

working by your place" --

Q Talk a little louder. A "I am working in your place a few years ago and I never bothered you that you should give me a raise. I get \$20.00 a week since the third year already and everything is very dear and I am not able to pay rent so much as I paid, because I used to live in 71 Second Avenue and used to pay there \$27.00, but Mr. Schwartz told me that I should live in the same house where he lived, 77 Second Avenue, and it is too dear, his rent there, it cost \$37.00, \$10.00 more a month. He told me, "Never mind, if I see you need \$10.00 more I will give you \$10.00 more", but he never gave me the \$10.00 more in the month, so I told him, "You see, Mr. Schwartz, I have to pay more rent and also -- so, will you please give me some raise"?; so he told me --

Q Go ahead. A So he told me that I should wait a few days more.

Q And did he promise you at that time to increase your salary? A He told me to wait a few days more and after he will see what he will do.

Q Have you any children? Did you at the time have any children working? A Yes, sir.

Q They all lived with you, didn't they? A Yes, sir.

Q And they gave you their earnings? A Certainly.

Q How many children were working? A Working, three.

MR. MAYNARD: I object to that.

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THE COURT: Sustained.

MR. WEINBERGER: I except, if your Honor please. Your Honor asked the question how he could afford to pay it.

THE COURT: He testified to that. What is the use of having the testimony repeated?

MR. MAYNARD: Now you make it necessary for me to go into another matter.

BY MR. MAYNARD:

Q You say you were not discharged, Mr. Blaustein?

A No.

Q I show you this paper. Ever see it before? A No.

Q Did you draw that paper? A Yes.

Q Is it signed by Mr. Schwartz? A Yes.

Q It is not endorsed by anybody? A No.

Q When did you last see that paper? A When I saw this paper last?

Q Yes. A When I made that out.

Q Was it on the 16th of February? That is the day you left Mr. Schwartz, wasn't it? A Yes, sir.

Q Did you in the Police Court, in answer to questions, testify as follows: "Q Now did Mr. Schwartz ever discharge you, really? A No, sir. Q Well, How did it come

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that you left him? A Mr. Schwartz told me one pay day that he is short one check. First I must explain how the checks were signed. Q Now the employees were paid by cash and checks, weren't they? A Yes. Q When were the checks signed? A On Monday night. Q On Monday night? A Mr. Schwartz signed the checks in his house. Q When did you give them to Mr. Schwartz? A I gave the checks to Mr. Schwartz on Saturday. Q Go ahead now, after you gave him the checks. A And every week the Thursday before, we had the pay with Mr Schwartz together, was checks and cash, so he told me he was short one check. Q When was that? A That was on the Tuesday, on the Tuesday before I went to the bank; it was before we started to pay off the people. Q That was on the 16th of February? A I don't know what day it was. Q Was it the day you left him? A Yes, sir, that was the day when I left." Did you so testify? A Yes, sir.

Q In answer to the questions? A Yes, sir.

Q "Q J. Rosenberg; is that the man who was here before and testified? A Yes, sir. Q So I have promised the man to give him cash, not any checks, but in the meantime I forgot and I marked him and gave him a check. I made out a check, so after, before I was to the bank I made out a slip for cash, to bring his amount in cash, not any check, so I took the check and put it into the check book; there was

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another check to hand Mr. Schwartz and this check I put in the check book. Q What was your reason for putting it there?

A To give it to Mr. Schwartz back, and after I saw Mr. Schwartz trying to check in the book and after I saw that Mr. Schwartz (dash) I saw that Mr. Schwartz wants to accuse me of stealing the check, so I got very excited, so I did not put the money in the envelopes as usual, together with Mr. Schwartz, they wanted that they shall pay off the workmen properly, I gave each man a number so that everybody could get everything and Mr. Schwartz and Mrs. Schwartz should be able to pay them. When I got through with this work I got up and went away, but Mrs. Schwartz came back again when I was about to leave Mrs. Schwartz asked where I was going and I said I was going home. " Did you so testify? A Yes, sir.

Q That was the truth, was it? A Yes, sir.

Q That was the day you left? A Yes, sir.

Q And you were not discharged? A I was not discharged, Mr. District Attorney, I want to explain.

MR. MAYNARD: I haven't any questions pending for the present.

Q I show you another check; is that in your handwriting?

A Yes, sir.

Q Signed by Mr. Schwartz? A Yes, sir.

Q Turn to the back. Endorsed by you? A Yes, sir.

Q Any other endorsement on it? A Sivinski.

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Q Is that in your handwriting? A Yes, sir.

Q Both are in your handwriting? A Sirvirski is not my handwriting.

Q Sivirski is not yours? A No, my handwriting is here (indicating).

Q How did you endorse a check of Sirvirski; why did you put your name under Sivirski's name? A I want to explain. I gave Sivirski a check. He testified yesterday that he always got cash, but I knew he got sometimes a check. I told my counsellor, but he did not examine me on this so I gave him \$20.00 a check and he need the money to pay out employees, so he came over to me and asked me a favor, "Mr. Blaustein, if you are able, if you get cash \$20.00, please give me a check; give me cash for my check."

Q And you gave it out of your own pocket? A My own pocket. I got --

Q Gave it out of your own pocket? A My wages. I got in money, so I gave him my wages.

Q You gave your wages for that check? A Yes, I gave my money for this check.

Q Did you see Sivirski sign this check? A Well, I don't remember if it was signed before he give me, or signed after. I don't remember this, but I endorsed the check.

BY THE COURT:

Q What date is this?

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MR. MAYNARD: It is April.

A This is April 30, 1907.

MR. MAYNARD: I will offer that check in evidence.

THE COURT: April 30th, 1907?

MR. WEINBERGER: I object to it.

MR. MAYNARD: Here is the check that has this man's admitted endorsement and I want to know how that is. It goes to the credibility of this witness.

THE COURT: The claim is made, as I understand it, Counsel, that Sivirski was asked if he received payment by check or cash and Sivirski testified always in cash. This witness testified that Sivirski received payments sometimes by checks, is that right?

THE WITNESS: Let me explain, your Honor. At this time when Sivirski got a check so he was working only for himself. He had no help at that time, so at that time he had always checks, but since that time he started to work with helps and has to pay his helps every week, so since that time I used to pay in cash, but at that time, in 1907, he was working only for himself, the same as every employee at that time and I will show the District Attorney and your Honor, if they produce here the check book, I will show you for every week, a check for Sivirski two or two and a half

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years.

THE COURT: I should think that time was too remote, 1907.

MR. WEINBERGER: I think after the witness testified, the check ought to go in and I call upon the District Attorney to produce the check.

MR. MAYNARD: Do you want to offer the check in evidence itself?

MR. WEINBERGER: The witness testified the check book will show a check every week.

THE WITNESS: Every week.

THE EIGHTH JUROR: Will you find the pay roll of that date?

THE COURT: Of what date?

THE EIGHTH JUROR: Of that \$20.00 check; find it on the pay roll, the check of \$20.00.

THE COURT: Of course, you see gentlemen, this is done with the consent of counsel for the defendant, as I understand it. You said that the check may go in evidence. As a matter of law it has no business in this case.

MR. WEINBERGER: Your Honor's ruling is it has no relation to the case?

THE COURT: It is too remote from the time set forth in the indictment.

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MR. WEINBERGER: I object to the introduction of the check in evidence.

MR. MAYNARD: I withdraw the offer.

THE COURT: I will strike from the record all reference to the check of 1907, gentlemen, because it is on a collateral matter and too far away from the time set forth in the indictment; too remote.

MAX FRIED, a witness called on behalf of the defendant, having duly affirmed, testified as follows:

DIRECT EXAMINATION BY MR. WEINBERGER:

Q Deeter, what is your business? A I am a Rabbi.

Q You are engaged in what congregation? A I was engaged in the congregation of Aderthel.

BY MR. MAYNARD:

Q How do you spell it? A Aderthel.

BY MR. WEINBERGER:

Q Where is that? A On east twenty-ninth street, until the 30th of April, 1910.

Q And where are you employed now? A Since the 2nd of May in the Temple Aderth Isrial.

BY MR. MAYNARD:

Q How do you spell that? A A d e r t h I s r i a l.

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BY MR. WEINBERGER:

Q Do you know the defendant? A I know Mr. Blaustein.

Q Do you know the complaining witness, Mr. Schwartz and Mrs. Schwartz? A I know Mr. Schwartz and Mrs. Schwartz.

Q Do you remember having met the complaining witness some time about two months ago and having a conversation with him? Do you remember having met the complaining witness and having a conversation with him, with either Mr. or Mrs. Schwartz a few months ago? A I met Mrs. Schwartz accidentally with a member of our Lodge, of the Independent Order of Brith Abraham, who I met concerning Society business. I met Mrs. Schwartz and Mr. Gottlieb, and entered into the question of their affairs with Mr. Blaustein.

Q Now, do you remember --

MR. MAYNARD: Just ask the questions, so I may object if it is necessary to do so. What is the question?

Q Do you remember what the conversation was between yourself and the complaining witness, Mr. Schwartz?

MR. MAYNARD: Well, I will object to that.

MR. WEINBERGER: In the presence of the complainant

THE COURT: You should have called Mr. Schwartz's attention to this line of testimony.

MR. WEINBERGER: Well, she is here and we can

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get her today.

THE COURT: Under the case of People against Mallon, this testimony was excluded --

MR. MAYNARD: No foundation has been laid for it.

THE COURT: No foundation was laid, but the Court of Appeals held in that case, even if no foundation was laid, it should be allowed. You can call the witness for the purpose of contradicting the testimony given.

MR. MAYNARD: Well, I submit, your Honor, that if Mrs. Schwartz credibility was to be contradicted in any way, shape or manner, a foundation for that should have been laid in the counsel's examination of Mrs. Schwartz, and she should have been asked with respect to the matter.

THE COURT: Well, I have made this memorandum in my book as a result of an examination very carefully upon this subject. "Contradiction. Foundation must be laid."

MR. MAYNARD: I know of no exception, your Honor, to that rule, that a foundation must be laid.

THE COURT: "While facts tending to establish hostile relations between a witness and a party may be proved without a previous examination of the witness thereon, evidence of mere utterances of the wit-

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ness which are claimed to indicate hostility, is governed by the same rule of evidence as self contradictory statements offered to impeach the witness and a foundation for its introduction must be laid by first interrogating the witness sought to be impeached, as to whether or not such contradictory statements --." On this decision -- this was the Appellate Division. When it reached the court of Appeals this was taken from that case, "This case cites many important cases on the subject. It seems best, however to allow the evidence." and I will allow it.

BY MR. WEINBERGER:

Q State the conversation; state the conversation.

A Mr. Gottlieb, a friend of Mrs. Schwartz and a brother in the Society --

BY MR. COURT:

Q Is Mr. Gottlieb in court now?

MR. WEINBERGER: No, he is not.

THE WITNESS: He is not here.

A (Continued) Asked Mrs. Schwartz whether they could not settle their affair outside of the court. Mrs. Schwartz answered "We have our attorney and Mr. Blaustein has his attorney. Let him go and transfer part of the house we have in partnership and the matter is settled." I asked Mrs. Schwartz if Mr. Blaustein has committed a crime, I do not see how such a

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crime can be settled out of court. Mrs. Schwartz answered, "If Mr. Blaustein would not leave us, this matter would never come so far, because he is my blood and flesh, but now we are afraid that he may go down and harm us with the firm; therefore we must proceed against him." This is all I know about this case.

BY MR. WEINBERGER:

Q

How long have you known the defendant, Mr. Blaustein?

A I know Mr. Blaustein and Mr. Schwartz since four years, since they were initiated into the same Lodge where I belong.

Q

And you know people that know Mr. Blaustein? You know other people that know Mr. Blaustein? A I know the membership of this Lodge and know that they know him.

Q

What is his reputation for honesty and veracity?

A The reputation of both of these men is excellent in the midst of our Society.

BY MR. MAYNARD:

Q

You are not asked anything about Mr. Schwartz; you are simply asked about this man. A Mr. Blaustein enjoys the greatest reputation, the noblest reputation in our Society.

BY MR. WEINBERGER:

Q

He is a member of your Lodge, you say? A Yes, Lodge No. 5, Independent Order of Brith Abraham.

Q

Does he hold any office there? A He is Ex President of the Society there.

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BY MR. MAYNARD:

Q Where was the conversation which you have related?

A In the middle of the month of December; I cannot exactly remember the date.

Q Where was it held? A It was held at the corner of 4th Street and Avenue C when Mrs. Schwartz looked for Mr. Gottlieb concerning a tenant for her house in 10th Street.

Q Were you with Mr. Gottlieb or with Mrs. Schwartz?

A I was with Mr. Gottlieb.

Q At the time that she approached him for a tenant?

A When we had -- when we were in conversation with Mr. Gottlieb, Mrs. Schwartz happened to come and greet us.

Q Mrs. Schwartz happened to come? A Happened to come and greet us accidentally.

Q She did not happen to come about a tenant? A She was inquiring for a tenant for a certain apartment in her house, which is situated in 10th Street, so I did understand.

Q This was in December last, this conversation, was it, in December last? A That was in the middle of December, 1909.

Q Defendant's Counsel has stated that he heard of this conversation for the first time today. A I have had no talk with the counsel for the defendant about this case, because I know nothing about the case.

Q I have noticed you, without knowing who you were, in

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court every day since this case was called. A I was here every day, because I am taking interest in the family of Mr. Blaustein, just as well as the family of Mr. Schwartz.

Q You are taking an interest in the family of Mr. Blaustein and have attended every day upon the trial of this case?

A Yes, sir.

Q And you expected to be called as a witness in this case?

A Expected to be called as a volunteer witness.

Q As a volunteer witness; you expected to be called simply as a character witness, didn't you? A What?

Q You expected to be called simply as a character witness for this defendant? A I was; I understood, or I volunteered to testify for his character. I called the attention of the, --

Q Mr. Weinberger? A Attorney for the defendant, that I did perfectly recollect a conversation which I had with Mr. Gottlieb and Mrs. Schwartz.

Q How did you happen to mention that to Mr. Weinberger today? A Because I -- it came into my mind that it will be just to bring before this jury and this court of justice the conversation I have had with Mrs. Schwartz.

Q To whom did you volunteer to become a witness in this case? A Yes, sir.

Q To whom? A To whom?

Q To whom did you volunteer? A To Mr. Blaustein.

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Q And not to his attorney? A And to his attorney.

Q And to his attorney. Have you talked this case over with Mr. Weinberger? A No, I did not.

Q Never mentioned it? A We spoke, as we usually speak about matters, but not entering into questions of discussions of the case.

Q I understood you to say that both Mr. Blaustein and Mr. Schwartz were members of the same Lodge? A The same Lodge.

Q And you were a member of that Lodge? A Yes, sir, for the last quarter of a century.

Q Twenty-five years? A Twenty-five years.

Q Are you an officer? A I am the first Ex President; not the first, not the first, fifth Ex President.

Q Of this Lodge? A Of this Lodge.

Q Now, when this difficulty arose between Mr. Schwartz and Mr. Blaustein, it was discussed commonly in the Lodge, wasn't it? A Not in the Lodge; after the meeting, the friends of both parties took an interest in both of the members, in Mr. Blaustein and in Mr. Schwartz.

Q And it was discussed in the Lodge room, but not at the Lodge meeting? A Not particularly, simply there is trouble between Mr. Schwartz and Mr. Blaustein.

Q And the Lodge took sides upon the trouble? A Not the Lodge.

Q The members of the Lodge? A Not the Lodge, individ-

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ually members who are acquainted with the parties.

Q That is what I am asking. A Of course they spoke about it.

Q Did the individual members of that Lodge take sides upon the question of the guilt or innocence of this defendant?

A Never. Because they never knew the particulars of it.

Q Well, how do you know what the individual members of your Lodge knew about this case? A Because we knew all that Mr. Blaustein was a favorite employee of Mr. Schwartz and suddenly they parted. It was a general talk, with each and every one member, why such close friends have parted so suddenly.

Q Now, you are friendly with Mr. Blaustein's family, are you not? A I am friendly with each and every member.

Q Of Blaustein's family? A Each and every member of the Lodge.

Q Well, you are friendly with Mr. Blaustein's family, aren't you? A I do not know the family, every one, by sight. I know his wife. I met her here in this court.

Q And you know Mr. Blaustein? A I know Mr. Blaustein from my association with him in the Society matters.

Q And your knowledge as to his character or his reputation is gained largely from the membership of the Lodge, is it not?

A I know that his character --

Q Now that is not my question, sir, with all respect to

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you. A What?

Q Now your knowledge of his reputation is gained largely from the membership of your Lodge, is it not? A Yes, sir.

Q That is true? A That is all.

BY THE SIXTH JUROR:

Q You testified the first attorney -- A I am of hard hearing. Kindly ask the question loud.

Q You testified to this attorney as to the reputation of the defendant, and to this attorney as to the character of the defendant. Do I understand you to mean that character and reputation are not the same? A Of whom, please.

Q Of the defendant? What is the difference between reputation and character? A Reputation and character? The difference between reputation and character is this. Reputation is the popular meaning of the man, without knowing his character, and the character -- the meaning and definition of character is the quality of the man in his dealings in every case, in his private life.

BY MR. MAYNARD:

Q Character, in other words, is what a man really is?

A Yes, sir.

Q And reputation is what people say he is? A That is what I mean.

THE COURT: Emerson says character is that which one himself knows. In our court we refer to the

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term, "good character" , but really it is an inaccurate term, but it has developed into our entire judicial system. We speak of evidence of good reputation or character. Character is that which an individual himself knows. Nobody knows character. @

THE SIXTH JUROR: I was getting at that point, the quality of the word .

THE COURT: We speak of ones reputation. The character is only known to the individual.

MR. WEINBERGER: That is the question I am allowed to put. I am not allowed to put any other question, just what the reputation is?

EMIL BLAUSTEIN, a witness called on behalf of the defendant, being duly sworn, testified as follows:

BY MR. WEINBERGER:

Q You are the son of the defendant, are you not? A Yes, sir.

Q Speak a little louder so they can hear you. Do you know the complaining witness, Mr. Schwartz? A Yes, sir.

Q What is your business, Mr. Blaustein? A Bookkeeper.

Q Where were you employed during the years 1906, 7 and 8?

A By Mr. Schwartz.

Q And what were your duties there? A I kept books

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on the thirteenth floor.

BY THE ELEVENTH JUROR:

Q What? A I kept books on the thirteenth floor; there were two floors there, twelfth and thirteenth.

Q Peoples' Exhibit 6, this book, is the one that you kept?

MR. MAYNARD: That is already testified to by his father.

MR. WEINBERGER: Well, I want to know about it.

MR. MAYNARD: Why duplicate it?

Q Is this the book that you kept there? A Yes, sir.

Q Did you have any conversation with Mr. Schwartz about in 1907, in 1906, about this pay roll, and how to keep it?

A Yes, sir.

Q What was the conversation; substantially, if you do not remember the words of it? A Well, he told me to keep the pay roll, and each week to put only expenses as much as he tells me to put on the expenses. Now in 1907, I suppose it will be around August or September, he told me to pad the pay roll with \$50.00 a week; that means I should put all employees names there which never worked over there and which wages will amount to \$50.00 a week and I did pad the pay roll \$50.00 four or five times, straight.

Q This item, "All expenses \$72.75" did you ever pay out any expenses? A I never handled the money.

Q Where did you get this money, \$72.75? A Well, Schwartz told me to put down every week so and so much expenses.

Q You never handled the money? A I never handled any of the money.

Q Do you know what expenses there were there? A Well, I know it was -- what kind of expense he should have had, electric and gas and so on, but I never handled the money; I don't know what he did with the money.

Q You simply took his figures? A I simply took the figures from Mr. Schwartz.

Q Until when were you employed by Mr. Schwartz?
A I was employed until 1907, at the end of about -- until about --

Q Do you know what I mean by "until"? A What?

Q Until when were you employed; not when, but until when? A Until 1908. September, I left, because on the thirteenth floor they gave up the place there; there was no work so then I left and I came again back in 1909 and I worked there about two months, two or three months.

Q When did you begin working? A I began -- I don't remember exactly the month when it was.

Q And were you ever discharged by him? A No, sir.

Q When did you leave him? A I left him two weeks after papa left/

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Q That was about -- A About the end of -- the beginning of March.

Q Beginning of March? A Yes, sir.

Q Do you remember having any conversation between -- being present at a conversation between your father and Mr. Schwartz? A Yes, sir.

Q When was that? A It was on a Thursday evening, before I left -- I left Friday and that was Thursday evening.

Q And where was that conversation held? A In Mr. Schwartz's house.

Q When? A At 77 Second Avenue.

Q Now how did you get to be there?

MR. MAYNARD: I object to this, if your Honor please; what has this got to do with any issue in this case. I have permitted it so far, but it is wholly incompetent and irrelevant.

BY THE COURT:

Q You asked when and he gave the place where. When was the conversation held? A The conversation was held Thursday evening, at Mr. Schwartz's house.

Q When, what day, what month, what year? A That was in March.

Q 1909? A 1909.

Q What was the conversation, Mr. Blaustein? A The conversation was, Mxx me and Papa went down to his place and

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Papa asked him why he refused to pay the promised wages to us when Papa left, so he promised us \$5.00 wages, he should raise \$5.00 the salary. He did give us a promise of \$5.00 the first week and the second week but the second week he did not give it to my brother, which was also working over there in the place. Papa went down and asked him the reason why he did not promise the raise what he was supposed to give to my brother also. He said that he thinks it is enough for a bookkeeper, as much wages as he gives. Papa told him after all the things he told him, all the money he made through him, all the jewelry Mrs. Schwartz wears, he made it through him, and after all the good he did with him and is in the office with him, and does not even pay the promised wages, so Mr. Schwartz got excited and Papa also told him that if he can do him any harm, but he is not that kind of man, so Mr. Schwartz said, "Go ahead and do it." Papa told him, "If I like to, I might do it". and he took his hat and went down. Next day morning we did not go to work.

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Q What did you get before you left? How much wages?

A Before my father left I had ten dollars.

Q How much did you get the week after that? A The week after he promised to give us \$15. to put in the book and pay me \$5. extra to me without the notice of Mrs. Schwartz.

Q How much did you get? A I got \$20.

Q How much did you get the week after that? A I also got \$20., but my brother had only ten dollars and he promised to give him \$15. also and \$5. without the notice of Mrs. Schwartz; not to pay it in the book.

CROSS EXAMINATION BY MR. MAYNARD:

Q You say you were not discharged by Mr. Schwartz? A No sir.

Q Is that letter in your handwriting (Showing letter)

A Yes sir.

Q Did you send that to Mr. Schwartz? A Yes sir.

MR. MAYNARD: I will offer this letter in evidence.

THE COURT: Have it marked for Identification.

MR. MAYNARD: I want to use it at once, if your Honor please, I offer it in evidence.

MR. WEINBERGER: I object to the production of this letter as not being written by the defendant and not

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binding upon him.

MR. MAYNARD: I offer it for the purpose of affecting the credibility of this witness.

THE COURT: I will allow it. Objection overruled.

MR. WEINBERGER: Exception.

(This letter marked People's Exhibit #7 in evidence).

Q What was the date of the conversation which you had with Mr. Schwartz in the presence of your father, that you have described? A I don't remember exactly the date. It was on Thursday evening.

Q Well, how soon after your father was discharged by Mr. Schwartz? A The third week after father left.

Q And he left on the 16th? A On the 16th.

Q On the 16th of February? A Yes sir, and I worked there after three weeks, the third week I left.

MR. MAYNARD: (Reading Exhibit #7) "New York, March 11, 1909. Mr. W. Schwartz. Dear Sir:
It is my right for me not by taking so much liberty and calling your kind attention to a few words. You may have that feeling against me and against my character and ability, but I hardly believe it. That is the reason my taking a liberty and asking you the following favor. After all that happened last week I had in

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mind that after so many promises and so good acting to me from you and Mrs. Schwartz, I am only taking it for a dream that you discharged me without any reason assigning me, by making up so quickly your mind. The offer, Mr. Schwartz, you wanted of me, namely if I shall leave my parents home is a thing I could not do it. This is a very big affair and I do not think that you will find between thousands and thousand a man who would do it, promising you to leave it very shortly I suppose would be enough satisfaction to you and Mrs. Schwartz, if that would be the only reason. I do not have to describe my circumstances. Both of you know it very good and I always hope to build my future on this position by being employed by you and like the end of a dream I am the ruined one, even by finding me not guilty. I am not making by writing this letter employment, or trying your made up minds to change, but only asking you if it is in your privilege not to forget me and place me back in my old position which I always filled to your satisfaction. I am sure that by talking with you personally I would not be able to describe all this/ That is why I am taking the pen as a helper in my trouble. Hope that my letter will be regarded favorably from you and Mrs. Schwartz

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and remain very respectfully, Emil Blaustein. Please answer as soon as possible at following address, Miss Ella Freedman, care of Mrs. Brem, 316 Stanton St. City. Please burn enclosed letter after reading."

Q You wrote that letter did you? A Yes sir.

MR. MAYNARD: That is all. .

MAX L. HOLLANDER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

BY MR. WEINBERGER:

Q What is your business, Mr. Hollander? A Assistant Grand Secretary.

Q Where? A In the Independent Order of Gris Abraham.

Q Do you hold any other office there?

THE COURT: Excluded; we are not investigating any lodges here.

Q Do you know the complainant, Mr. Schwartz? A Who?

Q Mr. Schwartz? A I do.

Q Do you know the defendant, Mr. Blaustein? A I do.

Q Do you know the place of business of Mr. Schwartz?

A Yes sir.

Q Do you remember having called at the place of business on or about the 17th day of February? A I would not

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be exact.

MR. MAYNARD: What year.

MR. WEINBERGER: 1920.

MR. MAYNARD: 1909?

Q 1909? A I would not be exact on the day, but I am exact on the Wednesday preceding Washington's birthday, whether it is Wednesday the 17th---

Q Th Wednesday preceding Washington's birthday? A Yes sir.

Q That was 1909? A Yes sir.

Q Washington's birthday is on the 22nd day of February, isn't it? A Yes.

Q And this was the week preceding it? A Yes sir.

Q Now did you see Mr. Schwartz there? A When I came up, yes.

Q Now, did you have any conversation with him? A The only conversation I had--

BY MR. MAYNARD:

Q Did you, yes or no? A Yes.

BY MR. WEINBERGER:

Q What was the conversation?

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THE COURT: Now, counsel, if you are going to adopt that course throughout the case, I shall be obliged to exclude it. The court in the exercise of its discretion or power has allowed it, but that is going to be the course of procedure by you, it was your duty when Mr. Schwartz was on the stand and again when Mrs. Schwartz was on the stand, to particularly direct the attention of the witness as to whether any statement was made by the witness to such and such a person, because that rule of law must be properly observed.

MR. WEINBERGER: If your Honor pleases, I may have made a mistake, I concede, but Mrs. Schwartz---

THE COURT: The law books are filled with decisions on that and it is elemental, you have got to direct specifically a witness' attention if you intend to impeach or contradict, because otherwise when a witness takes a stand and he gives testimony, he leaves the city and the people would be deprived of the evidence, but when you direct a witness' attention to the fact, why then the Jury has both versions of the situation before them.

MR. WEINBERGER: If your Honor please, the complaining witness is here yet. The people did not lose

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any rights.

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THE COURT: To save time, Mr. Maynard, it might be well to allow it, because we will have to put Mr. Schwartz on the stand and direct his attention to the matter and we will be losing time.

MR. MAYNARD: I submit that he cannot under the circumstances put Mr. Schwartz on the stand, because he will admit that it is not for cross examination and if he puts Mr. Schwartz on the stand and asks him questions, making him his own witness, he cannot contradict it.

THE COURT: Well, that is true, but I do not propose to be as technical as all that. I propose to let the counsel proceed. We have got to take into consideration one's experience at the bar and I am here after all to do equal justice to the people and to the defendant. I shall consider Mr. Schwartz as though he was under cross examination. Let him step forward.

WILLIAM SCHWARTZ (recalled)

CROSS EXAMINATION BY MR. WEINBERGER: (Continued)

Q Do you remember having seen Mr. Hollander in your place of business?

THE COURT: Mr. Hollander will retire from the room and every other witness that you intend to put

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upon the stand who had conversations with Mr. Schwartz.

MR. WEINBERGER: Only Mr. Hollander.

THE COURT: Let Mr. Hollander retire.

Q (Continuing) Mr. Schwartz, you know Mr. Hollander, don't you? A I do.

Q Do you remember having seen him at your place of business on or about the 17th day of February?

THE COURT: He said the 22nd of February.

MR. WEINBERGER: No, preceding Washington Birthday.

THE SIXTH JUROR: He said the Wednesday before Washington's Birthday.

Q You remember having seen Mr. Hollander at your place of business on the Wednesday preceding Washington's Birthday 1909?

MR. MAYNARD: Yes or no.

A Yes sir.

Q Do you remember having had any conversation with him? A Yes sir.

Q Did Mr. Hollander ask you where Mr. Blaustein was and you answered he was sick?

MR. MAYNARD: I object to this as not being cross examination; not being directed to anything that I brought out on the direct examination and I warn defendant's counsel that he is making the

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witness his own.

THE COURT: I will allow it.

MR. MAYNARD: Warning and all?

THE COURT: Yes sir, you have got to take into consideration his ability.

Q (Question repeated by the stenographer as follows):

"Q Did Mr. Hollander ask you where Mr. Blaustein was and you answered he was sick "?

THE COURT: Wait. If my recollection serves me well, I believe the witness was asked this question on cross examination. I believe you asked Mr. Schwartz when he was under cross examination whether he ever told Mr. Hollander that he was sick.

MR. WEINBERGER: If I did, it is useless to recall him.

THE COURT: Do you gentlemen remember that evidence?

JURORS: No.

BY THE COURT:

Q Did you? A No, Your Honor.

THE FOURTH JUROR: Never heard that name.

THE COURT: He told a certain witness he was sick, I think you will find it in the record.

THE WITNESS: I have mentioned the word "six".

BY THE COURT:

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Q In what way? A The book-keeper was absent for
a time an hour or so and I said he was sick.

THE COURT: It is not necessary for me to follow
the evidence faithfully. The safest thing for a
Judge to do is to pay no attention to the evidence,
only the law, and you take the responsibility of
following the evidence, but I have got to follow the
evidence nevertheless in order to properly apply the
law.

BY MR. WEINBERGER:

Q Did you have that conversation with Mr. Hollander?

A Yes sir.

BY THE COURT:

Q Did you tell Mr. Hollander that Mr. Blaustein was
sick the Wednesday before Washington's Birthday? A No
sir.

MR. MAYNARD: That is all.

MAX L HOLLANDER (recalled)

BY MR. WEINBERGER:

Q Mr. Hollander, do you remember having been up to see
Mr. Schwartz on the Wednesday preceding Washington's
birthday 1909?

MR. MAYNARD: Yes or no?

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A Yes.

Q Did you have any conversation with him? A I did.

Q What conversation did you have?

MR. MAYNARD: I object to that on the ground that he is attempting to impeach his own witness in respect to the matter in respect to which he is just examining him.

THE COURT: Objection overruled.

A When I looked around I asked ---

THE COURT: No, answer the question; what conversation did you have?

THE WITNESS: I asked where Mr. Blaustein is.

Q What did Mr. Schwartz answer? A "He is sick".

Q Is that all the conversation you had in regard to Mr. Blaustein? A That is all.

Q Did you go purposely to see Mr. Blaustein; did you have any business there? A No, I had come there and went there to see whether my coat is gone or not.

Q And this conversation about Mr. Blaustein is only casual? A That is all.

Q How long have you known the defendant? A I know him about four and a half years.

Q Do you know people that know him? A Some of them.

Q Have you met him frequently? A I met him frequently

at occasions which required going to the lodges and so forth which he is a member.

Q Do you know people that know him? A Some of them.

Q Do you know what his general reputation for honesty and veracity is? A So far as I can know, it is good.

MR. MAYNARD: That is all.

MR. WEINBERGER: The defense rests.

NATHANIEL B. OETTINGER, (recalled)

DIRECT EXAMINATION BY MR. MAYNARD:

Q What is your business, Mr. Oettinger? A Superintendent of the manufacturing department of Heidelberg Wulf & Company.

Q And how long have you been in the employ of that company? A 12 or 13 years.

Q During that time have you made contracts with William Schwartz, the complaining witness in this case? A Yes sir.

Q You have made contracts personally with him for your company? A Yes.

Q You yourself personally? A Yes sir.

Q Was any contract that you ever made with William Schwartz during the 12 years in any way shape or manner based upon his

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13 pay roll? A Absolutely not.

MR. WEINBERGER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: Just a moment. The defendant claimed that this was necessary, the books were to be padded in order to show that he ---he wanted Heidelberg and Company to give him an increase in the work and that he would have to show his pay rolls for that purpose. I overrule the objection.

MR. WEINBERGER: If your Honor please, the testimony, if I remember correctly, was that the complaining witness told that to the defendant. The defendant of course could not tell what the contract was with Heidelberg Wulf & company.

THE COURT: I understand that. If the defense in this case were insanity why then you could not contradict it. That is what one told the other, but that is not the defense here. I will allow the evidence. Objection overruled.

MR. MAYNARD: Read that question and answer.

(Question and answer repeated by the stenographer as follows: Q Was any contract that you ever made with William Schwartz during the 12 years in any way shape or manner based upon his pay roll? A Absolutely not.)

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Q Did you ever at any time prior to February 5th 1909 examined the pay rolls of Mr. Schwartz? A Never did.

Q Did you ever after the fifth of January 1909 have your attention called to the pay roll? A Only on the occasion of the present trouble.

MR. WEINBERGER: A little louder.

A Only on the occasion of the present trouble when this thing came up, Mr. Schwartz showed me some of the transactions.

Q Called your attention to the pay roll about which the trouble arose? A Yes sir.

Q Did he at that time show you any papers written by this defendant Mr. Blaustein? A I cannot recall that.

MR. WEINBERGER: I object to that.

MR. WAYNARD: He says he does not recall.

Q In making your contracts with Mr. Schwartz you were working in the interest of Heidelberg Wulf & Company, were you not? A Yes sir.

Q You tried to get the best contract prices you could? A Yes sir.

Q You let him take care of his side of the contract, did you? A Exactly, yes sir.

Q You found him an able man in making a contract.

A Yes sir.

Q He looked after his own interest? A Yes sir.

Q Did he from time to time change his contract with you in order to get the advantage of ~~you~~ in a business way; did he try to raise your prices? A Yes.

Q Did he some times succeed? A Yes sir.

Q And the price that you paid to him for work varied from year to year? A Yes, as the work changed, different styles of work.

Q Different years you had different styles of work?

A Different styles or different standards of work changed the price.

Q How frequently was the prices of work changed, if you can recall? A Well---

Q Just as it runs? A Well, the standard---

Q You are all business men. The styles or methods of making ~~xxxx~~ clothing is changing all the while? A They are, certainly. We are improving our work and when we demand more work we have got to pay accordingly.

Q Now is it a fact that in 1909 you were selling a better quality of material and goods than you were two years before? A Yes sir.

Q And is it a fact that you paid more for the making up of that better quality of material in 1909 than you had at heretofore? A Yes sir.

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

THE COURT: Objection overruled.

CROSS EXAMINATION BY MR. WEINBERGER:

Q Will you tell me, Mr. Oettinger, when Mr. Schwartz first called your attention to the pay roll? A The exact date?

Q Well, approximately. A At the time of the discharge of Mr. Blaustein.

Q When was that, about? A Well, I heard in court here, in February.

Q Was it in August? A No, I really could not tell the exact date.

Q Well approximately I asked you Mr. Oettinger. A In February, February.

Q In February? A Yes sir, at the time it happened.

Q You were up quite frequently to that place, weren't you? A Yes sir, very often.

Q You are very friendly with Mr. Schwartz? A Subject to my orders.

Q What was that? A Well, freidnly, as you would say a superintendent of the manufacturing department and he a contractor with us.

BY MR. MAYNARD:

Q Perfectly friendly, is he? A Yes.

Q You are perfectly friendly with him? A Yes.

MR. MAYNARD: There is no question about that.

BY MR. WEINBERGER:

Q Did Mr. Schwartz ever complain to you that he is not making enough money? A Complained about his prices.

Q And he said his expenses are large? A He complained at times that he could not make the garments at the prices which I marked them at, on account of the standard of work which I asked for.

Q And that he has got to pay big money for labor?

MR. MAYNARD: Ask the question.

Q Did he say he had to pay big money for labor? A That naturally came up when we had the conversation.

Q Do you know Mr. Reisenger in your place of business?
A Yes sir.

Q Do you know whether he ever looked at the Mr. Schwartz pay roll?

MR. MAYNARD: To your own knowledge.
A I do not.

Q You heard him testify in the police court that he did? A Mr. Rikert.

Q Mr. Reisenger? A I do not quite remember that.
MR. MAYNARD: I don't either.

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Q Mr. Reisinger? A I don't quite remember that.

MR. MAYNARD: I don't either.

Q Are you an officer of that — is Wulf, Heidelberg & Company a corporation or co-partnership? A A partnership.

Q Are you a member of the firm? A No, sir.

Q Do you make up the list of prices to pay for, that you pay to the contractor? A Yes, sir.

Q Do you know whether Mr. Schwartz ever had any conversation about this to other members of the firm? A He did not.

Q You do not? A He did not. That is, to my knowledge he did not.

Q But he may have without your knowledge? A I hardly think it is likely.

Q What makes you think it? A All his transactions are absolutely with me.

Q And you can make any price you like? A Yes, sir.

Q And the firm does not care? A They have absolute confidence in my ability and my integrity.

MR. MAYNARD: Yes.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q The firm of Heidelberg, Wulf & Company were in no way, shape or manner interested in the expenses of Mr. Schwartz?

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A In no way responsible.

Q In no way interested? A In no way interested.

Q You never paid any of his expenses; you paid your contract? A We had a contract; we paid the rent; it was our loss and the machinery was ours. He was allowed; that is, we paid him under his contract to make the work for us under his own risk.

Q That is right, but you had no part of his expense to pay? A No.

Q Now, before the Magistrate you were called; you were subpoenaed by this defendant, were you not? A Well, I really don't know.

Q In the Magistrate's Court? A I really don't know. I was asked to come and I came.

Q It appears here, "Samuel , a witness called on behalf of the defence, being duly sworn, testified as follows: Direct Examination by Mr. Weinberger." He examined you in the direct? A Yes, sir, he was the person who examined me.

Q You were subpoenaed by them at that time? A Yes.

MR. MAYNARD: That is all. I am obliged to you.

BY THE SIXTH JUROR:

Q Did you say that —

MR. MAYNARD: What is the question?

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Q You say that every question relating to the work given to Mr. Schwartz was made between you and he? A Yes, sir.

Q Now, you have paid him the money, is that it; the firm of Heidelberg, Wulf & Company have only made out the checks, providing you O.K'd it? A No, we have a book-keeper for that. He made out the checks and signed them.

Q That is what I understand, but how would the book-keeper know he was entitled to a check or not unless you O. K'd it? A It is not done in that way.

BY MR. MAYNARD:

Q Tell him how it was done? A The work was given, the contract prepared and statements were made out, statement of description of making. It was put on the statement and I write the contractor's name and the price that he is paid for making that garment. The garments are sent to the tailors to make, the contractors, and when they come back they are counted and checked. That slip is handed in to the office. The head examiner gives the slip stating what the tailor's name is, marking it O. K. if the work is satisfactory and they can hand him a slip for the work delivered.

BY THE SIXTH JUROR:

Q You do not count over every day's work and check it to see if it is ~~right~~ received or not? A I, no, sir.

Q In other words, you could not know whether Mr. Schwartz took any money exceeding what he was getting from the firm

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or not You could not say that, could you? In other words, you would not know whether he got more money than he was entitled to from Heidelberg, Wulf & Company or not? A Yes, I would know if he got more.

Q Well, may I ask, with the permission of the Court, do you know whether Mr. Schwartz is indebted to Heidelberg, Wulf & Company? A He was.

MR. MAYNARD: He said he was himself; he testified himself so.

BY THE COURT:

Q That is, your firm would advance him money? A If I directed that.

Q If you directed them, they would advance him money?

A Yes sir; that is, I would tell the bookkeeper Schwartz—

MR. MAYNARD: Talk loud.

A (Continued) Mr. Schwartz asked for a loan and I would tell the bookkeeper, Mr. Rikert, that he could have that money.

BY THE SIXTH JUROR:

Q That is what I asked you. In other words, he could not get the money without your telling him in advance?

A Exactly so.

Q Would you have been affected in any way if you had directed the bookkeeper to advance this man a thousand or

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two thousand dollars upon his say so, and if that man would fail to pay within a certain length of time, which we would call it is time to be paid, wouldn't you be affected in any way at all? A No, sir.

Q Wouldn't you feel as if something was done wrong in any way, manner or shape? A No, sir, I transact millions of dollars of business in a year —

Q I do not doubt your ability for doing business; I suppose you are a competent man, but I mean, wouldn't you feel that you had done something which would probably —

A No, I would buy the goods without question, without consulting anybody and make the prices without consulting anybody. I have absolute control of the manufacturing department in every detail.

Q You see what I asked is whether you would not be personally affected if you did something for other people, with their capital, and it was not repaid, if you were not affected? A No, sir.

BY THE COURT:

Q The gentleman says he has exclusive power; that is if you thought an advance was necessary you would so direct it? A Absolutely.

Q Did you take any writing from the defendant when you would make the advance to him, any writing from Mr. Schwartz? A No, none.

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Q No writing whatever? A No, never.

Q That is, the firm would be constantly advancing money?

A Constantly?

Q Would you be constantly?

MR. MAYNARD: Not constantly.

Q (Continued) Would you be constantly advancing him money? A No.

Q About how often? A A shop is an expensive luxury —

Q Now, explain that to the jury. A The shop is an expensive luxury for a manufacturing clothing concern, from this standpoint: that we are there continually striving to improve the standard of quality of our work and for that reason we have our own shop. There are times that the shop must be run and nobody could run it profitably. I possibly ought not to say these things in the presence of Mr. Schwartz. It is regarding the private business of the concern. I do not know if it is —

Q Well, you can omit the private business of the concern, but the point of the matter is this; you have made advances on behalf of the firm to Mr. Schwartz? A Yes.

Q Running to what sums of money? A A thousand dollars, \$1500; up to about \$2,000.

Q You have been doing that for the past twelve years?

A Yes, sir.

Q For the past twelve years? A Yes, sir.

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BY MR. MAYNARD:

Q And he paid those moneys? A Allow me — Schwartz at one time, the name was Gluck & Schwartz.

Q Gluck & Schwartz? A Or Schwartz, yes, sir.

Q For twelve years? A Excuse me, not quite twelve years, but ten years. Prior to that they run a small shop and we put them into our own loft.

Q Those sums have been repaid? A Not all yet.

Q But he has repaid? A Yes, sir.

Q Has the firm ever pressed him for the money? A No, sir. I did the pressing.

Q You did the pressing? A Yes, sir.

BY MR. MAYNARD:

Q You have pressed it? A I have at times asked him and made the arrangement with him he must pay off so much a week.

BY THE COURT:

Q Were those items paid? A Yes.

Q They were paid? A Yes, unless he came to me and told me.

THE SIXTH JUROR: A little louder.

A (Continued) Unless he came and told me he could not give me any this week and I said, leave it after, but he had to come to me after that.

Q Did you ever question him as to his books or ask to

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see his books? A Never.

BY THE SIXTH JUROR:

Q You say that this shops are rather an expensive luxury; that luxury does not happen to come on the back of Heidelberg, Wulf & Company, does it, if this shop belongs to Mr. Schwartz, as I understand it? A He is the proprietor in the shop. The shop is ours.

Q It is your shop? A Yes, sir.

Q You do not operate like most other stores and have these --- A Pardon me?

Q As I understand it, most of the men in the clothing business have shops scattered all over the City and deliver their goods and have them made there and they are sent back and the expense comes on the man that runs the shop?

A The expense is entirely Mr. Schwartz's, I explained before. We pay the rent, it is our loft and our machinery. We put him in there.

Q I understand you figure that all up on your profit on your clothing. That is all covered by the cost of the suit of clothes? A Yes, sir.

Q Do you remember the time when Mr. Schwartz was indebted to your concern to the amount of \$5,000? A He never owed us that amount of money.

Q But he owes you money now? A Yes.

Q How much? A I should judge in the neighborhood of

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\$1,000; in that neighborhood.

BY THE COURT:

Q What is the highest amount he ever owed you? A I think up to \$2,000; in that neighborhood.

Q \$2,000? A Yes, sir. That was partially our fault.

BY MR. MAYNARD:

Q Have you any idea what your weekly payments to Mr. Schwartz were in the year 1909, about what was the average was? A I couldn't tell; I couldn't tell you that.

Q You might estimate that? A No.

BY THE COURT:

Q That is Mr. Schwartz ~~highest~~ hired the help, did he?

A Yes, sir.

Q He was responsible directly to the help for wages, is that right? A I never — yes, sir — I never engaged or discharged a person under his control. The responsibility is absolutely his.

Q He pays their salaries? A Yes, sir.

BY MR. MAYNARD:

Q And he pays the expense of running the machinery?

A Pays for the gas and electricity.

Q If a machine breaks down he must pay for the repairs?

A Yes, sir.

Q All the repairs, all the costs? A All the repairs are absolutely his.

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Q You furnished the loft and machinery? A Yes, sir.

Q And paid the rent? A Yes, sir.

Q And he keeps the machinery in repair? A Yes, sir.

BY THE SIXTH JUROR:

Q In the philosophy of Heidelberg, Wulf & Company do they take into consideration all these items of expense that fall upon him? A Yes, sir.

Q So every once in a while you have to get together and find out how a man is getting along with the price of coal, the advance in labor and that sort of thing, and you make the changes on the prices? A As regards the standard of work we exact from him.

BY THE SECOND JUROR:

Q Did you know during the time that Mr. Schwartz owed you this money he had real estate, or had money in real estate? A Yes, sir.

BY MR. MAYNARD:

Q That fact influenced you in advancing this money?

A The fact he had property?

Q It was influencing you? A It was no crime to earn money.

Q And it was no crime to earn real estate? A No, sir.

Q And that fact that he owned real estate made him a more responsible man in your opinion? A I did not consider that. It was my firm's interest I considered at all

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times.

Q You had implicit confidence in Mr. Schwartz? A Yes.

Q At all times? A Yes, sir.

BY MR. WEINBERGER:

Q Wouldn't it influence you if you saw Mr. Schwartz had a larger expense account in a certain line, to give him larger prices? A I never went into that detail.

Q Wouldn't it?

MR. MAYNARD: I object to it, if your Honor please, as calling for a conclusion.

Q What was the answer? A I would not consider it good business policy to inquire.

MR. MAYNARD: I wouldn't either.

Q Isn't it your duty as the superintendent; isn't it natural that you should get the best price, but to get the best price you have got to know the expenses a man has, so as to be able to run them and you know no man can run along at a loss, don't you? A Certainly not.

Q And if a man would tell you how expenses are larger compared to the work he is doing, wouldn't you consider it? A Yes, that was all considered.

Q That was considered? A Yes.

Q And if he asked for more money and said, "I do not make enough money this week; give me an extension until next week", that would influence you in giving the extension?

A I had confidence in him and he paid off and at times, as the work just so happened, he did not pay; something like that.

BY THE EIGHTH JUROR:

Q If a tailor comes to you and asks for a loan, to advance him, does he tell you what he wants the money for; does he tell you he has a payment for the labor or owes his people or what it is and to kindly advance him money? Under what conditions do you advance money when a tailor comes and asks you for it? A That is part of the things I told his Honor about; I do not think it was policy to describe it in the presence of Mr. Schwartz.

MR. MAYNARD: The situation from the standpoint of Mr. Ottenger, he is still in this business with Heidelberg, Wulf & Company and Schwartz is his contractor and he does not feel at liberty to discuss these matters, because he has other contracts to make with Mr. Schwartz and it is not fair to disclose his mental attitude on that.

THE WITNESS: That is the reason; it is a business reason.

THE COURT: The witness states it is a business reason why that is done. Do you think it is necessary?

THE EIGHTH JUROR: If a tailor asks money in

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advance he generally promises to pay off so much a week or so much when he delivers the work. If every time he delivers he comes to ask about money and he promises to pay so much a week for the loan, I want to ask how was this payment in return? Was he always owing \$1500 or \$2,000, or was the payment made and a new loan given?

THE WITNESS: Yes, payment made and when occasion required, why more money was loaned.

Q How did he pay you? A \$100 a week, or \$50 a week.

BY MR. WEINBERGER:

Q When he told you he had larger expenses you gave him extension? A For a week. I did not take anything off for a week.

H N E W I R T H, recalled, testified through the interpreter Leon Lundberg, as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q You are in the jewelry business, are you not? A Yes.

Q And prior to December, 1908, had you sold this defendant, Mr. Blaustein, any jewelry? A Yes.

Q Do you know how much you had sold him? A Yes.

Q What was the aggregate amount? A \$410.

Q Now, has that \$410 all been paid?

MR. WEINBERGER: Was the whole question in-

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terpreted?

THE INTERPRETER: Yes.

MR. WEINBERGER: Did you interpret the whole answer?

THE INTERPRETER: I answered the whole question.

MR. WEINBERGER: The answer was \$410. Was that the whole answer?

THE INTERPRETER: Not everything at once, but one after another.

Q Well, you sold him once an article of jewelry for \$135?

A Yes.

Q And another article for \$125? A Yes.

Q And another article for \$150? A Yes.

Q The sum total of \$410? A Yes.

Q Did you ever sell this defendant any jewelry after December, 1908? A After December, I cannot remember because he bought for his sisters some earrings for \$155.

Q For his sister? A For his sisters.

Q Did you ever sell this defendant Blaustein a pin for \$450? A No.

Q Did you ever show him a pin, or four carat diamond pin? And try to sell it to him for \$450? A That was a diamond ring. I brought him a diamond ring; that was between August and July.

BY THE COURT: Q What year? A 1908.

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BY MR. MAYNARD:

Q 1908? A Yes. I brought him a ring for sale, but I do not remember how much it weighed. Then he said to me,

A Give me the ring and I will go to ask for the value.

Q That was a diamond ring? A Yes.

Q Did you leave it with him? A Yes, sir.

Q Did he afterwards return it to you? A He came back and said it was valued for less than I asked him and he returned it to me.

Q Did he tell you who he took that ring to? A He said he was in a pawn shop to find out how much it was worth.

Q Now, did you ever sell a pin for \$450 to Mr. Schwartz? A I then brought also to Mr. Schwartz studs; then Mr. Schwartz kept it for two or three days and he also returned it to me saying it was valued less than I asked for it.

Q Was that in December, 1908? A That was between July and August, 1908.

Q Did you ever sell a pin to Mr. Schwartz? A That is called in Yiddish a Lavalier.

Q You never sold Mr. Schwartz a pin, did you? A About ten or twelve years ago I sold him a pin.

Q A stecknadle? A A needle pin, it is the same word in Yiddish.

Q Did you notice the pin Mr. Schwartz was wearing yesterday? A I have not been here yesterday, I was here on

Wednesday.

BY THE SIXTH JUROR:

Q What month did he sell that pin in, twelve years ago?

A I don't remember.

Q Ask him how well he remembers all these other things?

A Well, a year or two I can remember, but not ten or twelve.

Q How much business does he do a year? A Sometimes I do \$1,000 a week business.

Q Ask him if he remembers everything about it? A I do not remember everything. A year or two ago I can remember.

Q Well, he says he doesn't remember? A He doesn't remember everything, but in the past year or not.

BY THE COURT:

Q From memory he does not remember everything; ask him that question? A Please repeat it.

Q He says from memory he does not remember everything.
A But I remember I say.

BY THE SIXTH JUROR:

Q Do you keep a record of all your transactions? A When I sell and it is time to be paid back I make a record. If I sell cash I do not make any record.

Q Then how much business have you done with Mr. Schwartz since you knew Mr. Schwartz? A I did business when Mr. Blaustein was not yet in New York, when he was partners with Mr. Gluck.

Q If I bought a pin from you four years ago would you recognize it to-day if you looked at it? A I might recognize it.

Q Just a moment. Does he design his own pins? A No, but I remember the goods, how it looked.

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Q I want to ask him if there are not a thousand jewelers you have the same model that they are selling all the time? A The stock as I say before when I see the pin I might recognize it.

BY THE SECOND JUROR:

Q Ask him if he had the pin there last February, 1909 for about \$450. A In February I had no goods at all.

BY THE FIRST JUROR:

Q When did you sell that Lavalier? A February 1908.

Q And isn't it a fact that some people which are not known to express themselves "Lavaliers", they call it a pin? Are there some people which call it a pin, if they are not in this business, which they know exclusively it is called in the modern way Lavalier? A Some call it so; some others call it the name "Lavalier"; so I call it lavalier. They come to me and order for a Lavalier, so I say "Lavalier".

Q That is not exactly what I asked you. I asked you if it is not a fact some people call it a pin just as others call it a lavalier? A He answered that question.

BY THE COURT:

Q Put that question to him. A person unfamiliar with the name of the particular article would call it a pin instead of a lavalier? A Well, how somebody calls it, I cannot know.

Q Has a lavalier got a pin? Has it got a pin?

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I understand a lavalier hangs on a chain? A It hangs such as this (Interpreter indicating shield).

BY THE FIRST JUROR:

Q How long are you in the business? A About 48 years.

Q Don't you know it is only about ten years or rather eight years it has been called by the name lavalier.

A It is about one year or two years ago that this article came out, that is called lavalier.

BY MR. WEINBERGER:

Q Do you remember when you got the \$47. check from Mr. Schwartz? A Yes.

Qc Did you at that time show Mr. Schwartz some piece of jewelry? A When I got the check I did not say anything. I asked him does he want to buy something call me and I will sell you.

Q Did you show him anything at that time? A At that time, no.

Q Don't you always carry jewelry in your pocket? A How can I remember.

Q Have you any jewelry now in your pocket? A Yes.

Q Don't you generally go around with jewelry in your pocket? A No, ^{only} when I got an order.

Q You received at that time a final payment, you testified? A Yes sir.

Q And you did not try to sell him anything else? A No.

Q You do not care for any business, do you?

MR. MAYNARD: I object to that form of questioning; it is an insult to the intelligence of the witness.

Q Didn't you yesterday going out, tell me that you could not answer the questions because I was too much in a hurry; I did not give you a chance to answer right? A No.

MR. MAYNARD: You did not give all his answer. He said, "Gar nicht."

THE INTERPRETER: No, he said nothing.

Q Didn't you have any conversation at all with Mr. Blaustein in my presence? A Wehn I left, Mr. Blaustein told me, "you have sold Mr. Schwartz a ring". Then I say to him, what are you talking about; I took it back."

Q Then he took it back is that it; you took it back?

MR. MAYNARD: That is what he said.

MR. WEINBERGER: Please, Mr. District Attorney, I never interrupt any of your questions.

Q Mr. Newirth, you took it back? A Yes, the ring.

BY MR. MAYNARD:

Q That ring you took back was given to Mr. Schwartz and an entire year before, wasn't it, July or August? You do not understand the question? Just a minute. Get it quiet for a minute. Now you did not sell any ring or

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pin to Mr. Schwartz in February 1909, did you? A No.

Q Now---A As soon as I got the check I did not
sell him anything.

THE COURT: There was no claim he sold. Did he
show him.

MR. MAYNARD: He already said that he said he
did not show him.

Q You did not on that day show Mr. Schwartz a ringer a
pin? A No.

Q Now how long before that was it that you ~~have~~ brought
to Mr. Schwartz a pin which he kept for a couple of days and
then returned to you? It was a ring, he said. A A pine.

Q A pin? All right.

THE COURT: And then returned to you?

A That was before or after the Jewish Holidays in 1908.

BY THE SECOND JUROR:

Q What holidays? A Roshashonah, New Years.

BY MR. MAYNARD:

Q In 1908? A Yes, 1908. Then from that time I did
not do any business.

BY MR. WEINBERG:

Q Is the Jewish Holidays, New Years, in August or
July? A The Jewish Holidays September or October.

Q But not in July or August? A July and August, no.

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BY THE COURT:

Q Did you extend credit to the defendant Blaustein when he purchased the articles representing in the aggregate the sum of \$410. A Only these things; he did not pay me anything at once cash, but he paid me by the week.

Q Did he give you any writing? A No.

Q And nobody was required to guarantee the payment to you for these articles? A No. To this day he is paying me over \$100.

THE COURT: I would put the direct question to this witness as to the claim by this defendant that Mr. Schwartz was to buy this article and this defendant was to pay Mr. Schwartz the \$10. per week.

BY MR. MAYNARD:

Q Did Mr. Schwartzewer buy from you a pin for Mr. Blaustein costing \$450.

MR. WEINBERGER: Objected to as not being properly in rebuttal.

THE COURT: Sustained.

Q Did you ever give Mr. Schwartz a pin, or any article of jewelry, of the value of \$450. which Mr. Schwartz was to sell to this defendant and the defendant was to pay to Mr. Schwartz by weekly payments of \$10.

MR. WEINBERG: I object to this form of question,

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if your Honor please.

THE COURT: Wasn't this the claim made by the defendant's counsel.

MR. WEINBERGER: Not that Newirth knew about it.

THE COURT: That Newirth knew nothing about it?

MR. WEINBERGER: No; they had a conversation between themselves about the pin.

THE COURT: That is your claim?

MR. WEINBERGER: Yes sir.

THE COURT: That Newirth knew nothing at all about it.

MR. WEINBERG. No sir, excepting he left the pine there. He left it for Mr. Schwartz.

MR. MAYNARD: Well, he said he did not.

THE SIXTH JUROR: You testified yesterday you left such a pine with Mr. Schwartz?

MR. MAYNARD: No, he did not.

THE SIXTH JUROR: Well, I am quite positive about this. This witness testified what I have stated yesterday, that he had a pin equivalent to this amount, and had it for several days and Mr. Schwartz returned it.

THE TWELFTH JUROR: I ask that dates be used when

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these questions are asked. They get excited over unconnected questions.

THE SIXTH JUROR: Worry about yourself. Don't worry about me.

MR. MAYNARD: I have no further questions to ask.

THE COURT: You had better straighten that out. Some of the jurors seem to be under the impression that this witness testified that he gave Schwartz a pin.

THE SECOND JUROR: That was the first examination.

THE SIXTH JUROR: Whenever it was, your Honor, I have a very distinct recollection of that.

BY MR. MAYNARD:

Q Did you testify on your last examination, "He is a customer of yours to-day. You sent him"---you understand English pretty well? A (To witness) A little bit.

Q If I read slowly---"He is a customer of yours yet, isn't he? A No sir, a couple of years ago, not now Q A couple of years ago? A Yes sir. A Didn't he buy a pin from you after this was paid? A No sir. Q Are you positive? A Yes sir. Q Didn't you bring him any pin at all? Is your memory quite ~~she~~ correct on that? A I brought him a pin but he did not buy it and I took it back. Q Didn't you sell him a pin for \$450. A When. Q After February, 1909. A No sir, he wanted to buy, but he gave

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it back. Q Did he give you any money at all on that? A
No sir." Now I ask you---

MR. WEINBERGER: I object to this question on the
ground that the District Attorney is cross examining
his own witness.

THE COURT: No, he is not.

MR. MAYNARD: I read the testimony of---

MR. WEINBERGER: Just for the purpose of reading
the testimony?

THE COURT: Yes, these were questions propounded
by the counsel to the witness.

Q Now, was the pine valued at \$450. mentioned in that
testimony, the one which you delivered to Mr. Schwartz in Sep-
tember 1908?

MR. WEINBERGER: Objected to as being immaterial and
irrelevant.

Objection overruled. Exception.

Q (Continuing) Which you gave to Mr. Schwartz in Sep-
tember, 1908.

MR. WEINBERGER: I object to that question on
the further ground that the District Attorney is trying
to contradict his own witness.

Objection overruled. Exception.

A I left it there and he returned it to me.

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In September 1908? A Two or three days later he returned it to me.

BY THE COURT:

Q What was the value of that pin?

MR. MAYNARD: \$450.

THE COURT: Did he say that?

A About over \$400.

MR. WEINBERGER: That was not the whole answer, Mr. Interpreter; that was not the whole answer.

THE COURT: Give the correct translation.

A I cannot remember exactly.

MR. WEINBERGER: He said something else.

THE COURT: He said I cannot remember if I did not make the sale."

THE INTERPRETER: "I did not sell; I did not make the sale; how shall I remember?"

BY THE FIRST JUROR:

Q When you brought him that pin, did he owe you any more money; was it as the time it was all paid for? A Yes.

Q So you did not bring him the pin at the time when it was all paid up? He owed you money? A He was still owing me money.

Q Yes? A Every week I came to the shop for money.

BY THE SIXTH JUROR:

Q Is your memory any better to day than it was yester-

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day? A What I remember I said.

Q Well, tell him that I remember that he said yesterday \$450. and I remember he said \$400. to-day. Now what is

it? A How much.

Q \$400. to-day and \$450. yesterday? A I said it was a prise about---was over \$400.

Q Ask him? A He did not buy it I di not remember right.

Q Ask yhim why he said yesterday it was \$450. and was so positive about it? A I do not remember it exactly.

Q Ask him if he does not remember anything about any of the other parts of his testimony any better than he remembers what I am asking about? A What I am asked I answered as it is, what I know.

BY MR. WEINBERGER:

Q I have just one more question to ask. Don't you collect from the sister of the defendant to-day for the jewelry? A Yes.

THE TWELFTH JUROR: What jewelry is he talking about? I am entirely in the dark.

A (Continuing). He has bought for his sister a pair of earrings, for her marriage and now they are being paid.

BY MR. MAYNARD:

Q How much did he charge for those ear rings? A I agreed

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with Mr. Blaustein for the ear rings \$155. \$30. I received cash and every week \$2. For three or four months the sister is paying me. Before that Mr. Blaustein used to pay.

MR. MAYNARD: Mr. Twelfth juror, are you satisfied with the answer?

BY THE COURT:

Q I want to direct the witness attention to page 149, of the testimony.

MR. MAYNARD: I read all of that.

THE COURT: I know, the jurors said the witness testified the pin was worth \$450. "Q By counsel for the defendant: Didn't you bring him any pin at all is your memory quite clear on that? A I brought him a pin, but he did not buy and I took it back. Q Did you sell him a pin for \$450. A When? Q After February, 1909? A No sir; he wanted to buy, but he gave it back. Q Did he give you any money at all on that? A No sir. By Mr. Maynard: Q You did sell jewelry to Blaustein, the defendant, didn't you. Objected to. Objection overruled. Exception. A Yes sir".

MR. MAYNARD: That is all.

BY MR. WEINBERGER:

Q Just a minute. You remember the date and you do not remember the amount. You remember it was in September,

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but you do not remember--

THE TWELFTH JUROR: What jewelry is this.

Q (Continuing) You remember this \$455. jewelry that you took to Mr. Schwartz in September 1908 but you do not remember the price? A I do not say exactly the month I brought him the jewelry. I said, "I have here a ring. Will you buy it from me." Then he kept it and valued it.

THE COURT: Now what was the article of jewelry that the defendant wanted to purchase at that time.

MR. WEINBERGER: That was a pin I understand. I never saw it.

THE COURT: Ask Mr. Blaustein.

MR. WEINBERGER: What was the piece of jewelry?

MR. BLAUSTEIN: From me?

MR. WEINBERGER: What was the piece of jewelry.

What piece of jewelry was it:

MR. BLAUSTEIN: I could not remember at the time.

MR. WEINBERGER: What kind of jewelry was it. That \$450. piece of jewelry?

MR. BLAUSTEIN: That was no pin and no ring; it was only a diamond.

THE COURT: Now you see you have been travelling all around. Ask him that question. Did Mr. Schwartz

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show you the diamond.

MR. BLAUSTEIN: Yes sir.

BY THE COURT:

Q Did you ever bring to Mr. Schwartz in the month of February 1909 a solitaire or diamond? A No.

The court thereupon admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned further hearing of the case until 10:30 A M. Monday morning May 16th, 1910.

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New York May 16, 1910.

TRIAL RESUMED.

MR. WEINBERGER: If your Honor please last Friday when the Rev. Dr. Fried testified here I asked the Court's indulgence to admit certain evidence for which proper foundation had not been laid and I said at that time to the Court I did not know of that evidence until that very moment. At that time he stated that one Mr. Gottlieb was present at that conversation. Since then I have got Mr. Gottlieb and I have him now and if your Honor permits I will put him on the stand.

MR. MAYNARD: I object to that if your Honor please on the score that the testimony given here by Dr. Fried in respect to the conversation was wholly irrelevant and immaterial having no bearing upon the case and was received without the Court's, I think, understanding the bent of the testimony that was being given. Your Honor will recall that Mrs. Schwartz the wife of the complaining witness gave testimony in this case. Now for the purpose of showing that that witness had bias, conversations had by her with somebody else are attempted to be shown in this case and it has no bearing whatever on the facts before the jury---on the question of fact

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before the jury.

THE COURT: In what way did the testimony of the Rev. Dr. Fried tend to contradict the testimony of Mrs. Schwartz?

MR. WEINBERGER: Showing the motive of the complaining witness in instituting this prosecution. Also shows a contradiction of the complaining witness as to the discharge of the defendant.

MR. MAYNARD: If your Honor please there are no complaining witnesses. The complaining witness in this case is William Schwartz. Mrs. Schwartz is not a complaining witness, she is a simple ordinary witness in this case; and conversation had by her with other people if had, have no binding effect upon her husband and have no bearing whatever upon the issues in this case.

THE COURT: As to what effect it may have as to her credibility as a witness, I will allow the evidence.

LEOPOLD GOTTLIEB a witness called on behalf of the defendant being first duly sworn, testified through the official interpreter as follows:

DIRECT EXAMINATION BY MR. WEINBERGER:

Q What is your business Mr. Gottlieb? A I have no

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business at all in the present time.

Q You are retired are you not? A Yes.

Q Do you know Mrs. Schwartz, Mrs. William Schwartz?

A Yes.

Q Do you remember having met her about December of last year? A Yes.

Q Will you tell the Jury what conversation if any you had at that time with Mrs. Schwartz, as far as you remember with reference to Mr. Blaustain? A One day in the month of December I was standing at the corner of 4th Street and Avenue C. with Mr. Fried; then frau Schwartz came and spoke to me and asked me whether I had a son, a dentist. She was just looking for me, she thought that the dentist was looking for rooms in 10th Street. I told her I had no son that was a dentist. She did not leave me right away; she remained there talking and I asked her---and I asked her what trouble there was with Mr. Blaustein,---they were related. She said there was some trouble, he left the place, and that they found out something wrong in the books. Mr. Schwartz said he would not wait until he goes to the warehouse, he will say something wrong about him, so he had him arrested. She said it was not her fault.

THE COURT: Was there anything else said?

THE WITNESS: I told her it was wrong of her

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to do it particularly against a relative. I told her when misunderstandings arise amongst relatives it ought to be settled amicably. She said this matter can be settled even now; I have a lawyer and Mr Schwartz has a lawyer.

THE COURT: Mr. Schwartz has a lawyer?

THE WITNESS: So she said.

A (Continuing) So Mr. Fied asked "How can the matter be settled since the matter is in the hands of the District Attorney"? So she said "I think the matter can still be settled." Then she left us and we went on our way.

Q When you say that she has a lawyer and I have a lawyer you mean Mrs. Schwartz said Mr. Blaustein has a lawyer---

MR. MAYNARD: I object to this.

THE COURT: Objection sustained. We cannot---

MR. WEINBERGER: The idea is---

THE COURT: We cannot help the idea, you cannot help the witness over that place any more---

MR. WEINBERGER: The witness probably misunderstands your Honor's question of a moment ago.

THE COURT: He was asked distinctly whether Schwartz said he had a lawyer--- that is what he distinctly said.

MR. WEINBERGER: I think he has misunderstood your

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Honor and I was trying to help him out. Otherwise that is all.

MR. MAYNARD: You can go your way, sir, as far as I am concerned.

WILLIAM SCHWARTZ, recalled by the people in rebuttal:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr: Schwartz did you ever tell this defendant ~~that~~ Max Blaustein to pad your pay rolls? A No sir.

Q Did you ever tell him to make a duplicate copy of any part of your pay roll for any year that he was employed by you? A No sir.

Q Or any year prior to the time that he was employed by you? A Never.

Q Did Heidelberg Wulf & Company ever examine your pay rolls? A Never.

Q Did you ever discuss your pay rolls with Mr. Oettinger with whom you made contracts with Heidelberg Wulf & Company. A No, no sir.

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

THE COURT: Objection overruled.

MR. WEINBERGER: Exception.

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Q What is the answer? A No sir.

Q Did you ever at any time upon the day when the bearer check was drawn and sent to the bank by Mr. Blaustein, fix the amount of that check? A No sir.

Q That was left entirely to Mr. Blaustein himself? A Yes sir.

Q And he reported to you that the amount of the check when it was submitted to you for signature---do you understand me? A Yes sir I do. Simply gave me a check to sign, that is all.

Q And you never at any time when that check--the bearer check was under consideration told him how much to make it? A No sir, never.

Q Did you ever, when the moneys came back from the bank for that bearer check have any part or portion of that money before the salary checks were filled? A No sir.

Q Did you after the salary checks were filled ever receive any money out of the bearer check except that which was given to your wife Mrs. Schwartz? A Never more than \$50.

Q And that you received from Mrs. Schwartz? A Yes sir.

Q Did you pay all of your expenses and so forth outside of the pay roll by check? A I did, yes sir.

Q Electric lights and all sorts of bills? A Everything what I had expenses for.

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Q Were paid by check? A Yes sir.

Q Did you ever redeposit in the bank any money that was drawn out by the bearer check by Mr. Blaustein? A No sir.

Q Did you ever buy any jewelry for this defendant Mr. Blaustein? A No sir.

Q Did you ever guarantee the payment with Mr. Newirth of Jewelry, or any purchase that he made from Newirth? A No sir.

Q Did Mr. Newirth between the ~~8th and 11th~~ days, February 8th and February 11th show you at your place of business a pin, or a ring, or stone, or diamond of 4 1/2 carats valued at \$450.? A No sir.

Q Did you ever buy a pin, a ring, a lavalier, pilza or stone? A I did.

Q Or diamond of the value of \$450. for Mr. Blaustein?
bought
A No sir, never ~~did~~ anything of that amount.

Q Did you ever buy from Newirth the jeweler any article of jewelry whatever for this defendant? A Never, no sir.

CROSS EXAMINATION BY MR. WEINBERGER:

Q Did you buy any jewelry from anybody else for him? A From anybody else?

Q Yes? A Yes sir, I did.

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Q For Mr. Blaustein? A Yes sir. I bought him a watch and chain, a present for New Years, New Year's present.

MR. MAYNARD: And you gave it to him.

THE WITNESS: I gave it to him, yes sir. I didn't buy---I bought it and I gave it to him as a present.

Q From whom was that bought, Newirth? A No sir.

Q From whom was it bought? A I don't remember. It was in a store, I don't remember where.

Q Did you buy a piece of jewelry for \$200. or thereabouts for Mr. Blaustein which money he paid you back in installments?

A No sir.

Q You did not fix the amount of the bearer check? A No sir.

Q Did you have any conversations at all with Mr. Blaustein about the amount of the bearer check on pay day?

A Never on pay day.

Q When then? A Mr. Blaustein knew---I told it to him---

Q When did you have a talk with Mr. Blaustein about it.

A I think I drew that for a couple of years, \$50. a week.

Q When did you have a talk with Mr. Blaustein about the bearer check that you had on pay day? A I am telling you, several years ago when I told him how many---I want to draw \$50. weekly, I don't remember when; that was simply a

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pay roll of \$50. weekly drawn by me for my living.

Q So every week when he came with the pay roll check you simply signed that check and asked no questions? A Yes sir.

Q You never checked over the pay roll book to see whether he had not--- A No sir.

Q ---whether it was right? A No sir, never was in my hand, these pay rolls up to this day of February 10, 1909.

Q Then if there had been incorrect entries and he came in for a larger amount, you would have signed the check anyway? A Any amount.

Q So there was no necessity at all for increasing the pay roll and Mr. Blaustein could have drawn a bigger check anyway if he had wanted to? A Yes sir.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q Up to February 9th, I understand Mr. Schwartz, you had implicit confidence in this defendant? A Yes sir.

Q That is you relied upon him absolutely? A Yes sir absolutely as on myself.

Q And you signed whatever checks he placed before you relying upon him and his supposed integrity? A Yes sir, he never showed me a cook, just gave me the check and I signed it.

BY THE SECOND JUROR:

Q Mrs. Schwartz have you your deposit book in which the deposits were made, your individual deposits? A I think it is right there (Indicating). I think I have it. You mean bank book? A Yes sir.

Q Your individual deposits? A Yes sir.

Q Have you that here? A I never destroyed anything.

BY MR. WEINBERGER:

Q How many bank books did you have? A How many bank books?

Q How many bank accounts? A When, now?

Q During the time that Mr. Blaustein was there? A I have two.

Q Where was your bank account? A Two I have.

Q You have two? A Yes.

Q Which banks were they? A Butchers & Traders Bank, and one was East River National Bank.

Q And where were these pay roll checks generally drawn from? A Butchers & Traders Bank.

Q And the East River Bank? A That is private.

Q That was your private bank? A private account.

Q Where did you get the money to deposit in the East River Bank? A I done some real estate business on the side.

MR. MAYNARD: You owned real estate.

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THE WITNESS: I owned it, yes sir.

Q Did you buy a mortgage during the last three years?

A I did.

Q For \$3,750. A No.

Q Did you buy a mortgage for \$3,750. during the last three years? A Three years?

Q Yes? A I don't think it is three years, I think it is about two, something like that.

Q Did you buy a house in 10th Street during the last three years? A I did.

Q And you done work for no other concern than Heidelberg Wulf & Company? A Yes sir.

Q And from that \$50. weekly you bought all that?

A Just a minute, I beg pardon, I am fourteen years in business and before that man was ever in this country.

MR. MAYNARD: Don't get excited because he makes such foolish remarks.

Q Did you ask Heidelberg Wulf & Company for an increase in pay? A Whenever they wanted better work why, they told me; I can prove you that, that they wrote me on statements that we are paying you for this more, because we want better work.

Q Will you please answer my question. Did you ever ask for an increase of pay from Heidelberg Wulf & Company?

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MR. MAYNARD: Yes or no.

Q Yes or no? A I did.

Q And when you asked for an increased price, did not you at the same time tell them of the large expenses it cost you and say it costs me more than ^{that,} I cannot afford to do it? A I told them if you want these goods made exactly same as you want the others or better than the others amongst other people then I will have to get more for it; if you want the same good class it will have to be more; they said that is all right.

Q You told them it costs too much? A Why certainly. The coats cost more.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q In making your contract with Heidelberg Wulf & Company you tried to get the best terms that you could, didn't you?

A Yes sir.

Q And you worked all of the normal considerations to raise the amount and pay that they would give you? A Yes sir.

Q You hold the legal title to certain pieces of real estate? A Yes sir.

Q Are there any mortgages on your real estate? A Yes sir.

Q Is there a mortgage on the 10th Street property? A
Yes sir.

Q Do you mind stating how large it was? A It was \$5,500
and it is paid off \$2500., on the house already has been paid.

Q You have got a piece of real estate in 137th Street
A I have.

Q Is there a mortgage on it? A Yes sir.

Q Do you mind stating it? A I won't ask you if you
don't mind stating it. A \$15,000. first mortgage.

Q Now I take it Mr. Schwartz you are not working in
this clothing contracting business for your health, you are
making a profit, aren't you? A Why yes sir.

Q And from the profits of your business, you are pay-
ing for your real estate aren't you? A Yes sir.

Q And paying off your mortgages as fast as you can?
A The house---

Q Answer the question. You are paying off your mort-
gages as fast as you can, aren't you? A I am trying to,
yes.

BY THE COURT:

Q Just one question Mr. Schwartz? A Yes sir.

Q What profit if any did your business yield you during
the year 1909 after withdrawing each week \$50. per week,---
about? A About---

MR. WEINBERGER: 1909 your Honor asked for?

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MR. MAYNARD: Yes.

Q During the period prior to February 1909?

A This, I can't say that. After that---

Q Not after that, during the year he worked for you, during 1908 and 1909? A It don't show me the profit of \$50. what I drew.

Q What is that? A It don't show me the \$50. what I drew I had to borrow money to meet the place on every way I could, several people to pay pay rolls so far I can; since then I pay all---

MR. WEINBERGER: That is not the question.

MR. MAYNARD: Will you allow the witness to answer the question please.

Q When was the real estate purchased, this mortgage, what year? What year did you purchase the \$3700. mortgage.

A Why I think it was in--- I think it must have been 1906 or 1907, about that.

Q And during that year what were your profits above your drawings if any? A Oh well during that year it was bad.

Q It was bad? A It was bad.

Q What income did your real estate yield you in 1906?

A Well it threw me off--about \$1000. a year.

Q '\$1000. a year? A Yes.

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BY MR. WEINBERGER:

Q Isn't it a fact Mr. Schwartz that the \$3000. mortgage, that you paid \$3,750. for is absolutely lost? A It is a fact, yes.

Q It is foreclosed? A Yes sir.

Q Isn't it a fact that your 134th Street house you had to take back? A Yes sir.

Q Because it did not bring enough to pay the interest, yes or no? A No I cannot answer that.

Q That you had to take back the 134th Street house? A I know if it drew interest or didn't---

Q Did you have to take it back because it didn't pay enough to pay the interest? A I can't answer that; I can't answer it; I know I have got it enough. It brings me good.

Q Didn't you take it back? Didn't you? A Why I had to take it back.

Q You had to? A Why sure.

BY MR. MAYNARD:

Q You still own your property, do you Mr. Schwartz? A I do.

Q And your property is now bringing in a profit? A Yes sir.

Q I mean all of your property? A Yes sir.

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Q Your business is now being conducted at a profit, is it? A Why I should say it was.

Q During the last three years the defendant was in your employ, did you have any profit in your business? A No sir.

BY THE TENTH JUROR:

Q Did you say that you had bought that second mortgage in 1906? A I don't remember if it was a third mortgage.

Q That was a third mortgage? A Yes.

Q You stated before to the counsel for the defendant that you purchased it first within the past two years? A I said I didn't remember.

MR. MAYNARD: He said before, that he could not tell what year it was.

It is wholly immaterial anyway about that. However I will ask you another question on---

MR. WEINBERGER: Just a minute before you make that statement, I object to the District Attorney making any statement to the jury.

MR. MAYNARD: I am asking a question.

MR. WEINBERGER: Ask your question then and be fair.

BY MR. MAYNARD:

Q You remember the third mortgage? A I do.

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Q It was the \$3700. mortgage? A Yes sir.

Q You bought it for how much? A Something around \$3000..

Q What is that? A I don't remember the exact amount.

Q Something around \$3000.? A Yes sir.

Q You thought it was a bargain and bought it? A Yes-sir.

Q And burned your hands? A Yes sir.

BY MR. WEINBERGER:

Q Isn't it a fact that you paid over \$3500. for it? A No sir.

MR. MAYNARD: The people rest.

MR. WEINBERGER: I renew my motions to dismiss if the court please on the ground that the people have failed to prove the cause of action as charged in the indictment.

THE COURT: Motion denied.

(Defendant's counsel sums up to the jury)

*Jury render verdict of
not guilty*

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