I was making me rounds, trying me doors of the commission merchants of the Harlem Market, when I met Harry, the defendant.

Q Harry what? A Harry, the defendant in the case, and another man with him.

BY THE COURT:

Q That was between one and two, you say? A Yes, sir.

BY MR. JACOBY:

Q Where were they when you first saw them? A On the corner of 100th street and First avenue, cutting diagonally across towards 99th street. I asked this man --

Q Did you know Harry Zebransky before that time?

A I knew him, but didn't know him by name.

CASE # 1082

Q You knew him by sight? A Yes, sir.

Q Did you know his first name? A No, sir.

Q Did you call him Harry? A No, sir.

Q Well, you knew him by sight? A Yes, sir.

Q Now what did you say to him? A I hadn't spoke to him, but I spoke to the man that was with him.

Q In his hearing? A Yes.

Q What did you say? A I asked him where they were going, and he said they were going over to feed a horse in the stable.

Q Indicating what stable? A Right in the rear of the blacksmith shop.

Q In the rear of Louis Simon's blacksmith shop? A Yes, sir.

Q And did you say anything more to them? A No, sir.

Q And the two of them went on? A Yes, sir.

Q Did you follow them with your eyes? A Just stood there, and watched, to see which way they went.

Q And where did they go? A They went direct into the driveway leading into the stable.

Q And is that driveway on the north side or south side of the shanty? A It's on the south side of the shanty.

Q That is, it is further downtown than the shanty is?

A Yes, sir.

Q And they went into that alleyway you say? A Yes, sir.

CASE #1082

7

Q Two men? A Two men.

Q Did you know who the other man was? A Yes, sir.

Q What is his name? A Well, I don't really recollect his name, only what I hear them say, that his name is Morris -- Morris. That's all I can remember. I can't remember his last name.

Q Would you recognize him if you saw him? A Yes.

Q Is he a man about -- about how old a man is the man that you call Morris? A I should judge him to be about 28 or 29 years of age.

Q How is he with reference to height? A He stands about five foot seven.

Q Is a foreigner, too? A Yes.

Q Have you seen him since that night? A Yes.

Q How recently have you seen him? A I've seen him quite often. I made an arrest with him.

Q He is not in court? You have not seen him in court, the last few days? A No, sir, I haven't seen him in the last three months.

Q Now when next, after you saw the defendant and the man you call Morris turn into the alleyway, when next did you see the defendant; how long after? A The next day.

Q What? A The next day.

Q Well, how long was it after you saw the defendant go into this alleyway that you saw the blaze? A I judge it to

CASE # 1082

be about twenty minutes or so.

Q About twenty minutes or so? A Yes, sir.

Q How far away were you from the building, from the blacksmith shop that was burned, when you first saw the flames?

A Well I stood at 103rd street when I see the flames.

Q At what street? A 103rd street.

Q 103rd street? A Yes, sir.

Q And what did you do when you saw the flames? A I ran down towards the fire.

Q And by the time you got there, what was the appearance of the fire? A One mass of flames.

Q And then, I suppose, the fire engines came? A Yes.

Q And they got to work? A Yes.

Q Anything else that you know about this occurrence that you have not told this jury? A No, sir.

CROSS-EXAMINATION BY MR. LEVY:

Q Mr. French-- A Yes, sir.

Q You have told all that you know; have you?, A Yes,

Q And you think you have remembered everything? A Yes.

Q Yes. And your memory is pretty good? A I believe so.

Q Do you know Jacob Levy? A Yes.

Q Did you know him very well? A Well, I know him to be an expressman.

Q Yes. A And I know him to be on a case of mine, once

CASE #1082

before.

Q Now, you knew him to be a tenant of that stable; didn't you? A No, I didn't.

Q You didn't? A No, sir.

Q Didn't you know that he stabled his horses and his trucks there? A No, sir, I didn't.

Q In the rear of Simon's blacksmith shop? A I knew he stabled somewhere in the neighborhood of 100th street, but I didn't know where.

Q And you have been a night watchman in immediate neighborhood how long? A For the last fourteen years.

Q Were you watching on that side of the avenue where the blacksmith shop was? A No, my boundary was --

Q Answer my question yes or no, sir? A No, sir.

Q Did you have occasion to pass that shack, often, at night? A No, sir; I don't go that far.

Q How far down to do you go? A As far as 100th street.

Q 100th street? A Yes, sir.

Q And that is how many feet north of where this shack is? A Where I see him?

Q Yes, from where you saw the shack burning? A I should judge it to be --

Q You say that you were at 103rd street? A When I seen him at the fire, going towards the fire?

Q Yes, when you saw the fire? A 103rd street?

CASE #1082

Q Then I understood you correctly; and you say you had met Levy on a case, once before? A Yes.

Q And he made an arrest with you? A Well, he was a witness in a case against us.

Q What kind of a case was it? A It was a homicide case.

Q Now you became very well acquainted with him; didn't you? A No, never held any particular business with him.

Q But you knew that he was stabling in that place, didn't you? A No, sir. I knew he stabled around there, but I didn't know he stabled in there.

Q Now did you know whether the defendant stabled around there? A No, sir.

Q You did not? A No, sir.

Q And you are sure you don't remember the name of the party you call Morris? A No, sir.

Q What? A No, sir, I don't. All that I know is that they call him "Moscher", and that "Morris", I think.

Q "Moscher"? A Yes, sir.

Q And you have seen Moscher since the fire? A Yes, sir.

Q And you have seen Jake Levy since the fire? A Yes, sir.

Q Now when you rushed from 103rd street to the fire, how long did it take you ? A About five minutes.

CASE #1082

Q Well, you are a pretty good runner, aren't you? A Well, if my flesh doesn't hold me back.

Q How long did it take you, about? A About five minutes.

BY THE COURT:

Q You went as fast as you could from 103rd street to the point of the fire? A Yes, sir.

BY MR. LEVY:

Q Now, Mr. French, when you got there, you saw Jake Levy, didn't you? A No, sir, I didn't.

Q What do you call him? Jacob or Jake? A I call him Levy.

Q Well, when you got to the fire, you saw Levy, didn't you? A I don't recollect of meeting him; I can't recollect of meeting him.

Q Are you sure of that, Mr. French? Now let's be a little serious? A Yes, sir.

Q Well, did you see anybody else there that you knew? A No; I was excited myself at the fire, and I didn't notice.

Q You are a night watchman, and you got excited from the fire? A Yes, sir.

Q What did you do? A I stood there, looking at it.

Q Did you see any horses and trucks in front of the shack? A I seen horses coming out of there.

CASE #1082

Q Did you see anybody taking them out; eh? A There were so many of them taking them out there that I couldn't mention them.

Q Well, mention some one that you knew taking horses out? A I couldn't. There was quite a crowd there, too.

Q Did you see any truck removed from that place? A That I couldn't say.

Q And you remained there until the fire was out? A Yes, sir.

Q It was your duty to remain around there? A Yes, sir.

Q Now did you see Levy around there? A No, sir. I can't recollect.

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

Q And, if he was there, you would be able to see him?

MR. JACOBY: Now, I object to that, as an improper question.

A Well, really, I couldn't say that, because there was quite a crowd of people there.

BY MR. LEVY:

Q Now, Mr. French, you had a good view of the alleyway? A I didn't get near the alleyway; I wasn't allowed to get near it. I just stood out by the car track.

Q Now when you arrived there, were the engines there already? A No, sir.

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

CASE #1082

Q What time was it that you arrived there and saw the flames? A Well, it was between half past one and two.

Q Half past one and two? A Yes, sir.

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

Q Could it have been later than that? A I can't swear to that effect.

Q You can't swear to the exact time? A No, sir.

Q It might have been after halfpast one, and near two o'clock? A No, sir; I can swear that it was between half past one and two o'clock.

Q That's all you can swear to? A Yes, sir.

Q And how near the front of the shack were you standing when you got there? A Well, out as far as the car track.

Q As far as the car track? A Yes, sir.

Q How far is that from the front of that building? A Well, I couldn't really tell you; I really couldn't measure it.

Q Well, ~~how~~ about how far, Mr. French? A Well, about 25 feet, say.

Q From the front of the building to the easterly car track? A Yes, sir.

Q And that's where you stood? A Yes, sir.

Q And you were watching the flames? A Yes.

Q And at that time you say you saw horses coming out of the driveway? A Yes, sir.

Q And did you see the persons who were bringing them out?

CASE #1082

A No, sir.

Q How many horses did you see coming out? A I never counted them.

Q Well, about? A Well, I don't know. I know there were a few horses come out.

Q Do you know, Mr. French, how many horses were stabled in that place? A No, sir, I don't.

Q Do you know what kind of a stable it was? A A one story stable.

Q Were you never in that stable? A Never was in there.

Q So you don't know how many stalls there were in the stable? A No, sir.

Q Now will you tell the Court and jury about how many horses you saw coming out? A Well, I couldn't say. I saw a few of them. You know I wasn't exactly watching the horses coming out. I was watching more the fire.

Q Well, there wasn't very much else to see there, except the building, and the fire; was there? A No, sir;

Q And it was a one story shack? A Yes, sir.

Q And you saw the horses coming out? A Yes, sir.

Q Well, how many were there? A I really couldn't tell.

Q More than three? A I couldn't recollect, counsellor.

Q Will you swear positively to this Court and jury that you

CASE #1082

didn't see Levy there? A Yes.

Q You didn't see him? A I don't recollect to seeing him. I might have seen him and he might have seen me, but I can't recollect. It's nearly two years ago, and I have so many cases on my mind that I can't recollect.

Q But you will swear positively that you didn't see Levy?
A I can't really say that. I might have seen him, but I don't recollect.

Q Well, then, we will ask you this question: Did you have any conversation with him at that time, at the fire?

A No, sir.

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

Q Did you have any conversation with him at any time?

A No, sir.

Q You are sure of that.

THE COURT: You mean after the fire, counsellor, on that morning?

MR. LEVY: Yes.

BY MR. LEVY:

Q Or at any time after the fire? A Not that I remember of.

Q And that's the best answer that you can give? A Yes, sir.

Q You never spoke to him about the fire? A Not that I can remember of.

CASE #1082

Q And, if you did speak to him about the fire, you would remember it; wouldn't you? A Well, I don't know. It's two years ago since it happened.

Q Well, you said your memory was very good? A Well, not two years back, I can't remember.

Q Well, when you testified for the District Attorney, you said that your memory was good.

MR. JACOBY: He did not. He said it was pretty good, in answer to your question.

MR. LEVY: Then pardon me, Mr. District Attorney.

BY MR. LEVY:

Q In answer to my question you said that? A I told the District Attorney all I could remember, as good as I could remember; that's all.

Q Now, Mr. French, you are a pretty good judge of distances? A Well, not exactly.

Q Well, have you any idea of how far it is from you to where I am standing? A I should judge it to be about 15 feet.

Q Now will you please tell us how wide was that shack or shanty that was burned down, on the street front? A About 20 or 25 foot; somewheres around that.

Q What? A Somewheres around 20 or 25 foot.

Q Now you knew that that shanty was occupied as -- what business it was occupied? A Yes.

Q At that time? A Yes.

Q What kind of business it was? A It was a blacksmith shop.

Q You have seen wagons being repaired in there, haven't you?

CASE #1082

A Yes.

Q And how could they bring wagons into that shack; do you know how? A Well, that I couldn't say.

Q Well, did they have screenswinging or rolling doors? A That I couldn't say.

Q Did you ever see the doors open? A Well, I seen them open, but I didn't see which way they opened.

Q Now you were there before -- what part of the building was in flames when you came there? Was it the rear or the sides? A Well, the whole building was in a flame when I got there.

Q Well, you could see the front, couldn't you? A Yes.

Q You are sure of that? A Yes.

Q Well now will you please describe for the benefit of the Court and jury, that appearance of that shack when you looked at it; doors and walls and roof and everything?

A The front of the building seemed to be all right.

Q No, not what seemed to be. Tell us what you saw. I am not talking about the fire. Describe the front of the building? A The front of the building?

Q Yes. A Boards, I believe.

Q Boards? A Yes.

Q It was made of boards; wasn't it? A Yes.

Q And the doors were made of boards; weren't they?

A Well yes; I believe they were.

Q Well, how many doors were there? A I couldn't say.

Q Was there more than one door? A Well that I really couldn't say.

CASE #1082

Q Any windows? A I don't know.

Q Well, are you serious about that, Mr. French?

A Yes, sir.

Q You are testifying seriously? A Yes, sir.

Q And you tell this Court and jury that you don't know whether there was a door or window to the front of the building?

A I know that there is a door in front of it.

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

Q Now where do you live, Mr. French, or where did you live at that time? A At that time I lived in 74 East 106th street, I believe.

Q Do you know what business the defendant is in, or what business he was engaged in at the time? A No, sir, I don't.

Q Did you ever see him peddling in that neighborhood?

A No, sir; I seen him hanging on the corner.

Q And that's all you saw? A Yes, sir.

Q And you never saw him driving a horse and wagon, with vegetables on it? A No, sir.

Q Do you know where he lived? A Yes.

Q Where did he live? A Right off First avenue.

Q Yes, right where you saw him? A Yes, sir.

Q And now you say that you were there until the fire was out? What was left of the shack after the fire was out?

A Well, we all got chased away.

Q Well, were you chased away so far that you couldn't

CASE #1082

see what was there? A Yes, sir.

Q How far were you chased? A The other side of the avenue.

Q And immediately opposite the shack? A Yes, sir.

Q Who chased you? A The officers.

Q Do you know the names of any of the officers who chased you? A No, sir; there was quite a few of the officers there.

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

Q Now you were looking directly at the place where the fire was, and, after the fire was over, what became of the shack? A Well, the front part of the shack was standing there, and the rest of it I didn't see.

Q Well, did you see the front of that shack the day after? A No, sir.

Q Or at any time thereafter? A No, sir, I never went down there.

Q Now you say that the front wall was intact? A Yes, sir.

Q It stood there? A Yes, sir.

Q And all that you could see was the doors and the wooden wall? A Yes, sir.

Q And there were no windows, you say? A Not that I recollect.

Q Was the front of that shack open when you saw it?

CASE #1082

A No, sir.

Q Were the doors locked? A Well, I don't know whether they were locked or not. They might have been shut.

Q No. Were the doors open or shut? A They were shut, until the fire engines got there.

Q What did they do? A They busted it open, I believe.

Q Well, you saw them break them open? A No, sir, I didn't.

Q Well, you saw the doors shut until the fire engines came? A Yes, sir.

Q And these are sliding wooden doors; aren't they?

A I couldn't say, because I never examined those doors.

Q Well, you were looking straight at them? A But they might be pasteboard, for all that I know.

Q Well, they looked to you to be solid wooden doors?

A Yes, sir.

Q Now will you tell me just exactly what your beat was, Mr. French? A From 100th street to 106th street, East and West, and the side streets, and First avenue to the river.

Q Now, for how many years did you patrol that beat?

A Fourteen years.

Q And when do you generally start in on your tours?

A Four o'clock in the evening.

Q And at that hour of the day it is usually daylight; isn't it? A Yes.

Q You can see clearly up and down the avenue; can't you?

A Yes.

CASE #1082

Q How many times did you have occasion to go into that blacksmith shop, before the fire? A Never was in it.

Q Never was in it? A Never in my life.

Q How many times did you pass it? A Never went down there; never went down that far.

Q There is a car line passing that door; is there not?
A Yes, sir.

Q Did you ever ride on the cars past that door? A Well once in a while.

Q Eh? A Once ina while.

Q About how often? A Well, I can,t recollect.

Q Well, what are you laughing at now, Mr. French?

A I can't recollect how many times since I have been in that market there, how many times I rode on those cars. There has been horse cars and trolley cars there.

Q Do you know how wide that runway is between the shack and the poultry market, which leads into the stable in the rear?

A Just wide enough for a wagon or truck to drive through.

Q Well, how much room? A Well, I couldn,t say that.

Q You say a wagon? A Well, a wagon or a truck.

Q A double horse truck? A Yes, sir.

Q Now how far did that alleyway lead into the rear?

A I couldn't tell you.

Q How wide is it between the rear of the blacksmith shop and the front of the stable in the rear of it? A I couldn't

CASE #1082

tell you.

Q You don't know how large that lot is? A No, sir.

Q After the fire, did you ever have occasion to go to that blacksmith shop? A Never did. Didn't concern me any.

Q Were you ever subpoenaed to go down to the Fire Marshal's office? A No, sir.

Q You are sure of that? A Sure of that.

Q Were you ever subpoenaed to come down to Mr. Jacoby's office, this gentleman here, the District Attorney (indicating)?

A I was summoned to come down to the Grand Jury.

Q Yes. Not when was that? A Some day last week.

Q Yes. Now did they ask you to describe that shack?

A Well, they asked me what did I know about it.

Q Yes. (Question repeated). A No, not in the Grand Jury.

Q Did Mr. Jacoby ask you to describe the shack?

A Well, I don't know was it this Mr. Jacoby, or some other District Attorney.

Q Well, but was Mr. Jacoby present? A No, sir, I didn't see him.

Q Now did you give an exact description of the premises as you saw them, that night?

A No, sir; I just gave him an idea of what I knew. He merely asked what do I know about this case, and I told him I seen that man.

Q And that's all you told him? A And another man with him.

Q And, notwithstanding it was so long ago, you remember that; didn't you? A That's only here last week, I told him that.

CASE #1082

1

Q You said you saw that man last week, what man do you mean? A (No answer.)

BY THE COURT:

Q You are speaking of the gentleman who was in the District Attorney's office, who questioned you, I take it?

A Yes, sir.

BY MR. LEVY:

Q Now, how long is it since you have seen the defendant?

A I haven't seen him in a year or so.

Q And was it at the time you saw him with this Moscher?

A No, I haven't seen him with that Moscher then.

Q Who did you see him with then, the last time? A I didn't see him with nobody.

Q Well, that was the same year of the fire; wasn't it?

A Well, I don't know. I know it was some time after it. I can't remember.

Q You can't remember the events of that evening at all distinctly; can you? A No, sir.

Q So long ago? A No, sir.

Q Now, do you remember--can you state with any degree of certainty when you did see the defendant? A A year and a half ago; somewhere around that.

BY THE COURT:

Q With reference to the morning of the fire, how long after the fire did you see him again? A I seen him when he

CASE #1082

made an arrest, when he was locked up in the Harlem Court.

Q That was the first time you saw him after the night of the fire, as you claim? A Yes, sir.

Q Well, when was that, about? A Well, I guess it was about four or five weeks ago.

Q You mean from this time? A No, from this time it is about a year and a half.

BY MR. LEVY:

Q Well, four or five months after what event? A About two months after the fire, he was arrested.

Q He was arrested for what? A For burglary.

Q And you were in court when he was arraigned? A No, sir, I wasn't.

Q Where did you see him? A I saw him as the officers made the arrest.

Q Did you go to the Police Station with him? A No, sir.

Q Well, when did you see him after that--wait a minute. I'll withdraw that question. Where was he arrested? A He was arrested in his own house.

Q Where is his own house? A Well, that was right off First avenue.

Q In what street? A 101st.

Q And that was what time of day? A It was in the evening.

CASE # 1082

Q In the evening? A Yes, sir.

Q And did you speak to the officers at that time?

A Not that I remember of.

Q Now, you say that was four or five months after the fire? A Four or five weeks, or two months after the fire.

Q And between the time of the fire, and that time that you saw him arrested, you have seen him quite casually on the street, in the neighborhood? You say you saw him on the corner with some people? A Not at that time.

Q Well, when did you see him? A I seen him before the fire.

Q No, I mean after the fire, up to the time he was arrested? A That's the only time I seen him, when the officers locked him up.

Q Yes. And you are sure you didn't see him during the interim, between those two times? A Not as I recollect of.

Q Eh? A Not as I recollect of.

Q If you did see it, you would remember it; wouldn't you? A Well, I think I would.

Q You think you would? A Yes, sir.

Q What business is this man "Moscher" in, that you speak of? A Well, I know him to be in the junk business, once in a while.

Q Where? A I seen him on the wagon.

Q Where was his shop? A He didn't have no shop.

CASE # 1082

Q Where does he stable his wagon? A 101st street.

Q Near what avenue? A Near First avenue.

Q Did you see him going in the direction of the stable?

A No, I never did, but I seen him coming out.

Q Out of the stable? A Yes, sir.

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

Q Now, you knew this man intimately enough to call him Moscher; didn't you? A Well, I only knew him by that name.

Q Well, who told you that was his name? A Well, by the hearsay of other people around there.

Q You had conversations with him very frequently; didn't you? A Oh, no.

Q You never had any talks with him atvall? A No, sir.

Q Only on this occasion, when you asked him where he was going, and he said he was going over to feed a horse?

A Yes, sir.

Q And that you remember distinctly? A Yes, sir.

Q And that happened over a year and a half ago?

A Yes, sir.

REDIRECT-EXAMINATION BY MR. JACOBY:

Q Why did you ask Moscher and this defendant, on that particular occasion, why did you ask them on that particular occasion where they were going?

MR. LEVY: I object to that.

CASE #1082

THE COURT: Sustained. He says that he did. I will let it stand just as it is, that he did make an inquiry.

MR. JACOBY: And my question was why, your Honor.

THE COURT: I understood the question, and I sustained the objection.

BY MR. JACOBY:

Q You never saw me before; did you? A No, sir.

Q And you have never talked with me? A No, sir.

Q Now, are you clear in your own mind as to whether you saw the man that you call Moscher with the defendant, about 20 minutes before you saw the flames? A Yes.

Q And where did you see them together? A I seen them going diagonally across the avenue to 99th street.

MR. LEVY: Now, if your Honor please, he has already asked that question, and got his answer.

THE COURT: Yes. Stand down.

RE-CROSS-EXAMINATION BY MR. LEVY:

Q Now, how far from First avenue was Moscher's stable?

A About 75 feet.

Q On the north side or south side of 101st street?

A On the north side.

Q On the north side? A Yes, sir.

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

CASE #1082

THE COURT: And that witness may also sit down in the rear of the court room, with the other witnesses who have been examined.

D I N A H P O S N E R, of 85 East 113th street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. JACOBY:

Q Mrs Posner, are you the wife of Philip Posner?

A Yes, sir.

Q And how long have you been married to Philip Posner?

A Five years.

THE COURT: Speak out, madam. You will have to speak out so that the last juror can hear you.

THE WITNESS: Thank you, sir.

BY MR. JACOBY:

Q Where were you married to your husband? A In England, London.

Q What country were you born in? A London.

Q You were born in London? A Yes, sir.

Q When did you come to New York City? A In the early part of September.

Q In what year? A 1906.

Q You were then already married? A Yes, sir.

Q Have you any children? A Yes.

CASE #1082

Q How many? A One.

Q You were never married before you married Philip Posner; were you? A No, sir.

Q How old are you now, if you don't mind telling?

A Twenty-three.

Q Did your husband leave you some time--was your husband taken away from you some time before this fire took place?

A Yes, sir.

Q About when was he taken away, as near as you can remember? A The first of August.

Q What year? A 1908.

Q Was he arrested? A Yes, sir.

Q Did you go to visit him during the time he was locked up? A Oh, yes, sir.

Q Where was he locked up? A In the Queens County Court House.

Q Over in Long Island City? A Yes, sir.

Q How long was he locked up? A Fully three months.

Q Fully three months? A Yes; and he came out on the last day of October.

Q He came out on the last day of October? A Yes, sir.

Q In the year 1908? A Yes, sir.

Q Prior to August 1st, 1908, did he live with you right along? A Yes, sir.

CASE # 1082

Q And following the last of October, 1908, has he lived with you ever since? A Yes, sir.

Q And between August 1st and the last of October, 1908, with whom did you live? A Well, I was living for myself, in rooms.

Q In rooms? A Yes, sir.

Q Where were these rooms? A 1850 Second avenue.

Q Between what streets is that? A That's between 96th and--I think it is between 96th and 97th, or 95th and 96th; I can't recollect exactly.

Q Now, one minute. Is that the same place that you lived with your husband at, up to August 1st, 1908? A No, sir.

Q You lived with him where? A 101st street.

Q Between what avenues? A Between First and Second avenues.

Q And immediately after he was taken away, you moved to this other address? A Well, at the time I was living with my parents.

Q What time? A Before he was taken away.

Q Both he and you lived with your parents in 101st street? A Yes, sir.

Q Was your child born in that time? A Yes, sir.

Q How old was the child, on the first day of August,

CASE # 1082

1908? A Just three months.

Q Three months? A Yes, sir.

Q And you and he and the child resided with your parents? A Yes, sir.

Q What was your father's name? A Jacob Rubenstein.

Q And what was his business? A Carpenter.

Q And is still? A No. Now he has no work, and he is now in the vegetable business for himself.

Q As his own boss? A Yes, sir.

Q And you say that, immediately after your husband was taken away to the Queens County Jail, you moved away from the place where you had been living, with your parents?

A No, sir; we moved away a few days before my husband was arrested. Before I lived in Second avenue, I lived at 244 East 104th street, for six weeks.

CASE #1082

1

Q And before that you lived with your father?

A Yes, sir.

Q And after you left your father, you and your husband and your child lived for six weeks at another address?

A Yes, sir.

Q And, about a week before the 1st of August, you moved to 1850 Second avenue; is that right? A No. Until August 1st, until three days before August 1st, we lived with my parents, and then we took rooms at 244 East 104th street, and I lived there a few days when he got arrested.

Q And after he was arrested? A Six weeks later, I moved to 1850 Second avenue.

Q And then you had just moved away from your parents' home, with your husband, a few days before he got arrested?

A Yes, sir.

Q The rooms in Second avenue were cheaper apartments?

A Yes, cheaper apartments.

MR. LEVY: And I don't think that that is at all material.

MR. JACOBY: It is only done to attempt to meet the attack on the character of the witness, if your Honor please. Otherwise I would not take up the Court's time with it.

BY MR. JACOBY:

Q Now, Mrs. Posner, when did you first meet this de-

CASE #1082

defendant here? A Well, I think it was a few months before my husband got arrested.

Q A few months before your husband got arrested?

A Yes, sir.

Q Certainly it was later than January 1st, 1908; wasn't it? A Oh, yes.

Q How many times had you seen him to talk to between the time you met him and the time your husband got arrested?

A Well, I never spoke with the man before.

Q Never spoke to him before August 1st? A No, sir; I just used to see him speaking with my husband.

Q Did your husband introduce him to you? A Well, my husband was once standing, talking to him, on the corner of 103rd street, and I came to call him, and I was speaking to my husband, and this one answered, and we got into conversation.

Q Well, there was a little conversation? A Yes, sir.

Q And how many times was there any conversation between you and the defendant, with or without your husband being there, up to the 1st of August, 1908? A I seen him a few times; that was all.

Q But the only time that you had talked with him was when you met him with your husband, on the corner; is that right? A Yes, sir.

Q Now, have you a sister? A Yes, sir.

CASE #1082

Q What is her name? A Well, I have a few sisters.

Q Well, there is one sister, is there not, that has something to do with this case? A Marie Rubenstein.

Q How old is she? A She's 13 years old, now.

Q Was she born in this country? A No, sir.

Q Also in England? A Yes, sir, London.

Q And came over with you, at the same time? A No, sir; she came over with my mother and the rest of my sisters and brothers.

Q When did they come over? A They came five months afterwards, in February.

Q And when did your father come? A My father came at the same time as my husband.

Q Your father came at the same time as your husband?
A Yes, sir.

Q Now do you remember anything out of the ordinary happening on the night of the 24th of September, 1908?

A Well, on that night --

Q Yes or no. Do you remember anything out of the ordinary happening? A Yes, sir.

Q Now tell us again where you were living then?
A 1850 Second avenue.

Q In what? In an apartment? A In an apartment house.

Q The apartment that you had consisted of how many rooms? A Three.

CASE #1082

Q What did you call them? A Sitting room, kitchen and bed room.

Q Now, on that night, the 24th of September, besides you and your little child, who, if any one else, was occupying the apartment with you? A My sister.

Q Your sister Marie? A Yes, sir.

Q The same girl whom you have just described?
A Yes, sir.

Q Was there anybody else in that apartment during the-- up to one o'clock in the morning on the night of the 24th of September, 1908? A No, sir.

Q On any night before the 24th of September, 1908, from the time that your husband was sent to prison, in other words, from August 1st, 1908, until September 24th, 1908, was the defendant ever in that apartment? A What time? Night time?

Q After seven o'clock at night? A No, sir.

Q Did he ever sleep in the apartment, between August 1st, 1908, and September 24th, 1908? A No, sir.

Q Did you sleep there, every night? A Yes, sir.

Q Now, on the night of September 24th, state whether anything out of the ordinary occurred? You said that there did? A Yes, sir.

Q At what hour did this unusual thing happen? A Well, it must have been close on to, or a little later than 2.

CASE #1082

5

Q In the morning? A Yes, sir.

Q How do you fix the time? A Well, my baby was sick at the time, and I got up for a drink for the baby. He cried, and I got up to warm him a drink of milk, and I heard a clock strike 12.

Q Your clock? A No, sir, the lady in front, because I never had a clock in the place. The lady in front, her clock struck the hour and half hour.

Q And how long were you up at that time? A About half an hour. And then I fell asleep again.

Q What woke you after that? A I heard a knock at the door.

Q You heard a knock on the door? A Yes, sir.

Q Now when you heard that knock on the door, what did you say and do? A I asked who it was.

Q Yes. A And a voice answered, "Me".

Q Answered "me"? A Yes, sir.

Q Well, did you know the voice? A No, sir, I didn't recognize the voice.

Q Well, what did you say when you heard the voice say "me"? A Well, I have a brother that's in the army now --

MR. LEVY: I object to that, and ask to have it stricken out, as irresponsible.

THE COURT: Motion granted. Proceed.

A (Answer continued) Well, when I heard the voice "me", I

CASE #1082

got up and turned on my gas larger, as I always kept a light on account of the baby, and unlocked my door.

Q You unlocked your door? A Yes, sir.

Q And then who came in? A This defendant.

Q This defendant? A Yes, sir.

Q Now, have you any means of knowing what the hour was then? A Well, after he was there a little while, I heard the same clock strike three.

Q Strike three? A Yes, sir.

Q Well, what do you mean by a little while? A Well, after he was there about -- well I can't tell how long -- I had an argument with him -- and it was may be three quarters of an hour, and I heard the clock strike three.

Q Now tell the Court and jury what he said. First, tell us what was his appearance when you saw him. How did he look? A Well, when I saw him, and when I had a good look, when I got my composure, and got a good look at him, he looked scared.

MR. LEVY: I object to that, and ask that it be stricken out, that he looked scared, if your Honor please.

THE COURT: I will strike it out. Just say how he looked, and then the jury can determine whether he was scared or not, perhaps.

THE WITNESS: Well, he come in in a rush.

BY MR. JACOBY:

Q Well, how did he look?

CASE #1082

MR. LEVY: I object to the last answer, and move to strike it out.

BY THE COURT:

Q What was his appearance? A His face was scorched. His face wasn't shaved, and one side was scorched.

BY MR. JACOBY:

Q What do you mean by scorched? A Well, on one side the hair was more, and on the other side less, as if it was scorched off.

Q Now what ~~he~~ did he say to you when he first came into the room? A I asked him what right he had to come into my house, at that hour of the night, and he said, "For God's sake let me stay. I just made a fire in First avenue, and I think I am being chased," and I asked him why he didn't go to his sister's house, which wasn't very much further than mine, and he asked me to let him stay there, and that I could give him some soap and a towel, as all his hands were oily.

Q Well did you notice any odor about him? A A very bad smell of kerosene oil.

Q State whether or not your sister was present during any part of this visit of his? A When she heard the argument she got up and dressed.

Q Well how long was it after you let the man in, according to your best opinion or impression, was it before your sister Marie joined you? A Well, may be about five minutes.

Q And from that time on she was awake and with you until he left? A Yes, sir.

Q Now did you know where his sister lived, the one you told him he had better go to stay with, rather than at your place? A Yes, sir; 101st street, near First avenue.

CASE # 1082

Q Now what reason did he give for not going to his sister's? A Well he said that, when he ran out of the place where he set that fire, he happened to run in the downtown way, and as my house was the nearest, and the only person he knew, he thought he would take the liberty to come upstairs and stay there until morning.

Q Now did your sister do anything for him? A She gave him a towel and soap to wash himself.

Q And did he wash himself? A Yes, sir.

Q And you continued your conversation with him? A Well, we didn't have very much conversation. I was sleepy.

Q Who was sleepy? A I was.

Q And you didn't go back to sleep until he left? A No, sir.

MR. LEVY: Why don't you let the witness testify?
I object, your Honor. He is leading the witness.

THE COURT: Well, you do not move to strike it out, do you, counsel?

MR. LEVY: No, sir, but I wish he wouldn't lead her.

THE COURT: No, do not lead.

MR. JACOBY: I haven't lead her in any material matter, your Honor.

BY MR. JACOBY:

Q Now, between the first of August, the time that your husband was taken to prison, and this night of the 24th of

CASE #1082

September, 1908, did you see the defendant? A Yes, sir; a few times.

Q Did he call upon you? A Yes, sir.

Q And did you see him in the street? A I saw him a few times in the street.

Q Now what, if anything, did you talk about with him, on these different occasions? A Well, about my husband. That was what I talked with him about.

Q About your husband? A Yes, sir.

Q And about getting him out of prison? A Yes, sir.

MR. LEVY: I object to this. He is leading the witness again, your Honor.

THE COURT: Yes. The witness seems to be intelligent, and it does not seem to be necessary to lead her.

BY MR. JACOBY:

Q Now did you ever at any time in your life have any improper relations with the defendant? A No, sir.

CROSS EXAMINATION BY MR. LEVY:

Q Mrs. Posner, when did you say you first met this defendant? A A few months before my husband got arrested.

Q Well in what month? A Well, I can't remember in what month.

Q What? A I can't remember what month.

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

CASE # 1082

Q Where did you meet him? A On First avenue, corner of 101st street.

Q corner of 101st street? A Yes, sir.

Q That was the only time you ever met him? A No; I had met him, a few times before, but never spoke to him.

Q When did you meet him before? A In conversation with my husband.

Q Always? A No, sir; sometimes I saw him in the street by himself, but never spoke to him.

Q You never spoke to him? A No, sir.

Q Did you see what he was doing? A He was walking the street when I saw him.

Q What business was he in at the time? A Well, I didn't know his occupation at the time.

Q Are you sure of that, Mrs. Posner? A Certainly.

Q Are you sure that you only met him casually on the street? A Occasionally, yes.

Q How many times did you meet him in your house?

A Before my husband got arrested?

Q Any time? A After my husband got arrested?

Q Now you understood me, what I said. (Question repeated).

A A few times.

Q Well, how many times was that? A Well, I didn't ever count it; I never counted how many times he was up in my house.

Q Well, whenever he came up to your house, he was alone;

CASE #1082

wasn't he? A Yes, he was alone.

Q Now, Mrs. Posner, after your husband went away to prison, where did you see the defendant? A The first time?

Q Yes. A On the street.

Q On what street? A 104th street.

Q Whereabouts? A Between Second and Third avenues.

Q At that time you didn't know him; did you? A No.

Q And you didn't speak to him? A I spoke to him that first time, yes. He come over and asked me where my husband was.

Q Yes. And what did you say to him? A I told him he was arrested.

Q Go on. Tell the Court and jury everything? A And he asked me how long. And this was Sunday when I saw him. My husband got arrested Saturday.

Q Yes. A And on Monday was visiting day, and he said he would go along with me to see him.

Q This defendant did A Yes, sir.

Q Well, give us all the conversation? A Well he did so. And then he used to go along with me, every other visiting day, and fetch some fruit along for my husband, and pay my car fare.

CASE #1082

1

Q And you are sure of that? A Yes, sir.

Q How many times were you in the jail with him? A Well, I can't remember exactly how many times; maybe half a dozen times or more.

BY THE COURT:

Q Did you always go to the prison with the defendant?

A No, sir, not always.

Q But you did go frequently with him? A Well maybe every other visiting day.

Q With him? A Yes, sir.

BY MR. LEVY:

Q And how many times did you go with him? A In all?

Q Yes? A Well, ~~many~~ maybe half a dozen times.

Q And you were present when he spoke to your husband? A Yes, sir.

Q You are sure of that? A Well, certainly.

Q During recess, you spoke to your husband, didn't you, out in the hall? A Just now?

Q During recess? A To-day?

Q Yes? A Yes.

Q And your sister was present during the conversation; wasn't she? A Yes.

Q Now just tell the Court and jury what took place during the conversation with your husband, at the jail? A When this defendant was present?

CASE #1082

Q Yes? A Well, sometimes he would ask him whether he could do anything for him.

Q Who asked him? A My husband asked the defendant, whether he knew a bailer to bail him.

Q Now,,wait a minute. Do you remember the first time you went over to the jail with the defendant to visit your husband? A Yes, sir.

Q And do you remember the conversation that took place then? A Well, there was just a little conversation. I can,t remember everything.

Q Now just give us what you can recall? A Well, my husband asked him if he knew a bailer that would bail him out, and he said he would try; and he said he would ask some of his friends if they knew of anybody, and that was all.

Q And how long were you in the jail visiting your husband? A The first time, about a quarter of an hour; no more.

Q No more? A No, sir.

Q And what did you have to say to your husband, on that occasion? A Well, I was sorry to see he was in trouble.

Q Is that all you said to him? A And I asked him what I should do, and he said to send him down something to eat, the next time I come down.

Q And you left the jail with the defendant? A Yes, sir.

CASE #1082

Q Where did you go with him? A I went home, to my home.

Q Where was that? A In 104th street.

Q Does your mother live there? A Yes.

Q Did the defendant go there with you? A No, sir. We came over the 92nd street ferry, and he went into the saloon in 101st street, and I continued on my way to my mother's home in 104th street.

Q Now when was the next occasion when you had any conversation -- when you went to the jail to visit your husband with the defendant? A Well, the same Wednesday the trial was going on, the hearing was on.

Q Now, Mrs. P^usner, did you understand me? You are through with the conversation of the first visit? A Yes.

Q And you say you went there half a dozen times. Now what happened the second time you went there to the jail with the defendant? A Well, nothing unusual.

MR. LEVY: Well, I move to strike that out. No, let it stand.

Q (Question repeated). A Well, he asked him how he was getting along, and so on.

Q And the same thing happened every time you went there? A No, sir.

Q Now, after you left the jail on each of these occasions with the defendant, where did you go with him? A I went home.

CASE #1082

Q Did you go home alone? A No. He went over the ferry with me, as I stated, and he paid my carfare back and forth.

Q And never took you home? A No, sir; I went home straight to my mother's house.

Q Now, Mrs. Posner, do you understand what I say? Did he ever take you all the way home? A Well, we used to go as far as the 92nd Street Ferry, and then --

Q (Question repeated). A No, sir.

Q You are positive of that? A Yes.

Q He didn't take you home, the first time? A No, sir.

Q Or the sixth time that you went with him? A No, sir.

Q You are sure of that? A Positive.

Q Do you know any of his friends? A No, I don't know any of his friends.

Q What? A No, I know none of his friends.

Q Now do you know where his sister lives? A Where she lives now?

Q No, at that time? A 101st street.

Q And did you ever visit his sister? A Once or twice.

Q What did you go there for? A Well, I was once in 101st street, at the corner of the saloon, discussing the case with this defendant.

Q Discussing your husband's case? A Yes. And she

CASE #1082

5

come down, and he told her that my husband was in trouble, and she seemed to sympathize with me, and she asked me to call on her when I had time, and I did call on her, once or twice.

Q And you called on her once or twice while your husband was in jail? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q Now where did you live at that time? When you were introduced to the defendant's sister? A 104th street.

Q What number? A I lived at 244.

Q 244 East 104th street? A Yes, sir.

Q And you lived there six weeks? A Yes, sir.

Q And you occupied how many rooms? A Three.

Q What was the name of the landlord? A I couldn't state.

Q Who did you rent the rooms of? A The janitress. I don't know her name.

Q Wasn't the name of the landlord Charles Ballen? A No. It was the janitress. I don't know her name.

Q Were you dispossessed from those rooms?

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

THE COURT: What is the purpose of that? What difference does it make?

MR. LEVY: I want to show why she was dispossessed.

THE COURT: Then I will take it.

CASE #1082

6

A No, sir.

BY MR. LEVY:

Q Were you dispossessed from any premises? A No, sir, never.

Q Positive of that? A Yes, sir.

Q Were you put out of the premises in any house by a janitor named Charles Ballen, for keeping a disorderly house?

MR. JACOBYP I object to that, if your Honor please.

THE COURT: Objection sustained. And the jury will disregard it.

MR. LEVY: Exception.

BY MR. LEVY:

Q Mrs. Posner, did you ever have any conversation with the janitor of that house, who told you that he objected to your having so many men calling at your place, at night?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

A No, sir. I never had no one call at my place, at night.

Q Were you ever arrested for soliciting? A Never.

Q How many times did the defendant call on you at your house, at N^o. 1850 Second avenue? A Three or four times.

Q During what hours of the day or night did he call there?

A Well, sometimes it would be between eleven and twelve.

Q In the day time? A In the day time, yes.

CASE #1082

Q Where did they live then? A 242 or 240--I can't remember the number. Two doors from me, in 104th street.

Q I'm talking of the time you lived at 1850 Second avenue? A Yes, at that time, too, they lived there.

Q Between that streets is that, 1850? A I think it is between 96th and 97th, or 95th and 96th. I can't recollect between what streets it is.

Q And your parents at that time lived in 104th street? A Yes, they lived the whole time there.

Q At what number in 104th? A I think it was 240; about that number. I can't remember the number.

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

Q How many times did you visit your parents? A Every day.

Q And yet you don't remember the number? A I think it was 240, because it was two doors from where I lived.

Q You are not sure of that? A I think it was 240.

Q Now, when did you live at 1850 Second avenue? During what months? When did you move in and move out? A Well, I moved the 16th of October--I think it was the 16th--from 104th street to Second avenue.

Q No.

MR. LEVY: I move that that be stricken out.

Q When did you move in and out of the premises 1850

CASE #1082

Q And usually between those hours? A Well, because I was home at these hours, between those hours, if I had homework to do, housework to do, I would be there, and otherwise I wouldn't be home all day long, as I used to be in my parents' house.

CASE #1082

Second avenue? A I moved in there in September, some time in September, and I lived in there until January 15th, 1909.

Q What year? A 1909.

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

Q September 15th? A September 15th or 16th, I can't remember just which.

Q To January 15th? A Yes, sir, I am positive.

Q What year? A 1909.

Q 1909? A Yes, sir.

Q Now, how many times did you say the defendant called on you there? A In 1850 Second avenue?

Q Yes. You say that he called there to see you Between twelve and one, or eleven and twelve in the day time, when you were at home? A Yes, sir.

Q Now, how many times did he call to see you? A Maybe two or three times.

Q Maybe two or three times? A Yes, sir.

Q Is it possible that he called more than that?

A No, sir; I don't think it was very much more.

Q You don't think it was very much more? A No, sir; about three times; no more.

Q And then you moved from Second avenue to 104th street; didn't you? A No; from 104th street to Second avenue, I moved.

Q Now, you lived in 244 East 104th street, and lived

CASE #1082

there six weeks? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q And you lived there prior to December 15th or 16th, 1908; isn't that so? A Yes, sir.

Q And how many times did the defendant call on you there?

A About twice.

Q Twice? A Yes, sir.

Q And what rooms did you occupy there? A Right on the top, the fifth floor.

Q The fifth floor? A Yes, sir.

Q Who was living with you then? A My sister, Marie Rubenstein.

Q That was all? A My baby.

Q How many rooms did you occupy? A Three.

Q Will you please state whether it was the first or the second or fifth week that the defendant called on you at that place? A That was the second week that my husband was arrested, I think.

Q You moved in there about the 15th or 16th of September; did you? A Where? 104th street?

Q Yes. A No, sir; the 1st of August.

Q Of 1908? A Of 1908; yes.

Q And you lived there six weeks? A Yes, sir.

Q And from there you moved to 1850 Second avenue? A Yes, sir.

CASE # 1082

Q Are you sure of that? A Positive.

Q Now, when was your husband arrested? A I think it was the 30th of the month before.

Q What? A I think it was the end of July.

Q The end of July your husband was arrested? A Yes, sir; it was on a Saturday.

Q You are sure of that? A I think so.

Q And two weeks after he was arrested, the defendant called on you at that address? A That was the first time he called on me.

Q That was the first time he called on you? A Yes.

Q And he called on you how many times at that address?

MR. JACOBY: If your Honor please, I object, on the ground that he has been over that, on cross-examination, thoroughly.

THE COURT: I think that is so. Haven't you covered it, counsel? Haven't you it in your own mind?

CASE #1082

MR. LEVY: No, sir.

THE COURT: Then you may ask it again.

BY MR. LEVY:

Q How many times did the defendant call on you at 244 East 104th street, the place where you lived on the top floor? A About twice.

Q About twice? A Yes, sir.

Q What business was the defendant in at that time?

A He told me he was a peddler.

Q A peddler? A Yes, sir.

Q A peddler of what? A Of fruit and vegetables.

Q Fruit and vegetables? A Yes, sir.

Q Did you ever buy any fruit and vegetables from him?

A Never.

Q What? A Never.

Q Sure of that? A Positive.

Q Will you swear positively that you didn't buy fruit or vegetables from this defendant? A No, sir.

Q At that address or any other address? A Never.

Q Now from there you moved to Second avenue. How long did you live in Second avenue? A Until January 15th.

Q That is, you lived at 1850 second avenue until January 15th, 1909? A Yes, sir; nearly four months.

Q Where did you move to from there? A 410 West 123rd street.

CASE #1082

Q Did the defendant call on you at that address?

A Oh, no, sir, never.

Q You are quite sure of that? A Positive.

Q Did your husband live with you at the Second avenue place? A Well, when he come out, he did.

Q How long did he live there with you? A All the time until now.

Q Did he live with you at 123rd street? A Why, sure.

Q Are you certain of that? A Positive.

BY THE COURT:

Q I understood you to say, Madam, that since he came out of prison in Long Island City, he has been living all the time with you? A Yes, sir, that's what I mean.

Q That is the fact; isn't it? A Yes, sir.

BY MR. LEVY:

Q And was your husband out of employment during that time? A Well, he was in nearly all the time, in employment, since he has been out.

Q He has been employed nearly all the time since he has been out? A Yes, sir.

Q And how much of the time was he not employed?

A Well, he has been out of work this last time about five weeks, about three months.

Q Continuously? A No; on and off.

Q Out of work three months, on and off, since he got out

CASE #1082

3

of jail? A Yes, sir.

Q When did he go to work? A He went to work about six days before the 15th of January, 1909, when I moved, about five weeks after he was out.

BY THE COURT:

Q You say he has been out of work some little time, latterly? A Yes, sir; and he went to work again, last Tuesday morning.

BY MR. LEVY:

Q And how long was he out of work before last Tuesday morning? A About five weeks.

Q And where did he work before that? A At Kitzinger's, Fifth avenue and 14th street.

Q And how long did he work there? A The whole season, about three months I think; I am not quite sure.

Q Now, Mrs. Posner, you were a witness against the defendant in the Harlem Police Court, when he was charged with burglary; were you not? A Yes, sir.

Q And you testified against him in that case; didn't you? A There was no testimony required.

Q What? A There was no testimony required.

MR. LEVY: I move that that be stricken out, as irresponsible.

THE COURT: Yes. Strike it out.

BY THE COURT:

Q Were you called to testify in the case? A No, sir, I

CASE # 1082

wasn't.

BY MR. LEVY:

Q So that you didn't testify? A No, sir.

Q And you went down before the Grand Jury in relation to that case? A Yes, sir.

Q And testified there against him? Yes or no? A Yes.

Q And was your husband a witness in that case too, before the Grand Jury? A In the other case?

Q Yes. A No, sir.

Q And what did you charge him with before the Grand Jury, in that case?

MR. JACOBY: I object to that, as calling for the witness's conclusion as to a judicial proceeding.

THE COURT: Objection sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q What did you testify to in that case?

MR. JACOBY: I object to it, as being immaterial, irrelevant and incompetent, and not within the issues of this case.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Now you charged him, in that case, with the crime

CASE #1082

of burglary; did you not?

MR. JACOBY: I object to that as calling for the witness's conclusion as to the legal effect of what she did before the Grand jury.

THE COURT: Objection sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q You know that he was arrested, after he went before the Grand Jury, charged with burglary; don't you?

MR. JACOBY: One minute.

THE COURT: I will let that be answered.

MR. JACOBY: Yes, sir; I don't object to that.

A Yes.

BY MR. LEVY:

Q You testified that he had stolen some curtains; didn't you?

MR. JACOBY: Objected to.

THE COURT: Allowed.

A Well, did I know that they were stolen?

Q No. Did you testify to that effect?

MR. JACOBY: Objected to.

THE COURT: Allowed.

A Yes, sir.

Q And did you say that the defendant brought to your apartment some stolen curtains?

CASE #1082

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Well, was the defendant living there at your apartment, at the time that you charged him with that crime?

MR. JACOBY: Objected to.

THE COURT: Allowed.

A No, sir.

Q Did you testify in that case that he brought the property, which was alleged to have been stolen, to your place?

A Yes, sir.

Q To whom did you tell that? A To the Grand Jury.

Q Did you see any District Attorney, and tell him about that case at that time? A No, sir.

Q Who was Meyer Torschinsky? A I don't know.

Q Do you know whether this defendant was discharged in this case?

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

MR. JACOBY: I suggest now that your Honor call the attention of the counsel for the defendant to the fact that he is endeavoring to draw out another issue, not the issues here before this jury.

CASE # 1082

MR. LEVY: The reason for this examination, if your Honor please, is to show that the ~~defendant~~ witness was a witness in the other proceeding against the defendant.

THE COURT: Well, you have that fact. I have permitted you to show that. But, of course, I cannot permit you to go into the merits of the other controversy. You have the evidence already of this witness that she appeared in another proceeding against the defendant, before the Grand Jury, and gave testimony against him. I think that, for the purposes of the defendant in this case, that you have all that you need, unless there be some relation, that has not been yet disclosed, between both cases. I am not going to permit you, counsel, to go outside of this indictment. I have given you a good deal of latitude now, and I think that you have all that you need for the purpose of addressing any argument to the jury upon the bias or the attitude of this witness to the defendant.

MR. LEVY: Well, may I --

THE COURT: We have pleadings for the purpose of being confined in the issue in a case.

MR. LEVY: But I want to know whether she was ever called for the trial of this other case.

MR. JACOBY: There was no trial.

THE COURT: I am not going to give you any directions,

1290

CASE # 1082

counsel, but I suggest to you the Court's attitude with reference to any other issues not involved here.

BY MR. LEVY:

Q Well, did you have any conversation with this defendant after you testified against him in the other case? A No, sir.

Q Are you sure of that? A Positive.

Q You never saw him after that? A No, sir.

Q Did you have any conversation with any of his friends, after he was charged in the other case, for the other crime?

A I don't know any of his friends.

Q Eh? A I don't know any of his friends.

Q Did you speak to a man by the name of Morris Reissman?

A I don't know the name.

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

Q Did you speak to a woman by the name of Mrs. Golden?

A No, sir.

Q Or Mrs. Hochsfeld? A No, I don't know those people.

Q Did you speak to a man by the name of -- or a woman by the name of Jennie Sachs? A No, sir.

Q Or Mr. Sachs? A No, sir.

Q Or Benjamin Bell? A No, sir.

Q Or Israel Besnick? A No, sir, I don't know those persons at all.

Q You don't know those persons at all? A No, sir.

CASE #1082

Q And you didn't tell these men or these women, that your husband was forcing you to make this second complaint against this defendant?

MR. JACOBY: Now, I object to the question, on the ground that it doesn't appear that this woman made the complaint against the defendant.

THE COURT: I will take an answer to that.

A I don't know the people, and therefore I couldn't speak to them.

BY MR. LEVY:

Q Well, did you say that to anybody, Mrs. Posner?

A No, sir, I didn't.

Q Well, isn't it a fact that, since your husband came out of jail, he accused you of having sexual intercourse with this defendant, and forced you to make the complaint against this defendant? A No, sir.

Q Isn't it a fact? A No, sir.

BY THE COURT:

Q Did anything like that ever take place, Madam?

A No, sir.

BY MR. LEVY:

Q Did you ever have any sexual intercourse with this defendant? A I don't know what you mean.

Q How many years are you married? A Five years.

Q You were born in England? A Yes, sir.

CASE #1082

Q And you talk and read English, don't you? A Yes, sir.

Q And you don't know what sexual intercourse means?

A No, sir.

Q Did you have any intimate relations with this defendant?
Did you stay with him in bed, or did you sleep with him in
bed? A No, sir.

Q What? A No, sir.

Q You are sure of that? A Positive.

Q Did you ever tell anybody that you did? A No, sir.

Q Did you ever tell your husband that you did?

A No, sir.

Q Now, in the Harlem Police Court, weren't you present
when your husband threatened this defendant because of such
alleged relations with you? A My husband wasn't in the Harlem
Police Court at the time.

Q Or in any other place? A No, sir.

Q Were you in the presence of the defendant at any
time after your husband left the prison over in Long Island
City? A No, sir.

Q You were never together with him after your husband was
released? A No, sir.

Q Quite sure of that? A Positive.

Q And never met him in his sister's house? A No, sir.

Q Or on the street? A No, sir.

Q So that after your husband's release you never saw the

CASE #1082

defendant again? A I saw him may be passing in the street, but never had anything to say to him.

Q How many times did you see him after your husband's release in the street? A That I can't remember.

Q Now you were very friendly and intimate with him while your husband was in prison; weren't you? A Not very friendly.

Q What was your last answer? A Not very friendly.

Q You were not friendly at all with him? A Just on speaking terms; that's all.

Q Just on nodding terms? A No, I would speak to him, sometimes for half an hour, about my husband's case.

Q And that's all the intimacy you had with the man?

A Yes, sir.

Q And you have no hard feeling against him? A No; why should I?

Q Well you say that you knew he tried to bail your husband out? A Yes.

Q And consequently you have a very friendly feeling towards him? A Well, I have no hard feeling towards the man.

Q Then you have friendly feeling towards him? A Yes.

Q You have? A Yes.

Q And you are quite sure of that? A Yes; positive.

Q Have you always told the District Attorney that you had friendly feelings towards him? A Yes, sir.

Q Did he ever ask you that? A Well, he never asked me, but I told him I had nothing against the man.

Q What did you mean by that? A That I had no malice, that I wasn't against the man, that I didn't want to do the man no harm.

Q Didn't want to do him any harm? A No, sir.

CASE #1082

1205

1

Q And telling the Grand Jury that he committed a burglary, and telling the Grand Jury that he committed arson, isn't doing any harm, in your opinion; is that it?

MR. JACOBY: I object to that, sir.

THE COURT: Objection sustained.

MR. LEVY: Exception.

Q Now, do you think that what you have said and done in relation to this case, and the other case, is a friendly act on your part?

MR. JACOBY: I object to that.

THE COURT: Sustained.

MR. LEVY: Exception.

Q Where did you say you lived on December 24th, 1908?

MR. JACOBY: If your Honor please, I object to that, on the ground that it has been gone over five or six times.

THE COURT: Well, have we assurances that this will be the last time?

MR. LEVY: Yes.

THE COURT: Then you may have it again.

A 1850 Second avenue.

Q Oh, that's Second avenue? A Yes.

Q Between what? A 96th and 97th streets.

REDIRECT-EXAMINATION BY MR. JACOBY:

CASE #1082

Q You say that the defendant told you, during the period that your husband was locked up, that he was a peddler? A Yes, sir.

Q And that's the only way you have any knowledge of what his business was? A Yes, sir.

Q Did you ever see him peddling? A No, sir.

Q One other question, Mrs Posner. Were you brought up in the Jewish or Hebrew religion?

MR. LEVY: I object to that.

MR. JACOBY: After this attack on her character, I want to show whether or not she is a believer in religion.

THE COURT: Allowed.

MR. LEVY: Exception.

A Yes, sir.

BY MR. JACOBY:

Q And I want to know whether you are a believer in the Hebrew religion?

MR. LEVY: Objected to.

THE COURT: Allowed.

MR. LEVY: Exception.

A Yes, sir.

MR. LEVY: And I object to that, and move to strike that out.

THE COURT: Motion denied. I take it only in view of the cross-examination, Counsel.

CASE # 1082

MR. LEVY: Exception.

RE-CROSS-EXAMINATION BY MR. LEVY:

Q Now, did you ever buy any fruit or vegetables from the peddler's wagon of the defendant?

MR. JACOBY: I object to that. She has said four or five times that she had not at any time bought any vegetables or fruit from him.

THE COURT: Yes. But if you will give me assurances that you will not take more than five minutes on it, I will allow you even to have this again.

MR. LEVY: Yes, sir, that's all I will ask.

THE COURT: Then you may have it.

A No, sir.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the trial of the case until Monday morning, January 17, 1910.)

CASE #1082

THE PEOPLE v. HARRIS ZABRANSKY (continued).TRIAL RESUMED.

New York, January 17th, 1910.

DAVID KAPOCHELSKY, of 1969 First avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Kapochelsy, how long have you lived in the United States? A About 18 years.

Q But how long have you lived in New York City?

A (No answer).

MR. JACOBY: If your Honor please, this witness seems to have a severe affection of the throat, which prevents him from being heard. He cannot speak above a whisper.

THE COURT: Then the interpreter may repeat his answers as he gives them.

(The official interpreter repeated the answers from this point on).

A About 18 years.

Q And what is your business now? A Wholesale produce business.

Q For yourself, or employed by somebody else? A Myself.

Q Where? A 1963 First avenue.

Q Were you also engaged in that business for yourself in

CASE #1082

September and October, 1908? A Yes, sir.

Q At the same address? A Yes, sir.

Q Do you know the defendant, Harris Zabransky? A Yes, sir.

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

Q Did you know his name, too, two years ago? A Yes sir.

Q Will you state whether or not you had a conversation with him at any time after September 24th, 1908? A (No answer).

Q State whether or not you had a talk with him at any time after September 24, 1908?

MR. LEVY: Now, I object to that. The form of the question is too general.

MR. JACOBY: I will bring it down to the issue here.

THE COURT: He may say yes or no.

A Never seen him.

BY MR. JACOBY:

Q Were you in a saloon, in the fall of 1908?

MR. LEVY: Now, if your Honor please, that is leading.

THE COURT: I will take that.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Were you in a saloon in the fall of 1908, at 101st street and First avenue? A Yes, sir.

CASE #1082

MR. LEVY: I object to that, if your Honor please, as too general, and ask that the answer be stricken out.

THE COURT: No, I will let it stand.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Did you see the defendant, Zabransky, in that saloon, one evening in the fall of 1908?

MR. LEVY: The witness has already answered that, that he didn't see him after a certain date.

MR. JACOBY: He didn't understand the question, perhaps.

MR. LEVY: And I object to such a remark in the presence of the jury.

MR. JACOBY: I do not think it is an improper remark, if your Honor please.

THE COURT: No.

A A year ago, the 15th, I saw him in the saloon.

BY MRJACOBY:

/ Q The 15th of what? A I don't remember the month. I know it was the 15th.

Q Was there anybody else in the saloon besides the defendant? A Yes, sir.

Q Did you hear any conversation -- A Yes, sir.

Q Between the defendant and this other person in the saloon? Yes or no? A Yes, sir.

CASE #1082

Q Now what did you hear the defendant say, and what did you hear this other person say, that evening, in the saloon?

A The fellow was sitting and eating his supper, and I was sitting by the table, too, and Harris came into the saloon, and he says to this fellow, "What he is doing?" "I'm working hard, six dollars a week."

Q Who said that? A That fellow that was eating supper.

Q And what did Zabransky say? A Zabransky said, "Because you don't understand anything. I made seventy-five dollars maybe in an hour or two," and the fellow said, "Tell me why you can make \$75 so quick."

Q And what did Zabransky say? A Zabransky said, "The blacksmith at 98th street, Max, gave me \$75 to make a fire to the other blacksmith, and I did ~~it~~ do it."

Q Do you know what other blacksmith that was? A Yes, sir.

Q Who?

MR. LEVY: I object.

THE COURT: Unless he said it then, unless it was part of the conversation, he cannot give it.

MR. JACOBY: I withdraw the question.

BY MR. JACOBY:

Q Was there a fire in any blacksmith shop in First avenue, in the neighborhood of 98th or 99th street, sometime before you heard this conversation in this saloon?

CASE #1082

MR. LEVY: I object to that.

BY MR. JACOBY:

Q State whwther or not there was a fire in any blacksmith shop in First avenue, in the neighborhood of 98th, 99th or 100th street, within two or three weeks before this conversation in the saloon.

MR. LEVY: I object. This witness has not specified any time when this alleged conversation took place, and how can he specify -- how can he answer that question?

THE COURT: He has reference to a date, about a year ago, he says, the 15th, but he cannot say what month. Now, with reference to that, counsel is asking him whether he knew of a fire in the locality he designated, a few weeks prior to this conversation.

MR. JACOBY: Yes, at any time within a few weeks prior to the conversation that he heard.

THE COURT: I will allow it.

MR. LEVY: Exception.

(The question is repeated by the stenographer).

A I only know that the blacksmith shop burned.

Q How long before you heard this conversation?

MR. LEVY: I object to the question, and ask that the answer be stricken out as hearsay.

THE COURT: Strike it out.

CASE #1082

BY MR. JACOBY:

Q Do you know of your own knowledge whether a blacksmith shop in First avenue, in the neighborhood of 98th, 99th or 100th street burned down shortly before this conversation?

MR. LEVY: I object to that question

THE COURT: Allowed.

MR. LEVY: Exception.

A I wasn't there when it burned. I was in the market. I was in the night time always in the market.

MR. LEVY: Now I ask that the entire answer, the preceding answer, be stricken out.

THE COURT: I will let it stand.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Do you know of a blacksmith shop, belonging to one Simon, in the neighborhood of 99th street and First avenue?

A Yes, sir.

Q Do you know of your own knowledge whether or not that blacksmith shop was burned down, a little over a year ago; not whether you saw it burned down, but whether you know whether or not it was burned down, a little over a year ago? A Yes, sir.

Q Now was it burned down? State how long before you heard this talk between Zabransky and the other man in the saloon. How long before that time was the blacksmith shop of

CASE #1082

Simon burned down? A I think about a couple of weeks.

CROSS-EXAMINATION BY MR. LEVY:

Q Mr. Kapochelsky -- is that your name? A Yes, sir.

Q Do you know David Levy?, A I know he is an expressman, but I never talked to him.

MR. JACOBY: Now, if your Honor please, if my friend refers to a David Levy, I do not know whether he does so accidentally or not, but the witness evidently understands that he refers to the expressman who has testified in the case, and perhaps my friend has got his name wrong. His name is Jacob Levy.

MR. LEVY: Pardon me, I made a mistake in the name. And pardon me, also, Mr. District Attorney, but I don't need your assistance, though I may make a little mistake of that kind, once in a while.

BY MR. LEVY:

Q Do you know him? A I saw him sometimes in the street.

MR. LEVY: May the witness speak without the assistance of the interpreter, your Honor? Can't he speak without the interpreter? I can hear him here?

MR. JACOBY: Well, I can't hear him.

THE COURT: Well, we will try him without the aid of the interpreter, and if the jury can hear him, we will let him proceed, unless they complain that they cannot

CASE # 1082

hear him.

BY MR. LEVY:

Q In what neighborhood did you see him in the street?

A Who?

Q Jacob Levy? A He's passing, every day.

Q Every day? A Yes, sir. And he stands on the corner.

Q Did he ever do any work for you? A Never.

Q Any carting? A No.

Q Did he ever cart any merchandise from your place of business to other people that you know of? A No, sir.

Q Or for any of your customers? A My customers only buy apples.

THE COURT: Is this satisfactory to you, Gentlemen of the Jury? Can you hear it?

THE FOREMAN: No, sir, we can't hear a sound even.

THE COURT: Then he will go on, and the Interpreter will repeat his answers as he gives them.

BY MR. LEVY:

Q Well, did he ever cart any apples for customers of yours, after they had bought them?, A There are about five express people in the Harlem market.

MR. LEVY: I ask that the answer be stricken out.

THE COURT: Strike it out.

BY MR. LEVY:

Q Do you understand me, Mr. Kapochelsky? A You asked

CASE #1082

me whether I cart the apples?

Q No, I ask you whether Jacob Levy, as an expressman, carted any apples away from your place for your customers?

A Jacob Levy is only for moving; he has a moving van.

Q How do you know that? A Can't I see?

Q Well, go on. Finish your answer? A There is a difference between moving vans and expressmen.

Q And you know that he has not an express business, too?

A Jacob Levy, no.

Q How do you know that he hasn't? A I don't know. I never see him.

Q So you don't know, do you, whether he had an express business? A I know he is in the moving business.

Q Now you don't know whether he is in the express business; do you? A No.

Q Now did you ever see him in anybody's else company in that neighborhood, Jacob Levy; eh? A I never got time to look for somebody.

Q Well, did you ever see Philip Posner with Jacob Levy in that neighborhood? A I don't know Philip Posner.

MR. LEVY: Will Philip Posner stand up?

Q Do you know that man (indicating)? A I don't know that man. I never see that man.

Q Are you sure of that, are you quite sure you never saw that man? A I see him in the court here, that's all. I nev-

CASE #1082

er ask him what he's doing. I never got anything to do with the man.

MR. LEVY: I didn't ask you that, and I ask to have that stricken out..

MR. JACOBY: I object to it being stricken out. The witness is being asked about the nature of his acquaintance with him.

THE COURT: Strike it out. He says he does not know him; that's all.

BY MR. LEVY:

Q You say Levy is in the moving van business? How do you know that he's in that business? A He is passing every day at the corner where I am standing with my business.

Q Well, did you ever see anybody pass with him, any of his employes or workingmen? A Sometimes he is going with the workingmen, and sometimes he is going alone.

Q Well, do you know his workingmen? A His brother I see.

Q (Question repeated). A I see he is passing with his brother, a couple of times.

Q Do you know his workingmen? A I never looked whether he has got workingmen or not. I have nothing to do with him.

Q You never took the trouble to see the workingmen, but you did see him and his brother?, A Yes, sir.

CASE # 1082

Q And did you have any horses and wagons at that time?

A No.

Q How far -- do you know where Simon's blacksmith shop was at that time? A Yes, sir.

Q Where was it? A Between 100th street and 99th street.

Q On what avenue? A First avenue.

Q And where was your place of business? A 101st street.

Q On the same avenue? A Yes, sir.

Q And you are a friend of Simon's? A No, sir.

Q You never talked to Simon? Yes or no, please. Did you ever talk to Simon? A I never talked with him.

Q Now you are quite sure that you never spoke to Simon, and you don't know Simon? You are quite sure of that? A I know him. He's got the blacksmith shop.

Q How do you know that? A Because I know him. Sometimes a customer comes to change a check with me, and he gave me his check.

Q But you don't know him personally? A No, sir.

Q And you never had any conversation with him about this case; did you? A No, sir.

Q At any time? A No.

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

Q Now you never had any conversation about this case, or about the testimony that you were to give in this case, with Jacob Levy; did you? A No, sir.

CASE #1082

Q At any time? A No, sir.

Q Or with Philip Posner? A No, sir.

Q And you didn't talk to these parties in the saloon, that night; did you? A No, sir.

Q Now what else did you -- do you remember any other circumstance that took place in that saloon at the time you say this conversation took place? A (No answer).

Q Where is the saloon? A 101st street.

Q On what avenue? A First avenue, on the corner.

Q Whose saloon was it? A I have forgotten the name.

Q You went there quite often, didn't you? A I live in the same house.

Q You went in the saloon quite often; didn't you? A Yes; every night.

Q Now you never saw this defendant from that night until you came here; did you? A No.

Q You never did? A No.

Q And you never saw him before that? A Before I saw him.

Q Where? A I see him around the corner, in the saloon.

Q Peddling? A In the saloon.

Q At the time you heard this talk? A No.

Q Do you know what business he's in; don't you? A I never seen him doing business.

Q Didn't you see him peddling around there, with a peddling

CASE #1082

wagon? A Maybe twice in a year.

Q And you saw him peddling vegetables; didn't you?

A Maybe twice in a year.

Q But you did see him; didn't you? A Yes.

Q Now -- but since you heard the conversation, you never saw this man? A No, sir.

Q As you say, you only saw him twice in the year before that time? A I say I see him every day, but peddling only twice a year.

BY THE COURT:

Q Did you speak to him when you met him?

MR. LEVY: I was going to ask him that, your Honor.

Q Did you speak to the defendant when you met him?

A Yes.

Q And you knew his name? A Yes, sir.

Q And you spoke to him nearly every day? A Sometimes.

Q What did you talk with him about? A I had nothing to talk, but when he says "Hello", I says "Hello."

Q That was all? A Yes, sir.

Q And that happened every time you met? A Yes, sir.

Q When was the first time -- the last time before you met him in the saloon that you saw him? A When he speaks that. I never see him no more.

Q I mean before that? When did you see him before that?

A Before that he was every day in the saloon..

CASE #1082

Q Were you in the saloon every day? A Only in the night time. I was waiting for the horse and wagon to come down.

MR. LEVY: I object to that, and move to strike that out, as irresponsible to my question.

THE COURT: Strike it out.

BY MR. LEVY:

Q (Question repeated). Now yes or no to that question.

A Yes, sir.

Q Now you say you also met him every night in the saloon; is that so?, A It was in the day time, too, in the saloon; yes.

Q And so you were in the saloon in the day time, also?

A No, I seen him from the corner. I'm standing on that corner by the door of the druggist, and on the other corner it's a saloon.

MR. LEVY: I ask that that preceding answer be stricken out, as to seeing him in the saloon, when he wasn't there himself.

BY THE COURT:

Q Well, did you look through the window or the door?

A I'm standing outside. I've got a stand outside.

Q You have a stand outside? A Yes, sir.

Q And how did you see? Through the window, or how?

A Outside.

THE COURT: What do you want struck out, counsel?

CASE #1082

MR. LEVY: The answer in which he says he saw the defendant in the day time, as well as in the night time, every day, in the saloon, and he says he wasn't in the saloon in the day time, and, therefore, how could he see him?

THE COURT: Well, ask him whether he could see him from his situation outside.

BY MR. LEVY:

Q Well, were you in that saloon every day, in the day time? A Sometimes in the day time, I come in, too.

Q And you say that you saw the defendant in the saloon every day, in the day time, when you went there? A I am not running after him. I see him going inside and outside.

CASE # 1082

Q And did you see what he was doing? A No; I haven't got nothing to do with what he he is doing.

BY THE COURT:

Q Now is this not it, that you saw him from your position at the corner, going in and out of the saloon? A Yes, sir.

Q That's what you mean? A Yes, sir.

BY MR. LEVY:

Q Now, then, do you remember the last conversation that you had with the defendant, before you heard this conversation in the saloon? A Yes, sir.

Q When was that? A When he was talking.

Q No. I mean before that. The last conversation before that which you had with him, with the defendant? A I don't understand what you mean.

Q Well all right, we'll try to make it clear. You say you saw the defendant a number of times, and spoke to him, and said "How do you do," "Hello" and "Goodby"? A That's all.

Q And that happened in the saloon and also in the street; isn't that so? A Yes, sir.

Q And will you please tell us the last time you met this defendant when that occurred, before you heard this talk in the saloon? A Yes.

Q Now when was the last time before that conversation?

A I see him every day, when he was talking that. He was

CASE #1082

gone away, and I never seen him any more than.

MR. LEVY: Now, I ask to have that answer stricken out, is irresponsible.

THE COURT: Strike it out.

BY MR. LEVY:

Q You know what I mean by conversation? A I never spoke to him. He said "Hello" and I said "Hello," and that's all.

Q Now you say that happened on the 15th, a year ago, the 15th of the month? A Yes.

Q A year ago? A Yes, sir.

Q And when did you see this defendant before the 15th, a year ago? A I see him the 14th, too.

Q Where did you see him on the 14th? A The same place.

Q Who was he with? A He had a whole lot of good friends.

Q Did you notice who they were? A Sure.

Q Who were they? Were they Posner and Levy? A No, sir.

Q You are sure of that? A I am sure.

Q Do you know Posner well? Did you know him then well?

A Yes.

Q You did know Posner well then? A No.

Q Now which do you mean? Did you or did you not know Philip Posner well, on the 15th of the month, a year ago?

A No, sir.

Q You didn't know him at all, did you? A No, sir.

CASE #1082

Q Now you are sure of that? A Yes, sir.

Q Now, you didn't know Jacob Levy at that time, well, did you, the 15th of the month, a year ago? A I know Jacob Levy, because every day he was passing around, because I am five years in that market.

MR. LEVY: I ask that that answer be stricken out, as irresponsible.

MR. JACOBY: And, if your Honor please, technically speaking, the question is objectionable, because "well" is a relative term, and contains the conclusion of the counsel, and I must object on that ground.

THE COURT: Yes, you ask him, counsel if he knew him well. I think you might ~~rephrase~~ reframe the question.

MR. LEVY: Yes, I think it is open to that criticism, perhaps.

BY MR. LEVY:

Q Well, was Jacob Levya friend of yours, on the 15th of the month, a year ago? A No, sir.

Q Can you swear that you saw ^{them} ~~him~~, Levy and Posner, with the defendant a year ago, on the 15th of the month? A No, he wasn't with him. I didn't see him with him. What do you mean? Jacob Levy passes every day.

Q (Question repeated). A yes, I am sure of that.

Q Now can you tell us the names of his friends that were with him, when you saw him on the 14th of the month, a year

CASE #1082

ago? A Yes.

Q What are the names? A One is Morris.

Q who is Morris? A I don't know his second name.

Q What business is he in? A He has got a business now in 101st street.

Q Do you know that he has a business now there? A Yes, sir; a couple of months.

Q What kind of a business? A He has got some wine; I don't know; I never was over there.

Q Is it a restaurant business? A Yes, sir.

Q What is the address? A I don't know the number.

Q Between what avenues is it? A Between First and second, near First avenue.

Q Who else? A Nathan. Lots of them. I don't know the names.

Q Nathan Lots of them? Who is he? A No; I say plenty of them, lots of them. I don't know them. I never spoke to them.

Q You say they were his friends. How do you know that they were his friends, if you never spoke to them? A Because they were all together.

Q And that's the only reason why you say they were his friends, although you don't know these parties? A Yes, sir.

Q Do you know what they were taking about on the 14th?

A No.

CASE #1082

Q Well, did you see the defendant on the 13th with his friends? A Yes.

Q Where? In the same place? A Yes, sir.

Q What were they talking about then? A I don't know.

Q Eh? A I don't know.

Q You don't know. A No.

Q Well, did you see him on the 12th of that month with his friends? A Yes.

Q And with whom did you see him on that occasion?

A The same people.

Q The same people? A Yes, sir.

Q Always the same people? A Yes, sir.

Q Did you ever see Jacob Levy and Philip Posner with him, on those occasions? A No, sir.

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

Q Now what time of the day was it that you saw the defendant with these parties, on the 12th of that month? A The whole day they were over there.

Q And you saw them the whole day there? A Yes, sir.

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

Q And what time of day was it on the 13th of the month when you saw them there? A What time?

Q Yes, what time of the day? A Oh, about two o'clock.

Q And how long were they there? A They stayed until 12

CASE #1082

o'clock at night.

Q Where were you then? A I was standing by the stand, and afterwards I went to bed, and I come down, to go down town.

Q Now what time of the day was it on the 13th, 14th and 15th of the month, when you saw this defendant with these friends?

MR. JACOBY: Now, if your Honor please I submit there are too many questions involved in one.

MR. LEVY: Well, I'll separate them. I wanted to save time.

MR. JACOBY: Well, it's impossible to save time in that way.

BY MR. LEVY:

Q What time on the 14th? A I don't look always at the time. Days and nights I have seen them over there.

Q And did you see the same people on the 15th?

A And I saw the people after the 15th, too.

Q The same people? A Yes, sir.

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

Q And that's the best answer you can make? A That's what I know.

Q And that is as true as all the other answers that you have made?

MR. JACOBY: Now, I object to that question.

THE COURT: Yes, counsel, the form is not good.

MR. LEVY: Exception.

CASE #1082

THE COURT: You can improve on the form of that question if you want the information.

BY MR. LEVY:

Q Now you say you met them on several other occasions after the 14th of the month ?

MR. JACOBY: Now I object to that. Who is "they". That is too indefinite.

THE COURT: Overruled. He may answer.

BY MR. LEVY:

Q The same parties that you refer to. A After the 15th?

Q Yes? A The other parties.

Q Yes. A Sure.

Q Now will you please tell us what day of the week the 12th of the month was, what day it was on? A I don't know.

Q Well, what day of the week was the 13th of the month?
A The 15th, I remember, was Thursday. I was paying the rent, that time.

Q What was the 13th of the month? A Can't you count it?

MR. LEVY: I move to strike out that answer, if your Honor please.

THE COURT: Yes. Well, he says that he fixes the 15th as being rent day.

THE WITNESS: Yes, sir. Thursday.

CASE # 1082

THE COURT: And you can calculate it as well as the witness.

THE WITNESS: Tuesday was the 13th.

MR. JACOBY: He has answered it now. He says that Tuesday was the 13th.

BY MR. LEVY: Now what was the name of the man that you heard in conversation with the defendant, on the 15th of the month, on Thursday? A Jacob Grabarnik.

Q And do you know this Jacob Grabarnik? A Yes, sir.

Q And where does he live? A He's gone to the old country, about four months ago.

Q Was Jacob Grabarnik in that saloon before you came in there, or did you come in there first, or did they come in after you? A I come in before .

Q How long were you in the saloon after you went in there? A About an hour I was in there.

Q What were you doing in there? A I was sitting and waiting for my horse and wagon.

Q Oh, then you have got a horse and wagon; is that so? A No, I haven't got the horse and wagon.

Q I mean then? A Yes, sir.

Q Now, where did you stable that horse and wagon at that time? A 101st street.

Q In whose stable? A He is a contractor. I don't know.

Q Was it in the same stable where Moscher --- do you

CASE #1082

know a man that they call Moscher? A If I see him I may know him.

Q Whose stabled in the same place at that time? A Nobody was stabling with me; only me and the contractor.

Q What is the contractor's name? A I have forgot his name. I think his name is -- French, the watchman knows his name. I think he knows his name.

Q Did you stable your horse and wagon in the stable at the rear of Simon's blacksmith shop? A No, sir.

Q Do you know the watchman of that blacksmith shop?

MR. JACOBY: Now I object to that, on the ground that there was no watchman of the blacksmith shop.

THE COURT: Overruled.

A No, sir.

BY MR. LEVY:

Q Do you know the watchman of the stable in the rear of Simon's blacksmith shop? A No.

Q Now what did you do on the 16th of the month, a year ago?

MR. BACOBY: If your Honor please, I ask that the question be made more definite. If the counselor means the day after the alleged conversation, let him say so.

THE COURT: I take it that is the date you have reference to? He thinks it is the date of the 15th of some month, and you are now asking him about the 16th of that

CASE #1082

month, I take it?

MR. LEVY: Yes, sir, a year ago. That's the time he is talking about.

BY MR. LEVY:

Q Please answer my question. A I am going in the night time to the market, and, after I come home, I have got to sell the stuff, and I am standing until four o'clock, and then I go upstairs.

Q And you do that every day; don't you? A Yes, sir.

Q Now do you remember any particular thing that you did on the 15th of the month, any special thing that you did on that particular day? A I have never got special things.

Q You are quite sure of that? A Yes, sir.

Q This conversation which you say you heard was a special thing; wasn't it? A What conversation?

Q On the 15th? A I don't understand what you mean.

Q Wasn't that a special thing that you heard on the 15th of the month, a year ago, this conversation which you told us about?

A When Harris was talking to the other fellow?

Q Yes or no please. A I don't understand what you mean.

MR. JACOBY: Now, I object to the question, if it is impressed, because it calls for the witness's conclusion.

THE COURT: He says he does not understand your question.

MR. LEVY: Yes, but he certainly can understand it,

CASE # 1082

if it is communicated to him in Yiddish, and he shouldn't be allowed to trifle with the Court in this way.

MR. JACOBY: Then your Honor understands that the witness is trifling with the Court?

THE COURT: No; I have not seen any evidence of that. The interpreter will repeat the question in his native tongue, which is Yiddish, I believe.

(The question is repeated by the official interpreter.)

A No.

Q Now, then, you didn't hear any conversation between these parties on the 16th or 17th of the month?

MR. JACOBY: Now, I move to strike out the last answer of the witness, because it is so manifestly irresponsible to the question.

THE COURT: No, I will let it stand.

BY MR. LEVY:

Q Do you remember anything special that occurred on the 16th of the month, of last year? A I have no time to look after such things.

Q Now do you remember anything of special importance that happened on ~~the~~ any day during that week, after the 15th of the month, a year ago? A No.

Q You are quite sure of that? A Yes, sir.

Q Now, Mr. Kapochelsky, do you know Mrs. Posner?

A No.

CASE # 1082

MR. LEVY: Your Honor, may I suggest that we use the interpreter altogether, and let him talk Yiddish to him? So that he cannot claim that he doesn't understand what I say?

MR. JACOBY: I object to the statement of counsel.

The witness has not made any such claim.

BY MR. LEVY:

Q Did you understand my last question? A Yes, sir.

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

Q Never saw her? A No.

Q And you never knew her before the 15th of the month, a year ago? A I never knew her before or after.

Q And you never knew any of the parties -- pardon me. I will withdraw that. Who was the first person that you told of your having overheard that conversation in the saloon, on the 15th of that month, a year ago, or thereafter? A As soon as I heard it, I got out of the saloon, and I see Frenchy, the watchman, pass.

Q And you told him; did you? A Yes.

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

Q Now please tell this Court and jury just what you told Frenchy. Frenchy is the watchman; isn't he? A Yes.

Q Now then please tell the Court and jury what you told Frenchy? A I told Frenchy, "Look what kind of people are around here in 101st street, taking from one man \$75 to burn of the

CASE #1082

other man the blacksmith shop."

Q Is that all you told him? A Yes, that's all.

Q What did Frenchy say? A He didn't say nothing to me. He walked away.

Q Now you are sure of that? A Yes, sir.

Q Now did you tell anybody else? A No.

Q At any time? A No.

Q You are sure of that? A Yes.

Q And you haven't told anyone else from that time down to this? A No, sir.

Q Since the time you told Frenchy? A No.

Q When did you first find out that this case was on for trial? A They bring me a subpoena and I have to go.

Q Where did you go when you got the subpoena? A To the Fire Marshal.

Q Who gave you the subpoena? A A man bring the subpoena.

Q When did you go to the Fire Marshal's office, the first time in your life? A I don't remember.

Q Well, was that the first time you went to the Fire Marshal's office in your life? A Yes, sir.

Q When you got the subpoena? A Yes, sir.

Q In this case? A Yes, sir.

Q And that was the first time you were ever there?

A Yes, sir.

Q When was that? A About a week or two weeks after I

CASE #1082

told Frenchy.

Q Well, when was that? A I don't know.

Q Well, don,t you remember that? A No.

Q Wasn't ~~it~~ the fact that you went down to the Fire Marshal's office after you were served with a subpoena , a mater of special importance in your mind? A I don't understand.

(The question is repeated through the interpreter.)

BY MR. LEVY:

Q Answer yes or no, please, Mr. Kapochelsky? A Sure.

Q Now don,t you remember the month that you went down there, in answer to that subpoena? A No.

Q Was it a month ago? A No.

Q Don't you remember the Hebrew month? A No.

Q And how long were you down in the Fire Marshal's office, the first time? A A couple of hours.

Q Who told the Fire Marshal, if you know, to send for you?
A I don't know.

Q When you got there the first time, who else was there, if you know? A I see detectives.

Q What detectives? A Bring me the subpoena.

Q How do you know they were detectives? You don't know that of your own knowledge, do you? A Well, he told me he is a detective.

Q Well, now, you didn,t see anybody else besides the

CASE # 1082

detectives there? A No.

Q You are sure of that? A Yes.

Q Did you see the Fire Marshal there? A Yes.

Q What was his name? A I don't know. I never asked him.

Q Did you see him in this court house, or around this court house, to-day? A To-day, I didn't see him.

Q Did you see him on Friday? A Yes, sir.

Q When did you go down to the fire marshal's office again after that? A I was only one time.

Q Only one time? A Yes, sir.

Q And on that one time did you sign any written statement? A Yes.

Q Did you swear to it? A Yes.

Q And what did you tell in that statement, what did you say in that statement? Do you know what was in the statement? A Yes.

Q Now please tell the Court and jury what you put in that statement? A I told the fire marshal what I told here, what I heard from "Harry" so I told him.

BY THE COURT:

Q Who do you mean by "Harry"? A This man (indicating the defendant.)

CASE #1082

Q The defendant? A Yes, sir.

BY MR. LEVY:

Q You call all your friends by their first names; don't you? A I've got no friends.

Q Well, do you call everybody by their first name or second names? A Call everybody by their second name? I don't know what you mean.

Q Are you a friend of this defendant's? A Yes.

Q An intimate friend? A I am a friend to everybody.

MR. LEVY: Now, I move to strike that out.

MR. JACOBY: If your Honor please, I submit that he is simply giving what he understands by the word "friend."

MR. LEVY: All right. I'll withdraw that motion.

BY MR. LEVY:

Q Now, Mr. Kapochelsky, you only call people that you are intimate with by their first names; don't you? A Sure.

Q And it is because you are very intimately acquainted with this defendant that you call him "Harry;" isn't that so?

A Harry Zabransky is his name.

Q Well, why do you call him Harry? A Well, everybody calls him Harry.

Q Well, who did you ever hear call him Harry? Did you ever hear Posner call him Harry? A No, sir.

Q Or Jacob Levy? A No, sir.

Q Or Mrs. Posner call him Harry? A I never seen Mrs. Posner.

CASE #1082

Q Did you hear the peddlers in the neighborhood call him Harry? A Yes.

Q Yes. And their helpers, too? A Yes.

Q And he is known in that neighborhood as "Harry, the peddler"; isn't he? A Yes.

Q Now did you give the Fire Marshal the names of everybody ~~in~~ at that time? A No, sir, I never know nobody.

Q And so you couldn't give the Marshal the names of the parties, could you, at that time? A No, sir.

Q At that time? A No, sir.

Q And so the statement which you signed and swore to did not contain the names of the parties who had appeared in that conversation? A I don't understand.

(The question is repeated through the interpreter).

A I don't remember.

Q Now do you remember what was in the statement you signed?

MR. JACOBY: Well, has not the witness practically answered that already, your Honor?

THE COURT: Yes; he said that it was practically what he said here.

MR. LEVY: Yes. Then pardon me, your Honor, I withdraw the question.

BY MR. LEVY:

Q Did you tell the Fire Marshal the name of the man with

CASE #1082

3

whom you say you saw this defendant speaking in that saloon, on the 15th of the month, a year ago? A Yes.

Q What name did you give him? A Jacob Grabarnik.

Q Did you give him his address also? A Yes, sir.

Q Do you know what his business is? A He was a peddler.

Q He was a peddler. A Yes, sir.

Q And did you know where his stand was at that time?

A Yes.

Q And did you tell the Fire Marshal where his stand was?

A Yes.

Q Do you know where his stand is now? Answer my question yes or no, please? A The Fire Marshal doesn't know, because he went to the old country.

MR. LEVY: And I ask that all that answer be stricken out, after the word "because".

BY THE COURT:

Q Well, do you know that he has gone to the old country?

A Yes, sir.

Q How do you know that? A Because he is from the same country that I am.

Q He comes from the same country that you come from?

A Yes, sir.

Q How do you know that he went to the old country? A He came himself and said he's going to the old country.

Q He told you so? A Yes, sir.

CASE #1082

MR. LEVY: Now, I ask that that evidence be stricken out, as to this man going to the old country; I move that it be stricken out; I ask that all the evidence of this witness in regard to the departure of this party that he calls Grabarnik, about his going to the other side, be struck out.

THE COURT: Do you want it stricken out?

MR. LEVY: Yes, sir.

THE COURT: Well, I will strike it out.

MR. JACOBY: And he testified to that, also, about an hour ago, that the man had gone back to the old country. Does your Honor strike that out also?

THE COURT: Yes.

BY MR. LEVY:

Q Now do you know when he went away of your own knowledge?

MR. JACOBY: Now, I submit that it has been stricken out.

THE COURT: Yes. You wanted it stricken out, counsel, just now, and now you are re-introducing it.

MR. LEVY: But I want to show why the People don't produce him as a witness for the People.

MR. JACOBY: I object to the statement. How does the gentleman know that we do not produce him?

THE COURT: Well, you asked to have all that stricken out, and I struck it out for you.

CASE #1082

MR. LEVY: Yes, sir, but I ask him now if he knows of his own knowledge when he went away.

THE COURT: You may have that.

A No.

BY MR. LEVY:

Q And you didn't see him go away? A He said good-bye to me.

Q Yes or no, please? A Yes.

Q Where did he go away from? I mean from what point did he depart? A From 100th street.

Q Well, where did he go from 100th street? A Right to the boat.

Q What boat? A I don't know. I never asked him.

Q Where was the pier? What dock?

THE COURT: Now, counsel, I gather from his testimony that he came to him and bade him good-bye, and he left him at that place, but he was not down at the dock himself, and did not see him go aboard the ship, and all that he knows about his going away is that he told him he was going away, and bade him good-bye.

MR. LEVY: Yes, sir. Then I misunderstood the witness.

BY MR. LEVY:

Q Now the Fire Marshal was the only person that you repeated this story to, besides Frenchy? A I don't understand.

CASE #1082

(The question is repeated through the official interpreter).

A Not the Fire Marshal alone. There were two detectives and other people.

Q Well, who else besides the detectives, were there?

A I don't know the people.

Q They heard what you said? A Yes, sir.

Q And can you state now when that was, that you told the Fire Marshal that statement? A No.

Q Yes or no? A No.

Q And you don't know whether it was a year ago or two years ago? A Over a year; not two years.

Q It was over a year ago? A Yes, sir.

Q And you are quite sure of that? A Yes, sir.

Q Were you a witness against this defendant in the Harlem Police Court, when he was discharged on the charge of burglary? A No.

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

Q Weren't you in the court room there? A No.

THE COURT: Anything further, counsel?

MR. LEVY: Yes, sir. I was confused by the names.

BY MR. LEVY:

Q Now, then, you have told us all that you know about this case; is that so? A Yes.

Q Now will you try to remember how long after you heard

CASE #1082

7
the conversation was it that you saw the Fire Marshal? A About a week or two weeks maybe.

Q And was that before you saw Frenchy? A No; after.

Q Have you ever met Frenchy since that time, and talked to him about this? A Never.

RE-DIRECT EXAMINATION BY MR. JACOBY:

Q Just one question. How long is it since you have not seen Mr. Grabornik? A About four months, over four months.

RE-CROSS EXAMINATION BY MR. LEVY:

Q What month are we in now? A I don't know. I can't write and I can't read.

MR. JACOBY: Now, if your Honor please, I want to recall Mr. Jacob Levy. I just want to ask him one question, sir.

THE COURT: You may do so.

J A C O B L E V Y, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Levy, on the night of this fire, how many horses did you stable in the stable back of the blacksmith shop?

A Two horses.

Q Were there any other horses stabled in that stable,

CASE #1082

that night, besides yours? A Yes, sir.

Q How many? A About the rate of forty horses.

Q At the rate of forty horses?, A Yes, sir.

MR. LEVY: I object to that, and ask that the answer be stricken out, as irresponsible.

MR. JACOBY: Let it go out.

THE COURT: Yes.

BY MR. JACOBY:

Q State whether or not the defendant Zabransky had or had not any horses stabled there, that night? A Not as I know of.

CROSS-EXAMINATION BY MR. LEVY:

Q Mr. Levy, will you tell us how long after that fire, you owned and had the same team of horses in your possession?

A About three months after.

Q Three months afterwards? A Yes, sir.

Q How long did you own those horses before the night of the fire? A The last four years.

Q Will you describe, for the benefit of the Court and jury, those horses?

MR. JACOBY: Now, if your Honor please, I object to this question, on the ground that it is in no way related to a cross-examination on a matter that I have inquired about, in recalling the witness.

CASE #1082

THE COURT: What is it addressed to, counsel?

MR. LEVY: I want to lay a foundation, sir, in accordance with the rules of practice and evidence, so that we can put my witnesses on, so that I may show the motive of this witness. I did not like to do that before in the previous cross-examination, but now I want to lay the foundation for it, to break down this witness's credibility.

THE COURT: Yes, you may proceed.

A I had a pair of gray horses.

BY MR. LEVY:

Q Is that the best description you can give of them?

A Yes, sir.

Q Now will you please tell us what stalls those two gray horses occupied, that night, or that morning, if you wish to call it morning? A The two stalls in the rear of the stable, on the uptown side.

Q Do you know whose horses occupied the adjoining stalls?

A Yes .

Q Whose? A The owner of the stable.

Q What is his name? A David.

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

Q Did you see David with horses there? A Yes, sir.

Q In the next stalls to yours? A Yes, sir.

Q Now, after the fire, -- you say, during the fire, you took your horses out?, A Yes, sir.

CASE #1082

Q Where did you go with them? A I went around the corner with them.

Q And stabled them elsewhere? A No, sir; I brought them back right after the fire.

Q How long after? A About an hour after.

Q Now what is the name of the watchman of that stable?

A The watchman? There is no watchman in there.

Q Was there not a watchman in there at the time? A No, sir.

Q When you came back from Rockaway Beach, didn't you have to be admitted by the watchman? A No, sir; the boss is there every night most.

Q What is his name? A Abraham Davis.

Q Where does he live? A In Second avenue. I don't know the address.

Q And he admitted you on that occasion? A Yes, sir.

Q That's all. No. Step back, Mr. Levy. Just something that occurred to me. Do you know a man in the blacksmith and wheelwright business by the name of Louis Saks, whose place is at 1213 Second avenue? A No, sir.

Q He is a wagon builder. Do you know him? A No, sir.

Q Didn't you know him at the time when he lived directly opposite Simon's blacksmith shop? A No, sir.

Q You are sure of that? A Yes.

Q Did you have any conversation with him in this building?

CASE #1082

A No, sir.

Q Did you say anything to him? A No, sir.

Q Were you present when you heard Posner say anything to him in this building, on last Friday afternoon? A No, sir.

Q Oh, when did you first tell the -- to whom did you first tell the story of what you say you saw?

MR. JACOBY: If your Honor please, this has been gone over several times.

MR. LEVY: If your Honor will refresh my memory on the subject, and show that I have asked about it, I will stop here.

THE COURT: At any rate, I should not permit you to take up the cross-examination de novo. I think you have covered it. At any rate, I do not think that it is the proper time to take up every matter generally. You wanted a question or two answered, and I was willing that you should have them answered.

MR. LEVY: In my anxiety in this case, if your Honor please, in view of its great importance, I may appear over-urgent, and I trust your Honor will excuse me.

THE COURT: Certainly. If you think you want an answer to this question, I will allow it.

(The question is repeated by the stenographer).

A At the Fire Marshal's office.

BY MR. LEVY:

Q When did you go down there? A I can't remember the

CASE #1082

time.

Q How long ago was that? A About a month or two months ago.

Q And who sent you down there? A I was subpoenaed down.

Q And who told the Fire Marshall if you know, to send for you? A I couldn't tell you.

Q How many times were you down in that office? A Once.

Q Once? A Yes, sir.

Q And that's all? A Yes, sir.

Q And who else did you tell it to, besides the Fire Marshal? A Nobody else.

MR. JACOBY: Now, if your Honor please, he has been over that, time and time again, on Friday last.

MR. LEVY: Yes, perhaps I did ask it before. That's all.

MR. JACOBY: If your Honor please, I would like now to recall French, for a moment, for just a question or two.

MR. LEVY: And I don't think it proper to recall him now, unless it is on the re-direct examination.

THE COURT: Well. I will allow you to cross-examine fully on whatever he asks.

MR. LEVY: Very well, then, sir.

CASE #1082

A L F R E D F R E N C H, being recalled by the District
Attorney, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Now I want you to give me a full description of the man
that you call Morris or Moscher?

MR. LEVY: I object to that. It has been gone over
fully.

THE COURT: Sustained.

BY MR. JACOBY:

Q Do you know whether Moscher owned a horse, or a horse
and wagon?

MR. LEVY: Objected to.

THE COURT: Sustained.

M A R I E R U B I N S T E I N, of 76 East 113th street,
a witness called on behalf of the People, being duly sworn,
testified as follows:

MR. LEVY: May I ask that Mr. and Mrs. Posner be ex-
cluded while this child testifies? put in the ante-room
here?

THE COURT: Yes, they may be excluded. I will examine
this witness. I will take her testimony. I have examined
her, counsel, and she seems to appreciate the importance of
the matter, and the gravity of the situation.

MR. LEVY: If your Honor is satisfied, I will not

CASE # 1082

examine her on that subject.

THE COURT: Yes.

(The witness is sworn).

DIRECT EXAMINATION BY MR. JACOBY:

Q Marie, how old are you? A 12, going on for 13, April 10th.

Q Talk a little louder, please? A 12, going on for 13, April 10th.

Q Do you go to school here in New York?, A Yes, sir.

Q Where? A In 115th street.

Q Is it a public school? A Yes, sir.

Q How long have you been going to school?

MR. LEVY: Now, I object to that, if your Honor please. Your Honor has stated --

MR. JACOBY: I wish to show that she is a respectable girl, to show her occupation, that she is a school girl.

MR. LEVY: That isn't material here.

THE COURT: Yes; it is only fair to have a brief history of the witness.

MR. LEVY: Does the District Attorney think that I am going to attack the character of this child?

MR. JACOBY: I ~~xx~~ don't know what you are going to do, sir.

THE COURT: Allowed. Go ahead.

CASE #1082

BY MR. JACOBY:

Q How long have you been going to the public school?

A I don't remember quite. I've been going to an American school for the last three years, and I was going to school in London, England.

Q Now have you a sister named Dinah Posner? A Yes, sir.

Q And what is the name of her husband? A Philip Posner.

Q And do you remember whether you ever lived with your sister Dinah? A Yes, sir.

Q Where did you live with her, in September, 1908?

A Second avenue, I think between 96th street and -- I lived in 18 -- I don't know the number quite.

Q What sort of a place was it? Was it a house or flat, or what? A A house.

Q Well, what part of the house did your sister occupy? at the time you lived with her? Did she occupy the whole house?

MR. LEVY: I object. Let the witness answer the first question.

MR. JACOBY: I was trying to proceed as rapidly as possible.

MR. LEVY: No, don't hurry the child up.

A She didn't live in the whole house. She lived in part of the house.

BY MR. JACOBY:

Q Well, did she live on several floors or one floor?

CASE #1082

A The third floor.

Q Just on the third floor? A Yes, sir.

Q Do you remember how many rooms she had? A Three rooms.

Q Three rooms? A Yes, sir.

Q Now do you remember about when it was that you came to live with your sister there? A I don't remember.

Q Do you remember whether your brother-in-law, Philip Posner, was there with you? A I don't know.

Q Do you remember anything ever happening in the middle of the night, one night? A Yes, sir.

Q Anything unusual? A Yes, sir.

MR. LEVY: I object to that, if your Honor please, as too general, and not sufficiently specific, and because it isn't confined to any approximate date.

THE COURT: Sustained.

BY MR. JACOBY:

Q When was this? When you lived in this house on Second avenue, was it? A Yes, sir.

MR. LEVY: I object to it, as already answered.

THE COURT: Overruled.

MR. LEVY: Exception.

BY MR. JACOBY:

Q When was this that you lived with your sister in this house on Second avenue, near 95th or 96th street? A It was when my brother-in-law was arrested.

CASE #1082

Q About how long ago was that? A I think it was about, now, two years.

Q And do you remember how long your brother-in-law was arrested at that time? A I don't remember.

Q Well, was it more than a week or less? A I don't know. I don't quite remember that.

Q Well, do you remember, along about a few weeks after your brother-in-law was arrested, do you remember something unusual happening in that apartment, in that house, in the middle of the night?

MR. LEVY: Now, I object to that question, if your Honor please. I make the same objection.

THE COURT: Ask her if she knows the defendant.

MR. JACOBY: Yes, sir, if your Honor prefers that I should get at it in that way.

THE COURT: Yes.

BY MR. JACOBY:

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

Q State whether or not you ever saw him at this Second avenue home where you lived with your sister, in the middle of the night?

MR. LEVY: Now, I object to that. I object to the District Attorney leading his witness.

MR. JACOBY: I am not going to lead her in any ma-

CASE #1082

terial matters.

MR. LEVY: But he puts the answer in the witness's mouth.

MR. JACOBY: No, I asked her a direct question.

MR. LEVY: But he asks, "in the middle of the night", and I think that puts the answer in the witness's mouth.

THE COURT: Well, I will sustain the objection.

BY MR. JACOBY:

Q Did you ever see him at this Second avenue house where you were living with your sister, while your brother-in-law was not there? A I seen him about two or three times, I think, after I came home from school.

Q After you came home from school? A Yes, sir.

Q Now state whether or not you ever saw him there in the night time? A Well, I saw him, I think, it was once only. There was a noise in the middle of the night at the door, and I heard my sister talking and him talking, in arguments.

Q What did you do? A Well, I got up from bed. I wanted to see what was the matter. So I heard him and my sister speaking together; that he says to my sister that she is to let him in, and my sister didn't want to let him in, and then he began begging to my sister that she should let him in.

Q Well, did you see him at the time you heard the voice?

MR. LEVY: No, let her continue.

THE COURT: Go ahead. Complete the answer. A

CASE #1082

A And my sister said, "What are you doing here, so late at night?"

BY MR. JACOBY:

Q When was this? Before or after he was in the room?"

A He was half way in the room.

BY THE COURT:

Q Did you see him then? A I saw him when I got up, after the argument.

BY MR. JACOBY:

Q Did you go into the room? A I came right into the kitchen.

Q And did you see him there? A Yes, I saw him there, when I got up.

Q Now, what, if anything, did he say while you were in the room? A He says that he has made a fire, between 99th and 100th streets, on First avenue, in the blacksmith store.

Q Did you notice anything about his hands?

MR. LEVY: Now, I object to that, if your Honor please as leading, and suggesting the answer.

BY THE COURT:

Q What did you notice? Did you notice anything?

A Yes, sir. He was black with some kind of stuff, I don't know; his clothes was full of slippery things; I don't know what it was.

BY MR. JACOBY:

Q Well, what did you do for him?

CASE #1082

MR. LEVY: Now, I move that that be stricken out,
that his clothes were full of slippery things.

THE COURT: I will allow it to stand.

MR. LEVY: Exception.

BY MR. JACOBY:

Q What did you do for him, if anything? A Well, he
asked my sister for a towel and soap, and my sister wouldn't
give him either towel or soap, and so he asked me, and I gave
him a towel and soap, and he went and washed himself.

Q Did you see him wash himself? A Yes, sir.

Q And did you ever see him at any other time at that
house, at that hour of the night? A Why, I don't remember
seeing him again. He sat up until daylight, and then he went
out.

Q That night? A Yes, sir.

Q Did you ever see him there on any other night at that
hour? A No, sir, never.

CROSS-EXAMINATION BY MR. LEVY:

Q Now, Marie, -- that is your name; is it? A Yes.

Q During all the time that your brother-in-law, Philip
Posner was in jail, you went to school; didn't you? A Yes,
sir.

Q And you were a good little girl, and went to school
every day? A Yes, sir.

Q And were regular in your attendance? A Yes, sir.

CASE #1082

Q And what time did you generally go to school, every day? A About a quarter to nine, or half past eight.

Q And what time did you come back? A I came back at twelve o'clock.

Q And that was for lunch; was it? A Yes, sir.

Q And how long did you stay home? A Well, about a quarter to one.

Q And then you went back to school? A Yes, sir.

Q And how long did you stay there? A Until three o'clock, I think.

Q And then you went home? A Yes, sir.

Q And did you always go directly, or play on the street? A Directly home.

Q How long did it take you to get home from the school? A, Ten minutes.

Q So that it was after three o'clock, when you went home, or got home? A Yes, sir.

Q When did you go to sleep, every night? A Sometimes half past eight, and sometimes half past nine.

Q And you say you had seen this defendant in that place a number of times. What time of the day did you see him there?

A After I came home from school, about half past three.

Q After you came home from school, about half past three? A Yes, sir.

Q And you and he got very friendly? You talked to him

CASE #1082

nicely and he talked to you; didn't he? A Yes, sir.

Q Did he bring you any presents, candy or anything like that? A He never brought me any.

Q Well, did he ever give you any pennies to buy some? A Yes, he gave me.

Q Well, he did that every time you saw him up there? A No, not every time.

Q Not every time? A No, sir.

Q Well, how many times did he give you pennies? A I don't know; about once, I think.

Q How many times? A About once.

Q That is all you can remember; is that so? A Yes, sir.

Q And do you remember that time? A I don't remember that time.

Q Eh? A I don't remember.

Q Well, do you remember what talk you had, what he said, that time, what he said to you and what you said to him, and what he said to your sister? A Well he told my sister about the fire.

Q But that was the time he gave you the penny? A No. I don't know when it was. I think it was the day after or the day before.

Q He came there the day after the fire, too; did he? A No, sir, I never saw him there, but I saw him along the street, and he gave me the penny.

CASE #1082

Q It was after the fire, then; was it? A Yes.

Q Now, Marie, did you go down and get the vegetables from Harry Zabransky? A I never did. I didn't know whether he was a peddler or not.

Q What? A I don't know.

Q Well, who mentioned the word peddler? A I don't know.

Q Why did you mention the word peddler just now?

A (No answer).

Q Can you give any reason for that? A No; because he used to stand around the peddler wagons.

Q And you saw him peddling? A No, I never saw him peddling.

Q Now why did you use the word "peddler"? Nobody asked you about it? A Because he used to stand around the peddler wagons.

Q But now nobody asked you about peddlers. Did I? A No, sir.

Q Well then why did you use that word "peddler" just now? A Well, because you asked me did I go down for any vegetables to him.

Q Well, did you ever go down to him for any vegetables for your sister? A No, sir; I went down in the store for vegetables.

Q Now do you know whether you ever saw -- did you ever see your sister buy any vegetables or fruit from him? A No,

CASE #1082

sir; she always went to the fruit store.

Q Now do you know that of your own knowledge? A Yes, sir.

Q Now when did she buy the vegetables? After you came home from school or before? A I don't know. She used to buy them --

Q Now wait a moment. You say you don't know when she bought the vegetables? A No, sir.

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

Q Now, if you don't understand me, say so. Now how do you know, then, if you never saw your sister buy the vegetables, where she bought them? A Why, because she used to peel the vegetables, and used to cook them, and so I know she had to buy them.

Q You knew that she used the vegetables? A Yes, sir.

Q But you didn't know where the potatoes were bought?

A Well, she always buyed them in a green grocery.

Q Well but you never saw her buy them in a green grocery; did you? A No, sir; because I wasn't there at the time she bought them.

Q Because you weren't there at the time that she bought them? A No, sir.

Q And then it is only just what you saw her do? A Just only what I saw her do with them.

Q Yes. But you don't know positively, of your own

CASE #1082

knowledge where your sister bought those vegetables? A Well, I know she buys them in a green grocery.

BY THE COURT:

Q Well, from time to time, you were with ~~xxx~~ your sister, when she bought vegetables in the store; were you? A Sir?

Q Did you use to go out to the store, and buy vegetables some times? A Yes, sir; I used to go with her to the store sometimes.

THE COURT: Of course, counsel, when she was in school she could not know where her sister bought her vegetables.

MR. LEVY: And your Honor sees the difficult task that I have in dealing with this child, and I trust your Honor will give me some leeway with the witness.

THE COURT: I will. Proceed.

BY MR. LEVY:

Q You never went to the store with your sister to buy vegetables; did you? A Not when I went to school. Sometimes after school.

Q And when did she buy them usually? A About four o'clock, she used to buy them, to make supper.

Q What did she buy? A Potatoes and onions, and all those kinds of vegetables.

Q And did you ever see her buy from the peddlers in front of her door, before you went to school? A No, sir; I never saw her do that.

CASE #1082

Q Now did you know that this defendant was called "Harry the Peddler"? A I only knew his name was Harry.

Q Say yes or no, please?

MR. JACOBY: She has answered it.

BY THE COURT:

Q You only knew him as Harry? A Yes, sir.

BY MR. LEVY:

Q Well, who called him Harry? Your sister? A My sister and other men called him Harry.

Q Other men in your home called him Harry? A No, the other men around the street, I heard them call him Harry.

Q What other men around the street did you hear call him Harry? A BY the beer saloon. I don't know who they were.

Q What beer saloon? A In 101st street, the corner.

Q Do you know whose beer saloon it is? A I don't know whose saloon it is.

Q Eh? A I don't know whose saloon it is.

Q How many times did you hear anybody call this defendant Harry at that beer saloon? A About two times, I think it was.

Q When? A I don't exactly know when.

Q Was it five years ago? A Five years ago I wasn't in this country.

Q Well, let us see if you know when it took place. Was

CASE #1082

Was it five months ago? A I don't know.

Q Was it five days ago? A I don't know; I don't remember when it was.

Q Was it six or seven months ago? A No.

Q Was it a year ago? A I don't know.

Q Was it before September, 1908? A I don't know when it was.

Q That's the best answer you can give? A Yes.

Q Now you know the men who called him Harry? A I don't know their name in the right way; just how the peddlers used to call them.

Q You have heard the peddlers call him Harry. Do they call him "Harry the Peddler?" A No, sir. I heard those other men.

Q Now what did you call him? Harry? A Yes, Harry.

Q Just Harry? A Yes, sir.

Q What did he call you?, A He called me Marie.

Q He called you Marie? A Yes, sir.

Q Now what did your brother, Philip Posner, call him?

A He called him Harry.

Q He always called him Harry. A Yes, sir.

Q And you never knew him by any other name than Harry; is that so? A Yes, sir.

Q And that's the name you heard everybody call him, especially your brother-in-law, and sister and other people?

CASE #1082

A (No answer)

Q Do you understand me? A No, I don't understand you when you say "Yes, is that so?"

Q Oh, you don't? I say, that is the name that you heard everybody call him? A Yes, sir.

Q Now, when you came home from school, at recess time, twelve o'clock noon, you would take your lunch; didn't you?

A Yes, sir.

Q Who was present when you eat your lunch? You sister?

A Sometimes I used to go to my sister's, if I used to see her around 96th street, I used to go to her house; and, if I didn't see her, I didn't go up to the house always.

Q So that you didn't have your lunch there all the time? A No, sir.

Q You went to your father's house? A Yes, sir.

Q And your father and mother's house was in the neighborhood of the school? A No, sir.

Q Where was it? Around my sister's neighborhood.

Q So that you didn't always take your lunch in your sister Dinah's house? A No, sir.

Q Well, how many times did you eat your lunch with your sister Dinah and Harry? A I never eat my lunch with Harry; only with my sister.

Q Did you ever see Harry eat there? A I never saw him.

Q Are you sure of that? A Positively sure.

CASE #1082

Q And will you tell me how Harry was dressed at the time you saw him there? A I don't know how he was dressed; just like ordinary men.

Q He had his coat off? A He used to wear his coat on.

Q I mean did he always have his hat off when he was in the house there? A Always on.

Q Always on? A Yes, sir.

Q And did you ever see him in his shirt sleeves, with his vest on and his coat and hat off there? A No, sir.

Q Are you sure of that? A Positively sure.

Q Now, during the time that you slept at your sister's Dinah's house, you say you used to eat lunch at your own parent's house, when you came from school? A Yes, sir.

Q Did your sister Dinah tell you to eat at your parent's house? A She never told me anything.

Q She never told you anything?, A No, sir.

Q What do you mean by that? A She never told me whether I should eat lunch there or not.

Q Did she ever tell you, in the morning, before you went to school, that you should not come there to lunch, because she would not be at home, but she would be at mamma's and you should not come there to eat lunch? A No, sir, she was always by my mother, sometimes.

Q She was always at your mother's? What do you mean by that, Marie? A She was mostly by my mother.

CASE #1082

Q When? A In the afternoon, and just in the morning, too.

Q How do you know that of your own knowledge? A Well, if I never used to find her in the house, I knew she was by my mother.

Q That's the only way you knew it? A Yes, sir.

Q Well you were in the school, in the afternoon; weren't you? A Yes, sir.

Q Well, then, how did you know where she was in the afternoon? A Well, when I came home from school, if I went up there, and I didn't find her home, I knew she was by my mother.

Q Well then you never found her home? A Yes, I did, sometimes; but, when I didn't find her there, I found her in my mother's house.

Q And, if you found your sister was not in, you went to your mother's house? A Yes, sir.

Q And your sister lived then between what streets, on Second avenue? A Between 96th street and -- I have forgotten the other street, where it was. It was near 96th street.

Q Where did your father and mother live at that time? A In 104th street.

Q And where was your school? A 96th street.

Q So that you came from the 96th street school, and walked to your parent's house? A Yes.

CASE #1082

Q In what street? A 104th street.

Q And that is how many blocks away? A I think it is about eight blocks.

Q So -- when did you -- you didn't sleep at your sister's house every day, did you?, A Yes, every day, since her husband was in prison.

Q Well, how many times did you sleep in your mother's home? A I don't know. Since my sister's husband was in prison, that's the only time I slept by her, but all the time I used to sleep by my mother.

Q And your sister used to sleep by your mother, too?

A No; my sister used to sleep at 96th street.

Q Didn't your sister ever sleep with you at your mother's house? A No, sir, she never slept; only in 101st street, when her husband --

Q I mean during the time that your brother-in-law, Posner, was in prison? A No, sir; she slept in 96th street with me.

Q In 96th street? A Yes; and Second avenue.

Q And you are sure of that? A Yes, sir.

Q Now on the night when you say you gave the defendant a towel to wash his hands with, before that, what was the first thing you heard, before the defendant came into that place?

A A lot of noise I heard at the door.

Q What kind of noise was it? A Knocking and screaming.

CASE #1082

Q Knocking and screaming? A Yes, sir.

Q And you say your sister asked the person who was knocking on the door, "Who is it?" Now just yes or no. Tell us the truth. Didn't you hear your sister say, "Who is that?"

Answer my question yes or no? A Yes.

Q You heard her say "Who is this?" A Yes.

Q And did you hear anybody answer her then? A No, sir; I didn't hear nobody answer it. My sister thought it was --

Q Never mind what your sister thought. Then you heard some more knocking, after your sister asked "Who is it?"

A Yes.

Q And that knocking was repeated several times? A Yes, sir.

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

Q And then after that did you hear any voices? A After, when the doors opened, I did.

Q No, before the door was opened? A I never heard any.

Q You never heard any voices? A No, sir.

Q At that time you knew Harry's voice? A No, sir; I never knew it.

Q You didn't know Harry's voice on that evening? A No, sir.

Q Eh? A No, sir.

Q Now, did you hear his voice that evening? A No, sir.

CASE #1082

Only when he came in.

Q Now, wait a minute. Just answer the questions, and don't make long speeches, little girl. Now did you hear Harry's voice after he was knocking on the door? A Yes.

Q And that was after you heard your sister ask who was there? A No, sir.

Q After you heard Harry's voice, did your sister -- after he was knocking on the door, did you hear your sister open the door? A Yes.

Q You saw her open the door? A No, I didn't see her open the door.

Q How was your sister dressed at that time? A Only with her skirt on. After I came out of bed I saw her, only with her skirt on, and something to cover her shoulders.

Q And then you saw Harry come in? A A little while after, I saw him come in.

Q You are sure of that? A I saw him in the room, yes.

Q A little while after, you saw him come in the room? A Yes.

Q Now how was Harry dressed, just as you laid your eyes on him, the first time? A He was just plain, but all kind of oily stuff on him.

MR. LEVY: I object to that about the oily stuff on him, and move to strike it out. I didn't ask her that.

THE COURT: Yes. Strike it out.

CASE #1082

BY MR. LEVY:

Q What kind of hat or clothes did he have on? A He had a cap on.

Q A cap on? A Yes, sir; and plain clothes.

Q Did he have an overcoat on? A He never wore any overcoat. He had only on a coat.

Q How do you know that he never wore an overcoat? A Because I never seen him have an overcoat on.

Q And you saw him a great many times with an overcoat on? A No, sir;

Q On the street? A No, sir.

Q And in your house, too? A No, sir.

Q You saw him a great many times, didn't you, in your own house, without an overcoat? A No, sir.

Q Or without a coat on? A Yes, sir.

Q Eh? A No, sir; not with a coat off.

Q Now you didn't see him without a hat on? A No, sir.

Q So that night he had a cap on? A Yes, sir.

Q It wasn't a derby? A No, sir.

Q You are sure you remember that? A Yes, sir.

Q Now did he have a colored shirt on, or a flannel shirt on? A I never saw it.

Q You never looked at it? A No, sir.

Q And you never looked at him close enough to see that; did you? A No, sir.

CASE #1082

Q You didn't pay close attention to him then; did you?

A No, sir.

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

Q Now you saw him washing his hands; didn't you? A Yes, sir.

Q And you paid no attention to what kind of clothing he had on? A No, sir.

Q Eh? A No, sir.

Q And you couldn't tell whether it was a short coat or a long coat? A No, sir.

Q Or whether he had no coat on at all? A I know he had.

Q But you couldn't tell what kind of a coat it was? A No, sir.

Q And you couldn't tell whether he had a linen collar on, or a necktie? A No, sir.

Q And did he have a handkerchief tied around his neck? A I don't know.

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

Q And all that you saw him do was to wash his hands? A Yes, sir.

Q And you gave him towel and soap to do that? A Yes, sir.

Q And then you went to bed? A He sat up until daylight.

CASE #1082

Q And you sat up with him until daylight? A No, sir; my sister was in bed, and she sat up in bed, and he was in the kitchen.

Q Your sister was alongside of you in the bed? A Yes, sir.

Q And he was sitting in the kitchen? A Yes, sir.

Q And you heard no conversation between them? A No, sir.

Q Now, did you remain awak during all of that time, until daylight? A Yes, sir.

Q You couldn't go to sleep again; could you? A No, sir.

Q Why not? A Because I never felt sleepy then.

Q So that you were awake when you saw Harry leave the house? A Yes, I was awake.

Q In the morning? A Yes.

Q Now you have told us all that you know about what happened, that night? A Yes, sir.

Q And you have told us everything that you heard of any conversation there? A Yes, sir.

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

Q You have told us all that you heard there in the way of a conversation? A Yes, sir.

Q And you couldn't be mistaken as to that? A No, sir.

Q Now how long was Harry there? A Just until daylight.

CASE #1082

Q How many hours? A I don't know how many hours it was.

Q Was he there an hour? A I don't know.

Q Was he there half an hour? A I don't know.

Q Was he there two or three hours? A I don't know.

Q Was he there the whole night? A I don't know.

Q Well you don't know what time it was when he came in?

A I think it was about two o'clock.

Q No, no. Don't give us what you think. You don't know what hour it was?

MR. JACOBY: The witness has a right to give her best impression as to the time. I object.

A Not exactly; no, sir.

BY MR. LEVY:

Q How do you know that it was two o'clock? A Because I heard the clock, next door, strike two.

Q Was there a clock in your room? A No, the clock stopped.

Q And you know that the clock stopped, that night?

A Yes, sir.

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

Q And you are sure that you heard the clock in the next apartment strike what? A Two.

Q What was the last hour you heard that clock strike?

A I don't know. I don't know what was the last hour.

CASE #1082

Q Why, you told the jury that you were awake until daylight. Now what hours did you hear it strike? A First it went one, and then half past one, and then two.

Q And that's all you heard? A Yes, sir.

Q And you heard no more time? A No, sir.

Q And the only time you heard that particular clock strike was while Harry was there? A Yes, sir.

Q And you heard no other hour after two o'clock? A No, sir.

Q And do you know whether the clock in the other apartment stopped also? A No, I don't know.

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

Q Now after Harry went away in the morning -- do you know what time it was when he left? A I don't know. It was just daylight.

Q What was said between you and your sister, after he left? A Nothing at all.

Q You didn't talk to your sister at all about anything? A No, sir; just she --

Q Now, that's an answer. Just a yes or no when I ask you questions. You are under cross-examination now. Did you get up, later, and go to school? A I got up just after he left.

Q And then you dressed and washed, and ate your breakfast, and went to school? A Yes, sir.

CASE #1082

Q Is that so? A Yes, sir.

Q Don't shake your head, but speak so that this last gentleman here can hear you. Now after you came back from school at recess time, did you go to your sister's home to eat lunch, or go to your mother's? A I never found my sister there, and I went home.

Q That was the day afterwards? A Yes, sir.

Q And every day after this night's occurrence that you talk about? A Yes, sir.

Q And your sister wasn't home? A Yes, sir.

Q And so you went where to lunch? A To my mother's home.

Q And you came back to your mother's house? A Yes, sir.

Q And did you go anywhere after that? A I came to my sister's house, and she was just going out.

Q And did you remain there, or go along with her? A I went along with her.

Q Did you have any conversation there with her, or at your mother's home? A No, sir.

Q Did she tell your mother and father about what happened, the night before, in your presence? A No, sir.

Q And did you tell your mother and father? A No, sir; I never mentioned it.

Q Who was the first one that you ever told about what you saw, that night? A The Fire Marshal.

CASE #1082

Q When was that? A I think it was in 1908.

Q Last year? A It was 1908.

Q That was two years ago; wasn't it? A Yes, sir.

Q Now did he send for you, or did you go down there, because somebody told you to go down there? A I think he sent for me.

Q Yes. Do you know who told him to send for you? A No, sir.

Q Did you go down alone? A No, sir; I went down with my brother-in-law.

Q With Philip Posner? A Yes, sir.

Q Has Philip Posner a middle name? A What do you say, sir?

Q (Question repeated). A I don't know.

Q Now let me ask you a question. Isn't your brother-in-law's name Philip Jacob Posner? A All I know is Philip Posner.

Q Isn't his middle name Jacob? A No, sir; I only know his name as Philip.

Q Did you ever hear him called Philip Jacob posner?
A No, sir.

Q Did you ever see any writing with that name on? A No, sir.

Q How long after you say this happened, and that you gave Harry the Towel to wash his hands with, did you go down to the

CASE #1082

Fire Marshal's office? A I don't know.

Q Well, how long was it about? Weeks, months or days?

A Well, it wasn't very long.

Q Well, about how long? A I couldn't tell you about how long it was.

Q Now, Marie, you have told this Court and jury that you remembered what took place on that particular night. Now you haven't been down to the Fire Marshal's office very often; have you? A No; only once.

Q Only once in your life? A Yes, sir.

Q And on this occasion, when you gave Harry a towel to wash his hands with, in the middle of the night, that only happened once; didn't it? A Only once.

Q And you remember that distinctly?, A Yes, sir.

Q Now why don't you remember distinctly what happened when you went down to the Fire Marshal's office? A I don't know.

Q Well, don't you remember the time, the date? A I think it was in September.

Q You think it was in September? A Yes, sir.

Q Well, was it in the early part of September or the middle part of September? A I think it was in the middle.

Q In the middle? A Yes, sir.

Q And didn't you tell the Fire Marshal just all about it? A Yes, sir.

Q Was your brother-in-law, Philip Posner present, when

CASE #1082

you told him all about it? A He was sitting in a separate room.

Q Oh, he was in a separate room? A Yes, sir.

Q And you were in with the Fire Marshal? A Yes, sir.

Q By yourself? A Yes, sir.

Q Anybody else present? A No, sir.

Q Any detectives? A No, sir.

Q No clerks or witnesses? A No, sir.

Q Now, Marie, do you remember the day of the week it was on that you went down to the Fire Marshal's? A The day of the week?

Q Yes? A No, I don't remember. I think it was on a Monday or Tuesday.

Q Do you remember what day of the week it was when you gave Harry the towel to wash his hands with? A No, sir, I don't.

Q You don't remember the date of the night, or the morning? A No, sir, I don't remember.

Q Now, Marie, how many times did you see Harry wash himself in that place? A Only once, only that night; that's all.

Q Where was the towel usually kept in that room? A Hanging on the wall.

Q Right over the basin; isn't that so? A Right on top of the door.

Q Right on top of the door? A Yes, sir.

CASE #1082

Q And the soap is right by the basin? A The soap is right by the sink.

Q The soap is right by the sink? A Yes, sir.

Q And anybody could get it, couldn't they? A Not if they didn't know where it was. It couldn't be seen.

Q Eh? A Couldn't be seen.

Q Now, you are a religious girl; aren't you? A Yes.

Q You know what I mean by that? A Yes, sir.

Q You go to the Hebrew school? A On Saturdays.

Q You go to the synagogue on Saturdays? A Yes, sir.

Q And you go to the Hebrew Sunday school? A No, sir.

Q You don't? A No, sir.

Q And do you go to the synagogue regularly, also, on Friday nights? A No, sir.

Q You go only on Saturdays? A Yes, sir.

Q Who do you go with? A With my mother.

Q And did you ever go with your father? A No, sir.

Q Did you ever go with your sister Dinah? A My sister used to go with my mother.

Q Did you ever go with your sister Dinah? A Along with my mother, I used to go with her.

Q And did you ever go with Philip Posner? A No, I never went with him.

Q Now, you know the names of the Hebrew holidays; don't you? A Yes.

CASE #1082

Q Now what is the Hebrew New Year called? A The Pass-over.

Q Now, just take your time and answer my question. Do you know what I mean by the New Year's? A No, I don't know.

Q Well, what is the holy day called when they eat matzoths? A That's the Passover.

Q And what's the day when they go to pray in the synagogue all day? A Yom Kippur.

Q Now what holiday happens before that? A Shavooth, I think.

Q Do you know when Rosh Hoshanna happens? A No, sir, I don't know what day it is.

Q Do you know what kind of a holiday it is? A A Jewish holiday.

Q Well, is it the Jewish new year's holiday? A I don't know.

Q Then you don't know the names of all the holidays; do you? A Not of every one of them, no.

Q Now you generally go to schule, on holidays; don't you? A Yes.

Q More so than on Sabbath days. A Yes, sir.

Q Is it more important for you to go to schule on holidays than on the Sabbath, isn't it? A Yes, sir.

Q Now do you remember what great Jewish holiday hap-

CASE #1082

pened immediately, -- a day or two, or so, after the night you saw Harry in your sister's apartment, and when you gave him the towel to wash his hands with? A I don't know what holiday it was.

Q Eh? A I don't know what holiday it was. I don't remember it.

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

Q Will you try to remember?

A I think I will.

Q Well now then please tell us what great holiday it was?

A (No answer).

Q Now, you know it's only two years ago, you say, and we have had only two of those holidays since that time?

A I think it was Christmas.

CASE #1082

Q You think it was Christmas? A Yes, sir.

Q Is that a Jewish Holiday? A No; it's a Gentile holiday.

MR. JACOBY: I object to the question, on the ground that it has no relevancy to this cause of action, and is needlessly prolonging the cross examination.

THE COURT: Objection overruled.

BY MR. LEVY:

Q Can you think of the important Jewish holidays that happened a few days after, one or two days after, you saw Harry at your sister's house? A No, I can't think of it.

Q Eh? A No, I can't think of it.

Q Well, wouldn't that recall the circumstances in your mind? A (No answer.)

Q Don't you remember to Schule or the Synagogue, with your parents, or your sister, a day after this happened?

A I don't remember.

Q Or the next day after that? A No, sir, I don't remember.

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

Q And if you did go, you would remember, wouldn't you?

MR. JACOBY: Well, I object to that on the ground that it is speculative and hypothetical and calls for the witness's conclusion.

THE COURT: Overruled.

A Yes I would.. I didn't go that time.

CASE #1082

Q Oh, you didn't go the Synagogue that time? A Yes, sir.

Q Now you are sure that you remember that? A Yes, msir.

Q Now, before you went to the Fire Marshal's office with your brother-in-law, did you speak to your brother-in-law?

A No, sir.

Q Did you know what you were going down to the Fire Marshal's office? A I know I was going down for the fire.

Q And your brother-in-law told you about that? A No, sir.

Q Well, he told you that you were going down about the fire? A I don't know; because my sister said, "I think you are going to go down, too."

Q Oh, your sister Dinah said that to you? A Yes, sir.

Q Now what did she tell you about the fire? A She never told me anything.

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

Q What makes you so sure about it? A Well, because it is what I heard.

Q So that, before you went down to the Fire Marshal's office, you and your sister Dinah never spoke about that night again? A No, sir.

Q Never? A No, sir.

Q Not a word? A No, sir.

Q Now, on your way down to the Fire Marshal's office

CASE #1082

did your brother-in-law speak to you about it? A No, sir.

Q Did he tell you what to say? A No, sir.

Q Did he ever tell you at any time what to say?

A No, sir.

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

Q So that you went down to the Fire Marshal's office unprepared as to what you were going to say; is that so?

A Yes, sir.

Q And the Fire Marshal asked you a lot of questions?

A Yes, sir.

Q And you answered his questions? A Yes, sir.

Q But, before you went down there, you were not told anything at all about that night? A No, sir.

Q And you were not told what to say? A No, sir.

Q Did anybody refreshen your memory about that night?

A No, sir.

Q Did anybody instruct you what to say to the Fire Marshal? A No, sir.

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

Q Did anybody else go down with you? A No, sir.

Q Did Jacob Levy go down with you? A No, sir.

Q You know whom I mean by Jacob Levy? A I think he is the expressman.

Q And he is the expressman that did some work for your brother-in-law, wasn't he? A No, sir.

CASE #1082

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

Q And, outside of that, you know that they were intimate friends; don't you? A I don't know.

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

Q But you saw them together ~~by~~ very often? A No, sir.

Q Will you swear positively to that, Marie?

A Yes, sir.

Q And how do you know that he is the expressman? A Because I see the card of Levy's express.

Q What? A I saw the card by him, Jacob Levy .

Q How do you know that it was a card? A Because I heard them call him Jacob Levy.

Q Well, how did you know who Jacob Levy was, that they called? A Well, because I was sitting down, and Frenchy, I think it was -- I don't know who it was -- said, "Jacob."

Q Frenchy you know very well, don't you? A I know he is --

Q No. Answer my question. Question repeated.

A No, I don't know him very well.

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

Q You never did? A No, sir.

Q Then you never spoke to him or he to you? A No, sir.

Q Then how do you know his name is Frenchy? Who told you his name was Frenchy? A Because I heard him called Frenchy many times.

CASE #1082

Q By whom? A By my brother-in-law and my sister.

Q And you heard Levy called, "Levy the expressman " by the same persons? A Yes, sir.

Q And that happened quite often? A No, sir.

Q Eh? A That wasn't quite often.

Q Well, who pointed out Frenchy and Levy to you, when they called them by those names? A Nobody did.

Q And so you found that out by yourself? A Yes, sir.

Q Now are you sure that you are telling us the truth, when you say that no one told you what to say, when you went down to the Fire Marshal's office? A Yes, sir.

Q And do you remember what you told the Fire Marshal?
A Yes, sir:

Q Could you go over that again? Let's hear what you said to him? A I told the Fire Marshal that it was in the night, very late at night, but I don't remember the time, and I heard knocking at the door, and the sound of clapping, and so I told him -- I told the Fire Marshal that there was a noise then, and about my sister speaking with arguments, and that I went out and gave him the towel and soap, and he washed himself, and stayed until daylight.

Q Yes. You told that to him in that exact language?
A Yes, sir.

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

CASE # 1082

Q Now, after you told the Fire Marshal, didn't you tell it to the District Attorney? A No, sir.

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

Q Did you ever tell it to any other person? A No, sir.

Q Did you ever go before the Grand Jury as a witness?

A Yes, sir.

Q Well, didn't you tell that there? A I told it to a lot of people sitting down there, I told it to them.

Q What did you say about that? A I told ^{them} ~~him~~ it was very late at night, and I didn't remember the time, and I heard arguments and clapping at the door.

Q Yes. A And he came in and he asked my sister for towel and soap, and she didn't want to give it to him, so I got up, and got him towel and soap, and he washed his hands, and stayed there until daylight.

Q Now, after you came out of the Grand Jury room, were you sent for by the District Attorney to come to his office to prepare for this trial? A I don't think it was just after that, but I know I was up to his room.

Q Now let's us hear that. When were you before the Grand Jury? A I don't know what date it was.

Q Well, how many months ago was it? A Well, it ain't many months; about two or three weeks, I think it is.

Q And you remembered then distinctly what happened, two or three weeks ago? A Yes, sir.

CASE #1082

Q And that's just the way you recited what you have just said? A Yes, sir.

Q Now after you left the Grand Jury room, weren't you sent for by Mr. Jacoby, or some other Assistant District Attorney? A I don't know.

Q Didn't you come down to this building, and go upstairs into some room, and talk to some District Attorney, in the presence of your sister? A I never spoke to my sister. The District Attorney spoke to me.

Q Who spoke to your brother-in-law and sister?
A The District Attorney.

Q Is this the gentleman sitting here (indicating Mr. Jacoby)? A Yes, sir.

Q Mr. Jacoby is his name? A Yes, sir.

Q Now, Marie, what did Mr. Jacoby say to you? A He didn't ask me anything.

Q He didn't ask you a thing? A He asked me something, but I forget; I don't know what it was. And I answered him yes.

Q Did you ever say anything to Mr. Jacoby? A No, sir.

Q Not a word? A No, sir.

Q So that he didn't know what you were going to say?

A No, sir.

Q Sure of that? A Yes, sir.

CASE #1082

Q And when he called you and put you on the stand here, he didn't know what you were going to say here? A I don't know whether he did or not.

Q Well, do you know whether he ever heard your story before? A I don't know.

Q Well, were you present when your sister told him all about it? A Yes, I was here when my sister told him.

Q Yes, of course. Then your brother-in-law was there too? A Yes.

Q And that was in Mr. Jacoby's room? A Yes, sir.

Q And how many times did that happen? A Only once.

Q Now please tell us what was told to Mr. Jacoby, that once, in his room? A I don't know.

Q Well, but you were there? A I don't know what they were speaking to him.

Q They were speaking about the fire; weren't they? A Yes, sir, about the fire.

Q And were they speaking about Harry? A Yes.

Q Was Levy there? A Yes.

Q Was Frenchy there? A No, sir.

Q Was Kapochelsky there? A Yes.

Q That man in the back there (indicating the rear benches of the court room)? A No, sir.

Q Was my friend Frenchy there? A No, sir.

Q Didn't see him there? A No, sir.

CASE #1082

Q You know who I mean by Frenchy? A Yes, sir.

Q Well, can you name anybody else who was there?

A That's all; only those people.

Q Well, how do you know Kapochelsky? A I only know him since I came into this court.

Q Who told you to say that? A Nobody.

Q Now isn't it a fact that your brother-in-law instructed and told you what to say here in this court room? A Nobody told me.

Q Did they tell you what to say before the Fire Marshal?
A No, sir.

Q Did you sign a paper before the Fire Marshal? A Yes, sir.

Q You are quite sure of that? A Yes, sir.

Q And that was over a year ago? A Yes, sir.

Q Now you were here on Friday, weren't you, in this court? A Yes, sir.

Q And you were out in the corridor there, with your brother-in-law and sister? A No, my brother-in-law was in here.

Q But after recess you were together? A Yes.

Q And you went away and had lunch together? A Yes, sir.

Q And came back again together? A Yes, sir.

Q And your brother-in-law went into the court room, and you remained outside with your sister? A Yes, sir.

CASE # 1082

Q And that night where did you go? A We went home.

Q Now, while your sister was in the court room here, where were you? A Outside.

Q Talking to anybody? A No, sir.

Q Were you talking to the Fire Marshal? A No, sir.

Q Did you ever talk to him, before or after the trial?

A No, sir.

Q Now, where did you go, after the trial was over, on Friday afternoon? A Went home.

Q With whom? A My sister.

Q And your brother-in-law didn't go along with you?

A No, sir.

Q You left him here in the corridor? A Yes, sir.

Q And what was said by you and your sister on the way home? A Nothing at all.

Q And you didn't talk about this trial at all?

A Nothing about this trial.

Q Who told you to say that? A No, sir.

Q Didn't you ask your sister what was happening in the court room, while you were waiting for her outside?

A No, sir.

Q Weren't curious to know what was going on inside?

A No, sir.

Q Didn't ask her a single question? A No, sir.

CASE #1082

Q And your sister didn't volunteer any information?

A No, sir.

Q Did your brother-in-law tell you what he said in here?

A No, sir.

Q Didn't you ask him what he had said? A No, sir.

Q Didn't you ask your sister what she said? A No, sir.

Q Didn't you ask Kapochelsky, or Frenchy, or Simon what took place while you were outside? A No, sir, I never mentioned it.

Q Were you ever in a court room before? A I was all last week here, except Monday.

Q Were you ever in the Magistrate's court in Harlem? A No, sir.

Q So that you didn't know what took place in this court room until you came in, to-day? A No, sir.

Q And so that you were not anxious to know what was going on in here? A No, sir.

Q Eh? A No, sir.

Q Where do you live now, Marie? A 113th street, No. 76.

Q With whom? A With my mother.

Q Did you ever tell your mother? A No, sir.

Q Or your father about it? A No, sir.

Q Your father lives with your mother at that address; doesn't he? A Yes.

CASE #1082

Q Did your mother and father ever ask you how the trial was going on down here? A No, sir.

Q Did you say anything to them about it? A No, sir.

Q You had to get excused from school to come down to the trial, didn't you? A No, sir.

Q Eh? A No, sir; I wasn't excused.

Q You haven't been near school since the trial went on?
A No, sir.

Q Did you write to the tacher as to why you didn't go to school?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

(The court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until a quarter past two o'clock.)

CASE #1082

(After Recess.)

MR. JACOBY: The people do now rest.

MR. LEVY: I respectfully move, may it please the Court to dismiss the indictment, on the ground that the People have failed to prove the crime of arson as recited in the indictment, by credible evidence, beyond a reasonable doubt.

THE COURT: Motion denied.

MR. LEVY: Exception. Now, I ask your Honor to take, at this time, from the consideration of the jury, the first and second counts of the indictment. There is only evidence in this case -- if your Honor will permit me -- showing some relationship in reference to the last count of the indictment only, namely the last Simon count. There is no other proof in the case.

THE COURT: I will withdraw from the consideration of the jury the first and second counts, keeping, however, any statement in the first count which may be necessary, in view of the language of the third count, as to dates and localities.

MR. LEVY: If your Honor please, I also move to dismiss the indictment, as it is now, as it now stands, amended, upon the ground that the proof taken thus far

CASE #1082

does not prove a cause of action under this indictment, in any wise making a case under section 1421 of the Penal Law, or what was formerly called section 225 of the Penal Code.

THE COURT: 1421?

MR. LEVY: Yes, sir. Or, may I change my motion, your Honor? This indictment is found under section 223 or 225 of the Penal Code -- whatever number appears on the indictment -- and I claim that, in any event, the only proof submitted thus far to the Court and Jury can only be considered under a different section of the Code, or Penal Law, to wit, 1421 of the Penal Law, as contained in the Consolidated Laws.

THE COURT: Motion denied.

CASE # 1082

MR. LEVY: Exception. Now, if your Honor please, I also move for a dismissal of this indictment as it now stands, upon the ground that, as the proof now appears before the Court, no case under the sections mentioned has been made out; but, on the contrary, a case appears to have been made, a prima facie case, under the old section known as 637, and now known in the Consolidated Laws as Section 2444, I think it is, of the Penal Law. May I see the book, so as to make the exact reference, sir? I think it is 2444 .

THE COURT: You may see the book.

MR. LEVY: I meant to say 1421 of the Penal Law.

THE COURT: Motion denied.

MR. LEVY: Exception. Shall I proceed, your Honor?

THE COURT: Yes.

(Mr. Levy then opened the case for the defence.)

MR. LEVY: And I am sure, Gentlemen of the Jury, that, at the proper time, if this case should go to the jury, that his Honor will instruct you that the denial of any motions made by the defence by the Court must not be taken by you to mean that the Court has any opinion whatever as to the guilt or innocence of the defendant.

THE COURT: And I do so now. Gentlemen of the Jury, the denial of any motions by the Court must not be gathered by you as expressing any opinion on the facts of the case,

CASE #1082

because the facts are entirely with you, and not for the Court; but that action of the Court means simply, in the view that the Court has taken of the case, that it is a matter that should be determined by you.

MR. LEVY: Thank you, sir.

CASE #1082

THE DEFENCE.

MR. LEVY: If your Honor please, I am going to call an officer from Long Island City first, out of the regular order, because he wants to get back to his duty there.

THE COURT: Very well.

MR. LEVY: And will your Honor now exclude all the witnesses, except Posner?

THE COURT: Yes.

WILLIAM J. HENNESSY, of 394 11th Street, Brooklyn, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Officer, you are attached to the Police Department of the City of New York? A Yes, sir.

Q And what Borough? A Queens Borough, 274th Precinct, Astoria, Long Island.

Q And you have been on the police force how many years? A Fourteen years.

Q And you were such an officer on the 31st day of October, 1908? A Yes, sir.

Q Were you present in the County Court of Queens County, when, --

MR. JACOBY: Now, I object to the form of the question.

1299
CASE # 1082

BY MR. LEVY:

Q On the 31st day of October, 1908? A Yes, sir.

Q Were you present when Philip Posner was convicted of the crime of burglary, in that courtroom?

MR. JACOBY: I object to that, as calling for the witness's conclusion; and I object not only to the form but to the substance of the question.

THE COURT: I sustain the objection.

MR. LEVY: Exception. Will you stand up, Mr. Posner, please?

BY MR. LEVY:

Q Do you know that party (indicating Posner)? A Yes, sir.

Q Who is he?

MR. JACOBY: I object to that.

THE COURT: Overruled.

MR. JACOBY: It is too indefinite.

THE COURT: He asks him if he knows him.

MR. JACOBY: Yes, sir; and he said he did, and then he asks who he is.

THE COURT: He may answer.

A Philip Posner.

BY MR. LEVY:

Q Did you see him there, on that occasion, in that courtroom? A Yes, sir.

Q And now, was he convicted of the crime of burglary, on

CASE #1082

that occasion?

MR. JACOBY: I object to that.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q I hand you the certificate of the County Clerk of Queens County, and ask you whether this person is the person mentioned in that certificate?

MR. JACOBY: I ask that the paper be marked for identification.

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

A Yes, sir.

BY MR. LEVY:

Q And this the person mentioned with one Miller in that paper?

MR. JACOBY: Objected to, as not the proper way of contradiction as to a collateral matter.

THE COURT: Objection sustained.

MR. LEVY: Exception.

MR. LEVY: Then I offer in evidence that certificate of conviction.

MR. JACOBY: And I move to strike out the statement of counsel, that certificate of conviction.

THE COURT: Strike it out.

CASE #1082

MR. LEVY: Exception.

MR. JACOBY: Now I object to this paper, on the ground that it is not proper for the purpose of impeaching a witness as to a collateral matter.

THE COURT: I think, counsel, that the objection is sound. At the same time, in the interests of justice, I am going to take it in evidence. In view of the testimony of Posner, in the interests of justice, I take it.

(It is admitted in evidence, and marked Defendant's Exhibit 1.)

BY MR. LEVY:

Q Did you have any conversation with this Philip Posner, mentioned in this exhibit, in the corridor of this courtroom, to-day? A Yes.

Q Please state what was said between you?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: What is the purpose, the scope of this proof?

MR. LEVY: I want to show to the Court, if your Honor please, what this man Posner is resorting to to prevent some of the true facts, at least, from coming to the knowledge of this jury.

THE COURT: You charge that this is a conspiracy?

MR. LEVY: Yes, sir. And I claim that this is a

1392

CASE #1082

link in the chain of circumstances to prove it.

THE COURT: And you think that this conversation with this witness is material to that issue?

MR. LEVY: Yes, sir.

THE COURT: Then I will take it, and see what it is.

MR. JACOBY: Subject to a motion to strike out?

THE COURT: Yes.

A Well, I met Mr. Posner in the hall where that square piece of marble is in the center.

Q Did he approach you? A He came over to me.

Q Now, state what was said? A I saw Mr. Posner walking over towards me, and as he came towards me I said, "Hello, Posner", and he said, "Do you know me?" And I said, "Yes", and he said, "I'm mixed up in a case here," and I said, "Well, I am called on a case, too, that I don't know anything about," and he said, "What case is it?" And I said, "The Shansky or Roshansky case, or something like that," and he said, "That's my case also. That's the case I'm mixed up in." And then he began to tell me about a man over in our precinct. He said that a harness-maker over there, a harness man over in my precinct, locates different horses and things, and that this prisoner comes over and steals them.

Q Any further conversation about this case? A No, sir.

MR. JACOBY: Not a question, Officer. And I shall not move to strike that evidence out, your Honor.

CASE #1082

1303

WILLIAM LIPPMAN, of 227 East 113th Street,
a witness called on behalf of the defence, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Lippman, please talk up loudly so that all the
gentlemen can hear you. How old are you? A Twenty-one.

Q Where do you live? A 227 East 113th Street.

Q With whom do you live? A With my parents.

Q What is your business or occupation? A Peddler.

Q What kind of goods do you peddle? A Well, everything;
potatoes, fruit, produce.

Q During the month of September, 1908, were you a peddler?

A Yes, sir.

Q Did you use a horse and wagon for peddling? A Yes.

Q More than one? A Just one.

Q Just one? A Yes, sir.

Q Where did you stable then? A Davis, 99th Street and
First Avenue.

Q Who was the owner of that stable? A M. Davis & Sons,
if I am not mistaken; I am not positive, but I think it's M.
Davis & Sons.

BY THE COURT:

Q That is in the rear of Simon's blacksmith shop? A Yes,
sir.

BY MR. LEVY:

Q Do you know what stall your horse occupied? A Well,

CASE #1082

I can't exactly tell you, but I know I occupied a separate stall, right near the side of Levy.

Q Now, wait a minute. Do you know Jacob Levy, the van man? A Yes, sir.

Q The expressman? A Yes, sir.

Q Have you seen him here to-day? A Well, I saw him here more than once.

Q More than once? A Yes, sir.

Q Now, did he stable his horses in that same place, in that same stable? A Yes, in the same stable.

Q At that time? A Yes; but in separate stalls.

Q You say that the stall of your horse was immediately next to where his horses were stalled? A Not immediately. I had to pass his horses to see mine; I had to pass his stall to go to my horse.

Q Now, had you ever been obliged to bring your horse back to that stable late at night?

MR. JACOBY: Now, I object to that as calling for a conclusion, and as leading, and too indefinite.

THE COURT: Well, Counsel, are you going to bring him right up to this night?

MR. LEVY: Yes, sir. But I want to show what it necessary to do to get into that stable. I will lay the foundation for that.

THE COURT: Very well. He may answer.

CASE #1082

A Yes, sir.

BY MR. LEVY:

Q Now, is that stable kept locked, at night?

MR. JACOBY: I object to that as leading, and too general.

THE COURT: Well, from his experience, he can testify whether he found it open or locked, during the times that he went there late at night.

A Well sometimes I met it open and sometimes I met it locked.

BY MR. LEVY:

Q Now, do you know whether there is a watchman there or not? A Well, the time I was there, there was a son of the boss, the proprietor of the place, he slept there at night; he done the watching.

Q He slept in the stable? A No, sir; not exactly in the stable. He slept in the storeroom for wagons. First is a storeroom for wagons and then comes the stable. It's one building, right straight back.

Q Now, do you remember the night of September 24th, 1908, when the fire occurred there? A Yes, sir.

Q Who let you into the stable, with your horse?

MR. JACOBY: Now, I object to that.

THE COURT: Is there any evidence that he went in there, that night?

BY MR. LEVY:

Q Did you go into that stable, that night, with your

CASE #1082

horse? A Yes, sir.

Q What time of the night was it? A Well, I think it was about nine or half-past nine; somewhere around it.

Q Who let you in there? A The proprietor himself.

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

THE COURT: Well, he says the proprietor did. And Jacob Levy also says that the proprietor let him in.

BY MR. LEVY:

Q Well, did you go to that place about half-past one or two o'clock that morning? A I was there.

Q Now, did you go into the stable? A No, sir.

Q Well, did you see the fire? A I saw the fire, but couldn't get near it.

Q Now, did you see Jacob Levy there, that night? A No, sir.

BY THE COURT:

Q You didn't go near the stable, then, did you? A No, sir; I wasn't allowed to.

Q Where were you? A On the opposite side of the street.

BY MR. LEVY:

Q Did you go into the stable after the fire? A Yes.

Q How soon after the fire? A It was half-past six or seven o'clock in the morning.

CASE #1082

BY THE COURT:

Q That is, after it was all over? A Yes, sir; after the firemen and the police went away.

BY MR. LEVY:

Q Well, you have passed the front of that blacksmith shop, Simon's blacksmith shop, nearly every day, haven't you?

A Every day.

Q For a long time? A For over a year.

Q Now, is there any window in the front of that structure? A No, sir; no window at all.

MR. JACOBY: I object, on the ground that it is immaterial whether there is any window there now or not.

BY THE COURT:

Q You remember the general appearance of that building?

A Yes, sir.

Q Of the doors and windows? A Yes, sir.

Q You have a clear picture of that structure as it was before the fire, in your mind? A Yes, sir.

THE COURT: I will allow it.

BY MR. LEVY:

Q Now, there was no window in that structure? A No, sir; no window at all.

Q There was only a door? A There was a door, and a little opening for a skylight, no more than six inches square, and there was a wire netting around it, too.

1308
CASE #1082

Q A wire netting around it? A Yes, sir.

Q And where was that little opening situated? A About nine feet high.

BY THE COURT:

Q Was it over the door? A No, sir; it wasn't over the door. Well, here is the door right here (illustrating), and from the door it is a distance, and then above that, about nine or ten feet high, it was right near the ceiling.

BY MR. LEVY:

Q And how high was the structure? A I don't know; about 15 or 18 foot, in my estimation.

Q Now, could a man get through that opening? A No, sir.

Q Could a man get through it? A No, sir.

MR. JACOBY: I object to that. If it was that size, of course no human being could get through it. That is obvious.

THE COURT: Yes, he says it was a size that no one could get through.

BY MR. LEVY:

Q And could the defendant get through, a man of his size? A No, sir.

Q You know Levy, Jacob Levy, very well, don't you?
A No, sir.

Q You have seen him in that neighborhood with other persons, haven't you? A Yes.

CASE #1082

Q Have you seen him with Posner? A I think I seen him more than once with Posner. I met him a couple of times in 100th Street, just nodded and passed by.

Q Did you ever see him in the company of Frenchy?

A Which is Frenchy?

Q The night watchman? A The night watchman of the Harlem Market?

Q Yes? A Well, I think I did see him with Frenchy, a couple of times; I'm not sure.

Q Well, did you hear any conversation between Posner and Levy about the defendant Zabransky? A No, sir; no conversation at all.

CROSS-EXAMINATION BY MR. JACOBY:

Q Lippman, were you born in this country? A Yes, sir.

Q And do you know a Mrs. Gold? A Mrs. -- who?

Q Mrs. Gold? A No, sir.

Q You have known the defendant a good many years; haven't you? A The defendant; no, sir.

Q You hardly know him at all? A Well, I just know him as a peddler, that's all, and, when I pass, I say, "How do you do?"

Q You know it is very important in this case that you should say that you know him very slightly; don't you?

MR. LEVY: Objected to.

THE COURT: Sustained.

CASE #1082

BY MR. JACOBY:

Q You only know him slightly? A Just slightly.

Q And you never drank in that saloon in 101st Street, did you? A No, sir; I never was in the saloon.

Q And you never saw him hanging around there? A No, sir.

Q And you used to go past the saloon in 101st Street, a dozen times a day? A No, sir.

Q Half a dozen times? A No, sir; just once in the morning and once in the evening.

Q And never saw him there when you were passing? A No, sir.

Q Did you know Morris or Moscher? A No, sir.

Q You knew that the witnesses for the People had to testify, or one of the witnesses for the People had to testify, that this man had jumped out of the window in front of the blacksmith shop, didn't you? A No, sir; I never heard anything about it.

Q Didn't you know before you came here to testify, that the People called at least one witness who testified that he saw the defendant jump out of a window in the front of the blacksmith shop?

MR. LEVY: I object to that, as already asked and answered.

THE COURT: Allowed.

MR. LEVY: Exception.

A I did not.

CASE #1082

Q You didn't know that? A No, sir; I didn't know it at all.

Q And you don't know Mrs. Gold? A No, sir; I don't know Mrs. Gold.

Q And you don't know any relatives of the defendant, do you? A No, sir.

Q And you don't know anything about the past history of the defendant? A No, sir; I don't know nothing about it.

Q To whom did you give your name as a witness in this case? A Well, I gave my name as a witness in this case to a gentleman outside, by the name of Mr. Saks.

Q A gentleman outside of what? A He's outside now. That was the first time I ever met him.

MR. JACOBY: I move to strike that out, if your Honor please.

Q When did you first give your name to Mr. Saks?

A Just this Friday, I think it was.

CASE #1082

1

Q Just this last Friday? A Yes, sir.

Q Who told you to go and give your name to Mr. Saks?

A I went to the restaurant to eat.

Q Where? A 101st street.

Q Where? A Between First and Second avenues.

Q Is that ~~kept~~ the place kept by Morris or Moscher?

A I don't know his right name. His name is Miller. And then I heard a conversation going on.

Q Between whom? A Mr. Saks said there was an opening there, a window.

Q And who was there talking? Mr. Saks and who else?

A I can't recollect who he had the conversation with.

Q And you jumped up, and gave your name to Mr. Saks?

A No,,sir. There was another party there, and he said, "You stabled in that stable, and you ought to know it."

Q And you gave your name to Mr. Saks or Mr. Miller?

A Mr. Saks.

Q Didn't they ask you whether there was a window there? A They did not.

Q Didn't they say to you that the People had called a witness who said that he saw the defendant jump out of a window, just before the fire? A They did not.

Q Didn't they say that they wanted you to testify that there was no window in front of the place? A No, sir.

Q Didn't they tell you that there was no window in front of the place? A No, sir.

CASE #1082

Q Didn't they ask you whether or not there was a window in the front of the place? A No, sir.

Q Didn't you tell any one before you went on the stand, to-day, that you knew there was not any window in the front of the building, before the fire? A No, sir.

Q Then, for all that he knew, counsel for the defendant would not have been surprised to have heard you testify that there was a window? A No, sir.

Q You have been convicted of crime; haven't you? A Yes.

Q When? A About four years ago.

Q Where? A Right here in this court.

Q What were you convicted of? A Receiving stolen goods.

Q Where were you sent? A Elmira.

Q What Judge sent you there? A I don't remember his name.

Q Was it in this Court of General Sessions? A Yes, sir.

Q Haven't you been a close friend of this defendant for years? A No, sir.

Q Haven't you consorted with him at the saloon and elsewhere? A No, sir.

Q In the saloon at 101st street? A No, sir.

Q And haven't you been asked to come here, and aid him in getting out of this charge, by anybody? A No, sir.

Q You did not go to the place until the flames were up

CASE #1082

high; did you? A I got to the fire when the flames were coming.

Q You did not get in front of the premises of Simon the blacksmith until the thing was burned; did you? A I tell you --

Q Yes or no? A I didn't see no flames, I only saw the fire just coming, and, when I got there, they wouldn't let me get no nearer.

Q And between half past nine, when you left there, and the time when you returned, when the fire was burning, you were not there at all? A No, sir.

RE-DIRECT EXAMINATION BY MR. LEVY:

Q You were subpoenaed to come here; weren't you? A Yes.

Q Who subpoenaed you?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

MR. LEVY: Exception.

LOUIS SAKS, of 227 East 56th street, a witness

called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Saks, what is your business and occupation? A My business is a wagon builder.

CASE #1082

Q Is this your business card (indicating)? A Yes, sir.

MR. LEVY: Please hand that to him, officer.

MR. JACOBY: Oh, I object to handing him his business card.

THE COURT: Yes; he is a wagon builder, he says.

BY MR. LEVY:

Q In September, 1908, where did you live? A In the same place, 227 East 56th street; the same place where I live now.

Q Didn't you live opposite the fire? A Never.

Q At any time? A What's that?

Q Didn't you live opposite the blacksmith shop where the fire was? A No, no; I live at the same place where I live now, in 227 East 56th street.

Q Oh, you lived there then, and you live there now?

A Yes, sir.

Q Now have you ever been up in that neighborhood in the month of September, 1908? A Yes, sir.

Q Do you know where Simon's blacksmith shop is? A Yes, sir.

Q What business brought you up there?

MR. JACOBY: I object to that, as being immaterial, on direct examination.

THE COURT: Well, if it is close to September 24th, I will take it.

MR. LEVY: I mentioned that date, your Honor.

CASE #1082

MR. JACOBY: I did not hear it.

BY THE COURT:

Q Were you there on the 24th of September? A I was there on the 26th of September.

BY MR. LEVY:

Q Now didn't you see the burned building? A Yes; I was passing by there, and I seen it.

Q Now what part of the burned building remained that you saw? A (No answer).

Q Do you understand my question? A No, not so good, what you mean.

(The question is repeated through the official interpreter).

A Oh, it was only burned up the top there, and I couldn't tell you exactly how it is burned up, only I passed by, and I don't have no business to look on, but I see fire was there.

MR. JACOBY: I move to strike out the answer.

THE COURT: I will let it stand.

BY MR. LEVY:

Q Now did you see the front of the building? A Yes, I see it.

Q Now tell the jury what you saw? A (No answer).

Q Now describe the front of the building to the Court and jury? A Yes, I seen it.

Q (Question repeated). A Oh, there was a shanty there,

CASE #1082

a wooden building, a shop. It was burned up there, and then the front of it has been there, with those boards there. I couldn't explain to you.

Q Well, was there any window in the front of the building?

MR. JACOBY: I object to that as leading, and I move to strike out the answer.

THE COURT: Strike it out.

MR. JACOBY: If there was any answer.

BY MR. LEVY:

Q Did you see any window in the front of that building, four feet wide and four feet high, and five feet from the ground, in the front of that building?

MR. JACOBY: I object, because, there having been a fire, it would be impossible for the jury to say that the building was in the same condition as it was just prior to the fire, when this gentleman saw the building. He may qualify him, however, by some preliminary questions.

BY THE COURT:

Q Now, Mr. Witness, when you went there, on the 26th, you saw that a fire had taken place there? A Yes, sir.

Q Was the blacksmith shop entirely burned, or what part of it was standing? A The front part was standing.

Q Was the front part of it standing? A Yes, sir.

Q Were the walls up? A The walls were a little burned.

CASE # 1082

Q It was a frame building, wasn't it? A Yes, sir;
a frame building.

Q Well, was it not entirely burned down, was it not
all burned? A No, no, not at all, not all burned.

Q Could you see the door there? A Yes.

Q Did you go in? A No, sir, I don't go in there. It
isn't my business to go in there.

Q Did you see the door? A Yes, I seen it, I seen it.

Q How familiar were you with the building? Had you seen
it frequently? A What's that?

Q Had you been up there a number of times, and seen
that building? A Before the fire?

Q Yes? A Many times I've seen it, because I was
there about half a dozen times.

Q Had you gone into it? A Yes; inside the shop, too.

Q You had been into Simon's place? A Yes, sir.

Q And you had business with him? A Yes; I bought a
wagon off him. I couldn't tell you that; when that was.

Q You bought a wagon from him? A Yes, sir.

Q And how many times did you go into the shop? A Half
a dozen times before the fire, about.

THE COURT: Go ahead, now.

BY MR. LEVY:

Q Mr. Saks, do you remember the holiday known as Rosh
Hoshanna, which took place on September 26, 1908?

CASE #1082

MR. JACOBY: Now, I object to that question.

BY MR. LEVY:

Q Well, was it on the day of Rosh Hoshanna that you went up there, and looked at the front of that place? A You see --

BY THE COURT:

Q Was it or was it not? A Yes, it was the first day, on Rosh Hoshanna.

MR. JACOBY: Now, I object to his testifying to the condition of the building on the 26th of December. He says he was there half a dozen times before the fire.

THE COURT: Yes, I simply let into the case that condition, so that counsel, if he desires, take it,, and carry it further. The witness said he had business there, and had been in the shop half a dozen times.

CASE #1082

1320

BY MR. LEVY:

Q Did you see any window on the front of those premises, four feet wide and four feet high?

MR. JACOBY: I object. A man might go in there a hundred times, and not notice the window. The question is whether he knows whether or not there was such a window.

THE COURT: Yes. Get his description of the structure, as to openings.

BY MR. LEVY:

Q Please describe the front of that structure when you were there on that occasion?

MR. JACOBY: On what occasion?

THE COURT: Oh, he said he had been in there frequently, into the blacksmith shop, to see Simon, the blacksmith.

MR. JACOBY: Yes, sir; but prior to the 24th of September, 1908.

THE COURT: Yes.

BY MR. LEVY:

Q Now what does the front of the building look like?

A Well it looks a shanty; it's a small buildings, boards there.

BY THE COURT:

Q Any doors? A Yes; they have a big door.

Q How many doors? A They have two big doors, and they open this way (illustrating).

CASE #1082

Q And any windows? A There was no window, only a little hole, about eight or ten inches wide. I didn't measure it. But there is no window, only the little hole there, about ten inches square, and then it was covered with wire. No window at all.

BY MR. LEVY:

Q Now what brought you up in that neighborhood at that time?

A Harry Zabransky used to poddle, and he used to supply my family with --

MR. JACOBY: I object to this, as to what brought him up there. On direct examination, it is not proper.

THE COURT: How is it relevant?

MR. LEVY: I want to explain how he came to be there in that neighborhood, before the 24th.

THE COURT: Oh, he said that he had business up there.

BY MR. LEVY:

Q Now, you know the defendant very well; don't you?

A Yes.

Q How long have you known him? A For the last three years.

Q Do you know other people who know him? A Certainly I know him.

Q Have you discussed him with other people, have you

CASE #1082

talked with other people about him?

MR. JACOBY: Now, I object to that. This is not proper on direct examination.

THE COURT: I take it that he intends to make the witness, in this respect, a witness as to character.

MR. LEVY: Yes, sir.

THE COURT: I will take it.

BY MR. LEVY:

Q Do you know what his reputation is for peace and quietness, and decency and honesty and sobriety? A Yes, sir.

Q What is it? A First class.

Q Now did the defendant ever visit your family, at your home? A Yes. Now, the 26th was the first day of Rosh Hoshanna --

THE COURT: Now, he has answered. Put another question.

BY MR. LEVY:

Q Did he ever visit your house? A Yes; he used to peddle --

MR. JACOBY: Now, I object to the witness continuing.

He has answered.

BY MY. LEVY:

Q no you know what his business was? A Yes, sir.

MR. JACOBY: I object to that, as not proper on direct examination.

THE COURT: Well, he has got it. I do not know that

CASE #1082

it is important. He may state if he knows.

BY THE COURT:

Q Do you know what his business was? A Yes, certainly.

Q What was it? A He was in the peddling business.

BY MR. LEVY:

Q What kind of peddling business? A He used to peddle with a horse and wagon fruit and vegetables, and this fellow used to supply me for two years with vegetables, and there was ---

MR. JACOBY: I object, if your Honor please.

THE COURT: Yes, you have answered. Put another question, counsel.

BY MR. LEVY:

Q Now do you know Jacob Levy and Philip Posner?

A Oh yes, I know them.

Q Well, how well do you know them? A Oh, Jake Levy I guess I know him for the last eight years, and Posner, I see him once, and I see him, the next time, here in the court.

Q Now did you hear any conversation, or did they talk to you at any time? A They --

Q Since September 24, 1908, regarding this case or the burglary case? A I seen --

BY THE COURT:

Q Did they or not? A Yes.

CASE #1082

Q With one of them? A Yes.

Q Who? A Jacob Levy and Philip Posner.

BY MR. LEVY:

Q Now what did they say?

MR. JACOBY: Now, I object to that as too general.

THE COURT: What is the purpose of it?

Is it claimed to be within the scope of the conspiracy?

MR. LEVY: Yes, sir; I want to show why this man testified against the defendant in this case.

THE COURT: Well, if it has any bearing on that, I will take it.

A Jacob Levy and Philip Posner were standing corner of First avenue and 101st street.

BY THE COURT:

Q How long ago was that? A That was four months ago.

And they was talking with a party there, and I was there, and I passed by, and I meet a party where they talk with there, and they was talking to that party, and Posner said, "I give the fellow enough," and then Jake Levy said, "You take my word, if I wouldn't give him twenty years, that they call me a liar." They don't tell the name who it is, and I don't have time to see who that party is, and I say to the party what I know there ---

1325
CASE #1082

BY MR. LEVY:

Q Who did you say that to?

A .Posner and Levy, they say to the party that they was talking with -- I know the first name not the second name -- I see him here --- and he said "If I wouldn't give him twenty years, then they call me a liar," and then I said to the party that was talking with them, "Now, will you come over for awhile? I ain't got no time to wait here," and I had business with him, and I said, "What was those people talking about now."

CASE #1082

Q What party are you talking about? A I don't know his second name; I know his first name. I see the party here.

BY MR. JACOBY:

Q What is his first name?

BY MR. LEVY:

Q Is his name Frenchy? A No, sir.

Q Or Simon? A No, sir.

Q Was he a witness for the People? A Yes, he's a witness for the People, he's here. I don't know the name, you see.

Q Was it a big fellow, named Kapochelsky? A No, no; it isn't Kapochelsky; it's Nathan.

Q Nathan? A Yes, sir.

Q You saw him here? A Yes, I see him here.

Q Well, did you hear what they said to Nathan?

MR. JACOBY: Now, I object.

BY MR. LEVY:

Q Now, did they say anything to you? A They said to Nathan. They had nothing to say to me. Never have I business with those people. I know those people to pass by, but I never talk with those people there. Then I told the fellow my business what I had to speak with him, and then I said, "What was they talking about?"

MR. JACOBY: I object to that, as being entirely too indefinite and vague.

CASE #1082

THE COURT: Well, I will take it.

A (Answer continued) And then they say to me --

BY MR. JACOBY:

Q Who said to you? A Nathan said to me.

MR. JACOBY: I object. There has been no witness by the name of Nathan. Can he tell us what an unknown man, that he calls Nathan, said to him?

THE COURT: Well, they claim it is a conspiracy, and I am going to give them a good deal of latitude to establish it, if possible. Go ahead.

A (Answer continued) Well, then, Nathan said to me, "They be mad on Harris Zabransky." And I said, "What for they be mad?"

MR. JACOBY: Now, I object, if your Honor please, to his telling the jury what Nathan, a stranger to this case, is said to have said to him, in regard to Harris Zabransky. He is going to tell now, apparently, as a reason --

BY THE COURT:

Q Was Levy there? A Levy was there.

Q And Posner? A Yes; and Posner.

Q And was it in their hearing and presence that that was said? A No; they don't hear what Nathan tells me.

MR. JACOBY: Now, I think I know what he is going to say, and I think it is absolutely typical hearsay evidence, and I do not think it is admissible here to show any supposed conspiracy.

CASE #1082

BY THE COURT:

Q Where were Posner and Levy? A They had gone away.

Q They had gone away? A Yes.

THE COURT: Well, isn't that hearsay evidence, Counsel?

MR. LEVY: I think it is, sir.

THE COURT: I thought it was in their presence and hearing.

BY MR. LEVY:

Q Now, did Posner say anything to you at all in the nature of a threat against the defendant?

MR. JACOBY: I object to that, as calling for the witness's conclusion, and as leading.

THE COURT: Anything that he said to the defendant, I will receive, whatever its character may be.

BY THE COURT:

Q What did he say, if anything? A Posner?

Q Yes? A That's what Posner said, "I send him away".

Q Who told you that? A He told that to the other fellow, and I heard him say that. I never speak with him there. He told that to the other fellow, and I heard that.

BY MR. LEVY:

Q Did you hear Posner or Levy say anything after that?

A After that?

Q Yes? A After that Mr. Levy said, "I sent him away for

CASE #1082

twenty years".

Q Do you know anything else about this case? A No, sir.

Q Did they say anything more about the case? A No, they don't say nothing to me. Of course I go away with the other fellow, and they don't speak with me.

Q Now, do you know whether the defendant called at your house, in the month of November, 1908? A What's that?

Q (Question repeated). A Yes, I was in his house there.

MR. JACOBY: Now, I move to strike that out, as utterly irresponsible. The question was not that at all. Evidently he doesn't understand it.

THE COURT: Yes, strike it out.

CROSS-EXAMINATION BY MR. JACOBY:

Q What is your name? A Saks.

Q Is it S-a-c-h-s? A No, S-a-k-s (the witness spells the name).

Q Where were you born? A Russia.

Q How many years have you been in this country? A Twelve years.

Q Twelve years? A Yes, sir.

Q Can you read and write English? A No.

Q How long have you known this defendant Zabransky?

A Zabransky?

Q Yes? A I know him for the last three years.

Q And you are not a good friend of his, are you? A Yes,

CASE #1082

I am a good friend to him.

Q And you were up there in the neighborhood of this fire, getting testimony, or looking up witnesses in favor of ~~the~~ Zabransky, as soon as you heard that he had been arrested on this charge; weren't you? Yes or no? A No, sir.

Q Weren't you there in the restaurant in 101st Street, kept by a man named Miller? A No, sir.

Q Weren't you talking with a man named Miller? A No, sir.

Q And don't you know a gentleman named William Lippman, an alleged peddler; William Lippman, a man who calls himself a peddler? A No, sir.

Q A young fellow, about twenty-one years old? A No, sir.

Q And didn't he hear you, Saks, talking with Miller, up at Miller's restaurant, about what kind of a front there was to this blacksmith shop before it was burned down? A No, sir.

Q And didn't somebody say in your hearing, "Why, this man Lippman here knows how that building was built"? A No, sir.

Q And didn't you take Lippman's name as a witness?
A No, sir.

Q And didn't Lippman tell you that there was only a little bit of a hole, a little bit of a window, in front of this building? A No, sir; I ~~talked~~ ^{don't talk} with nobody.

Q Are you a temperate man? A What's that?

Q (Question repeated). A I don't understand.

Q Do you drink much? A No, sir.

CASE #1082

Q You drink nothing except water? A I don't drink, no.

Q Can't you ever answer yes to any question? A No, sir; I don't drink.

Q Now, you know that I am asking you questions to try to get you to say something to hurt ~~the~~ Zabransky, don't you?
A Yes.

Q That's what you think, anyway? A Yes.

Q Now, didn't you know, before you went away from this Court House, on Friday evening, didn't you know that the witnesses for the People, at least one of them, testified that he saw Zabransky jump out of a window in the front of the blacksmith shop, and immediately afterwards the place go up in flames? A I don't heard that.

Q (Question repeated). A No, I don't heard that.

Q Well, you were here Friday, weren't you? A Yes.

Q And standing around the halls? A Yes.

Q And standing around the corridors? A Yes.

Q And, off and on, you were in the room, weren't you?

A I was here; yes.

Q And you were talking about the case to different people? A I didn't talk to nobody.

Q Weren't you talking with the counsel for the defendant, right up at that rail there (indicating the bar of the court), with Mr. Levy, counsel for the defendant? A Yes.

Q And you were acting as the man who was getting the

CASE #1082

witnesses together for the defence; weren't you? Yes or no?

A No, sir.

Q Didn't you procure the witnesses for the defence, or some of them? A No, sir.

Q Weren't you active in aid of the defendant, in preparing his defence in this case? A I don't ask nobody at all.

Q Weren't you working to help the defendant prepare his defence, and procure witnesses in this case? A No, sir; I ain't.

Q You are not helping him? A No, sir.

Q Is there no witness in this case whose attendance has been procured through you? A No, sir.

Q Didn't you go to anybody and ask him to come here as a witness for the defence? A No, sir.

Q Only yourself? A Only myself, and I and my wife.

Q Do you know when Zabransky was locked up on this charge?

A I don't know. I know it after that.

Q How long is it since you knew that Zabransky was locked up on a charge of setting fire to the blacksmith shop?

A Two weeks ^{ago} ~~after~~; something like that.

CASE #1082

Q Well, before the first of January? A Yes.

Q About two weeks? A Two weeks maybe; maybe a few days more.

Q Well, it was before the first of January? A Yes, sir.

Q He was indicted by the Grand Jury before the first of January? A Yes, sir.

Q And since the time he was indicted, how many times have you seen him? A Zabransky?

Q Since Zabransky was indicted, about two weeks ago, how many times have you seen him? A Twice, two times.

Q Two times? A Yes, sir.

Q Before the trial began? A Yes, before the trial began.

Q Where did you see him those two times? A I see him in the Tombs there.

Q And the second time also? A Yes, sir.

Q How long were you there, the first time? A The first time I was there I guess --

Q An hour; was it not? A I didn't say long.

MR. JACOBY: I move to strike that out as irresponsible.

THE COURT: Yes.

BY MR. JACOBY:

Q You were there the first time about an hour? A Yes;

CASE #1082

something like that.

Q Have you got a watch? A Yes.

Q And have you got it on now? A Yes.

Q And you know what an hour is; don't you? A I don't look on the time, and I don't look on the watch to see if it is an hour or half an hour.

Q Well, you were there at least an hour? A Just about that.

Q And you talked over the case with him? A No, I wasn't talking the case with him at all.

Q Now, you were not talking with him about getting witnesses and preparing the defense? A No, I don't.

Q Didn't you recommend or suggest the name of any witness for the defendant in this case, besides yourself? A I am not a lawyer, and I don't have to recommend to anybody.

MR. JACOBY: I ask to have that stricken out, if your Honor please as irresponsible.

THE COURT: Motion granted.

(Question repeated by the stenographer..)

A No, sir.

Q Didn't you give Mr. Levy the name of a single witness to subpoena for the defendant? A No, sir.

Q Aren't you related to the defendant; aren't you his uncle? A No, sir.

CASE #1082

Q Aren't you his cousin? A I am the fourth cousin.

Q What you call the fourth cousin? A Yes, sir.

Q Now aren't you his first cousin? Was not one of your parents brother or sister to one of his parents? A I don't understand what you mean. Won't you explain it?

Q Was not either your father or your mother a brother or sister of one of his parents? A No, somewhing with my wife.

Q your wife is his sister? A No, sir.

Q His cousin? A Yes.

Q And your wife is very friendly with him? A Yes.

Q And didn't your wife ask you to do everything you could to help him? A No, sir.

Q Didn't somebody tell you --- A Nobody had to tell me that; no.

Q Didn't somebody tell you that it was important for you to testify that there was no window bigger than ten inches square in that building? A No, sir, nobody.

Q Didn't the counsel know that you were going to testify to that? A No, sir.

Q From something that you told him? A No, sir.

Q Now show me with your hands how big it was? A That size (illustrating).

CASE # 1082

Q Just small enough so that a man could not get through it? A Yes, sir; so a man couldn't get through it.

Q Might it not have been as big as this, about two feet square (illustrating)? A No, sir.

Q Or eighteen inches square? A No, sir.

Q And it was only ten inches square? A Yes, sir.

Q You will swear that it was not even a foot square?

A I don't know; I didn't measure it.

Q But you knew it was important for you to say that it was too small for a man to go through; didn't you? A No; not what a man can go through, but I know what a foot is, and what is more --

Q (Question repeated). A Yes.

Q You knew that before you went on the stand; didn't you? A What?

Q You knew, before you came into court, and went on that chair, that it was important for you to swear to this jury that the window was too small for a man to go through? A I know it now, what you asked me questions, but I don't know before that I am to answer any questions about a window.

Q Didn't somebody tell you that, in order to help this young man, you must testify, if you can, that the window is too small for a man to get through it? A No, nobody told me that. I know what the truth is, and nobody has to tell me. I am not a baby, you know.

CASE #1082

Q And during all the time that you were here, last Friday, you did not hear that a witness for the People had testified that Zabransky made his escape, after the fire, by jumping out of a window? A No.

Q And you didn't hear it on Saturdayk, the day before yesterday? A No, sir.

Q And nobody told it to you, yesterday, Sunday? A No, sir.

Q Or this morning? A No, sir.

Q And nobody told you at any time before you went into that witness chair about it? A No, sir.

Q Nobody told you that a witness for the People had testified that Zabransky had jumped through a window, in the front of that blacksmith shop? A No, nobody told me, and I didn't hear this before now from nobody.

Q And you mean to tell this jury that you knew Louis Simon? A Yes.

Q How well did you know him? Did you know him from seeing him often? A Oh, I see him often.

Q Did you see him often before September 24, 1908? A Certainly I see him.

Q Is the front of the blacksmith shop the same as it was before the fire? A The front of the shop?

Q (Question repeated)? A Certainly; it has got the same front there.

CASE # 1082

Q The same front? A No. Now they have put a window ~~on~~ on there.

Q Oh, now, they have put a window there? A Yes, sir.

Q Big enough for a man to go through? A No, I don't think so, that a man could go through. The window is as wide as this and as long as this (Illustrating).

Q And the window is about six inches wide now, instead of ten? A I couldn't tell you exactly. I don't think so, that a man could go through there now.

Q Is the window bigger than it was before? A Yes, oh, yes, it is.

Q But still it isn't wide enough for a man to go through? A Yes. Now I think they could go through. Now it is big enough.

Q So it is big enough for a man to go through now? A Yes, that wide (illustrating).

Q It's about that wide there, about three feet wide (illustrating)? A Yes, ~~ah~~ sir.

Q And about eight or ten inches high? A Yes.

Q Or a foot? A Yes.

Q Now when did you see that window last? A My mother-in-law lived across the street, and I was there this Saturday.

Q This Saturday? A Yes, by my mother-in-law.

Q And did you notice the window, this Saturday? A Yes, I passed by there, and I saw it.

CASE #1082

Q And you carefully looked over that window, this Saturday? Yes or no? A I seen it.

Q You specially looked at that window, this Saturday?
A No, sir.

Q Didn't you just tell the jury so? A I don't look specially. You know my mother-in-law live across the street, and I see that window.

MR. JACOBY: I move to strike that out.

THE COURT: Motion granted.

BY MR. JACOBY:

Q Didn't you look at that window specially on Saturday, to see how large it was? A No, I don't look at that special.

Q Now didn't you look at that window specially on Saturday, to be prepared to testify for the defense as to the window, when you came to Court? A No, sir.

Q Didn't anybody ask you to look at that window, between Friday and Monday, to look at that window, and see how large it is now? A Yes.

Q But you looked at it on Saturday, and saw that it was considerably wider than it was before the fire? A Saturday I was by my mother-in-law, and that's across the street, and I saw it, but I couldn't give you a measure. I wasn't there extra to see that window.

Q Well, now you say it is much bigger than it was before the fire? A Yes, sir.

CASE #1082

Q Now is not Saturday the first time you ever looked carefully at that window? A I didn't look extra, that day, but I see the window.

Q Didn't you tell the jury that you looked it over when you were up there? A I see it Saturday, but I don't look at it extra, if it is bigger or smaller.

Q But you told the jury that it is bigger than before the fire? A Yes, it's bigger now.

Q Will you swear to the jury that it is not a fact that that window as it is now, except for painting it, and fixing up the building, is not just the same as it was before the 24th of September, 1908? A I couldn't swear this, because I don't look at it, if it is bigger or smaller. Maybe they put something else on it.

Q And maybe it is the same as it was before the fire; is that right? A I couldn't swear it was the same or not. Maybe it is higher or lower.

Q And ~~ix~~ maybe it is the same as it was before the fire? A It looked the same.

CASE #1082

Q It may have been the same as it was before the fire?

A It looked the same.

Q It looked the same? A Yes.

Q And, for all that you know, that window, to-day, or Saturday when you saw it, is no bigger than it was before the fire? A Oh, it is much bigger, the window there.

Q It is? A Yes.

Q Positive? A Yes, positive.

Q You are sure of that? A I am sure of that.

Q Before the fire, September 24, 1908, did you ever specially look at that window? Yes or no. Did you specially notice its size? A No, sir.

Q Now, there was only one window in the front, besides the door? A There was no window at all.

Q There was what you call a small hole besides the door? A Yes, sir.

Q How wide was this building? A I don't know.

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

Q It might have been 40 feet wide? A I couldn't tell you how wide it was, or how high.

Q How wide was the door? A I couldn't tell you.

Q Do you know whether it was a single or double door? A Oh, the door is a double door, I guess.

Q You guess? A Yes.

Q You are not sure; are you? A No, sir.

CASE #1082

Q It might have been a single door? A I couldn't tell you.

Q Do you know whether the door opened or shut, or ran on a roller? A No, they shut them up this way (indicating).

Q They are on a runner? A Yes, sir.

Q So that they don't open out into the street or into the blacksmith shop? A No, sir.

Q They were not on hinges? A No, sir.

Q Now, will you state to the court and jury that you were in that blacksmith shop within three months before the fire; at any time between July 1st and September 24th? A Before the fire?

Q Yes? A Yes, I was.

Q Were you there within a week of the fire? A No, sir.

Q Or a month? A No, sir.

Q Or two months? A Something like two or three months.

Q How many times? A Oh, I was there a few times, a couple of times.

Q Who lives opposite to that place now, ~~who~~ do you say?

A My mother-in-law.

Q Didn't she live there then? A No, no.

Q Where did she live then? A On 101st Street.

Q On First Avenue? A No, in the street, between First and Second Avenue.

CASE #1082

Q Did you ever go to that saloon on 101st Street? A No, I never go in that saloon.

Q Didn't you see this man (indicating the defendant) hanging around the saloon? A No, sir.

Q Did you ever see a man named Kapochelsky? A I saw him a lot of times.

Q And didn't you see him around this courtroom on Friday? A Yes.

Q And didn't you talk to him about the case? A No, sir.

Q Or to anybody? A No, sir.

Q Now, do you mean to tell the jury that, for two years before the 24th of September, 1908, this defendant used to supply you regularly with vegetables? A Yes, sir.

Q He came away down there, every day, to supply you with vegetables? A Not every day.

Q Well, three or four times a week? A Yes, sir.

Q And then he vanished for a year? After September 24th, 1908, for about a year, you didn't see him, and didn't know where he was? A He used to come around, once in a couple of weeks.

CASE #1082

1

Q But he didn't peddle vegetable after the 24th of September 1908? A Yes, he was peddling.

Q No you mean to say that he was peddling vegetables in October, November and December 1908, or a year ago in January 1909? Do you mean to say that in each of those months that I have mentioned, he was peddling vegetables regularly?

A In 1908, he was peddling regularly.

Q I mean in October, November and December and January 1909 -- that's a year ago -- you don't mean to say that; do you?

A I am positive on 1908 and 1907.

Q I am not talking of 1907. From the time of the fire, is it not a fact that he stopped peddling for a year, and did not show up? A Yes, he was peddling, but he come around not so often. He comes around once in a couple of weeks.

Q Zabransky did? A Yes, sir.

Q Did he come around with a wagon, with vegetables in it, in October, 1908? A I don't remember; I couldn't tell you.

Q On November , 1908? A (No answer.)

Q Now don't you know that he disappeared for about a year, and you didn't know where he was, and did not see him?

A Yes, I see him. He used to live in East New York.

Q Oh, he moved to East New York? A Yes, sir.

Q Immediately after the fire; isn't that right?

A About three or four or five months. I don't know when he

CASE #1082

moved.

Q Now I want an answer to my question. Didn't he stop peddling vegetables after the fire? A Yes, he was peddling after the fire.

Q Didn't he stop peddling vegetables immediately after the fire, for nearly a year?

MR. LEVY: I object, if your Honor please. He has covered that ground thoroughly several times, and the witness has answered the same question repeatedly.

MR. JACOBY: No, he has not answered yet as to October.

THE COURT: Very well. Proceed.

BY MR. JACOBY:

Q Did you see him peddling vegetables in October, 1908?

A Well, I can't tell you. I got more to keep in my head than Zabransky.

Q When did you first hear that he was charged with burning down the blacksmith shop? Wasn't it right after the fire?

A Will you explain me that question?

(Question repeated.)

A I don't understand the question.

BY THE COURT:

Q When did you hear that it was said that he burned that blacksmith shop? A (No answer.)

Q Now, you say that you were up there, two days after the fire, on the 26th of September. When did you hear that they

CASE # 1082

were charging Zabransky with firing the shop? A Oh, I heard he was locked up.

Q Did you hear it on the 26th of September, when you saw the place? A No, I don't hear it the 26th of September.

Q When did you hear of it? A A couple of weeks after.

Q A couple of weeks after you heard that the defendant was the one that did it? A No, sir, I don't hear that.

BY MR. JACOBY:

Q When do you claim that you heard Posner, a man whom you call Nathan, and Jacoby Levy, the public expressman, when do you claim that you heard them talking, and you heard Posner or Levy say that they would send him up for twenty years?

A About four months ago.

Q In front of this saloon at 101st Street and First avenue?

A I don't know if it is a saloon. May be it is another business.

Q Well, did you know Mr. Posner at the time?

A No, sir; but I know Levy.

CASE #1082

Q Did you walk close up to Levy? A No, I walk up to the fellow that they were talking to.

Q You walked close up to them? A Yes.

Q To the group? A Yes.

Q And then you joined the group? A Yes.

Q And do you mean to say that Posner and Levy, in your presence, went ahead and said this, in your hearing?

A Yes.

Q Seeing you there when they said it? A Yes.

Q Did you tell them you were a friend of Zabransky?

A No, they don't know it.

Q Oh, they did not know that you were a friend of Zabransky? A No, sir.

Q And you went up there to see what evidence you could get for Zabransky, at the time? A No, sir.

Q Weren't you up in that neighborhood to fish around, and see what you could find out about Zabransky's case?

A No, sir.

Q Was that the first time that you heard that the defendant was charged with burning down the blacksmith's shop?

A No, sir.

Q When did you hear it first? A Two weeks after he was locked up.

Q And who told you? A Mrs. Gold.

Q The defendant's sister? A Yes, sir.

CASE #1082

Q And she is a very intimate of your wife; isn't she?

A Yes.

Q Did you ever hear anything about stolen goods being received by Mrs. Gold? A No, sir.

Q What? Yes or no? A No.

MR. LEVY: Now, if your Honor please, that was never touched on in the direct, and if the District Attorney refers to such new matter on the cross examination, he make the witness his own.

MR. JACOBY: He says that he never heard it.

MR. LEVY: And he is your witness on that question.

MR. JACOBY: May I proceed in my examination?

THE COURT: As far as I know, it is not relevant in any way.

MR. LEVY: And may I then ask to have it stricken out?

THE COURT: Strike it out.

BY MR. JACOBY:

Q Now, Mr. Saks, how long have you known Jacoby Levy, the public truckman? A I know him for the last eight years.

Q You don't know anything bad about him, do you, except this one thing that you tell us about? A Oh, every one in the neighborhood, the knockers, say that he is no good.

CASE #1082

Q Now, you don't live in that neighborhood, do you?

A Yes.

Q I thought you lived in 66th street? A Now, I live there, but I lived in 98th street for six years, and Levy used to live there.

Q And yet you were talking in a group with him, four months ago? A Nathan was talking with him, and I heard that.

Q And do you mean to say that you didn't say "How do you do, to Mr. Levy, before you heard that? A No, I never have a talk with him.

Q And you hadn't said a word to Mr. Posner? A No; that's the first time I ever seen him in my life.

Q The first time you ever saw him in your life?

A Yes.

Q And you just walked up to these people? A Yes.

Q And they were there before you got there? A Yes; I just walk over, and I said, "Hello, Nathan."

Q And Nathan turned and shook hands with you? A Yes, sir.

Q And then Nathan turned back to them, and then, with you standing there, they said that? A No, these people were talking to him, and I said to Nathan, "I ain't got no time. Come over, and I'll tell you what I want to talk to you."

CASE #1082

Q Now you said, on your direct examination, when Mr. Levy was questioning you, that you thought that this man that you called Nathan was a witness against Zabransky; did you say that? A I couldn't understand that.

Q (The question is repeated through the interpreter)

A Yes.

Q Now you heard, on Friday or Saturday, that Nathan's name had been mentioned in this case; didn't you? A I don't understand that.

MR. JACOBY: Well, translate it to him, Mr. Interpreter, if he says he can't understand it.

(The question is repeated through the official interpreter)

A I see him --

Q (The question is repeated through the interpreter)

A No, no.

Q How did you know, or how did you come to say that you thought that Nathan had been a witness for the people in this case? A I don't tell to nobody Nathan is a witness in the case.

Q Well, didn't you testify so, within the last fifteen minutes or half hour, that you thought a man named Nathan had been a witness against Zabransky in this case? A No, I don't tell that; I don't know if he is a witness or not. I see him down ~~xx~~ there in the lawyer's office, and that's all I

CASE #1082

know him.

Q You saw him down in Mr. Levy's office? A Yes.

Q And so you were in Mr. Levy's office? A Yes.

Q When? A Oh, before the case started in.

Q Well, Thursday? A Thursday or Wednesday; I couldn't tell you exactly the day.

Q Well, didn't Mr. Levy or somebody ask you about the size of that window, and didn't you tell them that it was too small for a man to go through it? A Certainly. The lawyer asked me what I know it, and I tell him what I know it.

Q (Question repeated) A No; the lawyer asked me what I know it, and I told the lawyer what I know it.

Q Don't you know that the testimony that the window was too small for a man to go through was important for the defendant in this case? A No, sir, I don't tell to the lawyer that.

Q Now, let me get at it finally. Do you or do you not say that you told the lawyer, within the last two or three days, that you told the lawyer that the window was too small for a man to go through? A No, sir.

Q I didn't ask you whether the lawyer asked you to say it, or anything like that. (Question repeated) A No, sir.

Q And then, for all that you know, when you went on the stand, Mr. Levy might have thought that you were going to say that the window was a big window? A No, sir.

CASE #1082

Q Mr. Levy didn't know what you were going to say about the size of the window? A No, sir.

Q And not only the lawyer, but no other human being, before you went on the witness stand, to-day, told you that you should testify that the window was too small for a man to get through? A Oh, no, sir.

Q And nobody spoke to you about the size of the window? A No, sir.

Q And the first you heard of the size of the window was when Mr. Levy asked you about the window, and you said it was about ten inches square? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. LEVY:

Q And you say that your mother-in-law lived opposite the premises where the blacksmith shop is? A Yes, sir.

Q And there was no obstruction from her window to the blacksmith shop; there is no elevated railroad there?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent, and leading.

THE COURT: Allowed.

BY MR. LEVY:

Q Well, can you see from your mother-in-law's windows? A Yes.

Q And can you see the horses and trucks coming out of that alleyway? A Yes, sir.

CASE #1082

Q Now did you ever see Levy and Posner coming out together, on Levy's truck?

MR. JACOBY: I object to that, as not proper re-direct examination.

A No, I don't see them.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal procedure, and adjourned the further trial of the case until Tuesday morning, January 18th, 1910, at 10:30).

CASE #1082

TRIAL RESUMED.

New York, January 18th, 1910.

I S R A E L B U D N I K, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Budnik; will you be kind enough to talk loud enough so that all these gentlemen can hear you? Now look at these gentlemen, and talk loud. A I can't speak English.

Q You can't speak English? A No, sir.

MR. LEVY: Then I ask for the interpreter.

THE COURT: Yes.

(The witness then testified through the official interpreter).

BY MR. LEVY:

Q What is your business? A Stable.

Q Where is your stable, where is your place of business?

A 102nd street, east.

Q How long have you been in business there? A Five years.

Q How long have you been in the livery business, stable business? A Five years.

Q Do you know the defendant, Harris Zabransky?

A Yes, sir.

Q How long have you known him? A Three or four years.

Q Was he employed by you? A Yes, sir.

CASE #1082

Q How long was he employed by you? A About a year.

Q What did he do for you, while he was in your employment?

MR. JACOBY: When, if your Honor please?

THE COURT: Yes, fix the time.

BY MR. LEVY:

Q During the time that he was employed by you?

MR. JACOBY: No. When was he employed by him?

THE COURT: Get the time, counsel.

BY MR. LEVY:

Q When was he employed by you? A About three years ago.

Q And what work did he perform for you, while employed by you?

MR. JACOBY: I object to any further testimony on this branch of the case, if your Honor please. The witness says that the defendant was employed by him about three years ago, and that would be about the beginning of January, 1906. A young man like that might have been a reputable employe then, and might have committed crime since then.

THE COURT: Overruled.

A He cleaned the horses, and hitched up the horses.

BY MR. LEVY:

Q When did he leave your employ? A A couple of years ago.

CASE #1082

Q Do you know what he did after that? A He bought a horse, and stabled with me.

Q Do you know what business he engaged in then? A He was peddling with fruit and vegetables.

Q How long do you know that he has been peddling with fruit and vegetables? A Since he left me.

Q Have you had occasion to meet him frequently since that time? A What's that?

THE COURT: Yes or no.

A He used to leave the stable in the morning, with a horse and wagon, and used to come back in the night time.

Q Did you see what he had on the wagon? A Yes, sir; the goods he had on the wagon always.

Q What kind of goods? A Vegetables and fruit; and oranges and potatoes.

Q Now, do you know what business he was engaged in, in September, 1908? Wait a minute. I withdraw that. Do you know what business he was engaged in in July and August, 1908? A I think he was sick, at that time.

Q Oh? But do you know whether he was in the same business at that time?

MR. JACOBY: Oh, I object to that. How can he know if he was in the same business, if he thinks he was sick?

THE COURT: What are you trying to get at, counsel? Character? Do you want to show that he has known him right

CASE #1082

up to the present time, and has known him well?

MR. LEVY: Yes, sir; as a peddler.

THE COURT: And that he knows his reputation for honesty and veracity and clean living; is that it?

MR. LEVY: Yes, sir.

THE COURT: Now, then, put it to him.

BY MR. LEVY:

Q Now, do you know what the defendant's reputation is for good character, honesty, clean living and uprightness?

A It is good.

THE COURT: Cross examine. Unless you want to go into the question of the transaction itself? Does he know anything about it?

BY MR. LEVY:

Q Do you know anything about this fire? A No.

CROSS EXAMINATION BY MR. JACOBY:

Q Did you know that there was a fire at Simon's blacksmith shop, at 99th street and First avenue, in the fall of 1908? A Yes, I heard. It is not far from me.

MR. LEVY: Now, I ask that the answer be stricken out.

MR. JACOBY: This is proper on cross examination, I submit.

THE COURT: It is cross examination, I assume, as

CASE # 1082

to what he knows about his reputation?

MR. JACOBY: Yes, sir.

THE COURT: Go ahead.

BY MR. JACOBY:

Q Now how long after this fire did you see Mr. Louis Saks about this case?

MR. LEVY: Objected to. It doesn't appear that he ever saw him.

THE COURT: Sustained.

BY MR JACOBY:

Q Do you know Mr. Louis Saks?

MR. LEVY: Objected to.

THE COURT: Overruled.

MR. LEVY: Exception.

A Yes.

Q How long have you known him? A Five or six years.

Q Do you know him very well? A Sure. He ~~is~~ has a blacksmith shop, and I have my wagons fixed there.

Q You have done business with Mr. Saks? A He fixes my wagons and I pay him, and that's all.

Q Did Mr. Saks ask you to be a witness in this case as to the character of the defendant Harris Zabransky?

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

THE COURT: overruled.

CASE #1082

MR. LEVY: Exception.

A No.

BY MR. JACOBY:

Q Did Saks ever talk to you about this case at all?

A No.

Q Who asked you to come here, and be a witness?

A Zabransky had worked for me, and knows that I know him to be a good boy, and so the lawyer asked me to come here.

Q And you have never talked with Mr. Saks at all about this case, either in the court room, or in the corridor, or at any time before to-day? A Yes. One talks. I am not a prisoner. I will talk.

Q Well, did you talk with Mr. Saks about the case, before you came here to testify? A No.

Q What was the -- what is the last month in the year, in any year? A I think Rosh Hoshanna and Yom Kippur.

Q What is the month before October? A What do I need to know that for?

Q Do you know what the month before October is? A I don't know.

Q Well, you don't know the names of any of the months in the Christian or English language; do you? A No.

Q Do you know whether this fire was two years ago, or a year and a half ago, or a year ago? A Perhaps more than a year, I think.

CASE #1082

Q Now, how long before that fire took place was it that the defendant, Zabransky, went out of your employ? A A couple of years ago.

Q How long before the fire was it that Zabransky, that Harris Zabransky, the defendant, ceased to be in your employ?

A I don't know exactly the time. I haven't got it in my head.

Q Well, wasn't it at least a year before the fire that Zabransky ceased to be in your employ? A More than a year.

Q Before the fire? A Before the fire, yes.

Q Now do you mean that, from that time on, he has no longer stabled any horse in your stable? A What's that?

Q That from that time on, more than a year before the fire, he did not stable any horse in your stable? A Yes, he did stable.

Q Well, did he stable his horse in your stable up to the time of the fire? A I can't remember exactly. About two weeks before Rosh Hoshanna, the Hebrew New Years, he got sick, and left the horse stabled with me, and left word that I could sell the horse.

Q Was that before the fire?

MR. LEVY: If your Honor please, one moment.

Some part of the answer the interpreter did not repeat.

MR. JACOBY: Now I object to the statement of counsel. We can have but one interpreter here, and

CASE #1082

that is the sworn interpreter of the Court, and he must be relied upon, and neither counsel is supposed to know the language better than he does, or at all.

MR. LEVY: But I thought it was my duty to call the attention of the Court to the circumstance.

THE COURT: Yes, I think it is highly the duty of the counsel to call the attention of the Court to it.

MR. JACOBY: I did not observe it, but I have no doubt that it is so, if the counsel says so. And I suggest that the question be repeated by the stenographer, and that we have the answer again.

THE COURT: Yes. Mr. Interpreter, you must pay careful attention to the words of the witness, and interpret them exactly, and not give your own judgment of what it means.

MR. LEVY: Pardon me, your Honor. In justice to the interpreter, I will say I didn't mean that. I meant that he didn't give all.

THE COURT: That is just as bad. That does not relieve it a bit.

(The question is repeated by the stenographer)

MR. JACOBY: And the only answer that I want to that question is yes or no.

BY MR. JACOBY:

Q Was it before this fire that he got sick, and left the

CASE #1082

horse in the stable, and told you that you could sell it?

MR. LEVY: Well, I think we are entitled to the whole answer.

MR. JACOBY: And I move to strike out that part which is not responsive.

THE COURT: As a rule, counsel are entitled to entirely responsive answers, but in this case, where witnesses speak a foreign language, I think that great latitude should be allowed in answering, and I have allowed that latitude throughout to both counsel.

MR. JACOBY: Now I understand the interpreter, if your Honor please, just as well, and perhaps better than my friend does, and I want him to answer the question that I asked.

MR. LEVY: No, I think that the jury are entitled to the whole answer.

MR. JACOBY: Now, I must state that the interpreter did not repeat my question to the witness.

THE COURT: And do both of you gentlemen say that this interpreter did not give the witness the question?

MR. JACOBY: It was so long ago that he forgot the question.

MR. LEVY: He interpreted the question correctly, but not all of the answer.

BY MR. JACOBY:

Q So that, before the fire, he ceased stabling his

CASE #1082

horse in your stable, and told you you might sell it, having become sick, as you say?

MR. LEVY: Objected to. I think the witness answered that, and I think his full answer should be given.

BY MR. JACOBY:

Q Was it before the fire that you say that the defendant got sick and went away, and told you you could sell the horse?

A I think so.

Q Now, how long before the fire was it that he told you you could sell the horse? A I don't know. I can't tell exactly when the fire took place. I don't follow the fire, I don't care for it.

Q Now, just tell me the names of any people -- just their name and nothing else -- with whom you have talked about the character of the defendant Zabransky?

MR. LEVY: Now, if your Honor please, I object to that that, under the law he is not obliged to specify the names of parties.

THE COURT: Well, he is trying now to get the source of his information, and the grounds of his statement that the defendant's character is good. I will allow him to answer.

MR. LEVY: Exception.

A I think I spoke to the storekeepers in the Harlem Market, where he used to buy goods, and they almost tore the hair from their heads when they heard --

CASE #1082

MR. JACOBY: Now, I object to that.

MR. LEVY: No, I ask that the answer be completed.

THE COURT: Yes, you are asking for information,
and let us have the answer.

A (Answer continued) That this boy should be charged with a
crime, and sent away.

BY MR. JACOBY:

Q Did you talk with Louis Saks about his character at
any time? A Louis Saks lives somewhere in 60th Street,
and I live in 102nd Street.

MR. JACOBY: I move to strike out the answer.

MR. LEVY: I object. The interpretation of the
answer is this, your Honor: "How can I talk to him,
when he lives so far away?"

THE COURT: I will strike it out. Repeat the ques-
tion.

(It is repeated by the stenographer.)

A We were talking here in the hall.

BY MR. JACOBY:

Q Did Mr. Saks tell you that he was a young man of good
character? A He needn't tell me that. I know it myself.

Q Did he tell you that? A No, he needn't tell me that.
I know it myself.

MR. LEVY: And the jurymen here request that the in-
terpreter should speak louder, as well as the witness.

CASE #1082

THE COURT: Yes, speak louder, Mr. Interpreter, and tell the witness to speak louder.

BY MR. JACOBY:

Q Now, did Mr. Saks tell you at any time that you should come here, and testify that this boy, as you call him, is a boy of good character? A He never spoke about that.

C H A R L E S B E L L E R , of 230 East 112th Street, a witness called on behalf of the defence, being duly sworn and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Beller, talk loud so that I can hear you, and so that these gentlemen at this end can hear you. You understand me? A Yes, sir.

Q What is your business? A Peddler.

Q Where is your place of business? A I am working with a horse and wagon, on Amsterdam Avenue.

MR. LEVY: If your Honor please, Mr. Levinson wants the witness to talk louder, because he evidently understands the language.

THE COURT: Yes, tell him to speak louder.

Q In 1908 where were you in business? A A peddler. I have been a peddler for the last twelve years.

Q Now, were you a peddler in the neighborhood where the

CASE #1082

defendant lived?

MR. JACOBY: I object to that question, on the ground that it does not appear that the witness knew where the defendant lived in 1908.

THE COURT: Overruled.

A Sure. He lived not far from me.

Q Where did you live at that time? A When? What time?

BY MR. LEVY:

Q During the year 1908? A 339 and 341 East 101st Street.

Q Now, where did the defendant live at that time? A Where he lived, I don't know, but every day I saw him standing with a horse and wagon at my house, in front of my house, at the door.

Q Did you see what he had on the wagon, every day?

A Yes, sir.

Q What did he have on the wagon? A Vegetables, fruit.

Q Did you know what business the defendant was in at that time? A No business; only he was a peddler.

Q Now, had you spoken to other -- do you know what the defendant's character or reputation is? A I know.

Q Do you know other people who know him? A Yes. When he came here, he was a small boy.

Q And you have known him since that time? A Sure. I remember he worked for Budlick in the stable.

CASE #1082

Q Have you spoken to other persons about the defendant's character? A No, never.

Q Did you speak to anybody about the defendant, whether he was a good boy or a bad boy? A Yes, I used to talk ~~in~~ about him with other peddlers, that he was always better than the others; that he didn't do us out of any business, like the others did.

Q Now, what is the defendant's character and reputation for good behavior, and honesty, and peace and quiet, and respectability, among those who know him? A They all say he is an honest man, and I know it myself.

Q Do you know whether he is a good man?

MR. JACOBY: I object to that.

THE COURT: Yes, I think you have got as far as you can on the direct.

MR. LEVY: I think so, too, sir.

CROSS-EXAMINATION BY MR. JACOBY:

Q Mr. Beller, do you know a man named Louis Saks? A No.

Q Didn't you see him in court here, on yesterday and Friday, in the corridors? A No, I have no business with anybody, and I don't run after anybody.

Q Weren't you here all day Friday? A I was sitting here about an hour, and I went away.

Q You never heard, did you, that Harry Zabransky was arrested in July, 1908, upon the charge of -- upon a criminal

CASE #1082

charge; did you?

MR. LEVY: Objected to.

THE COURT: Sustained. And the jury will disregard that entirely.

MR. LEVY: I ask your Honor to instruct the jury to disregard it.

THE COURT: Absolutely disregard it, gentlemen.

BY MR. JACOBY:

Q And did you hear that he was fined for disorderly conduct?

MR. LEVY: Objected to.

THE COURT: Sustained. And you must entirely disregard that, gentlemen; you must not consider it in any way. Dismiss it entirely from your minds in this case.

BY MR. JACOBY:

Q Didn't you ever talk to Mr. Budnik about your coming here to testify in behalf of the defendant as to his good character? A No.

Q When did you leave the East Side and go peddling over in Amsterdam Avenue? A It was about half-past eight in the morning, every day.

Q Did you peddle over on Amsterdam Avenue in the fall of 1908? A I told you that I have been working there for twelve years; only there.

Q Where did you stable your horses in September, 1908?

CASE #1082

A At Dreyfuss's place in 101st Street. It is a large stable.

Q Did you ever go to the saloon at 101st Street and First Avenue?

MR. LEVY: I object to that, as not proper cross-examination. It was not brought out on direct examination.

THE COURT: Well, I do not know what the purpose of it is.

MR. JACOBY: Well, I want to show that he met the defendant there.

MR. LEVY: Oh, if that's the purpose, I will withdraw my objection.

A I had no time for that. I used to leave in the morning and get home late in the night, about ten o'clock.

Q Well, didn't you ever, after ten o'clock, go to the saloon at 101st Street and First Avenue, and see the defendant there? A No.

Q You never went to that saloon at all? A I used to go in there once, on Sundays, in the daytime; that day when I didn't work, then I used to go in and have a pint of beer.

Q Did you ever go there late at night, in your life? A No, sir; never.

Q Never? A No, sir; I used to go in the daytime.

Q Well, you say you didn't get back until ten o'clock at night, on week days; don't you? A Sometimes at nine and

CASE #1082

sometimes at half-past nine, and sometimes at ten.

Q You want to tell me that you never went into that saloon on any business day, on any day that you worked, after you got back and stabled your horse? A No. How can I come from Amsterdam Avenue to the 101st Street saloon?

Q Where did you stable your horse in the fall of 1908?

A At Dreyfuss's.

Q Where? A At 101st Street.

Q Near what avenue? A Between First and the other avenue.

Q Well, what do you mean by telling me that you could not go to the saloon, if you stabled your horse at 101st Street, near First Avenue? A I used to take out the horse about four o'clock in the morning, and used to buy the goods, and then I used to go on my business. I had no time to go to the saloon.

Q Now, when you got to the stable and stabled your horse, after you had finished your work, at nine or ten o'clock at night, weren't you then in the immediate neighborhood of the saloon? A I used to go through that saloon. At the corner is a saloon, and the third house is my house, where I live.

Q And you used to go through the saloon, every night in your life; didn't you? A No, I passed the saloon on the sidewalk.

Q Now, do you still tell this jury that you never went

CASE #1082

into that saloon, on any business day, in the evening, after you had stabled your horse, and finished your work? A I was glad to get into my rooms, and sit down and take a rest.

Q (The question is repeated by the stenographer). A No, never.

Q Then, of course, you never at any time met this defendant in the saloon? A No. When I went in there --

THE COURT: That will be enough, that is enough.

He has answered.

BY MR. JACOBY:

Q Now, did you ever see him in front of the saloon, at night? A No.

Q Do you know what month comes after October? A November.

Q Do you know the month before October? A September.

Q Well, now, do you know whether this fire was in September, 1908? A What fire?

Q The fire in Simon's blacksmith shop, 99th Street and First Avenue? A I remember, yes, I remember that there was a fire there.

Q Now, after that fire, did you see the defendant peddling? A Yes, sir.

Q Are you sure that you saw him peddling after the fire? A Sure I saw him.

Q And did you see him peddling after one month after the fire? A Whether a month or two months, I can't tell for

CASE #1082

sure, but I saw him.

Q Do you mean to say that you saw him peddling right along up to the time that he was arrested? A Yes, sir; he peddled; yes, he was working as a peddler.

Q Now, up to when did he keep on peddling? A This summer I didn't see him here; up to this summer he worked.

Q Well, did you see him working in January and February, 1909? A I don't remember the months, but he used to work steady.

Q Now, isn't it a fact that you don't remember seeing him peddling at any time after October 15th, 1908? A At that time he worked steady; only this summer I didn't see him.

Q You are sure that you saw him peddling in the neighborhood of 100th Street and First Avenue, since this fire in Simon's blacksmith shop? A Not there. He worked up Amsterdam Avenue.

Q Since the fire he didn't work in the neighborhood of 100th Street and First Avenue, so far as you know? A Nobody is peddling there. There is only a market, and the people buy their goods there.

Q Do you know where he stabled his horse after September 24th, 1908, if he had a horse? A He had a horse, but I don't know where he stabled it.

Q And the only place you used to see him, after the fire, was over on Amsterdam Avenue? A I used to see him in the

CASE #1082

morning, in the market, also.

Q After the fire? A Yes, sir.

Q Now, how many years did you know him altogether?

A More than three years.

Q Do you know how old he is now? A No.

Q Did you ever talk about his reputation for honesty and truthfulness with any other persons? A No.

Q Do you know anybody else who knows the defendant, to your knowledge? A Sure. He is known there.

Q Tell me the names? A No.

Q You don't know that Louis Saks is a friend of his; do you? A I don't know who he is.

Q You don't know that Budnik is a friend of his; do you? A I know Budnik, but I don't know whether he is a friend or not.

Q You never talked with Budnik before you came here to court, about coming to testify that the defendant here is an honest and truthful person; did you? A No.

MR. LEVY: Now, I have other character witnesses, but I think we have got enough.

THE COURT: Very well.

MR. LEVY: So I will call Mrs. Becky Goldman.

B E C K Y G O L D M A N , of 1880 Douglas Street, Brownsville, a witness called in behalf of the defence, being duly sworn and examined through the official interpreter,

CASE # 1082

testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Where do you live? A 1880 Douglas Street, Brownsville.

Q Oh, you must speak louder. What was the answer?

A 1880 Douglas Street, Brownsville.

Q Where did you live in the months of July, August, September, October and November, 1908? A 100th Street.

Q What number in 100th Street? A 413 and 415.

Q That is between what avenues? A First Avenue and the river.

Q Now, this defendant is your brother, isn't he? A Yes, sir.

Q Did he live with you at that address in 101st Street at that time?

MR. JACOBY: Didn't she say 100th Street?

MR. LEVY: Yes, I believe now she did.

Q At that address in 100th Street? A Yes, sir.

Q What business was your brother in at that time?

A Peddler.

Q Now, do you remember the time of this fire that is talked about in this case, September 24th, 1908; do you remember that time? A It was before Rosh Hoshanna.

Q What was before Rosh Hoshanna? A I know my brother was sick two weeks before that.

1375
CASE #1082

Q Now, wait a minute, please; I didn't ask you that. What was before Rosh Hoshanna? The fire? A I don't remember whether it was before Rosh Hoshanna. How can I remember that?

Q Well, now, do you know what day the first day of Rosh Hoshanna was on? A Yes.

Q What day was it? A Saturday, the first day, and Sunday the second day.

Q Now, did you hear about the fire? A I didn't hear anything about a fire.

Q Now, do you know whether -- do you know where your brother, the defendant, was on the first day of Rosh Hoshanna, in 1908? A He was in my house a week after his sickness. Two weeks before Rosh Hoshanna he was sick.

Q Well, what was the matter with him?

MR. JACOBY: I will object to that. No, I will let her answer that.

A He had a carbuncle on the neck.

BY MR. LEVY:

Q Now, for how many days before Rosh Hoshanna did he have the carbuncle on his neck? A Two weeks before Rosh Hoshanna he was dangerously ill.

MR. JACOBY: I move to strike that out, that he was dangerously ill.

THE COURT: Strike it out.

CASE # 1082

BY MR. LEVY:

Q Was he very ill on Rosh Hoshanna?

MR. JACOBY: I object to that, as leading.

THE COURT: Well, he may find out where he was at that time. If he was in his house and in bed, I will take that. But as to his exact condition, I do not think it possible to have that from this witness.

BY MR. LEVY:

Q Where was he on Rosh Hoshanna? A In the house.

Q Well, what was he doing in the house? Was he standing up or sitting down, or lying down? A He was still lying.

Q Lying in bed? A Yes, sir.

Q What was the matter with him, if you know? I am talking about Rosh Hoshanna now? A One day before Rosh Hoshanna, that carbuncle had opened, the carbuncle which he had on the neck. The first day of Rosh Hoshanna he felt a little bit better, but still he was lying.

Q Well, go on? A I know my brother was sick, and he was lying in bed until a few days after Rosh Hoshanna.

Q Lying where? A In bed. Then afterwards we put a bandage around the neck.

Q No, no; I want the answer. Was he lying in bed? A Two days after Rosh Hoshanna he was still lying in bed.

THE COURT: Ask her, Counsel, how long he was confined to his bed before Rosh Hoshanna?

CASE #1082

MR. LEVY: I will, sir.

BY MR. LEVY:

Q Now, before Rosh Hoshanna was he confined to his bed? How long was he lying in his bed, sick? A Before Rosh Hoshanna, he was lying in bed for two weeks, dangerously ill.

MR. JACOBY: I move to strike that out, dangerously ill.

THE COURT: Well, I will strike that out. The rest of the answer may stand.

BY THE COURT:

Q He was sick in bed two weeks before Rosh Hoshanna, and for two days afterwards? A Yes, sir.

Q That is your testimony; is it? A Yes, sir.

MR. LEVY: Yes, sir; that's the testimony of the witness.

Q You say that he was sick in bed for two days after Rosh Hoshanna? A (No answer.)

MR. JACOBY: If your Honor please, I move that the witness leave the stand, until she ceases making this exhibition.

CASE #1082

THE COURT: Yes. Is that all that you want to prove by this witness, counsel?

MR. LEVY: Oh, no, sir. I want to show how long he was in the house, confined to his bed, sick.

MR. JACOBY: And I move, if your Honor please, that this witness be removed from the room, until she ceases to weep and wail ostensibly.

THE COURT: Yes.

MR. LEVY: And I wish your Honor would tell her that, if she continues to cry, she cannot testify.

THE COURT: Yes, the interpreter may tell her that. She may be taken outside, until she has become composed.

MR. JACOBY: And can't we call another witness in the meantime, your Honor, so as to save time?

THE COURT: Yes, you may call another witness.

MR. LEVY: I will.

SAMUEL GOLDMAN, of 1880 Douglass street, Brownsville, a witness called in behalf of the Defense, being duly sworn and examined through the official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q You are the husband of the last witness; are you not?

A Yes, sir.

Q During the year 1908, where did you live? A 413 and

CASE #1082

415 East 100th street.

Q Who lived with you there? A I lived there with my wife and family.

MR. LEVY: Wait a minute. Give me the full answer. He hasn't finished his answer.

THE INTERPRETER: Pardon me. I will let him finish, but I wanted to get what he had already said, before I forgot it.

MR. JACOBY: It seems that the witness can speak English.

BY THE COURT:

Q Can you speak English? A A little bit I speak English.

THE COURT: Well, see if you can get along.

THE WITNESS: I can't explain everything.

THE COURT: You cannot explain everything?

THE WITNESS: No, sir.

(The witness testified from this point on in English).

BY MR. LEVY:

Q (Question repeated). A I lived there with my wife and family, and I have one boarder in the house.

Q What is his name? A Morris Reissman.

Q What floor did you live on? A Third floor.

Q How many rooms did you occupy? A Four.

Q Do you remember the first day of Rosh Hoshanna, in the year 1908? A
sure I know it.

CASE #1082

Q Do you know what day that happened on? A That day was Saturday.

Q Do you know the date of the month? A I know in Jewish. In English I don't.

THE COURT: Well, you can prove that accurately by some other witness; can't you?

MR. LEVY: Yes, sir.

Q Well, give us the Jewish month? A Eller.

Q Well, what date in Eller?, A (No answer).

MR. LEVY: I think the District Attorney can agree with me on the date.

THE COURT: Well, you can fix the date in the Jewish calendar, and then we can have the corresponding date agreed upon in our calendar.

THE INTERPRETER: I can fix it exactly.

THE COURT: Do you wish the interpreter to state it?

MR. LEVY: Yes, sir.

MR. JACOBY: Yes, sir.

THE INTERPRETER: In 1908, the first day of Rosh Hoshanna was Saturday, September 26th.

MR. LEVY: We concede that.

MR. JACOBY: And so do we.

THE COURT: Then that is agreed upon?

MR. LEVY: Yes.

MR. JACOBY: Yes, sir.

CASE #1082

THE COURT: And how many days does the festival continue?

THE INTERPRETER: Two days, sir, Saturday and Sunday.

(The witness testifies through the Interpreter from this point on).

BY MR. LEVY:

Q Now did the defendant live with you at that address at that time? A Sure. He lived with me all the time, as long as he has been in America.

Q Now, on Rosh Hoshanna, was the defendant in your home? A Sure; he was still sick at that time.

Q Now please tell the Court and jury what you saw. Was he sick or not sick? A Two weeks before Rosh Hoshanna he got sick, I know. There was something on the back of his neck.

Q Well, what do you call that something in Yiddish? A In Yiddish it is called a "macha", which corresponds to a carbuncle in English.

Q Now do you know whether he went out of the house on Rosh Hoshanna?

MR. JACOBY: Now, if your Honor please, I object to calling for the witness's conclusion in this way. If this witness was not there all day on Rosh Hoshanna, how can he tell?

THE COURT: es, you had better ascertain whether he
Y

CASE #1082

was all day in his residence, or went out.

BY MR. LEVY:

Q Did you go to the synagogue on Rosh Hoshanna? A Yes, sure.

Q At what time? A On Saturday morning.

Q When you left for the synagogue, did you see the defendant in the house? A Yes, sir, sure.

Q Well, was he up, or where was he?

MR. JACOBY: Now, I object to the testimony as to where the defendant was on the 26th of September, 1908. I cannot see what relevancy it can have to the 24th.

MR. LEVY: I am going to connect it, your Honor.

THE COURT: Well, I will take it. You are going to connect it, you say?

MR. LEVY: Yes, sir, I will. I am going backward now, in the Hebrew style.

Q (Question repeated). A When I went to the synagogue, he was still lying on his couch. He used to sit up a little while, and then lie down again. He wasn't quite well as yet. On the eve of Rosh Hoshanna, the carbuncle had opened, and on Rosh Hoshanna day he felt a little easier.

Q Now did you see him in your home, the night before Rosh Hoshanna, on Friday night? A Yes, sure.

Q Did you see him in your home the night before that, on Thursday? Yes or no? A Yes, he was all the time at

CASE #1082

home.

Q On the other two nights was he home all of the time, do you know, Thursday and Friday nights?

MR. JACOBY: I object to that, on the ground that the witness has not testified, and could not possibly be qualified to testify that he was at home all of those nights.

BY MR. LEVY:

Q Well, were you yourself at home all of both of those nights, those two nights before the first day of Rosh Hoshanna?

A I was at home in the night time; I was at home.

Q Now, you remember the two nights before Rosh Hoshanna distinctly, do you not? A Sure, because those two nights before Rosh Hoshanna, he was very sick. He had more pain in his neck then than before.

MR. JACOBY: I move to strike out that last part, that he had more pain in his neck than before. How can the witness possibly know that?

THE COURT: Except that he may have manifested signs of pain. I will let it stand. The jury perhaps, recognizing it in that respect, will regard it that the witness has testified that he manifested pain, during those evenings, those two nights.

BY MR. LEVY:

Q How do you know that the defendant had more pain in

CASE #1082

his neck? Did you see anything? What was he doing?

How do you know that? on those two nights, Thursday and Friday night? A He hollered in the night time that it was painful, and I saw that it was very red, and I used to put on oil-meal poultices.

Q Now did any other person help relieve him at that time, those two nights? A The two nights before Rosh Hoshanna, an aunt of mine was staying with me over night.

Q Well, what date was it? A Why, this aunt used to relieve my wife, and attend to ~~the~~ Zebraksky, because he was suffering.

Q Now how late did you sit up with the defendant, on Thursday night, before Rosh Hoshanna? A I was sitting up until one o'clock, I think.

Q Do you know who sat up with him, if anybody, after that hour? A After this hour, my aunt was sitting up. They used to change off.

Q Did you see whether your wife waited on the defendant, while he was sick at that time? A We used to attend to him, all of us. When I slept, my wife attended to him; and then I relieved her, and she relieved me, and so on.

Q And do you know of your own knowledge whether the defendant left that home at any time on Thursday, Friday or Saturday -- all Thursday and Friday, -- before Rosh Hoshanna, 1908? A No; he didn't go out nowhere before Rosh Hoshanna.

CASE #1082

Q How do you know that he didn't go out? A Because I was in the house.

Q Do you know whether he was able to go out?

MR. JACOBY: Now, I object to that.

THE COURT: Sustained.

MR. LEVY: Exception.

THE COURT: You may find out how long he had been confined to his house, and to his bed.

BY MR. LEVY:

Q How long was the defendant sick in bed with this carbuncle before Rosh Hoshanna, and how long after Rosh Hoshanna, 1908? A About two weeks before Rosh Hoshanna, and the day before Rosh Hoshanna the carbuncle opened; and, a day or two after Rosh Hoshanna, he felt a little easier, and could go downstairs.

Q How many days after Rosh Hoshanna did he go downstairs, if you remember? A I don't exactly remember if it was the first day or the second day after Rosh Hoshanna, but I know that during Rosh Hoshanna he could not go out, could not go down.

Q Well could he go down and out the Thursday before Rosh Hoshanna? A No, sir.

CROSS-EXAMINATION BY MR. JACOBY:

Q Goldman, have you any children? A Yes.

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

CASE #1082

Q And what is your present business? A Tailor.

Q Do you work for somebody? A Sure, for a boss.

Q Who do you work for? A Draur & Drezzin.

Q Were you working for them in September, 1908? A Yes, sir.

Q For the same people? A I have been working in this place since I came to America.

Q Do you mean to tell me that you have been working for one employer all the time that you have been in America? Yes or no? A Yes, sir.

Q Now what time do you go to work in the morning, nowadays? What time do you have to be there in the morning? A Eight o'clock.

Q And are they in the same place now that they were in, in September, 1908? A No, they moved.

Q Well, where were they in September, 1908? A 4 & 6 Washington Place.

Q How long did it take you, in 1908, to go from your residence to their place of business? A About an hour.

Q About an hour? A Yes, sir.

Q So you used to leave your house, every business morning in September, 1908, at about seven o'clock in the morning; is that right? A Yes, sir.

Q Now, Monday, Tuesday, Wednesday, Thursday and Friday before Rosh oshanna were all business days; weren't they?

A Yes, sir.

Q And on every one of those days, you left the house at seven o'clock in the morning; is that right? A Yes, sir; seven o'clock.

Q And on every one of those mornings you had breakfast at what hour? A I used to get up before six o'clock, and make my breakfast, and eat it.

Q On every one of those mornings, you are quite sure that you got up before six o'clock? A Yes, sir.

Q Now, when you are working at this place, nowadays, what time did you knock off work? A Six o'clock.

Q And then you always go right home? A Yes, right away home.

Q And that was the same way on Monday, Tuesday, Wednesday and Thursday and Friday before RoshHoshanna, 1908? A Yes, sir.

Q And it would take you about an hour to go home; wouldn't it? A Sometimes a little more, and sometimes a little less.

Q Well, you would get home generally around seven o'clock in the evening? A Before seven, sometimes.

Q And then you used to have your principal meal of the day, didn't you, at home, with your family? A As it happened, sometimes at nine o'clock, and sometimes at half past eight, and sometimes ten o'clock, as it happened.

Q Then you used to eat the principal meal of the day,

CASE #1082

didn't you? A Yes; the main meal was in the evening.

Q Yes, when you got home from your work? A Yes, sir.

Q Now, as soon as you finish your dinner, don't you generally go to bed, and go to sleep? A No. As it happens, sometimes it is summer, and one goes down with the children to take a walk with them.

Q Well you say you did not have dinner sometimes until nine or ten o'clock? A Yes, sir.

Q And after you had finished your dinner, then it was your custom to retire, and go to bed and sleep; wasn't it? A If it happened that I had my dinner late, then I went to bed after dinner. If I had my dinner earlier, then I took a walk afterwards.

Q Now at what time did you go to bed, on Monday night before Rosh Hoshanna, 1908, if you can remember? A I can't remember when I went to bed.

Q Can't you remember what time -- A I know I was sitting up late.

Q Well, you didn't go to bed before twelve o'clock, Monday night? A I am not sure.

Q Well, do you remember what time you went to bed on Tuesday night before Rosh Hoshanna, 1908? A Tuesday, I think, also, about one o'clock, or perhaps later.

Q One o'clock in the morning? A No, not in the morning; the night

CASE #1082

Q Well, one o'clock, in the middle of the night? A Yes, sir.

Q And got up at six o'clock? A Yes, sir; and often before six o'clock.

Q How old a man are you? A I am 33.

Q 33 years old, and you got sleep enough in five hours, Tuesday night? A Yes, sir.

Q And Wednesday night, what time did you go to bed? the Wednesday before Rosh Hoshanna, 1908? A Also late, I went to bed.

Q Well, you were a very tired man on Thursday before Rosh Hoshanna; weren't you? A Sure I am tired. When I work, I am tired.

Q And you were a tired man on Thursday before Rosh Hoshanna, weren't you, on the Thursday before Rosh Hoshanna, when you got home, you were a very tired man; weren't you? A I was tired, as every time.

Q And yet you are absolutely positive, as you testified before, you are absolutely positive that, on that Thursday night before Rosh Hoshanna, you were up and about until one o'clock in the morning? A Yes, sure. But I don't call it one o'clock in the morning. I call it one o'clock at night.

Q Well didn't you know, within a few hours after you got up, on the Friday before Rosh Hoshanna, that there had been a fire at Simon's blacksmith shop, at 99th street and First

CASE #1082

avenue ? A I found it out in the evening, because I had overslept myself a little bit, and I was in a hurry to run to work; and so I found it out only on the evening of that day.

Q You found it out only on the evening of the day before Rosh Hoshanna? A I think it was Thursday night.

Q You think the fire happened in the night from Wednesday to Thursday, is that it? A That's what I think.

Q And not on the night from Thursday to Friday? A I don't remember for sure.

Q But you are sure that on both Wednesday night and Thursday night, on both those nights, you were up until one o'clock in the morning? A Yes, sir.

Q And on both those occasions, the last thing you did before you went to bed was to see that your brother-in-law was safely tucked in his bed? A Yes, sure.

Q Did he sleep in a separate bed room from you? A Yes.

Q And you used to go in -- you went in on both of those nights, and bid him good night; did you, before you went to bed? A I left him to go to bed. I was with him.

Q Had you ever known any other person but your brother-in-law to have a carbuncle on his neck?

MR. LEVY: Now, that is not proper cross-examination, I submit, if your Honor please. I object.

MR. JACOBY: I think it is eminently proper, and I will lead up to it in a moment, and show the connection.

CASE #1082

THE COURT: Well, I will take it and see.

A In Europe I know that people sometimes used to have such things.

BY MR. JACOBY:

Q And how long do you say you have lived in this country now? A Seven years.

Q Well haven't you often in Europe and America seen people with carbuncles, or people with their necks tied up, and who, when you asked what was the matter, told you that they had a carbuncle? A I see people going around with a bandage around their neck, but I didn't ask them why they had a bandage around the neck.

Q Well, you know that carbuncles, or these things on the neck, these sores on the neck called carbuncles, are quite common things; don't you? A Sure, I know. A brother of mine had it in Europe.

Q And you know that, as a general thing, people that have carbuncles on their necks are not confined to their beds, for periods of time; don't you?

MR. L. EVY: I object to it, as immaterial, irrelevant and incompetent, and not within the issues, and not proper cross-examination.

MR. JACOBY: If your Honor please, I will promise to connect it.

Sustained

THE COURT:

CASE # 1082

BY MR. JACOBY:

Q Now you knew, did you not, that your brother-in-law, the defendant here, was very unusually ill from this particular carbuncle that he had; didn't you? A He was weak, because he couldn't move his head.

Q Well you knew that this case of your brother-in-law's that you have told the jury about, that this case of your brother-in-law's carbuncle, was an unusually severe case; didn't you? A Because it drew together the whole neck.

Q Then you mean that it was an unusually severe case? A Sure, I knew it.

Q Now, then, you do not claim that there was any doctor called in to treat your brother-in-law, during any of the period that he was sick from this carbuncle; do you? Was any doctor called in to attend your brother-in-law during the period that you say he was lying sick in the house? A When I was in the house, a doctor was not called.

MR. LEVY: And I respectfully request your Honor to allow the witness to complete the answer. The witness did not finish the answer.

A (Answer continued): I know in Europe, when one had a carbuncle --

MR. JACOBY: Now, I move that the remainder of the answer be stricken out.

THE COURT: es, it is in no way responsive.
Y

CASE #1082

BY MR. JACOBY:

Q Now you claim that your brother-in-law was in the house every night within the two weeks previous to Rosh Hoshanna, at the time you went to bed; that is, from early in the evening until you went to bed, which was sometime at one o'clock at night, and you claim that, for two weeks before Rosh Hoshanna, every night during those two weeks, your brother-in-law was sick in bed; do you? A Yes; he was always at home.

Q And he was always at home, even when he wasn't sick; wasn't he? A Even when he wasn't sick. After work, he used to come home, and have his supper, and, when I went to bed, I locked the door, and I saw that he was at home.

Q You mean to say that he never stayed out all night?

A No.

Q Will you swear positively that you personally know that, every night for three months prior to Rosh Hoshanna in the year 1908, that every night for three months before that time, he was safely in the house, and in bed, before you went to bed?

MR. LEVY: I object to that as incompetent, and not within the issues.

THE COURT: Well, it is cross-examination. I do not think it has much bearing, but I will allow it.

MR. JACOBY: I want to show to what extent he will go.

CASE #1082

THE COURT: Yes.

MR. LEVY: I except.

A I am sure that, for three months, he was in the house.

BY MR. JACOBY:

Q And do you know positively that he never used to be standing around in front of, and sometimes inside of that saloon, at the corner of 101st street and First avenue, late at night; don't you? A No.

Q He never did that; did he? A No, not late at night; never.

Q And he used to get home from work about nine or ten o'clock at night, so far as you know, didn't he? A All the week, he used to come earlier, but Saturday he used to come later. When he sell his goods earlier, he used to come home earlier.

Q But after he got home he never went out after dinner, and stayed out late at night, or all night; did he? A No, not coming home at all. This didn't happen.

Q Well didn't he sometimes go out late in the evening, after he had come home, and had his dinner? A About ten or half past ten, sometimes he used to go down, but at eleven o'clock he was up, because he has to get up early.

Q At eleven o'clock, he went to bed always, because he had to get up early; is that right? A Yes, sir. I can't figure it out to the minute exactly. Sometimes one goes to

CASE #1082

bed a quarter of an hour sooner or later.

Q Did you yourself ever go to a theatre, or any entertainment of any kind, within the three months before Rosh Hoshanna, 1908?

MR. LEVY: Objected to, as not proper cross-examination, not within the issues, and as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. JACOBY: Exception.

A No, I don't remember that I did.

Q Do you say positively that you yourself never went to any theatre or entertainment that kept you out late at night, within the three months before Rosh Hoshanna, 1908? A Every two weeks, I go to a meeting.

Q Now what time do you get home from that meeting?

A I get home twelve or half past twelve; as we happen to finish our business at the meeting.

Q And, on those nights, your brother was always home before you got home; wasn't he? A Yes; he used to open the door for me.

Q Do you remember that he was always home, during all those three months, whenever you were to an entertainment or club meeting, before you got home? A At home I know positively that he was.

Q Well, did he ever go to any theatres, or balls, or

CASE #1082

entertainments which kept him out late after you had retired ?

A He doesn't belong to any societies that he could go to meetings.

Q And you will state positively to this Court and jury, as your last testimony, that you are positive that, for the three months before Rosh Hoshanna, 1908, your brother-in-law was in bed every night before you locked up the house, and went to bed? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. LEVY:

Q Why are you sure that your brother-in-law, the defendant, was at home on the night of December 24, 1908?

MR. JACOBY: I object to that as not being proper re-direct examination, and also as calling for his conclusion, and as ~~not~~ having been brought out before .

THE COURT: Has not that been brought out before sufficiently, counsel?

MR. LEVY: No, your Honor, pardon me a moment. I don't remember whether I brought out whether he recalls this particular night, because it was two nights before Rosh Hoshanna.

THE COURT: Oh, yes you did, very fully. And he also testified that, for two weeks before that night, he was confined to his bed.

MR. LEVY: May I ask this one question, your Honor?

CASE #1082

BY MR. LEVY:

Q Why do you know that the defendant was at home particularly on Thursday night, September 24th, 1908?

MR. JACOBY: Objected to.

THE COURT: Well, he says that he connects it with the festival.

MR. LEVY: Well, if that is plain to your Honor and the jury, I have no further questions to ask on that subject.

MR. JACOBY: May I make a request, if your Honor please, that this witness be not allowed to talk with his wife until I have a chance to cross-examine her?

THE COURT: Yes, I will make that order.

MR. LEVY: Now call in his wife, and see if she can testify now.

MR. JACOBY: And I ask that I be allowed to cross-examine her now, before we adjourn?

MR. LEVY: What's that?

MR. JACOBY: I ask that I be permitted to cross-examine her, before we adjourn for recess.

MR. LEVY: I'm not half through with her. I expect her to take a long time. Suppose that I call another witness who will not take so long.

MR. JACOBY: No, I insist, if your Honor please, that I cross-examine her before the adjournment for recess.

THE COURT: Yes, that may be done.

CASE #1082

1

BECKY GOLDMAN, being recalled by counsel for the defence, for further direct examination, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. LEVY:

Q Now, Mrs. Goldman, do you remember two nights before Rosh Hoshanna, 1908? A Yes, sir.

Q Do you know on what day Rosh Hoshanna happened in that year, the first year?

MR. JACOBY: What is the use of wasting time asking the witness these questions, when we have it fixed by stipulation?

MR. LEVY: I want to know whether she knows it, but I will pass on to something else.

BY MR. LEVY:

Q Now, do you know whether your brother was at home on that night? A Sure he was at home, because he was sick.

THE COURT: I think you have also got that, that she also testified that, for two weeks prior to Rosh Hoshanna, he was at home, and in bed.

MR. LEVY: Did we get as far as that?

THE COURT: I think so. And for a couple of days afterwards.

MR. JACOBY: And, if we haven't got that, I will stipulate that she so testified.

THE COURT: Yes, but I am pretty clear that that was

CASE #1082

testified.

BY MR. LEVY:

Q What did you do for your brother on Thursday night before Rosh Hoshanna? A I applied poultices, because he was sick.

Q Did he have a doctor? A No.

Q How often did you apply poultices to his neck, on Thursday night, the night of the fire? A Every ten minutes.

Q Well, until what hour did you do that, during that night? A Until about six o'clock in the morning.

Q Did your husband help you, that night, in applying poultices to the defendant's neck? A Up to the time that he went to bed, he did.

Q Now, who else was in the room, that night? A My husband, my boarder, my aunt and the children.

Q Do you know of your own knowledge whether your brother, the defendant, left that room that night at any time? A How could he go, when he was so sick that the man can't go out?

Q Well, was he lying in bed all the time, that night? A All night he was lying in bed, until the carbuncle opened.

Q Was he lying in bed all that day, Thursday? A Sure. When he was so sick, it's natural.

Q Did you go out of the house at any time, that night, after supper, Thursday night, September 24th, 1908? A No. you remained

Q And ~~remained~~ indoors on that night? A All the night

6041
CASE #1082

with my aunt.

Q Now, did you see your aunt do anything to the defendant? A When I would lie down for rest, then she would attend to him; and, when she lied down to rest, I attended to him, and so we changed off.

Q Now, did you wait on the defendant on any of those nights before September 24th, 1908, while he was sick? A Sure.

Q Now, on how many nights did you do the same thing, before Thursday, September 24th, 1908? A Two nights before Rosh Hoshanna.

Q And before that how many nights did you wait on your brother, the defendant? A Two weeks.

Q Well, now, do you know of your own knowledge whether your brother went out of the house on Rosh Hoshanna, Saturday? A How could he go out, when he was so sick?

Q Well, did he go out the day before, on Friday, yes or no? A He didn't go, because the neck was open, the wound was open.

Q Did he go out of the house the day before, on Thursday? A He couldn't go.

Q Did he go out of the house the day before that, on Wednesday? A No, sir.

THE COURT: She said, Counsel, that for two weeks before that time, he had not gone out of the house.

One question will cover it.

CASE # 1082

MR. LEVY: Now, this is my last question, your

Honor, on that subject.

BY MR. LEVY:

Q During the time that he was sick, did he go out of the house at all, at night? A No, sir.

CROSS-EXAMINATION BY MR. JACOBY:

Q Now, Mrs. Goldman, you are older than your brother; aren't you? A Yes.

Q Were you living in the same house with him when he was born? A Sure.

Q How old were you when he was born? A I think I was about nine years.

Q Are you sure that you were about nine years old when he was born? A I know it for sure, because --

MR. JACOBY: I object to the reason. I just want to know if she is sure that she was about nine years old when he was born, and she says yes.

THE COURT: Yes.

BY MR. JACOBY:

Q Now, haven't you seen other cases of carbuncle on the neck, because this case of your brother? A Yes, I saw once a younger brother of mine had it.

Q Well, haven't you seen people with their necks tied up that had a carbuncle, on a number of occasions, in both this country and in Europe?

CASE #1082

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

THE COURT: Allowed.

MR. LEVY: Exception.

A How do I come to find out those things? I am a housewoman, and attend to my business.

BY MR. JACOBY:

Q Well, you knew how to treat this case of carbuncle, by putting poultices on it; didn't you? A Yes.

Q Because you had heard of other cases, and knew how they were treated; is that right? Yes or no? A (No answer.)

MR. LEVY: She is answering you. Let her alone.

A I know my aunt is an older woman than I am, and she has children, and she is more experienced, and she told me what to do in such a case, and what to apply.

Q Well, your aunt knew about carbuncles, then? A Yes.

MR. JACOBY: And I wish now, if your Honor please, to say, that while I am not criticising the interpreter, but I do not think that he translated one of the questions that I asked the husband of this lady, and which I am now about to propound to her, I do not think he translated it into German precisely correctly, and I am now going to suggest to him the correct translation into German. This will be the question, "This was an unusually severe case, was it not?" And the translation would be,

3641
CASE #1082

(Mr. Jacoby speaks in German).

MR. LEVY: Now, I object to that, if your Honor please.

THE COURT: And I will instruct the interpreter to take the question and put it in the language that he is talking with the witness in, and report back to the jury her exact reply, instructing the witness not to go beyond the question. And I will instruct the interpreter to be extremely careful to put the question just as the examiner gives it to him.

MR. JACOBY: The question is:

Q This was an unusually severe case, was it not?

THE INTERPRETER: Mr. Jacoby --

THE COURT: No, just translate that question. Do not make any explanations.

MR. LEVY: I object to the question because it does not appear that she is a doctor, and doesn't claim to be.

THE COURT: Overruled.

MR. LEVY: Exception. She doesn't understand the question.

THE INTERPRETER: The witness does not speak German. Mr. Jacoby must understand that, must know that. I wish she would speak German.

(The question is repeated through the interpreter.)

A I don't know how others have it. I only know how he had it.

CASE # 1082

BY MR. JACOBY:

Q Well, he seemed to be a very sick man to you , on every one of the five nights before Rosh Hoshanna, 1908?

A All the nights, and the two weeks.

Q And all the two weeks before Rosh Hoshanna of that year, the year in which the fire took place, 1908? A Yes. I don't know when the fire was, but I know that in 1908, for two weeks before Rosh Hoshanna, my brother was very sick.

Q Now, is the wife of Louis Saks, a witness for the defence in this case, a relative of yours? A She is a distant relative of mine.

Q Well, you know her and Louis Saks very well, don't you? A Sure.

Q You have visited them, during the last years, and they have visited you, isn't that so? A Not much, because I live in Brownsville, and they live uptown.

Q I don't mean now. You live in Brownsville now? A Yes, sir.

Q I mean in 1908, you used to visit them quite often, and they used to visit you? A Perhaps once in a month.

Q And how soon after the fire did you hear of the fire in Simon's blacksmith shop? A I didn't hear, because at that time my brother was sick, and I had children, and I had no time to bother with it.

Q How soon after Rosh Hoshanna, 1908, did you hear that

1495
CASE #1082

your brother was charged with having set fire to Simon's blacksmith shop? A I didn't hear it until now.

Q You didn't hear it until now? You heard it last Friday; didn't you?

MR. LEVY: Yes. Well, that's what she means.

MR. JACOBY: Well, that's what I want to find out.

A From the time that they started the trouble with my brother.

BY MR. JACOBY:

Q And do you know when your brother was arrested on this charge? A Five weeks ago.

Q Now, before he was arrested, did he continue to live with you and your husband in Brownsville? A With me and my husband in Brownsville.

Q How long after Rosh Hoshanna, 1908, did you continue to reside up in the neighborhood of 101st Street and First Avenue? A I think three months.

Q And you moved from there to Brownsville? A Yes, sir.

Q Isn't it a fact that you moved to Brownsville within a month or six weeks of Rosh Hoshanna, 1908? A Never, no.

Q And until you moved to Brownsville, your brother, the defendant, continued to live in your house in the neighborhood of 101st Street and First Avenue, with you? A Nowhere else, except with me.

Q And after you moved to Brownsville, he also went and continued to live with you in Brownsville? A Yes, sir.

CASE #1082

Q And never lived anywhere else since Rosh Hoshanna, 1908, up to the time that he was arrested? A Nowhere else, except in my house, because we are children three years apart, and therefore we keep together.

Q By the way, how old are you now, if you don't mind telling me? A Thirty-one years.

Q How long ago was your birthday?

MR. LEVY: Now, if your Honor please, I object.

He asks her when her birthday was.

MR. JACOBY: I want to find out whether she is just thirty-one, or nearly thirty-two, as bearing on the age of the defendant.

THE COURT: Well, I will sustain the objection. I do not see the importance of it.

MR. JACOBY: Well, perhaps your Honor may see the importance of it. It is because I want to fix the age of the defendant.

MR. LEVY: Then I will withdraw the objection, if it is for that purpose.

BY MR. JACOBY:

Q When is your birthday, Madam? A I can't tell. I remember my parents used to say that I was born before Rosh Hoshanna.

Q Now, your brother used to be home every night, didn't he, even before he got sick with the carbuncle, for the full

14651

CASE # 1082

three months before Rosh Hoshanna, 1908, used to be home every night at twelve o'clock?

MR. LEVY: Now, I object, if your Honor please.

There is a misstatement of the evidence. She didn't testify to that at all.

MR. JACOBY: I haven't said that she did, Judge. I am asking it of her. MY friend is too astute a lawyer not to really understand the question.

THE COURT: I will allow it.

MR. LEVY: Exception.

A Later than ten, he never used to be outside.

BY MR. JACOBY:

Q And, so far as you know, ^{of your own} ~~from~~ personal knowledge, he was never out late at night? I mean around twelve or one o'clock at night, on any night at all, for three months before Rosh Hoshanna, 1908? A Never.

Q And your husband always used to lock up the house, didn't he, after your brother-in-law got home? A Yes, sure; my husband used to be the last one to go to bed, and he used to close up the house.

Q And your brother did not have a key to the apartment, did he, your brother, the defendant, did not have a key to the apartment, did he? Yes or no? A He never had a key.

Q Now, did this apartment have two doors opening into the hallway? A One door.

CASE #1082

Q And that was always locked before the family went to bed; wasn't it? A Yes; when all went to bed, my husband used to lock the door.

Q And you will state positively that you know that for three months before Rosh Hoshanna your brother was never out all night? A No; he has no such business to stay out nights.

Q And you are particularly positive and certain that on none of the nights just before Rosh Hoshanna, 1908, three or four nights before Rosh Hoshanna, 1908, you are positive that he was not out all night on any one of those nights?

A Sure, I'm positive. He was sick, and couldn't go out.

Q And you know that he is charged now with setting fire to a blacksmith shop on the night of September 24th, 1908, two days before Rosh Hoshanna; don't you? A I found it out now; before I don't know it.

Q Well, didn't your husband or anybody else tell you that it was very important for you to testify that your brother was sick and confined to the house for two or three nights before Rosh Hoshanna, 1908? A Who needs tell me that? I know that my brother was sick at that time.

Q Well, did or did not your husband, or any other person, tell you that you should testify, or that it was important that you should testify, that your brother was sick at home with a carbuncle, for two or three or four nights before

CASE #1082

Rosh Hoshanna, 1908? A I'm not a baby, that people have to tell me what to say.
RE-DIRECT EXAMINATION:

MR. LEVY: Just one or two questions before we adjourn. There was just one new matter that he brought out.

Q How many rooms did you occupy in New York, before you moved to Brownsville? A Four rooms.

Q And there was but one door leading into the hall?

A Yes, sir.

Q And what room did it lead into? A The kitchen.

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

BY MR. LEVY:

Q And what room was next the kitchen? Was your bedroom next to the kitchen? A Yes, sir.

Q Was it your bedroom? A Yes, sir.

Q Was your brother's bedroom next to yours, further in?

A There were two bedrooms. The bedroom in the kitchen was mine, because it was warmer, and when my brother got sick, it was too cold in the bedroom that he had, and I took him into this bedroom.

Q And that was next to the kitchen? A Yes, sir.

Q And you and your aunt, and whoever was in the house, spent most of the time in the kitchen; isn't that so?

CASE #1082

MR. JACOBY: Well, if your Honor please, I object to that as leading, and not proper on re-direct examination.

THE COURT: Sustained.

BY MR. LEVY:

Q Where did you and your aunt and the others there spend most of your time, while your brother was sick; in what room in that apartment?

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Now, did you know what your brother worked at, while he lived with you at Brownsville?

MR. JACOBY: I object to that as immaterial, irrelevant and incompetent, what he worked at, three months after.

THE COURT: Well, you have the witness's testimony that the defendant lived with her in Brownsville, and also uptown, and as to what he was doing, I think, during that time.

MR. JACOBY: I will withdraw the ~~my~~ objection.

A He was peddling vegetables.

BY MR. LEVY:

Q In Brownsville? A In Brownsville, and in the latter

CASE # 1082

time he had a coal cellar and fruit.

Q Did he peddle in the neighborhood of Brownsville, after you left New York, moved away from New York?

MR. JACOBY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed. Yes or no.

A Yes.

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

CASE #1082

AFTER RECESS.

FANNY HOCHFELD, of 231 Eldridge Street, a witness called on behalf of the defence, being duly sworn and examined through the official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q You are the aunt of this defendant? A Yes, sir.

Q Where do you live? A 231 Eldridge Street.

Q Where did you live on Rosh Hoshanna, 1908? A Also, 231 Eldridge Street.

Q Where did this defendant live on Rosh Hoshanna, 1908? A 10th Street.

Q With whom? A With his sister.

Q Did you see the defendant on Rosh Hoshanna, 1908? A Yes, sir.

Q Where? A In the house of his sister.

Q How many times did you see him there? A Whenever I used to go there I saw him there.

Q How many times were you there before Rosh Hoshanna? A Two weeks before Rosh Hoshanna, he was sick, and I used to go there often to see how he was doing.

Q Did you ever sleep in that house overnight, when he was sick? A Yes, sir.

Q How many times? A Two nights.

Q Was that before Rosh Hoshanna? A Yes, sir.

Q How many nights before Rosh Hoshanna? A Two nights

CASE #1082

before Rosh Hoshanna.

Q Do you know what day Rosh Hoshanna was on? A Saturday and Sunday, I think.

Q Now, did you sleep in that house on Friday before Rosh Hoshanna? A Friday I didn't sleep there. I had to go home.

Q Did you sleep there Thursday night? A Wednesday night ^{the} and Thursday were [^] two nights I was there.

Q Now, please tell us what you did there on Wednesday night, when you stopped there all night? A I came there on Wednesday, in the daytime, to see how he was doing, and he had a big carbuncle on his neck, and Zabransky's sister, my niece, told me, "I don't know what to do. Whatever I do it doesn't help him." And then I took oil-meal and milk, and I started to apply that to him, and she started to ask me that I shall stay there over-night, and then I was staying there all night, and applied these oil-meal poultices to his neck; and the second day and the night also I applied this oil-meal, and then, in the morning, when he felt a little better, it was Rosh Hoshanna eve then, and then I went home.

CASE #1082

CROSS EXAMINATION: BY MR. JACOBY:

Q You are the aunt of this defendant here? A Yes, sir.

Q His mother was your sister, or his father? A His father is my brother.

Q And you have known this defendant since he was a baby; haven't you? A Sure.

Q And you have talked about giving your testimony in this case; haven't you, with your niece, Mrs. Goldman, and with your nephew, Mr. Goldman; haven't you? A I'm not a baby, that I have to talk about it. I have seen the trouble that he had.

Q Well you didn't talk to your niece and her husband, did you? Yes or no? A They told me that he was arrested, and I told them, "How could he be arrested for that time? I was there two nights with him."

MR. JACOBY: I move to strike out the answer.

THE COURT: Strike it out.

MR. LEVY: I take an exception, if your Honor please.

Q (The question is repeated by the stenographer).

A I know myself that he was sick at that time, and I don't have to talk to anybody about it.

MR. JACOBY: I move to strike out the answer.

THE COURT: Strike it out.

(The question is repeated by the stenographer).

CASE #1082

A I don't understand what you mean.

M O R R I S R E I S S M A N, of 1937 First avenue, a witness called on behalf of the defense, being duly sworn, and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q What is your business? A I am a workingman.

Q In what business? A Operator on cloaks.

Q Where did you live in September of 1908? A By Mr. and Mrs. Goldman.

Q Where was that? A 413 and 415 100th street, between First avenue and Avenue A.

Q Who else lived there? A Mr. Goldman and Mrs. Goldman.

Q Were you boarding with them? A Yes.

Q Did the defendant live there then? A Yes; I am he.

Q What room did you occupy? A In a bed room.

Q Do you remember Rosh Hoshanna of 1908? A Rosh Hoshanna was on Saturday and Sunday.

Q Now did you see the defendant, on that day, on Saturday, the first day of Rosh Hoshanna? A Yes, sir.

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

Q Did you see him the day before that, on Thursday?

CASE #1082

MR. JACOBY: Now, if your Honor please, I object.

He is leading the witness.

THE COURT: Well, I will permit it. He may ask the question.

A Thursday, he was sick, he was dangerously ill.

MR. JACOBY: I move to strike that out, that he was dangerously ill.

THE COURT: Strike it out.

BY MR. LEVY:

Q Did you see him in that place on Thursday night?

A Thursday night, I came from work, and I saw him in the house.

Q What was he doing in the house? A He was lying there. He was dangerously ill.

Q What were you doing there? A I was living there, boarding.

Q How late did you stay up, that night, Thursday night?

A I am living there; I was staying there over night; I was sleeping there.

Q How late did you stay up that Thursday night? A Until eleven o'clock at night.

Q What did you do after, what did you see there, what happened there, up to the time you went to sleep? A He was very sick, and they were applying poultices of oil-meal to him.

CASE #1082

Q Who was applying the poultices? A His aunt, Mrs. Hochfeld.

Q You are a cousin of his also; aren't you? A Yes, sir.

Q A cousin of the defendant? A Yes, sir.

Q Now did you see anybody else apply poultices to the defendant? A His sister, also, applied.

Q And the brother-in-law? A His sister changed off with the aunt. When she was tired out, then the other one took her place.

Q Did you see his brother-in-law there? A Yes, sir.

Q Now did you see him early -- now what time did you get up, the next morning?

THE COURT: You are speaking of Friday morning, counsel; are you?

MR. LEVY: Yes, sir.

A Six o'clock.

BY MR. LEVY:

Q Do you know whether the defendant left that room or that house, on Thursday night? A No, sir; he was very sick; he couldn't go out.

Q Now did you see the defendant at any time on Friday night in the house? A Yes; Friday night he was in the house.

Q Did you sleep in the room with him? A Yes.

Q Did you sleep in the same bed with him? A Yes.

Q On that night? A That night, I didn't sleep in the same bed.

CASE #1082

Q Now where did you sleep, and where did he sleep?

A He was sleeping in the kitchen bed room, and I was sleeping in the front room bedroom, because he was very sick.

CROSS-EXAMINATION BY MR. JACOBY:

Q How old are you, Reissman? A 22 years.

Q How long have you lived in this country? A Over three years.

Q And when you came to this country, did you go to live with your relatives, the Goldmans? A Yes, sir.

Q And up to when did you live with your relatives, the Goldmans? Until they moved to Brownsville? A Up to the time that they moved to Brownsville.

Q When did they move to Brownsville? A I think about a year.

Q About three months after the fire; eh? A I don't know anything about a fire.

Q You never heard anything of the fire? A I heard about fire. There is no wonder in America to hear something about a fire.

Q Did you hear about the fire in Simon's blacksmith shop, in 99th street and First avenue? A I don't know anything about any fires.

Q Did you know that your cousin was accused of having set fire to a blacksmith shop, at 99th street and First avenue; and, if you did know that, tell us when you heard that he was

CASE #1082

accused of it? A I don't know anything about fires.

Q Do you remember that your cousin had a carbuncle, sometime within a year or two years of this present time; don't you? A In 1908, about two weeks before Rosh Hoshanna, he was very sick.

Q Now you only heard of the case that was coming up here within the last two or three days; didn't you? A I don't understand it. " In the last two or three days, he felt a little better.

Q I suppose you are referring to the last two or three days of the carbuncle story; aren't you? A Yes.

Q You remember that accurately, that the last two or three days he felt better; don't you? A On Rosh Hoshanna ~~the~~ eve, on Friday, he felt a little better, because that carbuncle had opened.

Q Now who reminded you of the fact that the carbuncle opened -- who, if any one -- the night before Rosh Hoshanna? A Nobody told me, because I was in the house myself.

Q And you didn't know it till you were put on the witness-stand here that you were going to be asked about when that carbuncle opened; did you? A What do you mean, I didn't know?

Q You didn't know until you sat down in this witness-chair that anybody was going to ask you about your cousin Zabransky's carbuncle, and when he had it? A What do you mean I didn't know? When I was in the house, why shouldn't I

CASE #1082

know that?

Q Did you or did you not know until you took your seat in the witness-stand, to-day, that some of the lawyers would ask you about when, about precisely when, your cousin had this carbuncle on his neck? A I knew it, because I lived in the house, that Friday night, the carbuncle opened.

Q Well, you say that you knew that he had that carbuncle on Friday, but what I want to know is whether you knew that the lawyers were going to ask you about it? A Sure I knew that he had it, because I was in the house.

Q Have you talked about this case at all, about the time when the carbuncle was on your cousin, the defendant's neck, with your relatives, Mr. and Mrs. Goldman, the sister and brother-in-law of the defendant? A I spoke to them, and they took me to the lawyer, and told me to tell the lawyer everything I knew.

Q But neither ~~Mr.~~ Mr. or Mrs. Goldman reminded you of the alleged fact that the defendant had the carbuncle, during the two weeks preceding Rosh Hoshanna, 1908? A Nobody reminded me, and there was no necessity for it, because I know it myself.

Q And you went to the lawyer's office, you say? Yes or no to that? A Yes.

Q Did you see this gentleman (indicating Mr. Levy)?

A Sure; yes

CASE #1082

Q And then you just told him what you knew about the case; is that right? A He asked me, and I told him.

Q And now at any time before you went to the lawyer's office, neither your relatives, the Goldmans, nor the old aunt, Mrs. Hochfeld, nor Mr. Louis Saks, nor anybody else, reminded you of the fact, if fact it be, that this carbuncle was on your cousin's neck for just the two weeks right up to Rosh Hoshanna, 1908, nobody reminded you of that? A Nobody told me.

Q And the defendant Zabransky was always at home at night in that apartment, every night for three months before Rosh Hoshanna, 1908? A Yes, sir.

Q And he never stayed out late at night in all those three months? A No, sir.

Q Not on a single occasion? A No, sir.

Q And you never stayed out late at night? A No, sir.

Q And did your relative, Mr. Goldman, always lock up the house before you turned in? A Yes, sir.

Q And, whenever he locked up the door, both you and Zabransky, the defendant, were safely at home; weren't you? A Yes, sure, I and he were at home.

Q Didn't you ever stay away for the whole night, during those three months? A No, not I.

Q Did the defendant Zabransky at any time, to your knowledge, remain out all night, on any night, in the three months before Rosh Hoshanna, 1908? A He didn't go any-

CASE #1082

wheres. He remained at home.

Q And he always was out working, ev3ry business day, at the peddling business too; wasn't he. A Yes, every day he used to work.

Q He knocked off very early in the afternoon, did he, as far as you know? A No, he worked straight.

Q And did you see him around those premises for all the time after Rosh Hoshanna, 1908, until the Goldmans moved to Brownsville, a few months later? A Yes, sir.

MR. LEVY: Now, I have just one more witness, besides the defendant, on a different subject, and I will call him, and that will be all.

LOUIS BRUMBERG, of 405 East 101st street, called in behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q Mr. Brumberg, what is your business? A Stable business.

Q Where is your stable? A In 101st, 405 East.

Q Is that your own business? A My own business, yes.

Q And how many horses and trucks, do you stable there?

A About twenty. I got them steady, and sometimes I got more than that in there, you know.

Q What is it? A boarding stable? A Boarding and sales

CASE #1082

stable, too.

Q Where is it? A In 101st street, right near First avenue.

Q Do you know this defendant? A I know him. He is a peddler.

Q Did you ever see him in Mrs. Posner's house?

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

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Do you know Mrs. Dinah Posner? A I know the name, as Dinah.

BY THE COURT:

Q Do you or do you not? A Yes, sir.

BY MR. LEVY:

Q Did you see her in this court house at any time? A I saw her outside, just now.

Q And do you know whether or not she was a witness in the case? A I heard about it. They were speaking about it in the neighborhood where I lived.

Q Did you ever visit her? A I certainly did.

Q What? A I did.

Q Where? A Up in the house.

Q What house? A In Second avenue.

CASE #1082

Q Eh? A 1870 Second avenue.

Q Well, how often did you visit her there?

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

THE COURT: How is it material or relevant here?

MR. LEVY: May I make the statement publicly, your Honor?

THE COURT: Yes.

MR. LEVY: The defense will prove that this defendant, and also others, had sexual intercourse with this Mrs. Posner; that the husband of Mrs. Posner was in jail at that time in Queens County; that some one notified him that these men were having intercourse with his wife; that, when he came out of jail, he threatened this defendant with bodily harm, and also threatened to put him away for twenty years.

THE COURT: Will this witness testify to that?

MR. LEVY: Well, I want to show his relations with the woman.

THE COURT: Oh, no. Anything that this witness will testify to in that regard, I will take, anything that would show any threats made by Posner to this man with reference to the defendant; I will permit you to go into that very fully.

MR. LEVY: Well, I don't know whether he heard any

CASE #1082

threats.

Q Did you ever see this defendant come out of Mrs. Posner's apartment?

MR. JACOBY: I object to that, as being immaterial, irrelevant and incompetent and improper.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Do you know when Mr. Posner was in jail? A Do I know?

Q Do you know when Philip Posner was in jail? A I didn't know when he was in jail. I never knowed she had a husband.

MR. JACOBY: I move to strike that out.

THE COURT: Strike it out. Answer the question.

Q (The question is repeated by the stenographer).

A I know it.

BY MR. LEVY:

Q Did you know it at the time? A Yes, sir.

Q Did you visit her when her husband was in jail?

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Did you have any conversation with her --

CASE #1082

THE COURT: Anything that has relevancy to the matter which is the subject of this indictment you may ask about, but anything that is foreign to it, I will exclude, and so counsel will take that suggestion from the Court, and act upon it.

BY MR. LEVY:

Q Did you have any conversation in the apartments of Mrs. Posner, with Mrs. Posner, about this defendant?

MR. JACOBY: I object.

THE COURT: One moment, counsel. If it has any relevancy to this transaction, you may go into it, but, if it is something that is extraneous to it, I shall exclude it.

MR. LEVY: Well, I really don't know myself. I want to know whether she ever told him of any relations.

THE COURT: Well, I wish you would consult with the witness, on that subject, if you desire to. In other words, I do not want any legal vice in the case, if I can avoid it.

MR. LEVY: Never mind. That's all.

MR. JACOBY: No cross-examination. If your Honor please, I ask this witness Posner be in court during the examination of the defendant.

THE COURT: No, I do not see any reason for it, counsel, why she should be.

CASE #1082

MR. JACOBY: Just as your Honor thinks.

THE COURT: No, I do not think so.

HARRY ZABRANSKY, of 1880 Douglas street,
Brownsville, the defendant, being duly sworn and examined,
through the same official interpreter, testified as fol-
lows:

DIRECT EXAMINATION BY MR. LEVY:

Q In 1908, where did you live?

MR. JACOBY: Now, if your Honor please, I wish to
find out whether this defendant can talk English.

BY THE COURT:

Q Can you speak English? A A little bit.

THE COURT: Well, you must speak out louder. It is
important that the jury should hear you.

THE WITNESS: I can't explain good.

THE COURT: Do you understand what I am saying to
you?

THE WITNESS: A little, I understand. But I can't
explain. In Yiddish I could explain.

THE COURT: Well, I think perhaps it will save time
to take it in Yiddish. Proceed.

A East 100th street, 413 and 415.

BY MR. LEVY:

Q With whom did you live? A With my sister and Broth-
er-in-law and Morris Reissman.

CASE #1082

Q Do you know -- what business were you in at that time?

A Peddler.

Q Where? A I used to peddle in the street, Amsterdam avenue and Columbus avenue.

Q And where did you stable your horse and wagon? A 446 East 102nd street.

Q Do you know where Louis Simon's blacksmith shop is, where it was in 1908? A No.

Q Do you know now where it is? A I see that there is a shanty and a chicken market, but what is inside, I don't know.

Q Well, were you in Simon's shanty or blacksmith shop, on the night of September 24, 1908? A No, sir.

Q Did you set fire to it? A No, sir.

Q Did you jump out of any window of that building, on that night, between the hours of one and two? A No, sir.

MR. JACOBY: The witness answered the question from the English question, without the aid of the interpreter, if your Honor please.

THE COURT: Well, he said that he can speak some English, but can do himself better justice by speaking in Yiddish. He may proceed through the interpreter.

BY MR. LEVY:

Q Were you in the company of a man called Moscher, that night, and did you see a witness named Frenchy? A Thursday

CASE #1082

night, I wasn't anywhere, and I haven't seen either Moscher or Frenchy.

Q Did you see Jacob Levy, that night, September 24, 1908?

A No, sir.

Q Did you ever visit the witness Philip Posner in the Queens County jail? A I never went there.

Q Did you hear Posner testify that you went there, and called upon him, three times? A Yes, sir, here in court I heard it; as he said it.

Q Did you ever visit him on the occasions that he testified to?

MR. JACOBYP Well, he says that he was never there at all.

THE COURT: Yes, he says that he never visited him.

BY MR. LEVY:

Q Did you ever tell him, as he testified, that a man by the name of Marx had promised to pay you \$75 to burn Simon's blacksmith shop? A I don't know Marx, and I don't know Philip Posner.

Q I am talking about -- did you say that to Posner? A I never seen him.

Q Or to any other man? A Never.

Q Did you ever say to that, or words to that effect, to Kapochelsky, in a saloon, or in his hearing? A I know Kapochelsky. I used to see him in the market, and used to buy fruit

CASE #1082

from him, but I didn't say anything, and I don't know anything about it.

Q Did you ever tell the witness Posner that you would try to get him abondsman, and try to get him out of the Queens County Jail? A I have never seen him.

Q Did you ever tell him that you had received \$25 on account, and that you had burned the blacksmith shop, and that there was more money coming to you for the job? A I never seen him, and never spoke to Posner.

Q And did you ever take Mrs. Posner to visit Mr. Posner, in the Queens County Jail? A Never went.

Q You heard her testify that she had gone -- that she went with you to visit Posner in the jail, six times?

MR. JACOBY: Oh, I object to that. I don't believe that was the testimony.

THE COURT: Well, he says that he never took her there, or went there himself.

BY THE COURT:

Q Ask him if he knew that Posner was in jail, at Long Island City? A I didn't know.

BY MR. LEVY:

Q But you know now, don't you? A No.

Q You knew he was in jail; didn't you? A No, sir.

Q But you know now that he was in the jail in Queens County; don't you?

CASE #1082

MR. JACOBY: I object to that. He is leading the witness, and he has been over that subject, and is now cross-examining his own witness.

THE COURT: Well, he says that he was never there, and, therefore, ~~that~~ the conversations did not take place, and the visits did not take place.

BY MR. LEVY:

Q Now did you ever visit a stable, or go to any place in 100th street, with a man who was called here Moscher, by one of the witnesses? A Never in my life; I never in my life went with anybody in the night time.

Q Now do you know where Mrs. Posner lived in the year 1908? A In the summer of 1908, she lived in 101st street, between First and Second avenues.

Q Did you ever peddle in that neighborhood? A No, sir.

Q Did you ever go there? A No, sir; once I was there.

Q Did you go to visit anybody there at that time?

MR. JACOBY: I object to that.

THE COURT: What time? Anything in reference to the 24th of September, 1908? There was some testimony here, on the part of Mrs. Posner that, on the night or morning of the 24th of September this defendant did come to her apartment. Bring him right to that.

MR. JACOBY: But that wasn't at 101st street, your Honor.

CASE #1082

THE COURT: Well, at some place. I do not accurately recollect the address.

BY MR. LEVY:

Q Mrs. Posner testified that, on the 24th of September 1908, or on the morning of that day, you knocked on the door, and begged to be admitted, and then, when admitted, you said that you had just burned up Simon's blacksmith shop, and that you thought somebody was following you, and you wanted her to let you in, to hide there until morning. Did any such thing take place? A I never seen her. I seen her once, six weeks before that, when she moved from 104th street to 96th street, to No. 1850.

Q Well, you didn't see her that night or morning? A No, sir.

Q Did you see the little child, Marie Rubinstein, on that day or morning? A No, sir; I didn't see anybody.

Q Were you in her premises at all, on that night? A No, sir.

Q Were you, on September 24, 1908? A No, sir.

Q Where were you on September 24, 1908? A I was in my sister's.

Q Where were you on the night of September 24, 1908?

A At my sister's.

Q What was your condition of health, on that night? A I was sick.

CASE #1082

Q Well, what was the matter with you? A I had a carbuncle on the neck.

Q How long did you have the carbuncle? A Two weeks before Rosh Hashanah.

Q How long were you confined to your house? A Two weeks before Rosh Hashanah and two or three or four days after Rosh Hashanah.

Q Now during that time were you confined to your bed constantly?

MR. JACOBY: I object, on the ground that he is leading the witness,

MR. LEVY: Well, I will withdraw that.

Q During the time that you had this carbuncle on your neck, did you go out, from time to time, at night, up to Rosh Hashanah? A No. I couldn't get out of my bed. I was very sick.

Q Were you in bed all the time? A Yes, sir.

Q Who treated you for that carbuncle during that time? A My sister, and, two days before Rosh Hashanah, my sister couldn't attend to me any more, she was tired out, she had to attend to her children, and then came my aunt, and she attended to me.

Q Now you say you have visited Mrs. Posner at 1850 Second avenue. When did you visit her? A It was after the feast day that they call Whitsuntide. In Jewish, they call it

CASE #1082

Shevoos.

Q Will you say it was in the summer time ?

A Yes.

Q Now at that time did you sell her anything? A At the beginning, she lived at 101st street, with her old mother and father, in a flat, the number I don't remember. I went there to her house to buy paper bags for the fruit and vegetables.

Q Well, did you sell her any vegetables? A She was on the second floor, looking out of the window, and she asked me whether I had to sell something good, any vegetables.

CASE #1082

MR. JACOBY: Now, I object to the conversation between the witness and Mrs. Posner, on the ground that it is immaterial, irrelevant and incompetent, and not within the issues of fact in this case.

THE COURT: Well, the question is whether he sold her anything. I will allow it.

A She told me to carry out three bundles of potatoes.

BY MR. LEVY:

Q Now, did you ever have any sexual intercourse with Mrs. Posner, at 1850 Second Avenue?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Did you visit Mrs. Posner at 1850 Second Avenue, more than -- how many times did you visit her there?

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

THE COURT: Counsel, if your purpose is to go into the subject of conspiracy, bring this witness right to Posner, and then it may have some relevancy or bearing.

BY MR. LEVY:

Q Now, at the time of your discharge in the Harlem police court, did you see the witness Philip Posner, and

CASE #1082

Jacob Levy and Dinah Posner together there?

MR. JACOBY: I object to that as leading.

THE COURT: Sustained. You may refer to some charge preferred up there against him, if there was one, if you can fix the date.

BY MR. LEVY:

Q Mr. Zabransky, do you remember when you were charged with some offence, up in the Magistrate's Court in Harlem?

A (No answer.)

Q Do you remember the case in Harlem, when you were arrested? A Yes, sure I know.

Q Do you remember when that took place, about the time?
A I think it was in the month of November.

MR. JACOBY: What year?

BY MR. LEVY:

Q What year? A 1908.

Q Did you see Mrs. Posner there? A Yes; and Philip Posner and Jake Levy, and Jesse Brennan, with a partner, the detective.

Q Now, did Mrs. Posner testify against you in that proceeding?

MR. JACOBY: Objected to, as immaterial, irrelevant and incompetent, and also as calling for a conclusion.

THE COURT: Yes, she may state whether she appeared in that court, and testified to the charge against him.

BY THE COURT:

1437
CASE #1082

Q Did she? A Yes.

BY MR. LEVY:

Q And you were discharged, were you not?

MR. JACOBY: Well, I object to that. It is calling for a witness's conclusion as to a judicial proceeding.

THE COURT: Allowed.

A Yes.

BY MR. LEVY:

Q You were discharged? A Yes, sir.

Q And, when you were leaving the Court House, did you have any conversation with the three persons that you have just named, in or out of that building, that Court House?

A When I came out of the Harlem Court, I came downstairs, and I found there Jacob Levy and Philip Posner and Dinah Posner, and two more people.

Q Now, what did Philip and Dinah Posner and Jacob Levy say to you? A Philip Posner came up to me and struck me in the face, and Jacob Levy said, "What's the use of beating him? We would rather send him away for twenty years to prison."

Q Now, when Posner struck you, what did he say to you? A Either he will shoot me, kill me, or he will send me away for twenty years, for the reason that I had lived with his wife.

Q Now, what happened after that? A Then I came to my

CASE #1082

sister. The next day, I went peddling again, and I came home from peddling, and I unhitched the horse in 102nd Street, and I went back to my sister, to my home.

When I approached my stoop, there came Jake Levy, and Philip Posner, and two Italians, and they started to beat me, and they beat me in the hall.

And I saw that they were troubling me very much, and putting up people to watch me and beat me, and I came up to the sister, and she asked me why I was so pale, and I said --

MR. JACOBY: I object to anything that he said to his sister or she said to him, on that occasion.

THE COURT: Sustained.

BY MR. LEVY:

Q Now, was anything said by Jake Levy or Posner, at the time they were beating you in front of your house, at that time? A He told me that I wouldn't go away from New York, that either I will be shot, or I'll be sent away to prison for twenty years.

BY THE COURT:

Q Who said that? A Jake Levy, with Philip Posner.

BY MR. LEVY:

Q Now, how long did you live with your sister at that place after that? A Then we moved to 101st Street, and lived there six weeks, and they still troubled me and beat me.

Q Wait a minute. Where did you move to? A 101st Street.

CASE #1082

Q Did you ever see Posner and Levy in the 100th Street house, or near it? A They are always standing in the corner of First Avenue, and talking to one another, and that Kapochelsky and the watchman, too.

Q Well, did anything else happen? A The watchman came up to me and asked me why those people are so angry with me.

Q Who do you mean by the watchman? Frenchy? A Yes, sir.

Q Go ahead, go on? A He said, "It would be better for you not to have any business with them, because they may shoot you." Then I went up to my sister, and told her she should move away to Brownsville.

MR. JACOB: I object to that, and move to strike it out.

THE COURT: Motion granted.

BY MR. LEVY:

Q Now, after you spoke with your sister, did you move away to Brownsville? A Yes, sir; we moved away.

Q Where did you move to? A Brownsville.

Q Did the whole family move over there? A Yes, sir; my sister and my brother-in-law.

Q Now, did you ever come back to New York, to that neighborhood? A The whole week I used to peddle among the Jews in Brownsville, and only Saturday I used to come to New York, and peddle that one day, because on Saturday they don't

CASE #1082

peddle among the Jews.

Q Well, where did you peddle on Saturday? A Amsterdam Avenue. And Detective Brennan used to see me in 165th Street and Amsterdam Avenue, on the corner.

MR. JACOBY: I move to strike that out.

THE COURT: Motion granted.

BY MR. LEVY:

Q Now, after you moved out to Brownsville, did you always conduct your business out there?

MR. JACOBY: I object to that, as immaterial, irrelevant and incompetent, and not within the issues.

THE COURT: Well, I will take it. If he went in and out of this city, it is some evidence.

A I peddled with a push cart. It was winter time, and I peddled with a push cart.

Q Did you ever peddle around Canarsie? A In summer, I had rented a horse and wagon. Jesse Brennan has the card from the place where I hired a horse and cart, and I used to peddle every day in the summer time.

Q Now, you say that Posner punched you and threatened you, threatened to shoot you, or send you away for twenty years, because you lived with his wife?

MR. JACOBY: Now, if your Honor please, he has testified to that, and Counsel is merely repeating what he said.

CASE #1082

MR. LEVY: Well, wait until I finish my question.

THE COURT: Put your question to the witness.

BY MR. LEVY:

Q Now, did you ever live with his wife?

MR. JACOBY: Now, I object to that.

THE COURT: If you can get from this witness that he told Eva Posner or any of these witnesses that you charge are in this conspiracy, I will take it.

MR. LEVY: Well, I believe, your Honor, I have laid the proper foundation.

THE COURT: If it was brought to the attention of Posner, anything that the witness said, or any one of those that you say are in conspiracy against him.

MR. LEVY: Did your Honor hear the answer that the witness made a few minutes ago, at the time he was punched by Posner, outside of the Harlem police court? Posner threatened to shoot him, or send him away for twenty years, because he had lived with his wife.

THE COURT: Yes, that is what he said.

MR. LEVY: And, on the cross-examination of Posner, I laid the foundation for just that testimony. It was all brought to his attention.

THE COURT: I will sustain the objection.

MR. LEVY: Exception.

THE COURT: If he said anything about it, so that it was conveyed, showing a motive for the conspiracy,

CASE #1082

I will permit you to go into that.

BY MR. LEVY:

Q Did you ever have any conversation with Mrs. Posner in regard to a letter that she sent to her husband while he was in jail?

MR. JACOBY: I object to that.

THE COURT: If it refers to this matter of the conspiracy, I will allow it.

BY MR. LEVY:

Q In relation to your relations with her, Mrs. Posner, while he was in jail?

MR. JACOBY: Objected to.

THE COURT: Sustained.

BY MR. LEVY:

Q Did Mrs. Posner ever tell you not to come around any more, because her husband was at home, and he knew all about your relations with her?

MR. JACOBY: Objected to.

THE COURT: Sustained.

MR. LEVY: Exception.

THE COURT: Counsel, you have already in evidence that Posner charged him with it, and acted upon the charge, and beat him, and said that he would send him to prison, or he would kill him. Now, whether it is a fact or not, is not of great importance, except if it was conveyed to him by this witness, or by any of these

CASE #1082

9

392

different parties, it may furnish a sufficient motive for him to believe that something like that would happen.

MR. LEVY: Your Honor, I am very glad that that is your opinion in this matter, because it relieves me of the necessity of besmirching this woman's character publicly.

MR. JACOBY: I don't see, if your Honor please, how he could besmirch it more openly and publicly than he has done.

MR. LEVY: I mean as to the actual facts. You may examine.

CROSS-EXAMINATION BY MR. JACOBY:

Q Now, you say that Mr. Posner came up to you, after you had been let out of the Harlem police court -- is that what you call the Fifth District Court? A It is in 121st Street, towards Lexington Avenue.

Q It is in 121st Street, towards Lexington Avenue?

A Yes, sir.

Q Now, you say, do you, that Posner and Levy and Mrs. Posner, all three of them, were waiting on the sidewalk when you came out, having been released from that court? A They were in the court, inside, and, when I was discharged, they went down together with me.

Q Now, that was in November or December, 1908? A It was the month after October. I don't remember exactly; I'm

CASE #1082

not sure.

Q Well, but you are sure it was after the fire that took place in the blacksmith shop, on September 24th, 1908?

A I don't know anything about fires. It was about the time when they go to vote; then I was arrested.

Q Well, it was later than the time that you say you had the carbuncle; wasn't it? A Yes, after.

Q Now, that is not the first time you had been in court, in a criminal court; is it?

MR. LEVY: Now, I object to that, if your Honor please. It is unfair.

THE COURT: I sustain the objection to the form of the question.

BY MR. JACOBY:

Q You had been convicted of crime before Rosh Hashanah, 1908, hadn't you? A What's that?

Q In July, 1908? A Jesse Brennan had me arrested, on Sunday, in the street, at three o'clock. In 106th Street he arrested me.

Q For what? A I don't know what for.

Q Weren't you with a man named Zellman? A The boy that you say is Zellman came up and asked me for a cigar, and I said I had none, and, as I was standing there, there came up Brennan, and arrested me also. Jake Levy had sent him.

Q Well, this was before you claim that you knew Mrs.

CASE #1082

Posner, wasn't it? A Mrs. Posner I had known already.

Q Well, but it was before Posner was sent to prison, over in Long Island City; wasn't it? A I don't know whether he was in prison or not.

Q Well, don't you know that it was in the middle of summer, in July, 1908? A I don't know.

Q Don't you know that you were brought up in that very court, up there in 121st Street, before Magistrate House?

MR. LEVY: Now, I object to that, if your Honor please.

MR. JACOBY: I will come to it.

Q Don't you know that you were brought up in that very court, before Magistrate House?

MR. LEVY: Well, I object. That isn't the way to prove a conviction.

THE COURT: Well, he has asked him if he was ever convicted of crime, and he may answer that question. Put that question which he has not answered.

MR. LEVY: We take an exception, sir.

(The previous question is repeated by the stenographer.)

A Never.

BY MR. JACOBY:

Q Weren't you, in July, 1908, in that very court, 121st Street and Sylvan Place, before Magistrate House, ac-

CASE #1082

cused of crime, and the complaint against you was changed to disorderly conduct, and you were fined \$10 by Magistrate House for disorderly conduct?

MR. LEVY: Now, I object to that, if your Honor please, on the ground that, under our law, that is not a crime.

THE COURT: Disorderly conduct?

MR. LEVY: Yes, sir.

THE COURT: Well, it may be of some help in the scrutiny that the jury will give his testimony, to ascertain his character. I will permit him to answer the question, whether he was convicted of disorderly conduct, and fined \$10.

MR. LEVY: And I take an exception.

A The Judge fined me \$10, because I stood with a boy, and was talking there, because he peddled, and he had a piece of iron, the other boy had a piece of iron, and he told me, next time, I shouldn't go with such boys.

Q And that piece of iron they call a jimmy, don't they?

MR. LEVY: Now, I object to that, if your Honor please.

THE COURT: Sustained.

MR. LEVY: Now, I move to strike out all evidence, and all questions on that subject, if your Honor please, under my previous objection.

CASE #1082

THE COURT: I do not think that it is very important, if he was fined for disorderly conduct.

MR. LEVY: I ask that it be stricken out.

THE COURT: Yes, I will strike it out; and it ought not to be put into the scales against the defendant. The jury will disregard it.

MR. JACOBY: Your Honor strikes out all the testimony in this regard?

THE COURT: Yes.

BY MR. JACOBY:

Q Do you know that, on this charge of arson that you are being tried for, to-day, do you know how long -- I will withdraw that. Now, at this time, in front of the police court, the time I mean after Rosh Hashanah, around Election Day that you say you came out of the police court, having been discharged upon the charge of burglary, Mr. and Mrs. Posner and Levy approached you, and Posner said to you that he would either kill you or send you away for twenty years, because you had lived with his wife; is that what you say? A Yes, sir.

Q Posner said that to you in front of this Court House, in November, after you had come out from the court; is that right? A Yes, sir.

Q And Jacob Levy, who was also there at the same time said, "What's the use of beating him? We'll send him to prison for twenty years"? A Yes.

CASE #1082

Q Now, then, they didn't beat you; did they? A When I was discharged, they beat me twice.

Q Now, the first time that they beat you, after your discharge, where was that? A Near the court.

BY THE COURT:

Q Were these conversations that you had with Posner and Levy in English or in Yiddish? A In Yiddish. They talked Yiddish. And Mrs. Posner came between, and wouldn't let them beat me.

MR. JACOBY: Now, I move to strike that out, "and wouldn't let them beat me".

THE COURT: Well, I will strike it out, but I will permit you to get it, if you want it.

BY MR. JACOBY:

Q Now, they did beat you, very soon after that? A Yes, sir; when I came out of the court, on the sidewalk.

Q Who struck you? A Philip Posner.

Q Did Levy strike you? A No. He said, "There is no use of beating him. We'll send him away for twenty years."

Q And Posner struck you once or twice, or three times? A Once, and then the wife came between, and wouldn't let him.

Q Well, with a club, or his fist, or open hand? A With his hand.

Q Open or closed? A Closed.

Q Did he strike you on the face? A Yes. (Indicating

CASE #1082

the right side of the face.)

Q Did you know Posner before he went over to Long Island City to prison? A No.

Q Was this the first time you ever saw him in your life, this time in July, at the Harlem police court, when you say he struck you and threatened you? A The second time.

Q Now, when was the first time? How long before this time? A Detective Brennan --

Q Now (Question repeated.) A About four days before the arrest, he was standing near my house.

Q Did he talk to you on that occasion? A No. He was standing there, and talking to Brennan, the detective, and to Davis Kapochelsky and to Levy.

Q And you noticed very particularly the people who were standing at the corner of 101st Street at that time; did you? A Yes. When Brennan came up to ~~my~~ my sister's house for me, I didn't want to go down. It was nine o'clock and I was sleeping already.

MR. JACOBY: If your Honor please, I object to the answer, and I move to strike it out, as far as it has gone, because it is irresponsible.

THE COURT: Yes, it does not appear to be responsive to the question.

(Question repeated by the stenographer.)

A I saw them when they told Brennan to take me out of the

CASE #1082

house.

MR. JACOBY: I move to strike that out.

THE COURT: I will let it stand. But tell him to answer just the question, and tell him that he will get himself into very much disfavor with the Court, if he does not do that. He is taking up a lot of time unnecessarily by not answering the questions.

BY MR. JACOBY:

Q Now, Zabransky, were any of your friends or relatives with you in the Harlem police court, on the day that you were discharged, when you say that Levy and Posner threatened you, and Posner struck you? A Nobody was there.

Q Wasn't Mr. Goldman there? A No, sir.

Q Or Mr. Saks, Louis Saks? A No, sir.

Q He is a good friend of yours; isn't he? A I attend him with the vegetables and fruits.

Q Well, he is a personal friend of yours, also, isn't he? A She is a cousin.

Q His wife? A Yes, sir.

Q And Saks has been to see you several times in the Tombs prison, has he not, within the last few days?

MR. LEVY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. LEVY: Exception.

CASE #1082

A One.

BY MR. JACOBY:

Q You are sure he hasn't been there twice within the last five days? A No, sir; once he was there.

Q And how long did he stay there, that once? A Perhaps about fifteen minutes. He came up, and he was told to go away.

Q And then, with the exception of that one time, that is the only time that you have seen Saks since you were locked up in the Tombs prison on this charge? A Yes, sir.

Q I mean, that is the only time you have seen him in the Tombs prison, between the time that you were locked up in the Tombs prison, and to-day, in court? A Only once.

Q So he is mistaken, if he says he saw you twice, each time for about an hour? A I don't look at a clock, whether it lasts fifteen minutes or an hour.

Q And he may have been there twice; may he not? A I don't know. I know that once I was lying sick, and I had my head, bandaged, in my hands, and I couldn't talk to him.

Q Well, didn't you just tell the Court and Jury that you were absolutely positive that he had been to see you only once in the Tombs since you had been locked up? A I am sure once.

Q Only once? A Yes.

Q And then he is mistaken when he says that he went to

CASE #1082

see you twice? That's all I want to know? A But he was there once, I am sure, but perhaps he was there the second time; I don't know.

Q And you don't know the difference between fifteen minutes and an hour; do you? A He came up --

Q (Question repeated by the stenographer)? A I know the difference.

Q And when he was there, during that fifteen minutes that you say he was there, on that one visit, he didn't talk to you about your testimony here, to-day; did he? A Nothing; only he said he was at the lawyer's.

Q Did he ^{not} tell you that you should be sure to remember that you had the carbuncle just before Rosh Hashanah, 1908? A Nobody needn't tell me that, because I had the pains and I remember that.

MR. JACOBY: Now, just show the jury where the carbuncle was on your neck, with your finger. Now, turn around and let them see where it was. Show it to the jury. All right. Now, go back to the stand.

Q Now, isn't it a fact that you had that carbuncle at some time quite different from Rosh Hashanah in 1908, either some time before it, or some time after it? A I am sure that it was Rosh Hashanah -- two weeks before Rosh Hashanah -- 1908.

Q Now, Zabransky, you say that there was a second time

CASE #1082

that Posner beat you. How long after the time that you say he beat you on the sidewalk, in front of the Harlem police court, how many days after was it that you claim he again beat you? A The next day.

Q In front of your home in 100th Street? A No, in 101st Street.

Q At the corner of First Avenue? A Before the corner, and before my house also, and after I was discharged. The same day my sister moved.

Q In other words, about six weeks after Rosh Hashanah, your sister moved from 100th to 101st Street, and you and all the family moved too? A Yes.

Q And that was between First Avenue and the river?
A Between First and Second.

Q And the second beating that you got, the day after you got out of the police court, was in that neighborhood, wasn't it? A Yes, sir.

Q And were you coming out of the house at the time?
A No, sir; I was coming from the stable, where I had attended to the horses.

Q What time was it? A About seven o'clock in the evening.

Q What day of the week was it, if you remember? A Wednesday; because Tuesday I was discharged from the Harlem Court.

CASE #1082

Q I suppose you had been out peddling, as usual, on that very Wednesday, with your horse and wagon, hadn't you?

A Yes.

Q And you got home at six or seven o'clock in the evening, that night; didn't you? A Yes.

Q And you had stabled your horse, and were quietly going to your home in 101st Street, between First and Second Avenues? A Yes, to my sister's house.

Q And ~~had~~ nobody was with you? A No.

Q And Posner and Levy and French, the watchman, were all standing there, waiting for you, laying for you? A Yes.

Q Was Frenchy, the watchman, laying for you there, too? A Yes.

Q And, when you got up there, Posner came right at you, and started to beat you again, did he? A Not Philip Posner, but Jake Levy, and then the two Italians came at me.

Q Well, do you say that Jacob Levy, on that occasion, started to beat you himself, too? A Yes.

Q Although he was that man who said, the day before, "What's the use of beating him? We'll send him to prison for twenty years"? A Yes, sir.

Q Did he beat you with his fist or with a club? A He kicked me with his foot, in the lower part of the stomach (Illustrating).

Q Did he kick you hard? A I fell, and I couldn't get up.

CASE #1082

Q Did Philip Posner hit you, too? A Then two detectives came, and they ran away.

Q Well, were there Italians there, too, beating you?

A They wanted to beat me, but detectives came, and they ran away.

MR. JACOBY: I move to strike out what they wanted to do.

THE COURT: Motion granted.

BY MR. JACOBY:

Q Were these Italians in the same party as Levy and Posner? A They hang out with Jake Levy, up at the corner, at the wagon.

Q Now, did Posner on that occasion when you say Jake Levy kicked you, and Posner beat you, say that he would send you to prison? A Yes, sir; Posner said that either he will kill me, or send me away for twenty years to prison.

Q And was Frenchy, the watchman, there, when Levy kicked you and Posner said that? A Frenchy hid in the hall the of a saloon which is next to my stoop.

MR. JACOBY: I object to that answer, and move to strike it out, as a conclusion.

THE COURT: Motion granted.

BY MR. JACOBY:

Q Now, didn't you tell the Court and Jury that, when you got to 101st Street, on that evening, between six and seven

CASE #1082

o'clock, that a group of people, consisting of Posner and Levy and a couple of Italians, were waiting, or laying in wait for you there? A I don't know whether they were waiting for me or not, but, as soon as I arrived there, they started to beat me.

Q Well, Frenchy was present when Levy kicked you; was he not? A He hid in the hall.

MR. JACOBY: I move to strike that out.

BY THE COURT:

Q Well, did you see him go into the hallway? A Sure. I know him well for four years.

THE COURT: I will allow it to stand.

BY MR. JACOBY:

Q Well, did Frenchy go into the hall before you were attacked? A As soon as I came up, he went into the hall.

Q So that, according to your testimony, you were not in sight at the time Frenchy went into the hall, and he had no reason to know that you were to be attacked by Posner and Levy? A Well, no, sir, I can't look into their heart.

Q And you don't know whether Frenchy saw Levy kick you, or Posner attack you, or heard him threaten to send you to prison, or kill you? A No, sir.

Q Didn't you say that, immediately after Levy kicked you, and Posner had threatened you, that the watchman had then said to you, that these people were so angry with you, that

CASE #1082

it would be better not to have anything to do with them because they would kill you? A That was the next day.

Q Did Levy or Posner ever beat you or threaten you at any time, except in front of the police court, and in front of the house in 101st Street? A After this I moved to Brownsville.

Q Yes or no? A No; I moved to Brownsville after that.

Q Now, you lived with your sister and brother-in-law, Goldman, and you lived with them in 101st Street for six weeks, didn't you? A Whether it was four weeks or six weeks, I don't know exactly. I know only that she took it by the month, and didn't live out the month.

Q Then you ^{lived} ~~left~~ there about a month, anyway, in the house in 101st Street, after you say that Levy and Posner and the Italians threatened you and attacked you? A Yes, them two days I lived there, and then I went to Brownsville.

Q And then you didn't live with your sister until she went to Brownsville? A Sure I lived with her together.

Q But didn't you say that your sister stayed there for at least three or four weeks after Levy and Posner threatened you and attacked you? A I didn't say that.

Q Now you want this Court and Jury to understand that your sister and your brother-in-law and you all moved to Brownsville, a day or two after the time that Frenchy, the

CASE #1082

watchman, told you that, if you had anything to do with those people, they would kill you? A Yes, two or three days after that.

Q Well, how long did you and your sister and your brother-in-law live in the 101st Street house, altogether?

A A short time; perhaps a month.

Q And how long before that did you live in the -- how long was it before that month that Rosh Hashanah occurred?

A That was after Rosh Hashanah.

Q How long before the time you moved into that house was Rosh Hashanah? A I think about six or seven weeks.

Q And when your sister says that it was about three months after Rosh Hashanah that the family moved to Brownsville, she is mistaken; isn't she? A She doesn't make the mistake. Sure it is three months time.

Q Well, how many weeks are there in three months, according to your understanding? A Twelve weeks.

Q Well, will you please account for the twelve weeks the best you can, from Rosh Hashanah ~~for~~ to the time that you moved to Brownsville? Will you show how it amounts to twelve weeks?

CASE #1082

MR. LEVY: Well, I object to the question, in form.
I do not see the materiality of that question.

THE COURT: Well, he says it was sometime around
election, which the Court will take judicial notice was some-
time early in November, and the Jewish holidays were on
the 26th of September, and I think I will let it stand as
it is.

BY MR. JACOBY:

Q And it was only about six weeks from election day to the
Jewish holiday, and you say that right after election day you
moved to Brownsville? A I don't know whether it was two
days or two weeks after election.

Q Now you knew Posner before August 1st, 1908, didn't
you? A Mr. OR Mrs. Posner?

Q Mr. Philip Posner? A No, sir.

Q Did you not -- A The wife I knew.

Q Did you know his wife before you knew him? A I
didn't know him, but I knew her.

Q Then, when Mrs. Posner said that the first time she
met you was before her husband was locked up in Long Island
City, in the street, when she went to talk to her husband,
and he was talking with you, and then that her husband told
her who you were, or words to that effect, she was mistaken,
or testified falsely? A She is mistaken. It's a lie. I
knew her without knowing him.

CASE #1082

Q Now, then, when you first met her, you say that you met her at her own parents' home in 104th street, or somewhere in that neighborhood? A In 101st street.

Q And you don't remember how long before Rosh Hashanah, 1908, that was; do you? A It was soon after May.

Q It was soon after May? A Yes.

Q And it was in the day time; was it? A It was ten o'clock in the morning.

Q Now did she tell you her name on that occasion? Yes or no? A No, no.

Q You said that you knew she was living there with an old father and mother, didn't you? Yes or no? A Yes, sir.

Q Did you know the name of the mother or father, the last name? A No.

Q And didn't you ask Mrs. Posner what her name was, when you met her, that time? A No, nothing.

Q Didn't you know, the first or second time you saw her, that her name was Mrs. Posner? A When she moved to 104th street, without her mother, then I knew.

Q Then you knew that she was Mrs. Posner? A Dinah Posner.

Q The wife of Philip Posner? A I know her name is Dinah Posner; whether her husband's name is Philip Posner, I don't know.

Q But you knew that she was a married woman, when she

CASE #1082

moved to 104th street? A I didn't know. I asked her.

Q But you said before, didn't you, that you knew her name was Mrs. Posner? Yes or no?

MR. LEVY: Now, I object, if your Honor please.

That is a misstatement of the evidence.

MR. JACOBY: I am not stating the evidence at all, if your Honor please. I am asking questions.

THE COURT: Yes. Proceed.

A I only said that I knew that in 104th street, that her name was Dinah Posner.

Q Did you know that when they moved to 104th street?

A No, sir, I didn't.

Q Don't you know that when they moved to 104th street, it was the father and mother and sisters of Dinah Posner that moved there, and that she moved there with them? A I didn't know that.

Q And don't you know that it was not until Mrs. Posner moved to the address on Second avenue, between 95th and 96th streets, or 96th and 97th streets, that that was the first time that she lived away from her father and mother? A That was the second time. In 104th street she lived also, and afterwards in Second avenue she lived alone.

Q Didn't you go to the house between 95th and 96th streets, or 96th and 97th streets, where Mrs. Posner was living, between half past one and two o'clock in the morning, on the night

CASE #1082

of the 24th of September, 1908, and ask for shelter there because you were fleeing, after having made a fire in the blacksmith shop of Simon, the blacksmith, in First avenue?

A That's a big lie. I was sick at that time.

Q And you didn't have your face scorched, that night, and you didn't have any oil or grease on your clothes? A In all my life, there was nothing of the kind on me.

Q And you never poisoned any horses, as you are said to have ~~stax~~ said, did you? Yes or no? A No.

Q Did you ever tell anybody that you stole horses? A Nobody.

Q And did you ever tell -- do you know a man by the name of Grabarnik? A I don't know Grabarnik.

Q Did you ever go into the saloon at 101st street and First avenue in your life? A No.

Q Do you ever drink beer? A No.

Q Never drink beer? A No; soda water.

Q Soda water is the only thing you drink? A Yes, sir.

Q You don't drink any beer, ale, whiskey or any other intoxicating drink? A No, my head isn't quite good yet; I am sick in my head. I can't do that.

Q Well, you have tried to drink, and found that you couldn't is that it? A The doctor said that I should never drink.

Q Well, you don't drink at all? A Once at a wedding, I drank.

CASE #1082

Q When was that wedding? How long ago? A About four years ago.

Q And how late were you up, the night that you were at that wedding, if you remember?

MR. LEVY: Now isn't that wasting time, your Honor?

MR. JACOBY: No, it is not. I am coming right down to it.

A About eleven or half past eleven.

Q And you were always at home in the house at 101st street, where you lived with your brother-in-law and sister, you were always at home before your brother-in-law locked up the house, for the whole period of three months before Rosh Hashanah, 1908? A Steady, yes.

Q Did you ever stay out all night during the entire period of those three months? A No, I am peddling hard all day, and I am glad that I am home.

Q And you never came home after one o'clock in the morning any night during those three months; did you? A I am going to bed at ten or eleven o'clock. I never came home later than ten o'clock usually.

Q And you never stood around the corner of 101st street and First avenue with any loafers or bad people, until late at night? A No, sir, never in my life.

Q And when the watchman Frenchy says that he saw you and and a man named Moscher together, at about half past one o'clock

CASE #1082

on the morning of the 24th of September, 1908, at 100th street and First avenue, and saw you crossing diagonally over towards the blacksmith shop of Simon, he is mistaken, is he?

A He is mistaken. I was sick at that time.

Q Well you know that he is mistaken, because you were never out so late at any time; were you? A No, sir; because I was sick at that time.

Q Then the reason that you are sure that he is mistaken is that you were never out that late at night, and not so much that you were sick? A No; because I was sick.

Q Then why did you say that the reason why he must be mistaken was because you were sick? A No, not only that I was sick, but because I never go out so late.

Q Now then, it is for both reasons, is it, first, because you were sick, and if you hadn't been sick, you know that you were never out as late as that? A I go to bed generally at ten o'clock, and I ^{don't} leave the house generally after ten o'clock

Q You don't know any man by the name of Morris or Moscher, whose last name was Miller, or didn't know him on the 24th of September, 1908? A No, sir.

Q A man who had a junk business, and is now said to have a restaurant in 101st street? A I haven't got it in my head that he has a restaurant or a junk shop either.

Q And then you didn't know a man named Moscher, at the time of Rosh Hashanah, in 1908, who kept a junk shop, and now

CASE #1082

has a grocery, and whose last name is said to have been Miller?

A No, sir.

MR. LEVY: The defendant rests. That is our case,
Your Honor.

MR. JACOBY: I will try to be very speedy in rebuttal
if your Honor please.

THE COURT: Yes, please do.

CASE #1082

- R E B U T T A L -

A L E X A N D E R Z I M A N, of 432 East 72nd street,
a witness called on behalf of the People, being duly sworn
and examined through the official interpreter, testified
as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Ziman, you are speaking German, and not Yiddish; are you
not? A Yes, sir.

Q You are not a Hebrew, are you? A No, sir.

Q Do you know a man named David, who kept a stable for
horses in the neighborhood of 99th street and First avenue, in
the fall of 1908? A Yes, sir, I know a certain David. He
has a stable there.

Q Did he have a stable there in September, 1908? A Yes,
he had it.

Q Now how far back from the line of First avenue was the
stable? A About thirty paces.

Q How many English feet would you call a pace? A It
can be about fifty feet from the sidewalk.

Q It might be a little more than that, too; might it not?
A I can't say that exactly.

Q Now, in front, close to the sidewalk, there was a black-
smith shop, was there not, in September, 1908? A Yes.

Q And what were you doing in that neighborhood, what work

CASE #1082

were you doing in September, 1908? A I was working there was a helper in the blacksmith shop, in the painting, and other work.

Q With Louis Simon, the owner? A Yes, sir.

Q How long before September, 1908 had you been working in the blacksmith shop? A I worked in that shop more than three years; since he rented the shop.

Q And you are still working there now? A Yes, sir.

Q Now, will you state to the jury whether or not -- no, state to the Court and jury what opening there were in the front part of that blacksmith shop, before the fire on the 24th of January, 1908?

MR. LEVY: I object, on the ground that it is leading, your Honor.

THE COURT: No, it is bringing to his mind the general situation and the place where he was employed for some time, and asking him to describe it. He may answer.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Just before the fire? A In the front of the shop, there was a double door, standing in the middle, and then to the left and right of the doors, on the uptown side and the downtown side, were two windows, one on each side.

Q How large was each of these windows? First give us the breadth and then the height? A Towards the downtown

CASE # 1082

side, there is a window, but it is nailed up with boards.

Q Yes? A And this window is about a foot and a half square.

BY THE COURT:

Q That was boarded up? A Yes; that is now boarded up.

Q Was it at that time boarded up? A No, sir, at that time it was open.

BY MR. JACOBY:

Q Now, the uptown window? A The window towards the uptown side, I don't know exactly to the inch, but it was two by four.

Q Feet or inches? A Feet.

Q You mean four feet wide and two feet high, or the reverse? A Yes, four feet high and two feet wide.

Q Now is that uptown window there yet, is it there now?

A Yes; the same window is there, but another window has been put in, because the first window that was there has been burned out. After the fire, I myself put another window into the same place, and that window is now in the same condition that it was before the fire.

CROSS-EXAMINATION BY MR. LEVY:

Q When did you put that window in? You understand English, don't you? A A little bit. Better German.

Q Well, try to talk English. When did you put that window in? A Two weeks after the fire.

CASE #1082

Q Now that was a very severe fire, wasn't it? A It was a big fire, yes.

Q Now you know the whole building was burned down, don't you? A No; the front wall was standing yet but the inside was burned.

Q Wasn't the front wall made of wood? A Yes.

Q And the whole shanty? A Yes.

Q Now don't you know that the whole shanty was burned?

A No, sir.

Q Wasn't the front wall burned? A From the inside, not outside.

Q How much of it was burned and scorched? A From the top, two or three boards.

Q And didn't you remodel or rebuild the whole front, or a great part of the front? A I don't understand.

(It is repeated by the interpreter).

A No; only from the top, two or three boards were put in, new ones.

Q Now please tell this Court and jury what was burned in that building, what part of the building was burned?

MR. JACOBY: I object to that, as immaterial. The witness is simply examined as to the nature of the windows, and he has evidently told him all that he knew about the windows, and he is now examining him about other matters, which are clearly immaterial.

CASE #1082

THE COURT: Yes, you are going beyond the scope of the direct examination, counsel. He is called to testify to the condition of the front of the building.

BY MR. LEVY:

Q Now which window did you put the shutters on?

MR. JACOBY: I object to that. There is no evidence that he put shutters on any window.

THE COURT: Well, he said he boarded one window up. I suppose that is what he had reference to.

BY MR. LEVY:

how

Q Now/high up on the wall were these windows? A Above?

Q Yes? A The same like now.

MR. JACOBY: No, the witness did not understand the question, your Honor,

MR. LEVY: What is that?

THE COURT: Mr. Jacoby was not in order, counsel. He suggested something to the Court which was not necessary. Put a question, and we will proceed.

BY MR. LEVY:

Q How far from the floor were those two windows that you spoke of? A Inside or outside?

Q Are they different inside from outside? A Why, sure, because inside stands much higher the floor, about a foot.

Q And how high from the floor are the windows from the sidewalk? A About five feet from the sidewalk.

CASE #1082

Q Now what kind of shutters did they have on those windows before September, 1908? A What is that?

(Question repeated through the Official Interpreter) .

A There is only glass there.

BY MR. LEVY:

Q Anything else over the windows? A No; there was only glass in the windows. I can't say any more.

CASE #1082

1

Q And you don't remember anything more; do you? A No, sir.

Q How many panes of glass were in north side window?

A Well, I can't remember now.

Q And how many panes of glass were in the south side window? A I don't understand you.

(The question is repeated through the interpreter)

A This I don't know.

Q Well, do you know how many were in the north side window? A No, this I don't know; I don't remember.

Q And were there any bars over those windows? A No; no bars were there.

Q Was it a regular window frame, or was the window frame of one piece, was the sash of one piece? A (No answer)

(The question is repeated through the interpreter)

A There were several small panes; I don't know how many.

Q Now you say that you nailed that window shut?

A That was nailed up close; yes.

Q Now weren't there wire bars over the front of it?

A No.

Q Or wire screens? A No, sir.

Q How was it locked at night?

MR. JACOBY: If your Honor please, I ask that the question be made more definite, whether he means the blacksmith shop or what.

CASE #1082

BY MR. LEVY:

Q How were the windows locked at night? A They were never open. They were always nailed up.

A B R A H A M D A V I S, of 1990 Second avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Davis, are you the proprietor of this boarding stable for horses at 99th street and First avenue, back of Louis Simon's blacksmith shop? A Yes, sir.

Q And do you remember the fire that occurred there in the latter part of September, 1908; do you remember that there was a fire? A To tell you the truth, I wasn't up there, that night. I didn't feel good.

Q But you remember that there was a fire there in the latter part of September, 1908, a little over a year ago? A Yes, sir.

Q And this was a fire in Louis Simon's blacksmith shop? A Yes, sir.

Q Now do you remember -- did you know a man named Mosher, last named Miller; did you ever meet such a man that you know of? A No, I don't know him.

Q Did this man stable any horses in your stable in September, 1908, as Moscher or Morris Miller? A He might.

CASE #1082

3

I don't know. I don't know nothing at all.

Q Well, do you know what openings there were in the front of the blacksmith shop, just before the fire?

MR. LEVY: Now, I object. Let him describe the front of the shop, as our witnesses were compelled to do.

THE COURT: Yes.

BY MR. JACOBY:

Q Now, give us a description of the front of the blacksmith shop, just before the fire, with reference to the openings therein? A Well I didn't was there, that night, and I couldn't give no information for that; I didn't was there that night.

Q Well, I want to find out whether you remember, whether you can remember, what openings, doors, windows or other things there were in the front of that shop?

MR. LEVY: Now, I object to that. That is leading and suggestive.

MR. JACOBY: If your Honor please, we are pressed for time, and I am endeavoring to hasten the trial.

THE COURT: Yes; I do not think that that can do you any harm, counsel.

BY MR. JACOBY:

Q Now, I am not asking you about the fire at all, but, before the fire, what openings there were in the front of the

CASE #1082

blacksmith shop. Was there a door? A Yes; and one window.

Q Where was it? A On the uptown side.

Q How big was it? A I can't tell you exactly; about two foot by four.

Q You mean two feet by four? A Yes, sir.

CROSS EXAMINATION: None.

P H I L I P P O S N E R, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Posner, the defendant Zabransky testified, in substance, to-day, that, in front of the Harlem Police Court, at 121st street and Sylvan Place, or thereabouts, or in the corridor, coming out of the Police Court, sometime around election day 1908, you said to him, in substance, that you would either kill him, or send him away for twenty years, for the reason that he lived with your wife. Did you say that to him? A No, sir.

Q Did you ever say that to him? A No, sir.

Q Did you ever beat him? A No, sir.

Q Did you ever strike him with your fist? A No, sir.

Q And the next day, or a day after, within a day or two after this alleged conversation, the defendant Zabransky said that, in front of premises in 101st street, between First and Second avenue, where he at that time claimed to be living,

CASE #1082

around seven o'clock or thereabouts in the evening, you said that he would either be shot or sent to prison; is that so; did you say that? A No, sir.

Q Were you there in front of a house in 101st street, and did you make any such statement? A No, sir.

Q Did you then or at any time, strike him, or threaten him with your fists? A No, sir.

CROSS EXAMINATION: None.

JACOB LEVY, being recalled by the District Attorney, testified as follows:

MR. LEVY: Now, to save time, I will concede that he will make the same denial.

MR. JACOBY: If your Honor please, I don't want the concession. It is easy enough to concede, when it is self evident.

DIRECT EXAMINATION BY MR. JACOBY:

Q Mr. Levy, the defendant Zabransky testified in court, to-day, in substance, that, in front of the Harlem Police Court, up at 121st street and Sylvan Place, about the early part of November, 1908, the defendant testified, I say, in substance, that at that time and place, you and Posner were in front of the Police Court, and Posner strick him, and that then and there you said, "What is the use of beating him? We will send him to prison for twenty years." Did you say that?

CASE #1082

A No, sir.

CROSS EXAMINATION: None.

ALFRED J. FRENCH, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q French, the defendant Zabransky, as a witness in his own behalf, testified, to-day, in substance, that, early in November, 1908, somewhere around election time, about seven o'clock in the evening, he was returning to his home, which he said at that time was in 101st street, between First and Second avenues, and that in front, or almost in front of his home, there were waiting for him a group of persons, consisting, among others, of Jacob Levy, a witness who has testified for the People, the witness Philip Posner, and a couple of Italians, and that then and there either Levy or Posner struck him, and that one of them struck him, and the other threatened him, that he would either be shot, or sent to prison, and that you were in the immediate neighborhood at the time this threat was made, and that, shortly thereafter, ~~probably~~ the next day, that you came up to him, and asked him -- and told him that these people were so angry at him, that it would be better for him not to have anything to do with them, because they would kill him. Did you ever tell him that?

CASE #1082

MR. LEVY: I object to the question as bad in form.

It is not a correct recital of the evidence.

THE COURT: Objection overruled.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Did you ever tell him that? A Tell who that?

Q Tell Zabransky, in substance, that these people, meaning Posner and Levy, were so angry at him, that it would be better for him, the defendant, not to have anything to do with them, because they would kill him? A I never spoke to him in my life.

Q Did you ever see a group of persons in front of the house in 101st street, between First and Second avenues, consisting of Posner and Levy, and a couple of Italians, threaten him or strike him? A No, sir.

CROSS EXAMINATION: None.

LOUIS SIMON, being recalled by the District

Attorney, testified as follows:

DIRECT EXAMINATION BY MR. JACOBY:

Q Simon, do you know a man named Louis Saks? A Yes, sir.

Q State whether or not he was up in the neighborhood of the blacksmith shop at 99th street and First avenue, last Saturday? A Yes, sir.

Q Did he talk with you? A Yes.

Q Did he talk with you about anything in regard to the windows in front of the blacksmith shop at the time of the fire? A Yes.

CASE #1082

MR. LEVY: I object to this, as not proper rebuttal.

THE COURT: Overruled.

MR. LEVY: Exception.

BY MR. JACOBY:

Q Now what windows were there, if any, in the front of the blacksmith shop, just before the fire?

A There was a window, two by four, and there was a small window towards the downtown side.

CASE # 1082

Q Is that window two by four there yet? A Yes, sir.

Q And it is the same size as it was before the fire?

A Yes, sir.

Q How high is it above the street level? A About five foot.

Q And is the little window just as it was before the fire? A No, sir; it's boarded up now.

Cross examination: None.

MR. JACOBY: The People rest.

MR. LEVY: The defense rests.

THE COURT: And I would like to have the Fire Marshal take the stand. I see him here.

MR. LEVY: If your Honor please, I have no objection to his being called, but it seems to me that it is objectionable, because he was here during all the trial.

THE COURT: I want to ask a question myself. I shall ask but one question.

MR. LEVY: Very well, sir.

P E T E R S E E R Y, being duly sworn, testified as follows:

BY THE COURT:

Q Mr. Seery, you are the Fire marshal of the City of New York? A Yes, sir.

CASE #1082

Q And have been for a great many years? A About thirteen.

Q Have you been at the blacksmith shop owned by Louis Simon?

A No, sir.

Q Were you there after September 1908? A I was not there at all. Mr. De Malignon, one of my assistants was there. He had charge of that case. I didn't go there myself.

Q Well is he here? A Yes, sir.

THE COURT: Then I want him to take the stand.

HERMAN W. DEMALIGNON, being duly sworn,
testified as follows:

BY THE COURT:

Q You are connected with the Fire Department of the City of New York? A Yes, sir.

Q How long have you been connected with it? A About twelve years.

Q Did you go to the blacksmith shop of the man Simon, which has been referred to in this case, in September, 1908? A Yes, sir.

Q What did you see there? A I found the interior of the building had been burned, and considerable of the contents.

THE COURT: That is all.

MR. LEVY: One question. May I ask him one question?

CASE #1082

THE COURT: No.

MR. LEVY: Now, I move your Honor to dismiss the indictment as it stands now, on the ground that the People have failed to prove their case, beyond a reasonable doubt, on believable evidence; and I renew my motions made at the close of the People's case .

THE COURT: I will hear the People's counsel briefly.

MR. JACOBY: On the motion to dismiss?

THE COURT: Yes.

MR. JACOBY: May it please the Court the charge here is one of arson in the third degree. I do not know personally to which part of the case the Court desires me to direct my argument.

THE COURT: On the general motion to advise an acquittal.

MR. JACOBY: I am aware of that, but I am not aware of which particular point or link in the evidence your Honor wishes me to dwell.

THE COURT: I will hear you generally upon the motion.

CASE #1082

MR. JACOBY: Well, the first point that occurs to me, perhaps as attracting your Honor's attention, is the question of the ownership of the building. On that point it has been held that the fact that a person is a tenant is sufficient to make him a proper prosecuting witness, and on that point I can give you numerous authorities.

THE COURT: No, I am satisfied on that question.

MR. JACOBY: Now, as to the acts of incendiarism itself, we have the evidence of one absolutely credible eye-witness that a man was seen springing out of the window, and that the place went up in flames at the same instant, and of another credible eye-witness that this defendant was seen in the immediate neighborhood of the premises, going directly toward the premises, at an unusually late hour of the night. And then we have the testimony of two women, one of them of tender years, and both of them absolutely unimpeached, as to the admissions and declarations of the defendant. Then we have the testimony of another man, of questionable character, I will admit, but who was actually interested, as far as I can see, as a friend of the defendant, who testified to an admission on the part of the defendant that he set the fire, and that is the testimony of the

CASE #1082

witness Posner, as to whom there is no evidence, except that of the defendant, to show that he was not absolutely friendly to the defendant at all times. The witness Posner testified that the defendant told him that he was going to set a fire there, if he could agree upon the compensation he was to receive; and the witness Posner also said that he, the defendant, told him he wanted more compensation than a person who has been called Marx was willing to pay him, but he thought they could agree upon an intermediate sum.

Then we have a second interview with the defendant testified to by Posner, in which the witness Posner says that the defendant said that they had agreed upon a price, and he was to set the fire; and a third interview in which the defendant said that he had set the fire, and had received \$25 as part payment for it, and was to receive more.

That testimony is most perfectly corroborated by the testimony of the wife, and it dovetails in this respect with the testimony of the witness Levy, who is absolutely unimpeached in this case, as to whom they have not shown absolutely any motive for testifying against the defendant, absolutely not even a hint, such as they have intimated against Posner, that he might have known that this defendant had intercourse with his wife. And

CASE #1082

Levy said that the defendant ran down the avenue, and Mrs. Posner who tells us that he came to her house, which you will remember was at 96th Street, and did not go to his own sister's house, which was further uptown from the fire, and he said that he had come there because he had run downtown, when he escaped from the scene of the fire, and he feared that he was pursued. And he would naturally direct his flight downtown, because he knew that French, the night watchman, was on duty just above the fire, on First Avenue.

And then you have the motive for the commission of this crime, Judge, from his own confession, made to people that he thought were his friends at the time, allied with him against law and order.

And then you must remember the corroborative testimony of Kapochelsky, who answers to my description in my opening of a humble witness, but against whom nothing has been even intimated by the defendant.

Kapochelsky heard him tell a man named Brabarnik, several weeks after the fire, what he had done, and what he had been paid for it, and Kapochelsky's testimony seems to be so natural as to impress one with its truthfulness, and he tells us that this defendant, just as a young fellow would say, said to Brabarnik, in a spirit of boastfulness, "What is the use of working as hard as you

CASE #1082

do? Why, I earn \$75 in an hour", just like a boastful young man would brag in the presence of his friend, and Brabarnik asked him how he earned it, and he said, "Why, by setting x the fire in the blacksmith shop," and that was the only fire in a blacksmith shop up in that neighborhood in that entire year.

And this is clinched by the testimony of Mr. and Mrs. Posner and the young girl, and by Kapochelsky, and the circumstantial evidence, almost persuasive in itself, that Levy saw a man jump out of the window of the place, the doors being closed, and almost in the same instant the place goes up in flames.

Now, if such a case be not a case where the jury does not believe an alibi which has been attempted to be proved, where the defendant is not proved guilty beyond a reasonable doubt, then I do not believe that any case that the People could present would secure a conviction in an arson case, which is always a crime secretly committed; if that be not a case where the jury should render a verdict of guilty, if they do not believe the alibi, then the People can never make out a case of arson.

CASE #1082

THE COURT: gentlemen of the Jury, a verdict in a Criminal Court cannot be based on the doctrine of chances that a defendant may be guilty, and, although we have been occupied for three days in the trial of this case, I am constrained to say that, if I had not heard from the Assistant Fire Marshal, I would entertain a reasonable doubt that there was a fire there at all.

The crime of arson itself is, and always has been considered one of great malignity, and pernicious to the public. It is frequently, indeed, more destructive than murder, of which it is often the cause, since murder, as atrocious as it is, seldom expands beyond the felonious act designed, whereas arson frequently involves in the criminal calamity persons unknown to the incendiary, and not intended to be hurt by him, friends as well as foes.

It ought, therefore, to be proven by a high degree of credible testimony, before any person, no matter who, should be put in the shadow of such a charge, and within the possibilities of a punishment which would flow from the conviction of such a charge.

The law requires the People of the State, in a criminal action, to prove the defendant's guilt beyond a reasonable doubt. He is presumed to be innocent, no matter what his record may be, no matter what his environment, and, unless his guilt be established up to that standard, he is entitled

CASE #1082

to an acquittal by a jury.

Nay, more than that, the law requires that if, at any time after the evidence on either side is closed, the Court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant, and they must follow that advice.

I do not feel that I would be justified, with this proof that you have heard, which upon both ~~sides~~, to my mind, is a blister upon the face of honest evidence, to convict any man, and, impressed with that conviction, I advise you, as matter of law, to acquit him, and set him free.

(The jury found the defendant not guilty).

CASE # 1082