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CASE # 1857

MISSING PAGES

1-19

20

New York, March 20th, 1914,

Trial resumed.

MR. HAYWARD: If your Honor please, I have a little preliminary proof I might as well get out of the way. It may not be exactly in order, and I will only mark my exhibit for identification at this time.

THE COURT: Very well.

F E R D I N A N D G A T T O, called as a witness in behalf of the People, being duly sworn and examined, testified through the official interpreter, Mr. DeVille, as follows:

(Residence 871 Fiftieth Street, Brooklyn, New York).

DIRECT EXAMINATION BY MR. HAYWARD:

Q Mr. Gatto, are you acquainted with a man in Italy by the name of Guiseppe Fazio? A Yes, sir.

Q Where does he reside? A Catania.

Q What is his business? A Fruit business.

Q Explain more in detail the nature of his fruit business?

A All kinds of fruits.

Q Is he, among other things, engaged in the exporting of lemons to the United States? A At times.

Q Have you a personal acquaintance with him? A Yes.

Q Where did you know him? A In Catania, his place of residence.

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Q Did you ever see him write? A Once.

Q Since that time have you engaged in correspondence with him, in due course of business, in which you have received letters from him written in his own hand?

MR. MOSS: I object to the question. It does not appear how he would know the letters were written in his own hand. It is an assumption.

THE COURT: He says that he saw him write.

MR. MOSS: Once.

THE COURT: Once. You have not asked, Mr. Hayward, if he knows his handwriting.

MR. HAYWARD: I intend to do that. I think, seeing a man write once, followed by a correspondence --

MR. MOSS: He has not shown how long ago that was.

THE COURT: Suppose you go into that, in a little more detail.

MR. HAYWARD: I intended to, and I will withdraw the last question.

BY MR. HAYWARD:

Q How long ago was it when you saw him write? A Four years ago.

Q Where was it? A In his house, his office.

Q In Catania, Italy? A In Catania, Italy.

Q What did he write? A He wrote a letter addressed to my nephew and handed it to me for delivery to my nephew at Messina.

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Q Since that time have you engaged in a correspondence with Guiseppe Fazio, in which you have received letters from him in due course of business?

MR. MOSS: I object. It does not appear that he wrote them, or that this witness knows it.

THE COURT: Suppose you say "In answer to letters written by you."

MR. HAYWARD: I will add that to my question.

BY MR. HAYWARD:

Q In answer to letters written by you and directed and mailed to him? A In reply to letters of mine I have received letters, and also he wrote letters directly to me.

Q Do you know his handwriting? A Yes.

(A letter is now marked for Identification People's Exhibit 1-A and the accompanying translation 1-B).

BY MR. HAYWARD:

Q I hand you a paper marked for Identification People's Exhibit for Identification 1-A, and I ask you to state whose handwriting that is in?

MR. MOSS: I object. The witness is not sufficiently qualified.

THE COURT: If you know.

BY MR. HAYWARD:

Q Do you know in whose handwriting it is, first, the body of the letter?

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MR. MOSS: I object as not having been sufficiently qualified. Objection overruled. Exception.

THE WITNESS: I do not know the handwriting of the body of the letter.

BY MR. HAYWARD:

Q Examine the signature to the letter, and state whether or not you know whose signature and whose handwriting that is?

MR. MOSS: I make the same objection and I call your Honor's attention to the fact that he saw the man write but once, four years ago, and he has written to him and received letters purporting to be written by him, but may have been written by his clerks. He is a business man.

THE COURT: That is on the border line, of course.

MR. HAYWARD: May I be heard a moment?

THE COURT: Yes.

MR. HAYWARD: My understanding of the law is that witnessing a man's writing once, or his signature once -- either one of those propositions is sufficient, and if you care, I can refer to Abbott's Trial Brief.

THE COURT: I am looking at it now. Wigmore says "A witness who qualifies by having seen the person make a writing, need not have seen it done more than once. This is the rule, and especially where he has had a correspondence with the person -- where correspondence has been exchanged circumstantially indicating genuineness."

MR. MOSS: That last clause is important, and also the fact that this man has apparently no qualifications as an expert in handwriting, and he saw him write but once, four years ago.

THE COURT: Suppose you ask him how many times-- how soon after the time that he saw Fazio write, four years ago, he received any correspondence from Fazio in answer to his own correspondence.

MR. MOSS: I object unless the words "purporting to be"...

THE COURT: Well, purporting to be, that is well put-- purporting to be from Fazio.

THE WITNESS: Last year

BY THE COURT:

Q So that from the time you saw Fazio write, four years ago, you never saw any writing purporting to have been signed or to have been written by Fazio, until three years after that? A That is correct.

Q And the specimen of the writing that you saw Fazio make four years ago, what became of that? A It had nothing to do with me whatever. It was a letter that he wrote to a nephew of mine.

Q Where is that letter? A I do not know whether my nephew has it or not.

MR. MOSS: Will you ask the witness if he read that letter.

BY THE COURT:

Q Did you read the letter which he wrote your nephew? A No,

I simply saw him write and I saw him sign the letter, but did not read the contents thereof.

MR. MOSS: And probably did not examine the signature.

BY THE COURT:

Q. Did you examine the signature? A I saw him write.

Q. Where is that letter now, where is your nephew now? A He is in Messina, Italy.

Q. Do you know anybody in this city now that knows the handwriting of Fazio?

MR. HAYWARD: May I interrupt and I think I can save some time. I have a witness that will be here presently and his opinion may be taken by this jury with more force than this witness, but, this witness is competent, I can satisfy you-- here is Richardson on the law of evidence based on New York opinions that says as follows: (Mr. Hayward reads from Richardson on the law of evidence).

MR. HAYWARD: And about the citation that I had in mind says "that a witness, though not an expert, is competent to testify to handwriting where he has seen the party write although only once, and then only his name, or has seen only one specimen of his writing, and that only his name."

MR. MOSS: It does not appear that this witness looked over his shoulder. It does not appear how near he was to the writer, and whether he saw anything more than just the physical act of writing; whether he paid any attention to

I simply saw him write and I saw him sign the letter, but did not read the contents thereof.

MR. MOSS: And probably did not examine the signature.

BY THE COURT:

Q Did you examine the signature? A I saw him write.

Q Where is that letter now, where is your nephew now? A He is in Messina, Italy.

Q Do you know anybody in this city now that knows the handwriting of Fazio?

MR. HAYWARD: May I interrupt and I think I can save some time. I have a witness that will be here presently and his opinion may be taken by this jury with more force than this witness, but, this witness is competent, I can satisfy you-- here is Richardson on the law of evidence based on New York opinions that says as follows: (Mr. Hayward reads from Richardson on ~~the~~ law of evidence).

MR. HAYWARD: And about the citation that I had in mind says "that a witness, though not an expert, is competent to testify to handwriting where he has seen the party write although only once, and then only his name, or has seen only one specimen of his writing, and that only his name."

MR. MOSS: It does not appear that this witness looked over his shoulder. It does not appear how near he was to the writer, and whether he saw anything more than just the physical act of writing; whether he paid any attention to

the chirography.

THE COURT: If Abbott is correct, and he ought to be, and Wigmore is correct, the witness could testify as to whether or not that correspondence was Fazio's, even although he had not seen Fazio write, because, in Abbott's Trial Brief mode of proving facts, second edition, page 379, he says "A witness, though not an expert, is competent to testify to handwriting where his only knowledge of it is derived from having seen communications purporting to be from the alleged writer, which has been received and acted upon as such in the ordinary course of business." And this witness says he had seen him write once and has corresponded with him and received answers to his correspondence, and acted upon it in the regular course of business.

MR. MOSS: That I think does not appear except as a conclusion.

MR. HAYWARD: I might add that to my question, if Mr. Moss prefers it.

THE COURT: He has acted upon letters received from Fazio in the ordinary course of his business.

MR. MOSS: Your question referred to the identity of the handwriting and not to qualification. In other words, there must be some real serious business that has transpired as the result of the correspondence, and even in this case, it may have been written by an employe or clerk.

THE COURT: Ask your question, Mr. Hayward.

BY MR. HAYWARD: -

Q Did you act upon the letters purporting to come from Mr. Fazio which you received in the course of business?

MR. MOSS: I object to it as a conclusion. What he did would be the question.

THE COURT: Ask him then.

BY THE COURT:

Q What did you do after you received the letters from Fazio, what did you do in connection with the , if anything? A Last year's letters?

Q Yes? A I obtained the goods, disposed of them, and remitted some money to him.

MR. MOSS: I shall not move to strike it out. I will let that stand.

THE COURT: Very well.

BY MR. HAYWARD:

Q What goods? A Lemons.

Q The goods referred to in the correspondence? A Yes.

Q Do you know whose signature that is (showing paper)?

MR. MOSS: I object upon the ground that the course of this correspondence, and the nature of the business as stated, does not indicate necessarily that the correspondence was had by Fazio himself. It may very well have been had by Fazio's clerks. That is, in a correspondence over the sub-

ject of lemons, the signature of the house sending the lemons might very easily, in the papers which the witness saw, have been made by clerks and not by Fazio himself.

THE COURT: Abbott says on page 380, "When letters are directed to a particular person" -- we will say Fazio-- "on business, the answers are received in due course, purporting to come from him, a fair inference arises that the answers are written by the person from whom they purport to come," citing authorities. That is Abbott's Trial Brief, mode of proving facts, second edition, at the top of page 380.

MR. HAYWARD: May I be heard just a moment.

THE COURT: I have ruled in your favor.

MR. HAYWARD: This thing is coming up right along. According to Mr. Moss' contention, if this letter were a typewritten letter, written on a typewriter by a typist, I could not prove the signature of Mr. Fazio, because he had not written the typewritten part with a pen and ink. I contend under all these authorities, I have a right to prove his signature, and even though a clerk writes the body of it with a pen and ink, the signature of Faziomeant as much to this kind of letter as the signature to a typewritten letter, and it is the only known method of proving this fact.

MR. MOSS: That is, if the signature was written by anybody else?

MR. HAYWARD: No, if the signature is written by Fazio.

The signature of the letter makes the contents of the letter competent here.

MR. MOSS: I shall not argue the matter. I am certain your Honor has the point and I am willing to take your Honor's ruling. I have sufficient on the record.

THE COURT: Yes.

MR. MOSS: I take an exception.

BY MR. HAYWARD:

Q Do you know whose signature that is? A Guiseppe Pazio's signature.

MR. HAYWARD: I ask to strike out the answer and let the witness reply whether he knows or not, first.

MR. MOSS: I have not raised any objection to the form of the question.

THE COURT: Then let it stand.

MR. HAYWARD: Let it stand the way it is then.

A letter is now marked for Identification People's Exhibit 2-A and the translation People's Exhibit 2-B).

BY MR. HAYWARD:

Q I hand you a paper marked People's Exhibit 2-A for Identification, state if you know in whose handwriting the signature is at the bottom of the letter there?

Same objection, ruling and exception.

A I do not know.

MR. MOSS: I will withdraw the objection.

THE WITNESS: There is the name of Fazio written thereon.

MR. MOSS: I move to strike out the last response.

MR. HAYWARD: I have no objection to striking it out.

I do not think it ~~was~~ responsive to my question. I will re-
new the question; the answer was not responsive.

MR. MOSS: I only referred to the last sentence.

BY MR. HAYWARD:

Q Whose signature is that attached to the letter?

MR. MOSS: I object to the form of the question. The
witness has answered he does not know, and the form of the
question is calculated to get an answer that does not repre-
sent the witness' intelligence. The question does not at-
tack the handwriting and he has already said that he does
not know in whose handwriting it is

MR. HAYWARD: I did not know what the witness said. I
did not know that he said he did not know.

MR. MOSS: The interpreter gave his answer.

THE COURT: What is the question now?

Q (The question is repeated)?

MR. MOSS: I object to the form of the question. It
does not call for his opinion on the handwriting.

THE COURT: He has answered that he knows the signature?

MR. MOSS: A few minutes ago the interpreter gave his
answer that he did not know the handwriting.

MR. HAYWARD: If he answered that I did not so under-

stand it. I think he must have misunderstood my question.

BY THE COURT:

Q Do you know the handwriting to the letter which I now show you, that is, the handwriting of the signature? A Yes, I know it.

BY MR. HAYWARD:

Q Do you know in whose handwriting it is? A The handwriting of Mr. Fazio.

Q Guiseppe Fazio? A Yes.

BY THE COURT:

Q Is it the same Guiseppe Fazio that you say you saw write in Italy, in Catania? A That I could not positively state. I believe it is the same.

MR. MOSS: I move to strike that out.

BY THE COURT:

Q Do you know any other Guiseppe Fazio? A No.

MR. HAYWARD: He says he believes it is the same. This is opinion evidence.

THE COURT: The trouble about it is that he says he does not know -- you know when we are dealing with foreigners, they have a mode of speech, and sometimes their expressions are not literally translatable. We will ask him again. Is that signature in the handwriting of Guiseppe Fazio that you saw write in Catania, Italy?

THE WITNESS: No, I do not recall.

MR. HAYWARD: He does not understand the question yet.

THE COURT: Put it to him in any way he will understand it.

BY MR. HAYWARD:

Q I am not asking if you saw him write this signature. I ask you if, in your opinion, that is the signature of Guiseppe Fazio, the same Guiseppe Fazio you have told us you once saw write? A Yes.

MR. MOSS: May I ask a question right here?

THE COURT: Yes.

BY MR. MOSS:

Q Do you believe Mr. Fazio wrote that very name there with his own hand? A I believe he did.

(Another letter is now marked for Identification People's Exhibit 3-A, and the translation People's Exhibit 3-B)

BY MR. HAYWARD:

Q I hand you People's Exhibit 3-A for Identification, and call your attention to the signature at the bottom thereof, and I ask you to state, in your opinion, in whose handwriting that signature is? A That is Fazio's signature also.

(Another letter and the translation thereof are now marked for Identification People's Exhibit 4-A and 4-B).

BY MR. HAYWARD:

Q I hand you a paper marked People's Exhibit 4-A for Identification, and I call your attention to the signature at the

bottom of the reverse side of that paper, and I ask you to state whose signature that is, in your opinion?

MR. MOSS: I wish to register the same objection, to the same line of questioning.

THE COURT: Yes. Same objection, ruling and exception.

THE WITNESS: In my opinion I think that is Fazio's signature, but I am not certain.

(Another letter is now marked for Identification together with the translation thereof, People's Exhibits 5-A and 5-B).

BY MR. HAYWARD:

Q I hand you a paper marked for Identification People's Exhibit 5-A, and I call your attention to the signature which I indicate on the reverse side of that paper, and I ask you to state in whose handwriting that signature is, in your opinion?

A The signature demonstrates it is the name of Fazio, but I am not sure about the handwriting being his.

BY THE COURT:

Q What is your opinion on the subject, have you an opinion one way or the other, as to whether it is genuine or not?

MR. MOSS: I object to the question in view of the witness' answer.

THE COURT: Abbott on page 381 says: "The testimony of a witness to handwriting is not incompetent merely because he testifies that he thinks it is genuine but will not swear

positively it is so. It will be received for what it is worth.

Exception.

BY MR. HAYWARD:

Q What do you think about it?

MR. MOSS: I object.

BY THE COURT:

Q Have you an opinion as to whether or not it is his signature?

Objected to. Overruled. Exception.

THE WITNESS: I form the opinion that I am not exactly sure as to whether it is his signature or not.

BY MR. HAYWARD:

Q Your opinion is that you are not sure? A No.

Q I do not ask you whether you are sure or not, but I ask you if you have any opinion at all, what your opinion is, is it or is it not, in your opinion, the signature of Guiseppe Fazio?

MR. MOSS: In view of the witness' uncertainty I object to the question.

THE COURT: Can you prove it by another witness?

MR. HAYWARD: Yes, I have another witness.

THE COURT: Then I would pass from that.

(Two letters are now marked People's Exhibits 6 and 7 for Identification).

BY MR. HAYWARD:

Q I hand you the paper marked People's Exhibit No. 6, and I

call your attention to the signature on the reverse side, and I ask you to state in your opinion whose handwriting that signature is?

same objection, ruling and exception.

A My opinion is it was signed by Giuseppe Fazio, but I am not positive of it.

Q I hand you People's exhibit No. 7 for identification, and I call your attention to the signature on the reverse side of that paper, and I ask you to state in your opinion whose handwriting that signature is? A Fazio's.

MR. HAYWARD: That is all for the present, but we will want you, Mr. Witness, later.

MR. MOORE: No cross-examination.

GIUSEPPE GALATIOTO, called as a witness in behalf of the People, being duly sworn and examined, testified through the official interpreter, Mr. DeVille, as follows:
(Residence 550 Riverside Drive).

DIRECT EXAMINATION BY MR. HAYWARD:

Q How long have you been in the United States? A Four months

Q Where did you reside before that time? A Trieste, Austria.

Q Before that time where? A Catania, in Italy.

Q When you lived in Catania, were you acquainted with Mr. Giuseppe Fazio? A Since I arrived at the age of reason, yes.

Q Were you employed by Giuseppe Fazio or did you have any business connection with him? A I was not employed by him, but I

had business dealings with him.

Q Covering a period of how many years did your business dealings with him extend? A Twenty odd years -- twenty-five maybe.

Q During the course of those twenty-five or twenty years, did you see Mr. Fazio write his name and other writings? A Always.

Q Could you give us an idea of how many times you have seen him write? A Hundreds of times.

Q Are you now familiar with, and do you know his handwriting? A Yes.

Q I have you a paper marked People's Exhibit 1-A, directing your attention to the signature to that paper, and I ask you to state whether or not you know whose signature that is? A I do know this signature. It is Fazio's signature.

Q Giuseppe Fazio? A Yes.

Q I ask you the same question with reference to People's Exhibit 2-A for Identification -- do you know, and if so, whose is it? A It is Giuseppe Fazio's signature.

Q And the same question with reference to People's Exhibit 3-A, directing your attention to the signature? A The same individual.

Q I hand you a paper marked People's Exhibit 4-A, and I direct your attention to the signature on the reverse side, and I ask you the same question? A This is also Fazio's signature.

Q And the same inquiry with reference to People's Exhibit 5-A? A Perfectly so.

Q Guiseppe Fazio's signature? A Guiseppe Fazio, yes.

Q And People's Exhibit for Identification No. 7? A Guiseppe Fazio's signature.

Q And No. 6? A Yes, sir, the same.

THE COURT: Did this witness say that he had business dealings with Fazio?

MR. HAYWARD: Yes, and had seen him sign his name and write hundreds of times.

THE COURT: Is there any other Guiseppe Fazio in Catania except the Guiseppe Fazio whom you say wrote those letters?

THE WITNESS: Yes, sir, but he is not dealing in agricultural products. He deals in other merchandise. Fazio, whose signature I identified just now, is one of the oldest merchants in agricultural products in Italy, or dealers.

BY THE COURT:

Q Is the other man named Guiseppe Fazio in Catania? A There are several Guiseppe Fazios in Sicily and also all over the world.

Q It is a family name? A Yes.

(A check is now marked for Identification People's Exhibit No. 8).

BY MR. HAYWARD:

Q I hand you a bank check marked People's Exhibit No. 8 for Identification, and I ask you to examine the endorsement on the back of that check and state if you know, in whose handwriting that is? A Yes, sir.

Q Is it in the handwriting of the same Guiseppe Fazio that you have testified as having signed these letters? A Yes, sir, the same.

THE COURT: Has this witness identified all the letters that the other witness, Ferdinand Gatto, has identified?

MR. HAYWARD: Yes.

THE COURT: The same letters?

MR. HAYWARD: Yes, he has identified them all.

(No cross-examination).

G E O R G E C. W I L E Y called as a witness in behalf of the People, being duly sworn and examined, testified as follows: (Residence 243 Troy Avenue, Brooklyn).

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your occupation or official employment? A Clerk in the law department of the Collector of Customs.

Q Of the Port of New York? A Yes.

Q Have you in your possession certain consular invoices and documents which came to this country in connection with a shipment of lemons, in the summer of 1913, to which your attention has been directed before by either Mr. Buell or myself?

A Yes, sir, I have.

Q Will you let me see them please?

(A package of papers is handed to Mr. Hayward).

(A paper is now marked for Identification People's Exhibit No. 9).

CASE #1017

BY MR. HAYWARD:

Q One of these papers that you hand me I have marked People's Exhibit No. 9 for Identification, and I now show you that paper and I ask you to state what it is?

MR. MOSS: I object to that. It speaks for itself, unless it be just a general statement of the name of the paper.

MR. HAYWARD: That is all I ask for.

THE WITNESS: It is a consular invoice covering 296 boxes of --

THE COURT: That is all we want, just the name, how you denominate it, so that we may refer to it easily.

BY MR. HAYWARD:

Q It is a consular invoice? A Yes, sir.

(Another paper is now marked for Identification People's Exhibit No. 9-B).

BY MR. HAYWARD:

Q With reference again to this paper No. 9, where did you get this paper, how did it come into your hands? A Taken from the files of the Collector's office in connection with the entry paper -- the paper upon which the entry is made.

MR. MOSS: The two papers go together, I take it -- there are usually two papers that go together.

MR. HAYWARD: This I am going to have marked 9-A instead of 9, and instead of 10 I will make the other 9-B for Identification. I have changed the marking of the invoice from

9 to 9-A, and I now hand the witness the paper marked Exhibit 9-B and ask him to state what that is, and how it came into his possession.

THE WITNESS: The bill of lading upon which the entry was made.

BY MR. HAYWARD:

Q In the same transaction as 9-A? A Yes.

MR. MOSS: That is the bill of lading and entry.

MR. HAYWARD: Yes.

(A paper is now marked for Identification People's Exhibit No. 9-C).

BY MR. HAYWARD:

Q I hand you a paper fastened to Exhibit 9-B, the green sheet, and I ask you to state what that is, and how it came into your possession? A This is called the entry paper. It is made up from the consular invoice and bill of lading.

Q Is it sometimes called the import blank? A Yes, sir; it is a broker's blank.

Q How did that come into your possession? A From the files of the Customs House after the entry was made.

(A paper is now marked for Identification People's Exhibit 10-A).

BY MR. HAYWARD:

Q I hand you People's Exhibit for Identification 10-A. Please state what that is, and where you got it? A Consular in-

voice produced from the records of the Customs House.

(A bill of lading is now marked People's Exhibit for Identification 10-B, and another paper is marked for Identification People's Exhibit 10-C).

BY MR. HAYWARD:

Q What is the paper marked for Identification 10-B? A Bill of lading connected with this entry.

Q The same transaction as 10-A? A Yes, sir.
is

Q What 10-C, the green sheet also attached to it? A The import blank from which the entry was made on the consular invoice and bill of lading.

Q How long have you been in the position or occupation of -- what did you say it was? A Clerk in the law department.

Q How long have you held that position? A Going on 6 years.

Q What do your duties there consist of? A Well, practically assistant to the Assistant Solicitor, Mr. Barnes -- come in contact with all the law appertaining to Customs matters.

Q In such position have you familiarized yourself with the Federal Laws, United States Laws controlling the importation of goods into this country and the Treasury regulations and decisions, regulations and decisions of the United States Treasury governing such matters? A I should say so, yes.

Q Are you now at this time familiar with what those regulations were during the summer of 1913, and what the law was?

A Regarding these goods?

Q Yes, A Yes.

THE COURT: Regarding the importation of goods of this particular kind?

THE WITNESS: Yes.

BY MR. HAYWARD:

Q Have you with you a copy of the Tariff Act of 1909? A I have.

Q Does that volume which you have contain the administrative portion of the Tariff Act of 1909? A It does, yes, sir.

Q And was the Tariff Act of 1909 --

THE COURT: If at any time during the course of the trial Mr. Moss, you feel that something could be shortened, just let me know.

MR. MOSS: That is my disposition.

THE COURT: And always has been up to date.

MR. HAYWARD: Might I make a suggestion, if Mr. Moss would agree that the Court might take judicial notice of the Tariff Act of August 15, 1909, and its contents, both the rates of duties and also the administrative portion of that Act.

MR. MOSS: Have you the volume here?

MR. HAYWARD: Yes.

MR. MOSS: I consent.

THE COURT: And it can be used by either side at any time.

MR. HAYWARD: I understand the concession to be that

Mr. Moss agrees that the Court may and does take judicial notice of the fact that the Tariff Act of August 15, 1909, including the administrative portion of that Act, was in force and effect in this city during the summer of 1913, and that the book I now hold in my hand marked "Eton Law Department" is a volume containing that law.

MR. MOSS: Yes.

(The book is marked for Identification People's Exhibit No. 11, and the particular pages referred to are pages 90 and 91).

(No cross-examination).

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:30.

CASE #107

1 44
AFTER RECESS: TRIAL RESUMED.

SALVATORE E. GATTO, called as a witness on behalf of the People, being duly sworn and examined, testified through the official interpreter, Mr. DeVille, as follows:

(Address: 187 West 9th Street, Brooklyn, N. Y.)

THE COURT: Do you speak English?

THE WITNESS: No.

MR. MOSS: I am not so certain that he cannot speak English. I would like to have him testify in English if he can. He seemed to understand your Honor.

THE COURT: That was a very simple question. I think if he asked me in Italian if I could speak Italian I would understand him throughly, but I do not know anything else.

MR. HAYWARD: I would much prefer to examine the witness in English.

THE COURT: Try him.

MR. HAYWARD: If Mr. Moss desires it -- but I am sure we will strike a stumbling block.

THE COURT: Try him.

DIRECT EXAMINATION BY MR. HAYWARD:

Q Where do you live? Where do you reside now?

THE WITNESS: (Through the interpreter) I cannot understand.

MR. HAYWARD: I have talked to the witness hundreds of

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times.

MR. MOSS. He does not under the question: Where do you live.

MR. HAYWARD: Please interpret the question.

MR. MOSS: I concede that if he does not understand a question like that that you had better use the interpreter.

THE WITNESS: (Through the interpreter) Brooklyn, 137 West 9th Street.

(The witness now testifies through the official interpreter, Mr. DeVille.)

BY MR. HAYWARD:

Q How long have you lived there? A Since the 10th of January, 1914.

Q How long have you lived in Brooklyn? A Since I arrived in the United States, that is eight years.

Q And what is your business? A Oil, macaronis and kindred products.

Q How long have you been in that business? A Since I first came to the United States.

THE COURT: When was that?

MR. HAYWARD: Twelve years, he said.

THE INTERPRETER: Eight years.

BY THE COURT:

Q You came to the United State eight years ago? A Yes.

BY MR. HAYWARD:

Q Have you ever lived anywheres else in the United States

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except in Greater New York or Brooklyn, or New York City? A No.

Q Are you acquainted with Philip S. Saitta? A Yes.

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

Q What business or social relations have you had with him?

A Business relations.

Q What has been the nature of the business relations you have had with him or had had with him up to February of 1913?

A No business. He simply loaned me, advanced money to me at times.

Q Have you been in his office at 258 Broadway prior to February, 1913? A Yes, sir; several times.

Q Had you with him a personal or social relation or an acquaintance other than a business acquaintance? A No, I knew him like that, casually.

Q Were you in his office in February, 1913, with particular regard to a transaction involving the shipments of lemons from Italy? A Yes, sir; a certain business transaction relating to lemons that I sold to Mr. Saitta on account of Mr. Salvatore Zimbaro, a brother in law of mine.

Q Were you in his office shortly after that in relation to a circular letter that was sent out? A I went there several times and he handed me the money to defray the mailing expense of the letter.

MR. MOSS: I object to the testimony in that way. It is coming out in a leading fashion. If there is anything, let

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us see what it was.

MR. HAYWARD: I consent that that may be stricken out.
It was not responsive.

THE COURT: Very well, strike it out.

BY MR. HAYWARD:

Q What name did you use, firm name or business name did you use for your macaroni and oil business that you have told us about?

A S. E. Gatto & Company.

Q Did you, during the month of February, have a conversation with Saitta regarding the lemon trade, the importation of lemons, and if so, what was it?

THE COURT: February, 1913?

MR. HAYWARD: February, 1913. I want to make the question a little longer.

Q I want you to tell all conversations that you had with the defendant from the first until the last, regarding the circular letter -- will you please, Mr. Interpreter, translate before he has gone too far -- translate it in sections.

THE WITNESS: The conversation started in connection with the favorable market conditions. We spoke about that, that lemons could be sold at good prices and that it was advisable that the growers or exporters should be informed of this fact, that the California crops had been frozen and in this manner the circular was prepared or born.

MR. MOSS: I will let it go as far as it stands, but

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this is not a statement of a conversation. It is the statement of the result of a conversation. I know the difficulty about getting it through an interpreter, but I would like to know what one man said and what the other man said and what was done.

THE COURT: Very well. Let us have it in that way. State what you said and what the defendant said in regard to the preparation of this circular and what it should contain -- is that about it, Mr. Moss?

MR. MOSS: That is the idea.

THE WITNESS: I said that it was advisable to prepare that circular and Mr. Saitta assented to that and said yes.

BY MR. HAYWARD:

Q What, if anything, did Mr. Saitta say with regard to what the circular should contain?

MR. MOSS: I object as leading and to the assumption.

THE COURT: Very well, put it this way: Did Mr. Saitta make any suggestion as to the contents of the circular.

THE WITNESS: No. He did not suggest anything.

BY MR. HAYWARD:

Q Did you have any conversation with him at that time regarding his participating in the profits that might accrue from any business?

MR. MOSS: Cannot you get him to exhaust the conversation without suggesting to him topics, and then if he forgets

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anything, call his attention to it.

MR. HAYWARD: It is always difficult to go through with an interpreter.

THE COURT: That is true and rather painful, but we have to do the best we can, but, try to exhaust his memory first.

BY THE COURT:

Q Was there anything else said in regard to the circular or what should be done with the circular? A I had the circular addressed and sent to Italy.

Q Who did? A I did all that part of the work.

BY MR. HAYWARD:

Q You did that yourself and how? A I cannot understand that.

Q Were the circulars printed on a printing press, were they written with a pen and ink or written on a typewriter? A They were written on a typewriting machine and written by myself.

BY THE COURT:

Q Where? A In my office in Brooklyn.

BY MR. HAYWARD:

Q During either before or after you wrote the circular letters, did you obtain a list of the Italian lemon exporters? A Yes.

Q And who gave you that list?

THE COURT: You mean, where did you get it.

Q Where did you get it? A I obtained it at Mr. Saitta's office.

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BY THE COURT:

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Q How did you get ~~it~~ there? A Mr. Saitta dictated the names to me and I wrote them down.

BY MR. HAYWARD:

Q How many names were there? A I cannot exactly remember the number of names that he gave me. I know that I sent out about one hundred circulars.

Q Did one circular go to Guiseppe Fazio at Catania?

MR. MOSS: I object to that question in that form. These things go to the root of the matter and I feel I must object.

THE COURT: Let him state if he got any answers to his circular from anybody and if so, whom.

MR. MOSS: I shall not object if this witness will swear that he mailed it -- anything that shows a direct action, but that is as a conclusion -- did a circular go to that man.

MR. HAYWARD: That was probably inadvertence on my part!

THE COURT: Put it that way.

BY MR. HAYWARD:

Q I will ask you to give us the names of some of the persons on this list to whom you mailed this circular -- addressed it and mailed it? A Dorazzio of Messina --

THE COURT: Really I think we are not much interested in the others. Why not ask him directly -- did you mail one to Guiseppe Fazio?

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THE WITNESS: Yes.

BY THE COURT:

Q Did you mail it yourself? A Yes.

Q Were there stamps on the envelope? A Yes.

Q Did you get a reply from Fazio? A No reply.

(A letter is now marked for identification, People's Exhibit No. 12).

BY MR. HAYWARD:

Q Handing you People's Exhibit No. 12, I will ask you to state what that is.

MR. MOSS: I object. It speaks for itself.

THE COURT: Ask him if he received it.

MR. HAYWARD: It is a copy of a circular letter. I think it is competent.

THE COURT: Has he ever seen it before?

MR. HAYWARD: Yes.

THE COURT: Why not ask him if he has?

THE WITNESS: Yes.

THE COURT: Is that one of the circular letters?

MR. HAYWARD: What question did you ask him?

THE INTERPRETER: Yours and the Judge's at the same time.

I said: "I show you People's Exhibit 12 for identification and I ask you whether you ever saw it before" and he said yes.

BY MR. HAYWARD:

Q Is that a copy of the circular letter that you say you

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sent out and is it particularly a copy of the circular letter that you mailed, stamped, addressed and mailed to Giuseppe Fazio?

A Yes, sir; precisely.

Q Did each of the circular letters contain the address and the name of the particular person to whom it was sent at the top of the letter? A Yes, sir.

Q Do you recognize that letter, People Exhibit 12, for identification as the letter that you mailed to Giuseppe Fazio? A Yes

Q Is that your signature, where you signed "S. E. Gatto & Company"? A Yes.

THE COURT: Show it to Mr. Moss.

MR. HAYWARD: Yes, and I am going to offer it in evidence with the translation.

MR. MOSS: The translation is attached to it.

MR. HAYWARD: Yes.

THE COURT: If you wish to make any correction in the translation, Mr. Moss, just say so.

MR. MOSS: I have no objection to the translation and no objection to the document.

(The translation is marked People's Exhibit¹²/B for identification).

(People's Exhibits 12-A and 12-B for identification are received in evidence and so marked.)

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MR. HAYWARD reads People's Exhibit 12-B to the jury as follows:

"S. E. GATTO & CO.
FRUITS, MERCHANDISE BROKERS,
WINES, LIQUORS, & OLIVE OIL

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Cable Address: "Gatto"-Brooklyn
A.B.C. 4th 5th Edit.-Code Used

710 HENRY STREET
Telephone Connection

Brooklyn, N.Y. 14th February 1913

Mr. Guiseppe Fazio

Circular letter

Catania.

We are pleased to communicate to you that the products (Agrumi) lemons and oranges of this year either in California or in Florida were destroyed by the frost.

The Italian fruit will therefore be looked for and there will be very high prices from now on and especially for Biancuzzi and Verdelli.

We having been very well placed and old in this great market of New York, we offer you our services for the sale on consignment of your lemons Bianchetti & Verdelli.

Your interests will be guaranteed by us and we assure you to obtain for you the highest price in the sale.

We shall be pleased to hear from you in regard to this and in the mean time with esteem and friendship we salute you.

S. E. Gatto & Co.,

per S. E. Gatto."

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BY THE COURT:

Q Who worded that letter? A I wrote it and Mr. Saitta corrected it.

Q Corrected it in what regard? A I don't remember exactly but changed some words.

Q Do you mean corrected the grammar or anything of that kind?

A He used technical expressions appertaining to the citrus trade.

Q As an actual fact you were not the old firm of Gatto & Company? A I was Gatto & Company.

Q Were you the old firm of Gatto & Company or was it the other man, Mr. Ferdinand Gatto, the old firm of Gatto & Company?

A No, I was S. E. Gatto & Company. Ferdinand had nothing to do with it.

Q I know, but Ferdinand Gatto, his company was a very much older company than your company, was it not? A I do not know about that.

BY MR. HAYWARD:

Q You mean, when you say that Saitta corrected the letter and gave you technical terms of the citrus fruit trade, that he corrected this particular letter or the original of the form from which this letter was written? A No, the original letter that was written by me.

Q And is this letter which you actually wrote and sent to Senor Guiseppe Fazio, an exact copy of the original after Mr. Saitta had corrected that? A Yes, sir.

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BY THE COURT:

Q You were not in the citrus trade at all, were you, at that time? A No.

Q Ferdinand Gatto was in the citrus trade, was he not?

A I believe so. I do not know, of my own knowledge.

THE COURT: Mr. Moss, you may correct this -- I do not know as it has a thing to do with the case but if it is objectionable say so and I will withdraw it.

BY THE COURT:

Q Did you send that letter over to Italy for the purpose of making the persons who received it believe that you were an old firm in the citrus trade-- Do you object to that, Mr. Moss?

MR. MOSS: No objection at all.

A No, in order to do business, that was all. I was already doing business for eight years.

Q But not in the citrus business? A No, not in the citrus business.

BY MR. HAYWARD:

Q Did you at some date following the time when you sent this letter to Fazio, receive from Fazio a letter in reply? A No reply

Q Did you receive a letter from Giuseppe Fazio in the latter part of June or early in July relating to a lemon shipment?

A Yes, sir; I received a letter at the beginning of July.

Q How did you receive that letter, through the due course of the mail? A Yes, sir; registered.

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Q A registered letter, and how was it addressed? A 710 Henry Street, Brooklyn.

Q I hand you People's Exhibit 1-A, and I ask you to state if that is the letter that you received.

MR. MOSS: I object upon the ground it is not connected with the defendant.

MR. HAYWARD: I expect to connect it up subsequently.

THE COURT: Upon the promise of the District Attorney to connect it, I shall have to receive it. If he does not connect it, you can then move to strike it out.

MR. MOSS: I take an exception.

A Yes.

Q What did you do with it when you received it? A When I received it, I found in it a bill of lading concerning the lemons or merchandise that is mentioned in the letter.

Q What did you do with it? A I put it in my pocket and went to see Mr. Saitta.

Q What did you do with the letter when you got to Mr. Saitta? A I showed him the bill of lading and I handed him the bill of lading and I said to him: This merchandise is coming here and I want you to sell it.

Q Did you show him the letter? A Yes.

Q Did he read the letter? A Yes.

MR. MOSS: The translation I concede to be correct. But the letter is objected to as not connected with the.

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defendant.

MR. HAYWARD: The witness has testified that he took all these papers and gave them too Mr. Saitta and Mr. Saitta read the letter at that time.

THE COURT: I understand the witness said that these circular letters were prepared by agreement between himself and Mr. Saitta, the defendant, and that the defendant corrected certain language in them and that he mailed them, according to an agreement or understanding with the defendant -- I think he said that. It is received subject to the objection and exception of the defendant. If you find any error in the translation at any time, Mr. Moss, correct it.

MR. MOSS: We are satisfied with the translation.

(People's Exhibits 1-A and 1-B, being the translation, are received in evidence and so marked).

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1
MR. HAYWARD reads People's Exhibit 1-B to the jury as follows:

"GIUSEPPE FAZIO

CATANIA, 23rd June 1913

RAMO
NAVIGAZIONE .

S. E. Gatto & Co.,

Brooklyn, N.Y.
S.S. Ivernia

I have at its proper time received your circular letter of the 14th February last and encouraged by it to send merchandise as well as by news that I have received from other parties, I have decided to send one consignment of Verdelli composed of 441 1/2 and 296 boxes and here enclose find bill of lading and Consul's certificate.

You ought to take attention of this consignment in order to obtain a good result at the sale for the reason, as you know, Verdelli are very dear. After the sale telegraph me two average prices, one of the half boxes and one of the boxes. Do not forget to notify me at intervals of the market for my own knowledge in order that if I obtain a good profit I will not forget to continue the work. Take notice not to insure the consignment as I have already insured it myself, and awaiting to hear from you, I salute you.

Giuseppe Fazio."

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THE COURT: As an actual fact, had the lemons been frozen in California and Florida in that year, that is last year, 1913?

THE WITNESS: Yes.

BY THE COURT:

Q The lemon crops of California and Florida were failures in 1913? A Yes.

BY MR. HAYWARD:

Q I hand you papers marked for identification, being People's Exhibits 9-A and bill of lading marked for identification 9-B and I asked you to state whether or not those are the papers which were enclosed in the letter from Fazio in Catania? A Yes. One is the bill of lading and the other a Consular invoice.

Q Did you give the two papers, being bill of lading and invoice to Saitta at the time you took him the letter? A Yes.

Q Directing your attention to the stamp, "S. E. Gatto & Company, 258 Broadway, New York, branch office, 710 Henry Street, Brooklyn, New York", appearing on the back of the bill of lading, I will ask you to say, if you know, who put that stamp on? A I did that.

Q When did you put it on, before or after you took it to Saitta? A Before taking it to Saitta, at my office, at my Henry Street office, Brooklyn.

BY THE COURT:

Q Was that endorsement on the paper at the time you took it

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to the defendant, Saitta? A Yes, sir.

MR. HAYWARD: Mr. Moss, Mr. Galatioto, the second witness this morning, who identified Mr. Fazio's signature, I have sent forthwith for him. I want him to identify the signature, Giuseppe Fazio.

MR. MOSS: I will concede that Mr. Galatioto would testify that that was the signature of Giuseppe Fazio, the same as he did this morning.

BY MR. HAYWARD:

Q Whose endorsement is that, who wrote the words "S. E. Gatto & Company" beneath Fazio's signature on the back of the bill of lading? A I did.

Q And did you do that before you delivered it to Mr. Saitto?
A No. I signed there in Mr. Saitto's office.

Q Do you know when Saitto signed his name? A I do not know.

Q When you took this paper to Mr. Saitto, you have said the stamp, S. E. Gatto & Company, was on there; was that stamp on this paper, being Exhibit 9-B, before Mr. Saitta signed his name to it --

MR. HAYWARD: I will withdraw that question and ask another one.

Q You have said the stamp was on there when you took it to Saitta? A Yes.

Q And Mr. Saitta had not signed it at that time, had he?

A No, he had not; neither had I.

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MR. HAYWARD: I offer in evidence Exhibits 9-A and 9-B for identification.

MR. MOSS: I have no objection.

(Exhibits 9-A and 9-B, for identification, were received in evidence, and so marked).

THE COURT: Without having seen them or knowing anything about them, I assume they are the ordinary bill of lading for certain lemons and invoice -- that is about all there is to it?

MR. MOSS: Yes.

THE COURT: Sent by Fazio to S. E. Gatto & Company, received by S. E. Gatto and Gatto says he showed them to the defendant.

MR. HAYWARD: And gave them to the defendant.

THE COURT: And endorsed them -- there seems to be an endorsement on the bill of lading -- and handed the bill of lading endorsed to the defendant; is that about it?

MR. HAYWARD: Yes. I would like to read only one part of this paper, it being the invoice for merchandise, the lemons described in the letter already read: "Declaration of the owner or his duly authorized agent covering goods shipped without sale, we, the undersigned, do solemnly and truly declare we are the owners of the merchandise in the within invoice mentioned and described."

THE COURT: Who is it signed by?

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MR. HAYWARD: Fazio & Company in Italy -- the said invoice contains, and so forth.

THE COURT: Is not that a statement by Fazio that he owns the goods, that he is the consignor, and that they are billed at the real market value, so as to comply with our tariff law?

MR. MOSS: And if it becomes necessary to go into it more particularly we can do that.

THE COURT: Yes, either side can do that at any time.

BY MR. HAYWARD:

Q Did you Mr. Saitta sign the endorsement on the back of the bill of lading?

MR. MOSS: That is conceded.

MR. HAYWARD: It is conceded the endorsement P. H. S. Saitta on the back of Exhibit 9-B is the signature of the defendant.

Q Now, did the defendant Saitta tell you then or later what he did with these papers? A After several days, at the time of the arrival of the steamer, I believe the steamer reached port on the 9th of July.

Q Did you know, at the time you took these papers to Saitta what the customary commission was for selling lemons on commission in this city? A No; later on I obtained that information.

Q Did you at this time have any conversation with the defendant Saitta regarding that commission? A At the time the

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papers --

Q Were delivered to him.

MR. MOSS: What time do you speak of?

MR. HAYWARD: At the time he took those papers.

MR. MOSS: Does he understand that?

MR. HAYWARD: I think he does.

THE WITNESS: No, we did not speak about that at all.

BY MR. HAYWARD:

Q How long afterwards did you speak about the commissions, if ever?

Objected to as leading.

MR. HAYWARD: It may be leading and I withdraw it.

Q Did you at any later time have such a conversation with the defendant? A When I received it the second letter with and another bill of lading/invoice in it.

Q Did you ever make an agreement with the defendant as to the commissions?

MR. MOSS: I object to the form of the question as leading and as calling for a conclusion.

MR. HAYWARD: Perhaps I can frame it so that you will not have any objection.

Q What was the conversation that you had with the defendant regarding commissions, what he said and what you said? A Immediately at the outset, we had no conversation. I broached the subject. I told Mr. Saitta that on that first transaction he

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could withhold half or the whole of a certain indebtedness I had contracted towards him.

Q Half of what or the whole of what? A Of the commission. I told him in plain words that if there were for instance \$120 coming to me as my share of the commission, he could keep half of that amount or all of it and charge it to my indebtedness to him.

Q How much was your indebtedness to him at that time?

A About \$190.

Q And for what was that indebtedness? A Loans that he had made to me before this occasion and also advances that he made.

Q Advances on what? A Well, both of them could be called loans -- loans that I had obtained from him.

Q What further conversation did you have with Saitta directing your particular attention to what Saitta was to do with these papers, 9-A and 9-B? A No other conversation.

Q Did you direct, in any way, what Mr. Saitta was to do with these papers or what part he was to take in the transaction?

A No, I did not make any suggestion to him.

Q Did you leave the papers with him? A Yes.

Q Do you know what Mr. Saitta did with the papers -- do you know of your own knowledge or from his telling you? A I do not. I conjecture as to what he did with them.

Q I do not want that -- did he ever tell you what he did with them? A He told me that he had sent them to the Customs House brokers.

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Q And did he name who that was? A Vincenzo Inguglia.

Q I show you a paper marked Exhibit 2-A for Identification, and I ask you to state if you know what that is? A Yes.

MR. MOSS: Just calling for a general description again.

MR. HAYWARD: You do not care to concede that is a letter he received?

MR. MOSS: I do not know what it is.

MR. HAYWARD: I will show it to you.

(The letter is shown counsel for the defense).

MR. MOSS: I have no objection. We concede the translation to be correct.

MR. HAYWARD: Then I offer Exhibit 2-A and 2-B in evidence.

(Exhibits 2-A and 2-B are received in evidence and so marked).

BY MR. HAYWARD:

Q This paper you received in the mail? A Registered, yes.

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MR. HAYWARD reads People's Exhibit 2-B to the jury as follows:

"GIUSEPPE FAZIO

CATANIA, 30th June 1913

RAMO

NAVIGAZIONE

S.E. Gatto & Co.,
Brooklyn, N.Y.
S.S. Ultonia.

We confirm ours of the 23rd last and believing the good conditions of your market I have sent you another consignment of Verdelli, consisting of 225 half boxes and 232 boxes according to document herein enclosed.

On account of the continued demand of this article here the prices are constant with a tendency of increasing, therefore, I hope you will sell this consignment very well.

I have insured the consignment hence, I pray you to telegraph me after the sale two average prices, one of the boxes and one of the small boxes.

Awaiting your news regarding the movement of the market for my own guidance and assuring you that by receiving good results I will not cease to continue the work. Besides the bill of lading and consul's certificate I also enclose proper distinctive trade marks of the consignment. If necessary, telegraph me even weekly to decide for other consignments using Scattergood Code.

Hoping that you will obtain high prices, we salute you
Giuseppe Fazio."

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BY MR. HAYWARD:

Q What papers came with this letter? A Another bill of lading and another Consular invoice.

Q I show you People's Exhibits 10-A and 10-B, invoice and bill of lading, and I ask you to state if those are the two papers you refer to? A Yes, sir; this is the consular certificate and this is the bill of lading (indicating).

MR. HAYWARD: Will you concede, Mr. Moss, that if Mr. Galatioto was called he would swear that Guiseepe Fazio signed to the back of the invoice, being People's Exhibit 10-A, the signature of Guiseepe Fazio at Catania?

MR. MOSS: Yes.

Q What did you do with these papers? A I went to Mr. Saitta and handed them to him in the same manner I handed the previous ones.

MR. HAYWARD: Will you concede that the endorsement on the back of the bill of lading is likewise that of Guiseeppe Fazio?

MR. MOSS: I will concede that Mr. Galatioto will testify to whatever you say he will testify to on that subject.

MR. HAYWARD: That if Mr. Galatioto were present he would testify that the signature, Guiseeppe Fazio, on the back of the bill of lading, beneath the endorsement, is the signature of Guiseeppe Fazio, of Catania, Italy?

MR. MOSS: Yes.

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BY MR. HAYWARD:

Q Directing your attention to the rubber stamp mark:
"S. E. Gatto, 258 Broadway, New York, Branch Office, 710 Henry
Street, Brooklyn, N. Y.," I will ask you if you put that stamp on
there? A Yes.

Q When, before or after you took it? A Before going to Mr.
Saitta's office...

Q The endorsement, S. E. Gatto & Company, beneath Guiseppe
Fazio, is that your handwriting? A Yes.

Q Did you see Mr. Saitta make his endorsement on this
second paper?

MR. MOSS: I will concede that he made it.

A This time I did, yes.

MR. MOSS: We will concede that Mr. Saitta made the
last endorsement appearing on the bill of lading.

It is also conceded that the endorsement on the back of
the bill of lading correctly translated, is as follows:
"Delivered to S. E. Gatto & Co., dated Catania, 23rd of
June, 1913, signed Guiseppe Fazio, signed S. E. Gatto & Co.,
signed P. H. S. Saitta."

MR. MOSS: That is on which Exhibit?

MR. HAYWARD: Exhibit 9-B.

It is also conceded that the endorsement on the back
of People's Exhibit 10-B, correctly translated, is as follows:
"Consigned----"

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MR. MOSS: We do not concede that. It does not mean consigned; it means delivered.

MR. HAYWARD: "Delivered to the order of Senors S. E. Gatto & Co., dated Catania, 30 day of the 6th month, 1913, signed Guiseppe Fazio, signed S. E. Gatto & Co., and signed P. H. S. Saitta.

MR. HAYWARD: I am going to offer this in evidence.

MR. MOSS: You may. I have no objection.

MR. HAYWARD: I offer in evidence now Exhibits 10-A and 10-B, invoice and bill of lading.

IT IS CONCEDED that if Mr. Galatioto were here he would testify that the signature of Guiseppe Fazio on 10-A and 10-B are the signatures of Guiseppe Fazio, of Catania, and both these Exhibits, 10-A and 10-B, are offered in evidence and received and so marked.

MR. HAYWARD: At this point I think it will be more logical and intelligent to the jury if I withdraw Mr. Gatto from the stand for a few moments and put Mr. Hegeman on the stand.

MR. MOSS: I will certainly consent to whatever you think may expedite the trial.

MR. HAYWARD: I presume you want to reserve cross examination?

MR. MOSS: Yes.

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HENRY B. HEGEMAN, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HAYWARD:

(Residence Cranford, New Jersey).

Q You live here in New York? A I live in New Jersey.

Q You are in business in New York City? A Yes.

Q What is your business? A I am treasurer of Brown & Secomb.

Q What business are they in? A The selling of fruit at auction.

Q How long have you been connected with that firm as treasurer? A Since 1903 as treasurer.

Q How long altogether with the firm? A I have been with the firm since 1885.

Q Are you acquainted with the defendant here, Mr. Saitta?
A Yes.

Q How long have you known him? A Three or four years, I guess -- five years possibly.

Q Did you have a conversation with the defendant during the summer of 1913 regarding the selling of a shipment of lemons from Italy, from anybody in Italy? A Yes.

Q Now, handing you Exhibits 9-A and 9-B and 10-A and 10-B, I will ask you to state to the jury just what conversations you had with the defendant regarding the shipment or shipments alluded to in these papers -- give me as near as you can, the exact conver-

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sation. Here is the first one, 9-A and 9-B, and the other corresponding papers are 10-A and 10-B. A Mr. Saitta came into --

MR. MOSS: What do you refer to now, the first set?

MR. HAYWARD: Referring to the first set, 9-A; that is the Ivernia shipment.

THE WITNESS: (Continuing) Mr. Saitta came into my office and told me that he had some fruit from Fazio that he wished -- on the Ivernia and Ultonia, that he wished us to sell; and that he expected to receive other consignments from them.

BY MR. HAYWARD:

Q From whom? A From Fazio. And handed me the two bills of lading. I told him all right, we would be glad to sell them. I asked him how he wanted them catalogued, whether he wanted them catalogued in his name or in Fazio's name or to order; acting under his instructions they were catalogued to order, that is on the index of the catalogue read "order".

Q Have you that catalogue? A I have the catalogue in my overcoat pocket.

Q Will you please step down and get it at this point?

(The catalogues are produced).

Q The first was the Ivernia? A Yes.

Q Just show me the particular items that had to do with this consignment. A From Lot 376 to Lot 389, the index reads.

Q Items listed from 376 to 389 inclusive, did they have to

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do with this consignment of lemons from Fazio? A On the Steamship Ivernia.

Q And was this catalogue used at a sale of the lemons? A Yes.

BY MR. MOSS:

Q Used by your firm.

BY MR. HAYWARD:

Q By Brown & Secomb? A Yes.

Q Were these lemons actually sold? A They were.

Q Can you tell us what the net proceeds of those sales, of this particular catalogue list, amounted to and what you mean by the net proceeds? A Yes, sir; the sale of -- the original sale of the Ivernia amounted to \$2,611.84. That was after the deduction of the auctioneer's charges for selling, the charge of cataloging and small minor charges; it was the net auction sale, the net amount resulting from the sale.

Q Was how much? A \$2,611.84 on the original sale of July 11th.

MR. HAYWARD: I want to offer at this time this catalogue, or these pages 15, 16 and 17 thereof, containing these items, and I would like to read the catalogue numbers description to the jury at this time:

(Pages 15, 16 and 17 are offered and received in evidence and marked People's Exhibits 13, 14 and 15).

MR. HAYWARD: I offer on these pages items 376 to 389 inclusive.

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MR. MOSS: Fazio is a name in the trade?

THE WITNESS: The name of Fazio is known in the trade as a shipper.

BY MR. HAYWARD:

Q And these pictures of this lion, were they his particular mark? A Yes.

MR. MOSS: Giving some indication of the quality of the goods?

THE WITNESS: It is the brand on the end of the box, as near a copy as they can make of it.

BY MR. HAYWARD:

Q What day did you say this sale was? A July 11th.

Q When did you make remittance of the proceeds or any part of the proceeds of this first sale, and to whom? A The first payment that we made on account of the proceeds, was to give a check to Mr. Inguglia to pay the duty.

Q Who was Mr. Inguglia? A He was the Customs House broker, and acting under Mr. Saitta's instructions we paid Mr. Inguglia the sum of \$691.35 to pay the duty on this invoice on the steamship Ivernia. On July 14th, which was the following Monday after the sale, Mr. Saitta sent down to my office and we gave him a check for \$1500 on account of the net proceeds of this sale.

Q That was what date? A July 14th.

(A check is now offered and received in evidence without objection and marked People's Exhibit No. 16).

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Q Is Exhibit 16 the check with which you paid the \$1500 to Mr. Saitta on the date it purports to bear, July 14, 1913? A Yes.

Q What was the next payment that you made any person on account of the net proceeds of this sale? A July 15, I gave a check to Mr. Inguglia but drawn to the order of the Cunard Steamship Company to pay the freight, amounting to \$203.59.

Q What was your next payment? A The next payment on this--

Q On this transaction? A On this Ivernia, was on July 23rd, I gave Saitta a check for \$450, of which \$200 applied to the sale of the Ivernia and the other \$250 applied to the subsequent sale of the Ultonia.

Q Is this the check by which you paid Mr. Saitta the \$450 on the 23rd of July, 1913? A Yes.

MR. HAYWARD: It is admitted by counsel for the defense that People's Exhibit 17, which is now received and offered in evidence without objection, is the check which was delivered to the defendant, Mr. Saitta, and cashed by him, and that the endorsement, both P. W. Saitta and P. H. Saitta are by the defendant. It is also conceded by the defendant and his counsel that People's Exhibit 16 is the check referred to by the witness as having been delivered to the defendant on July 14th and that the same was cashed and the proceeds thereof taken by the defendant and that the endorsement, P. H. S. Saitta on the back thereof is the signature of the defendant.

MR. MOSS: Cashed or banked?

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MR. HAYWARD: The proceeds of it were deposited to the defendant's account.

MR. MOSS: All right. Both checks deposited.

MR. HAYWARD: This concession applies to both checks.

BY MR. HAYWARD:

Q Were there subsequent payments on this account? A There was a small check of \$16.90 on July 29th.

Q Do you know what that was for, was it for any particular item? A That was the balance of the proceeds of the Ivernia, original sale of \$2611.84, less the amount of duty, less the amount of freight, less \$1500 and less that \$200. That was simply the balance to close that account.

Q That was part of the second check.

(Several checks are now offered in evidence and received without objection, and marked People's Exhibits 18, 19, 20 and 21).

IT IS CONCEDED by the defendant that People's Exhibits 18, 19, 20 and 21, all being Brown & Seccomb's checks, were received by the defendant from Brown & Seccomb, the proceeds thereof received by the defendant, placed in his account in bank, and that the several endorsements on the backs on the said exhibits were made and are the endorsements of the defendant.

BY MR. HAYWARD:

Q I understood you to say that these checks, which have now

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been offered in evidence, \$1500, \$450, \$16.90, \$22.32, \$6.76 and \$43.09, ranging in dates from July 14th to August 19th, 1913, represent the net proceeds of these sales of the lemons which came from Fazio on the Ivernia and Ultonia? A That is correct.

Q These checks were delivered in what manner to Mr. Saitta?

A The \$1500 check Mr. Saitta sent down for. The \$450 check Mr. Saitta sent down for. The \$16.90 check and the other subsequent small checks I could not say whether he sent down for them or if they were mailed up to him.

Q Whether they were mailed or delivered to Mr. Saitta, in another way, it was done in the city and County of New York? A Yes, sir; it was.

Q Now, can you, by taking these other checks, which I hand you and which are marked by the reporter and received in evidence without objection —

(Certain checks are offered and received in evidence and marked People's Exhibits Nos. 22, 23, 24 and 25 inclusive).

Q Handing you these Exhibits, 22 to 25, I ask you to examine them and tell the jury as briefly as you can how the balance of the proceeds of the lemons was used and for what purpose? Such as paying freight and the like? A The first check is the coal & Iron National Bank check for \$2,060.33, drawn to the collector of the customs of the Port of New York. Of this check only \$691.35 applied to Mr. Saitta's account. The balance was duty for other people who had fruit on those same ships and the bill came from the

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same customs house brokers. The \$691.35 is the duty on the Steamship Ivernia. The balance of the check was for duty from a man by the name of Scoglio and Motisi and Saitta -- another Saitta.

Q Not this Saitta? A Not this Saitta. Here is another check on the Manhattan Company, No. 23, Manhattan check No. 14,220, for \$203.59, drawn to the order of V. Inguglia, account of P. W. Saitta. This check was for the Freight on the Steamship Ivernia which had been paid by Mr. Inguglia.

Q Inguglia was the Customs House broker? A He was the customs House broker and he had paid the freight for this invoice and came to us to reimburse him from the proceeds of the sale. Now, here is a check, Exhibit 24, for \$1,224.70; \$447.75 of this check was the duty on the Steamship Ultonia. In this check was \$35 duty for Matisi and Saitta, and \$741.95 duty for P. Scoglio. That check is drawn to the order of the Collector of the Port, Collector of Customs, Port of New York. Also another check, Exhibit No. 25, No. 3432, on the Aetna National Bank, drawn to the order of the Cunard Line, account of P. S. Saitta, \$135.10, and Giachinta Presta, \$18. 74. That was for the freight on the Steamship Ultonia.

Q Were these checks duly paid and charged to your account, Brown & Seccomb account? A Yes.

Q And did the items you have mentioned as being included in and incorporated in these last four checks, together with the

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checks that were received by Mr. Saitta, clean up the entire two transactions of the Ivernia and the Ultonia? A Yes, sir.

Q Was there any item left over of any amount? A It shows an over-payment to Saitta of \$30.

Q You have never made any claim upon Mr. Saitta for that \$30? A No.

Q Was there an additional item of duty paid by you or to be paid by any person, subsequent to these transactions covered by the checks now in evidence? A That I would not know.

Q You would not know about that? A No. That claim would be made upon Mr. Saitta who had entered the goods.

Q Perhaps I have shown it before, but these items that I read to you, the checks going to the defendant, were they not the net proceeds of these two sales? A Yes.

CROSS EXAMINATION BY MR. MOSS:

Q Just one matter I want to recall to your attention, Mr.

Hegeman: You stated that in your first conversation about these matters, with Mr. Saitta, he said he had some fruit from Fazio. Did he say that he had some of Fazio's fruit or did he say something else? A Did he say he had some of Fazio's fruit?

Q Yes. A My recollection is that he said that he had some fruit from Fazio.

Q Is that your best recollection? A That is my best recollection.

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Q Listen to me, is that your best recollection of his exact words? A Yes.

Q Could he not have said that he had some of Fazio's fruit?

A He might have, Mr. Moss.

Q He might have said that? A Yes.
had

Q You have/quite an acquaintance with Mr. Saitta in a business way? A Yes.

Q He has procured importers to sell fruit in your auction rooms? A He did.

Q To the extent of millions of dollars? A I would not care to state just how much it was but he has secured a number of various importers.

Q And having a large acquaintance on the other side and procuring many people on the other side? A I don't think he procured any on the other side.

Q On this side, very many people on this side, to take the fruit they received from abroad to your rooms? A Yes.

(The Court admonishes the jury in accordance with Section 415, of the Code of Criminal Procedure, and takes an adjournment until Monday morning next, March 23rd, 1914, at 10:30 o'clock).

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New York, N. Y., March 23rd, 1914.

Trial Resumed.

HENRY B. HEGEMAN, resumes the stand:

BY MR. HAYWARD:

Q You testified on Friday that Mr. Saitta, the defendant, brought the Fazio bill of lading and the other papers to you with instructions for you to sell the same? A Yes, sir.

Q Will you please tell any conversations that you had with the defendant, that you did not tell on Friday, with relation to the time when the money was to be paid to him or the time when he asked that the money be paid to him.

MR. MOSS: I think he should be asked if there was anything he did not tell. You are suggesting it to him in the question.

MR. HAYWARD: I am not trying to suggest anything. I presume my question implied that.

BY MR. HAYWARD:

Q Was there talk with the defendant that you did not tell us about on Friday? A Yes.

Q Please tell what that was. A Why, Mr. Saitta asked me to make him an advance against these goods previous to the sale and I explained to Mr. Saitta that I could not do that, and in fact that I did not want to accept the goods, to discount, immediately after the sale, but Mr. Saitta asked me to make an

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exception in his case and I agreed to and agreed to discount the sales right after the sales, that is, to give him 90 per cent. of the proceeds immediately after the sale.

BY THE COURT:

Q Before you got the money? A Yes, sir; before we collected the money.

BY MR. HAYWARD:

Q You are familiar with the commissions ordinarily paid in that class of business to consignees for foreign owners who are exporting goods to this country, are you? A I am in a general way, yes.

MR. MOSS: He says in a general way. I do not know what that is.

MR. HAYWARD: I think that is the only way he could be familiar with it.

BY MR. HAYWARD:

Q You have known of transactions of a similar kind and you have known of the commissions that have been charged and paid?

A Yes.

Q Now, what in the ordinary course of business would be a fair and usual commission to be paid to a consignee for the services in placing the sale of an imported bill of merchandise of that character, and for the work that Mr. Saitta here did in this particular transaction, if you know? A The importers in the majority of cases receive anywhere from two percent. to five

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per cent. -- anywhere from two to three percent, where the goods are free and probably up to five, where they have made advances against them.

Q Were these free goods or otherwise? A That I could not say.

Q At any rate, you would fix five as the outside figure, ordinarily paid, as a fair commission? A Yes, sir.

Q Mr. Moss asked you on cross examination if the defendant had not procured for you a number of customers in time past and I think he said hundreds of customers. A Well, Mr. Saitta was retained to use his influence to get business for us and he did that, but I found there was no business unless it was supplemented by a monetary consideration on our part.

Q I will ask you to state whether or not in the year 1910 the defendant procured any customers for you among those that Mr. Moss asked you about? A Mr. Saitta was connected without getting several customers that year.

Q I will ask you with particular reference to the Mergandante Regan Company; did he procure such a customer or send such a customer to you? A Mergandante Regan came to us in the year 1910 to sell goods; whether Mr. Saitta procured him or not I do not know. There seems to be a difference of opinion. Mr. Saitta brought suit against us since for commissions from Mergandante for 1910, but I believe in a subsequent suit he testified he did not claim commissions.

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MR. MOSS: We are getting into hearsay now. He says he believes in a certain matter --

BY THE COURT:

Q When you say you believe he did, were you present and did you hear the testimony? A Yes.

Q Did he so testify? A He did so testify, that he did not claim commissions for the year 1910.

BY MR. HAYWARD:

Q And at that time he had a suit pending against you for those commissions for that year? A Yes, sir.

Q Tell us as nearly as you can the date in 1910 when the Mergandante Regan Company had this business with you? A The first we sold any goods for Mergandante Regan was on March 29th, from then on up to October.

Q The suit you speak about Saitta bringing against you was in what Court? A I think the Supreme Court.

Q Are you familiar with another action called the Connolly Auction Company against the Mergandante Regan Company in the City Court? A I was a witness in that case.

MR. MOSS: I object to this. I do not think it is pertinent. That is, as to the bringing of suit by these gentlemen against Brown & Seccomb. It is all pinned on the question I asked whether Mr. Saitta had not brought a great deal of business from importers to Brown & Seccomb, which this gentleman answered in the affirmative and that is all there is to it.

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THE COURT: Is it material, in regard to actions brought by the defendant?

MR. HAYWARD: I think it is material.

THE COURT: Suppose you state the object of it.

MR. HAYWARD: I think Mr. Moss opened the door for this line of examination by going into that himself.

THE COURT: Perhaps so, but would it be essential and necessary at all, either directly to the issue or collateral to the issue?

MR. HAYWARD: I do not care to pursue this any further, but, I do not care to say at this time what our exact object is in this. It is simply preliminary, but I think we have been given the privilege by Mr. Moss opening the door by that question to go into any of these transactions he has asked the witness about.

MR. MOSS: I have not asked about transactions. I asked him if Saitta had not procured a large number of customers for his concern, which was a fair question to ask in view of the testimony which he has given. He answered yes. Now, that is all that establishes -- that Saitta who took a bill of lading to him to be sold was not a stranger, but had done business with him before. If we are to be carried into the issues that are in litigation in some other Court about some other matter and try that out as a side issue, we will never get through with this case.

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THE COURT: You might get a list of those cases but I would not go into it further, unless you can show some particular reason for it.

MR. MOSS: My purpose was simply to show that these men were acquainted and Saitta, in going to him was going to a man he has dealt with before to a considerable extent. That was all I cared for.

BY THE COURT:

Q You represented the auctioneers? A Yes.

Q Were you in their employ or a member of the firm? A I am treasurer.

Q Treasurer of the auction company? A Yes.

Q And probably one of the directors? A Yes.

CROSS EXAMINATION BY MR. MOSS:

Q You outlined an arrangement which was made about these lemons by which the sales were to be discounted at 90 per cent.?

A Yes.

Q Is that an ordinary arrangement in your line of business?

A Yes.

Q You say that Mr. Saitta sued your concern for Commissions, in the Mergandante matter, claimed upon business done in 1910?

A Yes.

Q Are you not in error about that, was it not 1911? A No, I think it is 1910.

Q You say you think so -- when you say Mr. Saitta said he

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had not sold for you or done business for you in 1910, was it not in connection with the statement that his claim was for 1911?

A His statement was that the claim was for 1911, in court.

BY MR. HAYWARD:

Q That was in the suit in the City Court? A No, that was the suit -- the complaint in the suit in the Supreme Court.

Q Let me understand -- I won't pursue this but a moment further -- the suit of Mr. Saitta against your firm in the Supreme Court was for services claimed to have been rendered in 1910, was it not, partly? A Partly in 1910.

Q And it was in the other Court, in the other suit that you testified, with another plaintiff and another defendant, where he appeared as counsel for the plaintiff or for the defendant -- for the defendant -- that there had been no such services in 1910, is that correct? A Yes, sir.

RE-CROSS EXAMINATION BY MR. MOSS:

Q Did not Mr. Saitta's suit claim commissions for the business, for Mergandante, and for other persons as well? A Yes.

Q So Mergandante was not the only customer involved in the suit? A No.

Q Didn't he say that his suit, so far as 1910 was concerned, related to other customers, but his claim as to Mergandante was for 1911? A Yes, sir. That was what he said, but the complaint calls for 1910 also.

Q You are taking about a paper for 1910 as to Mergandante? A Yes.

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BY THE COURT:

Q The claims of the defendant against your company, as I understand it, were for having brought you certain business? A Yes.

Q You were the auctioneers? A Yes.

Q And you charged how much? A Four per cent. commission on lemons.

Q And he claimed a part of that four per cent.? A Yes.

Q For having brought the customer to you? A Yes.

Q What part of it -- A He claims one half of one per cent. commission. It was only three per cent. in 1910.

Q So that would leave two and a half per cent to you and one half per cent to him? A Yes, that was what he claimed.

Q You say it was customary for you to discount the bills or the sale or, to discount the sale for the person for whom you made the sale? A Yes, sir.

Q Even before you got any money? A We advanced the freight and duty before the sale. That is customary, and usually the day after the sale we advance 90 per cent. of the proceeds of the sale and then we wait thirty days for our money.

Q Did you do the same thing for him, advance him 90 per cent. A Yes, sir; but he asked me to advance him money previous to the sale.

Q How could you tell what 90 per cent. would be? A We are supposed to guess at that.

Q Is that a familiar thing? A It has not been within the

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past year or two.

Q That is guesswork? A Yes.

BY THE SEVENTH JUROR:

Q What is the distinction between selling goods for a customer to order or in someone's name? A Very often when an order or bill of lading comes, the consignee may not want his name to appear on the catalog and he will have his catalog to order, rather than catalog it under his name as consignee.

BY THE COURT:

Q How were these particular lemons sold in question? A To order -- sold for order -- the catalog appears to order.

BY MR. MOSS:

Q Is it not customary to make loans in advance of sales to customers? A No, sir; it is not at the present time.

Q Not at the present time, but at those times? A At that time, no sir.

Q Had it been done? A It had been done previously.

BY THE COURT:

Q To whom did you make that loan that you speak of, for the lemons in question? A Did not make any loan on these lemons. We discounted the sales.

Q To whom did you discount that sale? A To Mr. Saitta.

Q Did you see the bill of lading for the lemons? A Yes.

BY MR. HAYWARD:

Q You could not have discounted them to anybody but Saitta?

A No.

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Q You received the order from him? A Yes.

BY THE COURT:

Q The bill of lading was assigned over to him? A I did not look at the endorsement at the time.

MR. MOSS: The bills of lading are in evidence.

THE COURT: Are they not endorsed to him?

MR. MOSS: Endorsed by Fazio to Gatto and then endorsed by Gatto to the defendant and delivered to the defendant.

SALVATORE E. GATTO, recalled, testified as follows
BY MR. HAYWARD:

Q You told us about writing the circular letter? A Yes.

Q On your own typewriter? A Yes.

Q How long did it take you to write the one hundred odd circular letters? A About three days.

Q How many would you write a day? A About 25 or 30 a day.

Q Tell us what you did with the letters as fast as you had them written? A I would finish the letters at home, at night, and bring them in the office in the morning.

Q To what office? A Mr. Saitta's office. Mr. Saitta would give me the stamps and I would mail the letters.

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Q Who would mail the letters after they were stamped?

A Sometimes I would mail them myself, sometimes I would give them to the clerk of Mr. Saitta, who would mail them himself.

MR. HAYWARD: May I ask the interpreter a question?

THE COURT: Yes.

MR. HAYWARD: Mr. Interpreter, is there a difference between the words "Denaro and Franco Bollo" and a different meaning?

THE INTERPRETER: Denaro is cash.

MR. HAYWARD: And what is Franco Bollo ?

THE INTERPRETER: Stamps, postage stamps.

MR. HAYWARD: What word does the witness use here, Franco Bollo or Denaro?

THE INTERPRETER: Franco Bollo.

BY MR. HAYWARD:

Q Did you know any of the clerks in Mr. Saitta's office?

A Yes.

Q Do you recall now what particular clerks you ever gave any letters to, or did you leave them there -- tell us in detail about that, as far as you can remember? A Artruro Canfora.

Q Are those two people, or the same person? A Arruro is the Christian name and Canfora is the surname.

Q How long after you took the documents for the Ivernia shipment of lemons to the defendant was it before you had any other conversation with the defendant? A A week after.

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Q At that time what conversation did you have with the defendant, tell us what you said to him and what he said to you?

A I asked him when the auction will be and he told me that the auction will be about the 14th or 15th.

BY THE COURT:

Q Of what? A July.

BY MR. HAYWARD:

Q What else did you talk to him about, if anything? A I asked him when they would be sold, whether we would receive the cash right away.

BY THE COURT:

Q What did he reply? A He answered that the auction sale does not pay until thirty days after the sale.

BY MR. HAYWARD:

Q Can you give approximately the date when this conversation was? A About the 10th or 11th of July.

Q Did you know when the lemons arrived by the Ivernia?

A On the 9th of July I think.

Q Did you know when they arrived at that time? A The 9th of July.

THE COURT: That was the Ivernia, the first shipment?

MR. HAYWARD: Yes.

BY MR. HAYWARD:

Q How did you learn they had arrived? A I read the name of the steamer.

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Q In what? A In the newspapers.

Q Did you know they were coming over on the Ivernia?

A Certainly.

BY MR. HAYWARD:

Q Were you present when the lemons were sold by Brown & Seccomb, the Ivernia shipment? A Yes, sir, I was present.

Q After that sale did you communicate with Fazio in Italy in any way? A Certainly. I had to telegraph the price and then I wrote a letter concerning the sale.

(A letter is now marked for Identification People's Exhibit 26A and the translation of it is marked People's Exhibit 26-B.)

Q I show you People's Exhibit for Identification 26-A and I ask you if you wrote that letter? A Yes.

Q And did you mail it? A Yes.

Q To whom was it addressed on the envelope? A Mr. Guiseppe Fazio, Catania.

Q Did you have postage on the envelope when you mailed it? A Yes.

MR. MOSS: The letter is objected to as incompetent, irrelevant and immaterial -- written by this man to Fazio. It has not anything to do with this case.

THE COURT: The fact that he wrote Fazio on a certain date, we might receive that, but the contents of the letter you object to?

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MR. MOSS: Yes.

THE COURT: You do not object to the fact that he did write to Fazio on a certain date?

MR. MOSS: No.

THE COURT: What was the date?

MR. HAYWARD: July 15th, immediately after the sale.

THE COURT: The sale was on July 14th?

MR. HAYWARD: No, it was July 11th, and they paid the defendant \$1500. on July 14th.

THE COURT: Which the defendant deposited in the Chatham National Bank to his account.

MR. HAYWARD: My theory on this is that it confirms cablegrams exchanged back and forth, and is part of the res gestae to show the entire transaction.

THE COURT: Can you connect the defendant with the letter? Was the letter shown to the defendant or was it written at the request of the defendant? Did the defendant know anything about the letter? Was it written as the result of conferences between the defendant and the witness?

MR. HAYWARD: I will see if I can lay that foundation.

BY MR. HAYWARD:

Q This letter refers to some cablegrams? A Yes.

THE COURT: Could you refer to the letter as the witness' letter to Fazio of July 15th, 1914?

MR. HAYWARD: Yes.

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THE COURT: So we might identify it in some way.

MR. HAYWARD: People's Exhibit 26-A I refer to.

BY MR. HAYWARD:

Q Did you show this letter to the defendant? A Certainly.

Q How about the cablegrams which are referred to in this letter? A Certainly I showed -- I had the defendant make those telegrams -- he made the telegrams.

Q Where? A 258 Broadway.

Q What is that? A Office of Mr. Saitta.

MR. MOSS: The translation is correct.

MR. HAYWARD : It is conceded that 26-B is a correct translation of 26-A.

BY MR. HAYWARD:

Q I now hand you People's Exhibit 27 for Identification, a cablegram -- state what that is -- did you send that cablegram?

A Yes, sir, I sent that telegram.

Q That is not the original, or is it the original? A It is a copy.

Q And is that a copy of the telegram which is referred to in People's Exhibit 26-A? A Yes, sir.

The cablegram is marked for identification People's Exhibit 28-A and the translation People's Exhibit 28-B.

Q State whether or not the cablegram marked People's Exhibit for Identification No. 27, or a copy of it, was shown to the defendant?

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MR. MOSS: I ask you not to do that, Mr. Hayward. Ask him what he did with it. Do not put the words right in his mouth. Ask him what he did with it.

MR. HAYWARD: It is merely a preliminary question.

THE COURT: What is that?

MR. HAYWARD: I asked him if he showed a copy of that to the defendant.

THE COURT: Ask him what he did with it.

BY MR. HAYWARD:

Q What did you do with People's Exhibit 27 before you sent it, or the paper of which that is a copy? A Mr. Saitta saw it, and this was the telegram that was notifying the price we obtained for each case.

BY THE COURT:

Q How did Mr. Saitta see the telegram? A First Mr. Saitta made the account and then he prepared the telegram and this is the telegram he prepared.

Q Who prepared the telegram? A Mr. Saitta made the account first, to see the price -- he calculated what it cost, and then he put it on this telegram. He put five and so on.

THE COURT: Referring to the numbers.

THE INTERPRETER: Referring to the figures he obtained.

BY MR. HAYWARD:

Q Did you have any reply to this telegram? A Yes.

Q What was it?

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THE COURT: You had better ask him -- you have to connect the defendant with the reply or with the reading of the reply in some way.

MR. HAYWARD: I thought I would show first that he did receive a reply.

THE COURT: He said he received a reply to that -- now, what did he do with the reply?

THE WITNESS: I went and brought it to Mr. Saitta so he could read it.

BY THE COURT:

Q Did he read it? A Yes.

BY MR. HAYWARD:

Q Is that the reply that you ^{received} ~~sent~~ and that Mr. Saitta read?

A This is the answer (referring to Exhibit 28-A).

(A cablegram is now marked People's Exhibit 29 for Identification.)

BY MR. HAYWARD:

Q I hand you letters and cablegrams received by you and copies of cablegrams sent by you -- will you please go through them and pick out any part of them that the defendant Saitta saw and read? A Everything you have handed to me.

Q Tell us how they were sent, those letters and cablegrams, and when they were received, if you can, in chronological order, in order of time as they were received or sent? A The first one I received like it was this evening and like to-morrow I brought

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it to Mr. Saitta to read it, the first one.

MR. MOSS: Your questions as answered by the defendant legally make the connection which you are striving for, I guess, and therefore I shall not object to their being read, and you may mark them in evidence. I do not want to waste any time. When the witness says that he showed them to Mr. Saitta, then I think the legal point is made, and there is no use continuing any other objection.

THE COURT: Ask about them in the order in which he received them, and show them to the defendant.

MR. MOSS: By that I mean, if your Honor please, I do not concede that he showed them to the defendant, but I merely say you have in law enough to justify you in offering them.

THE COURT: In other words, the rule of evidence has been conformed with sufficiently to receive them in evidence?

MR. MOSS: Yes. The translations are conceded to be correct.

The following papers are received and marked in evidence, People's Exhibits 30-A, 30-B, 31-A, 31-B, 32, 33-A 33-B, 34, 35, 36, 37-A and 37-B.

People's Exhibit 27 for Identification is also received in evidence.

People's Exhibit 26-A and 26-B are received in evidence. People's Exhibit 28-A, 28-B are received in evidence. People's Exhibit 29 is received in evidence.

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MR. HAYWARD read People's Exhibit 26-B in evidence to the jury as follows:

"Cable Address: "GATTO" - Brooklyn
A.B.C. 4th & 5th Edit. - Code Used.
"GATTOSALVA" - New York.

S. E. GATTO & CO.,
FRUITS, MERCHANDISE BROKERS,
WINES, LIQUORS & OLIVE OIL
710 HENRY STREET
Telephone 1714 Hamilton.

Brooklyn, N.Y., 15th July, 1913

Mr. Giuseppe Fazio:

Catania.

We received your registered letter of the 23rd ulto. with document for "S.S. IVERNIA" for which we thank you and we have done the best we could to serve you for the reason that although the fruit is beautifully packed, it contained 10% of decay, and the 1/2 boxes contained 142 Verdelli instead of 150; this is because the fruit is very large. Friday last immediately after the auction sale we telegraphed you "BOXES FIVE HUNDRED SIXTEEN HALF TWO NINETY THREE" the average price of \$5.16 and \$2.93.

Your cablegram of last Saturday says "TELEGRAPH NET STERLINGS CONTINUE SHIPMENTS." Yesterday we answered thus: "APPROXIMATELY FOUR HUNDRED STERLINGS MARKET ACTIVE FORESEE CONTINUATION." That we confirm and as soon as we are able to collect we will make a check on London.

Here the auction sales do not pay until after 30 days be-

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cause they are constituted on trust, which is the best guarantee for the interested person because they have neither annoyance nor guarantee -- take note--. If you desire funds we can authorize you to draw at sight upon us in pounds. If the hot weather will continue in the inner states we will give you proof of our energies.

Here under your commands with esteem and friendship, we salute you.

S. E. GATTO & CO;-
Per S. E. Gatto."

MR. HAYWARD read People's Exhibit 27 in evidence to the jury as follows:

"FAZIO
CATANIA.

Boxes five sixteen Half 293.
7/11/13."

GATTO.

MR. HAYWARD read People's Exhibit 28-B in evidence to the jury as follows:

"CABLEGRAM SENT BY GIUSEPPE FAZIO TO S. E. GATTO & CO., BROOKLYN,
N.Y.

DATED 12th JULY 1913.

TELEGRAPH NET PROCEEDS STERLING WILL CONTINUE SHIPMENTS.

FAZIO."

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MR. HAYWARD read people's Exhibit 29 in evidence to the jury as follows:

"FAZIO,
CATANIA.

Approximately 400 Sterling. Market very lively. Continuance expected.

7/14/13."

GATTO.

MR. HAYWARD read People's Exhibit 30-B in evidence to the jury as follows:

"CODE USED
A B C 5TH EDITION
PRIVATE

TELEPHONE 1714 HAMILTON

CABLE ADDRESS:
GATTO: BROOKLYN
GATTOSALVA: NEW YORK

MEMORANDUM
S. E. GATTO & CO.
710 HENRY STREET

BROOKLYN, N.Y., 16th July, 1913

Mr. Giuseppe Fazio,
CATANIA - Sicilia.

This is in continuation of our letter of yesterday and we have your registered letter of the 30th ult. with the bill of lading containing 225 1/2 boxes and 232 boxes of lemons on the "S.S. ULTONIA" which is expected to-morrow and the sale will be in the coming week. We thank you very much and we have the pleasure to communicate that the market is very good and we hope to obtain a very high price to encourage you to make other consignments which will always have our best care and attention.

Awaiting your commands with esteem and friendship we salute you
S. E. GATTO & CO.,
Sten/S.Gatto." Per S. E. Gatto

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MR. HAYWARD reads People's Exhibit 31-B in evidence to the jury as follows:

CABLEGRAM SENT BY GIUSEPPE FAZIO TO S. E. GATTO & CO., BROOKLYN, N.Y.

DATED 19TH JULY, 1913

"HAVE LOADED IMPORTANT SHIPMENTS. URGE TELEGRAPH MONEY.

FAZIO."

MR. HAYWARD reads people's Exhibit 32 in evidence to the jury as follows:

"FAZIO, CATANIA.

AWAIT LETTER 15TH INST.

GATTO.

7/21/13."

MR. HAYWARD reads people's Exhibit 33-B in evidence to the jury as follows:

CABLEGRAM SENT BY GIUSEPPE FAZIO TO S. E. GATTO & CO., BROOKLYN, N.Y.

DATED 22 JULY 1913

"SEND PROCEEDS NOTIFY ME MARKET.

FAZIO."

MR. HAYWARD reads People's Exhibit 36 in evidence to the jury as follows:

"FAZIO, CATANIA.
Ultonia fruit very rotten. Boxes 287 half 227.

Gatto.

7/22/13."

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BY MR. HAYWARD:

Q How many times did you see or talk to the defendant Saitta between the time of the sale of the Ivernia shipment and the 23rd day of July, for the purpose of refreshing your recollection I will say the 23rd day of July is the day when a bank account was opened in the Corn Exchange National Bank in Brooklyn-- the day after that? A Several times.

Q Tell in order about those conversations, what he said and what you said each time? A The first time we talked about the first sale we made.

Q What was said? A It was said that the auction pays in thirty days, and I asked him whether he received payment and he said no.

Q When, as near as you can, was the first time you ever asked the defendant if he had received the payment? A About the 14th or 15th of July.

Q When was the next time you ever had a conversation with him after that? A Three or four days after that.

Q What was the conversation? A The conversation was always on the same subject, that the auction would not pay unless the thirty days expired.

Q Who said the auctioneers would not pay until the thirty days had expired, who said that? A Mr. Saitta.

Q What did you say, if anything? A I said "If such is the case, then we will have to wait." What else could I say.

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Q Directing your particular attention, and for the purpose of refreshing your recollection, I will ask you to state whether or not during any of this time prior to the 23rd of July, you talked to Mr. Saitta about the consignor these lemons, ^{of} Fazio?

A All the time, every day.

Q What did you say about that and what did he say about that? A Always used to ask him when are you going to send remittances to this house, and he always used to answer "There is time, there is time."

Q Did you have a conversation with the defendant on the 22nd day of July, that you now recall? A Yes.

Q Tell what it was? A He said "I will open an account for you in a bank and then when we will have to pay, then we will pay."

Q When was that?

MR. MOSS: Will you repeat that translation?

THE WITNESS: He, the defendant, would open an account for me in the bank.

BY MR. HAYWARD:

Q What bank did he say? A Corn Exchange Bank in Brooklyn.

Q Had you up to that time had any bank account over there?

A No.

Q Had you had a bank account anywhere? A Never.

BY THE COURT:

As an actual fact when was the bank account opened, have

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you a record of that, so as to put that on the record?

MR. HAYWARD: Yes.

BY MR. HAYWARD:

Q Do you remember what day you had this conversation with Saitta? A The day before we opened the account in the bank.

Q Now, did you have any conversation with the defendant regarding the amount of this account; tell everything that was said by you to the defendant or by the defendant to you, the day before you opened the account, with regard to that account?

MR. MOSS: That should have been asked first.

THE COURT: Only translate that part of it. Strike out the word "amount" and do not translate that.

BY MR. HAYWARD:

Q Tell everything that you can recall that you said to the defendant or the defendant said to you, the day before the bank account in Brooklyn was opened. In reference to the account?

A He told me "To-morrow we open the account in the bank" and that was all that he said.

Q Did you open an account the next day in the bank? A Yes.

BY THE COURT:

Q Did either you or he state at the time the object of opening the account? A No.

BY MR. HAYWARD:

Q Do you now recall how much the account was for when you opened it? A Yes, sir.

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Q How much? A A check which the defendant gave me of \$210. and \$40. which I deposited in cash; that made it all told \$250.

(Two papers are now marked for Identification People's Exhibits 38 and 39.)

BY MR. HAYWARD:

Q Is the paper I hand you for Identification Exhibit 39, the check you refer to? A That is the check.

Q Is the endorsement on the back of the check yours? A Yes.

Q Was that a part of the initial deposit in the Corn Exchange Bank?

THE COURT: The first deposit.

THE WITNESS: Yes, the first deposit.

(Exhibit 39 for Identification is offered in evidence.

No objection, and is received and marked People's Exhibit 39)

Q I hand you a slip marked 38 for Identification, and I ask you what that is? A The check which I wrote myself when I opened the account in the bank.

MR. HAYWARD: I offer it in evidence.

THE COURT: That is what is known as the deposit slip, that is the original and first deposit slip, is that it?

MR. HAYWARD: Yes.

THE COURT: Opening the account.

MR. HAYWARD: Opening the account in the Corn Exchange Bank.

People's Exhibit 38 for Identification is received in evidence and so marked.

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BY MR. HAYWARD:

Q At or immediately after the time this account was opened, did you have another conversation with the defendant? A Yes.

Q What was it? A He told me to bring the check book in the house of the defendant.

THE COURT: You mean to the office of the defendant?

THE WITNESS: The office, yes. Before I done that I tore four checks out of the book, four blanks, and brought them to his house --

THE COURT: House or office?

THE INTERPRETER: He said house first.

THE WITNESS: His office.

BY MR. HAYWARD:

Q What did you bring to his house, the four checks or the check book? A Four checks which I tore myself out of the book.

Q Tell what occurred when you got there? A Then Mr. Saitta filled the first check. He put on it \$2,000. and then he stamped it with his machine which he has got in his office with a numbering stamp, which stamps 2,000., and not more than 2,000.

Q What did he say to you at that time, if anything? A He said to me "Take this check, do not say anything who wrote it or who did not, but just enclose it in a letter and send it to Catania.

Q Did he tell you who to send it to in Catania? A To Mr. Guiseppe Fazio.

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THE COURT: The body of the check he says was drawn in the handwriting of the defendant?

MR. HAYWARD: Yes.

THE COURT: And then put his stamping machine on "not more than 2,000."

MR. HAYWARD: Not over \$2,000.

BY MR. HAYWARD:

Q What did you do then, after he prepared this check? A I wrote a letter and enclosed it and sent it to Catania.

Q Whose signature is that at the bottom of the check? A My own signature.

Q I hand you the check People's Exhibit 8 for Identification and I ask you to state whether or not that is the check you have been telling us about? A Yes, sir, this is the check.

Q And what part of that check was written by the defendant and what part by you? A The whole check was written by the defendant except my signature.

Q After you signed it, what did you do with it? A I enclosed it in an envelope with a letter and sent it to Catania.

Q Did you mail the letter? A Registered it.

Q And stamped it? A Yes.

(The check is offered in evidence, People's Exhibit 8 for Identification).

MR. MOSS: No objection.

People's Exhibit 8 for Identification is received in evidence and so marked.

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THE COURT: Have you all there is in regard to that check, what was said in regard to sending it?

MR. HAYWARD: I think so.

THE COURT: I assumed from what you said here, that the check was not any good.

MR. HAYWARD: \$250. was opened in the account.

THE COURT: \$250. in bank and check for \$2,000. drawn upon it.

BY MR. HAYWARD:

Q Have you told us all that was said between you and the defendant regarding the size of the deposit in Brooklyn? A No, I asked him if we only deposit \$250. how is it we can draw a check for \$2,000.

Q What did he say? A He answered "By the time the check reaches Italy and by the time the check is returned back not honored, there would be about thirty days elapse, and in the mean time we can cover the bank over here" -- that is, deposit money over here in the bank.

Q I hand you Exhibit 37-A, and I ask you to state if that is the letter you told us you wrote in which you enclosed the check when you sent it to Fazio? A This is the letter.

Q Did the defendant see that letter? A Yes.

MR. MOSS: Is not that a letter you have already asked that question about?

MR. HAYWARD: I do not know if that was included or not but I will offer it in evidence now and read the translation.

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MR. HAYWARD reads People's Exhibit 37-B in evidence to the jury as follows:

"S. E. GATTO & CO.
FRUITS, MERCHANDISE BROKERS,
WINES, LIQUORS & OLIVE OIL
710 HENRY STREET
TELEPHONE CONNECTION

CABLE ADDRESS: "GATTO"-BROOKLYN
A.B.C.4TH & 5TH EDIT.- CODE USED

Brooklyn, N.Y., 23 July 1913.

REGISTERED.

Mr. Giuseppe Fazio,

Catania.

We confirm ours of the 16th inst. and we have your kind letter of the 12th inst. which we note and thank you. Your telegram of the 20th says "HAVE SHIPPED IMPORTANT SHIPMENT. URGE TELEGRAPH MONEY" ours of the 21st "WAIT LETTER 15TH INST." which you have understood and now we confirm it to you. Last evening we telegraphed you the average disastrous price of the Ultonio: 'ULTONIA FRUIT DECAYED BOXES TWO EIGHTY SEVEN HALF TWO TWENTY SEVEN.' From the catalogue you will perceive that your price was higher in comparison to others. This medium price is for each box and for two small boxes just as you desired. This morning received your telegram which says 'SEND PROCEEDS NOTIFY ME MARKET,' to which we answered quickly thus: 'PROCEEDS NOT COLLECTED SENT YOU PERSONALLY TWO THOUSAND DOLLARS REGISTERED REASON FRUIT DECAYED MARKET LOWERED,' which we confirm and you will comprehend that the market became lower for the reason that the boxes of the Ultonio were in a state of putrefaction on account

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of the decayed fruit. For the reason that we will not have the proceeds until the 11th August so we enclose one check for two thousand dollars on our personal account in order to be grateful to you. As soon as we receive the account we will send your regular account and the exact sum belonging to you.

Willing always to serve you well, with reverence

S. E. Gatto & Co.
Per S. E. Gatto.

S.G.-

Attached 1 check."

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MR. HAYWARD reads people's Exhibit 34 in evidence to the jury as follows:

"FAZIO,

CATANIA.

Proceeds not collected. Remitted you personally two thousand by registered letter.. By reason fruit decayed, market declined.

GATTO.

7/23/13."

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THE COURT: Between the sending of the check for \$2,000., People's Exhibit 8, and the time that it came back bad or not paid, did Fazio send you another consignment of lemons?

MR. MOSS: That is an assumption, that it came back bad.

THE COURT: I thought it was admitted that it came back bad.

MR. MOSS: No.

THE COURT: I thought there was no question about it.

Strike the question out then.

BY MR. HAYWARD:

Q Did you see the defendant mark this perforation stamp "Not over \$2,000."? A Yes.

Q Do you know whether or not that is the stamp that was used in that office (showing a stamp)? A That is the very one.

Q After this check was sent, did you hear again from Fazio?
A I received a telegram.

Q How long afterwards? A Three or four days.

Q When you received that cablegram, state whether or not you showed it to the defendant? A Certainly.

Q Did he read it? A Yes.

(A cablegram is now marked for identification People's Exhibit 40-A and 40-B).

Q Is 40-A for Identification the telegram you received? A Yes.

Q And the one to which you refer? A Yes.

Offered in evidence.

Received without objection, and so marked.

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MR. HAYWARD reads People's Exhibit 40-B in evidence to the jury as follows:

CABLEGRAM SENT BY GIUSEPPE FAZIO TO S. E. GATTO, & CO., BROOKLYN, N.Y.

DATED 31ST JULY 1913.

"Ultonio prefer proceeds telegraphic remittance at sight wishing to continue.

FAZIO."

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BY MR. HAYWARD:

Q What conversation did you have with the defendant when you took that cablegram and he read it? A We had to answer that telegram, and so we sent a telegram saying -- "the letter is on the way."

MR. MOSS: That is not answering the question.

BY MR. HAYWARD:

Q Tell what you and what the defendant said? A I showed him the telegram and the defendant answered "We will answer it."

Q What was said next? A That was all that was said and then the telegram was prepared and we sent the answer.

Q Who prepared the telegram? A The defendant dictated it to me and I wrote it.

Q Was it sent? A Yes.

Q What company was it sent by, do you remember? A I don't remember whether it was the Commercial Cable Company, but we always used to send by the Commercial Cable Company.

MR. HAYWARD: I do not know if I have that one or not, but I am looking to see. If not I will offer proof as to its contents.

BY MR. HAYWARD:

Q After this cablegram was sent to Fazio, what conversation did you next have with the defendant about this transaction? A I always used to ask the defendant whether he received payment from the sale.

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Q What. A I always used to ask the defendant whether he received payment from the sale, and he said no.

Q How long did that continue? A Six or eight days.

Q Six or eight days after what? A After this telegram of the 31st of July.

Q Did you later have a conversation with the defendant about a third consignment of lemons? A Yes.

Q If you did, tell exactly what you said and what he said?

A The house at Catania telegraphed that he has shipped some important shipment.

Q What did you do with that cablegram? A I showed it to the defendant.

Q What did he say and what did you say? A Then he said we will wait until the balance of the documents arrive.

Q When did you next talk to him? A About the 8th or 10th of August.

Q What was that conversation? A About cases that were on the way, and that the documents did not arrive yet.

Q Do not say what it was all about, but tell us what he said and what you said? A I said "I don't understand how this happened, and then the defendant said "Well, we will go and see how it is." We heard from Mr. Fazio then of Catania through the Consul --

MR. MOSS: I object to that line of answering as hearsay.

BY THE COURT:

Q Tell us the conversation that took place between you and

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the defendant in regard to it? A Then he told me "Then we will have to sign the check to the bank."

THE COURT: Repeat that.

THE WITNESS: We must stop the check in the bank.

(The interpreter states that there was a similarity of words in the Italian which accounted for the error of translation).

BY MR. HAYWARD:

Q What talk had you had with the defendant before he said they must stop the check in the bank? A Then the defendant said "If they had stopped two letters at the post office over here, registered letters, then through their acts I will stop the check over here. I will stop payment of the check."

Q What had you or the defendant said before that time about letters or anything else being stopped? A That is all he told me.

Q Did you tell him anything about any letters being stopped? A No, he knew it, the defendant.

Q Did he tell you? A He told me.

Q Tell us exactly what he told you about letters being stopped? A "I understand two letters" --

Objected to.

Q Is that what the defendant said that he is telling us?

THE INTERPRETER: Yes.

THE WITNESS (continuing) The defendant said "I understand that through the American Consul two letters have been

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stopped here in the post office."

BY MR. HAYWARD:

Q Did he say with the bill of lading included? A Yes, with the bill of lading included.

Q After he made the statement that payment on the check would be stopped, what did he do? A He made a copy for me to write down how to stop the check in the bank.

(A paper is now marked People's Exhibit 41-A and 41-B for Identification).

Q Handing you paper marked Exhibit 41-A I ask you to state if that is what he wrote? A Yes, sir, that is what he wrote.

Q Did he write it in your presence? A Yes.

Q Who wrote the 41-B, the yellow slip? A I typewrote it.

Exhibit 41-A and 41-B for Identification are offered, received in evidence without objection, and so marked.

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MR. HAYWARD reads People's Exhibit 41-B in evidence to the jury as follows:

August 14th - '13

The Corn Exchange Bank,
South Brooklyn Branch,
Hamilton & Summit Street,
Brooklyn, N.Y.

Gentlemen:

Please be kind enough to stop payment on check #5001 for \$2000.00, made payable to the order of Giuseppe Fazio, dated July 23rd, 1913, owing that the amount is not correct.

Respectfully yours,

S. E. GATTO & CO.

By -----

Dict. SEG."

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:15.

EX-101-101

AFTER RECESS. TRIAL RESUMED.

SALVATORE E. GATTO resumes the stand:

DIRECT-ON EXAMINATION CONTINUED BY MR. HAYWARD:

(A letter is now marked for Identification People's Exhibit 42-A and the translation 42-B.

Q Did you leave people's Exhibit 41-B, the typewritten copy you made of the stop order drafted by Saitta, at the bank -- did you leave 41-B at the bank, being a copy of the stop order Saitta drew? A I mailed it to the bank.

Q In a stamped envelope addressed to the bank? A Yes.

Q After receiving the cablegram marked 40-A from Fazio, did you have any further correspondence by mail with Fazio? A Yes, I wrote.

Q Handing you Exhibit 42-A, I will ask you whether or not you wrote that letter? A I wrote that letter on the 8th of August.

Q Where did you write it? A I typewrote it in the office of Mr. Saitta upon one of his own machines.

Q Under what circumstances did you typewrite it there in his office, A Because this letter had to be mailed that day.

Q Did Mr. Saitta know about this letter? A He dictated it to me.

Q Who wrote it on the typewriter? A Myself.

People's exhibits 42-A and 42-B are received in evidence without objection and translation is conceded to be correct.

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MR. HAYWARD reads people's Exhibit 42-B in evidence to

the jury as follows:

"S. E. GATTO & CO.

FRUITS, MERCHANDISE BROKERS,

WINES, LIQUORS & OLIVE OIL

710 HENRY STREET

TELEPHONE 1714 HAMILTON

CABLE ADDRESS: "GATTO" - Brooklyn

A.B.C. 4TH & 5TH EDIT.-CODE USED

"GATTOSALVA" - NEW YORK

• Brooklyn, N.Y., 8th August, 1913

Mr. Giuseppe Fazio,

Catania, - Sicily.

We confirm ours of the 23rd July and we have received your cable of the 31st: 'Ultonia prefer telegraphic remittance at sight wishing to continue.' To this telegram we did not answer for the reason that the remittance already made you is superior to your credit of the two shipments that is to say S.S. Ivernia and S.S. Ultonia. We are sorry we cannot send you the account for the reason that we have not as yet received it from the auctioneers. The amount sent you was more for the reason that you advised us that there were other shipments on their way which until this day we have not received and we hope that in a few days we will receive your good news with document. The market keeps low but we hope it will increase in the following week. Awaiting your command with esteem we salute you.

-S. E. Gatto & Co.,

Per S. E. Gatto."

Q After this letter was written in Mr. Saitta's office on his typewriter, what was done with it? A Enclosed in an envelope, put a stamp on it and mailed it.

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Q The letter you have just testified to is dated the 8th of August, when did you next write Fazio? A A few days after that.

(A letter is now marked People's Exhibit 43-A for identification, and the translation 43-B, for identification.)

Q Handing you Exhibit 43-A for identification, I ask you to state if that is the letter you wrote? A Yes.

Q What were the circumstances, how did you write it? A Because Mr. Saitta dictated it to me.

Q What was done with it after it was written? A Put in an envelope, put a stamp on it and mailed it.

(People's Exhibits 43-A and 43-B for Identification are offered in evidence and received without objection and marked in evidence).

(Mr. Hayward now reads People's Exhibit 43-B to the jury, being the translation).

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MR. HAYWARD reads People's Exhibit 43-B in evidence to the jury as follows:

"S. E. GATTO & CO.
FRUITS, MERCHANDISE BROKERS,
WINES, LIQUORS & OLIVE OIL
710 HENRY STREET
TELEPHONE 1714 HAMILTON

CABLE ADDRESS: "GATTO" -
BROOKLYN
A.B.C. 4TH & 5TH EDIT. - CODE USED
"GATTOSALVA" - NEW YORK.

Brooklyn, N.Y., 15th August 1913

Mr. Giuseppe Fazio

Catania - Italy.

We confirm ours of the 8th inst. and we are very much surprised at your way of acting towards us. You have sent other boxes of lemons consigned to others when in your telegram you demanded of us proceeds which were sent to you being more than what is your credit and we hoped for other consignments as you with your telegram notified us. In the mean time as the check that we sent is more we beg you to send it back, and as soon as we receive it we will send you your just amount with account of sale.

Saluting you

S. E. Gatto & Co.,
Per S. E. Gatto.

SEG/"

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BY MR. HAYWARD:

Q After this last letter, when did you next have a conversation with the defendant? A Then we always talked on the 20th, 21st and 22nd.

Q What was the conversation, tell what it was, what you said and what he said? A Saying about they sent other consignments to other people and we were surprised at their acts.

Q State what else was said by the defendant, if anything, to you. A And their acts were so bad that we will ask for our expenses and that we could have sold them at a very high price.

Q What was the last time you ever asked the defendant about the proceeds of the sale from Brown & Seccomb? A Those days.

Q What days? A The 20th or 21st of August.

Q What did he say at that time? A He told me that he received something on account but he had not liquidated the account yet.

Q Did he tell you how much he had received, tell us his exact words as near as you can. A He did not say how much he had received.

Q Did you ask him how much he had received? A Yes, sir; I ask him and he told me you will know it later on.

Q What was the next conversation you had with the defendant? A That is all we talked except about the expenses we will incur and we will make them pay the expenses, and that is all.

Q Did you have any talk with him in September? A Yes, in

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September.

Q What was that conversation? A He told me that I must say that we sold a number of boxes to Calandrio privately, and to somebody else also whose name I will tell to you afterwards.

Q Do you mean whose names he said he would tell to you afterwards? A Yes.

Q Did you have a conversation with him in September about anything else than what you have told us? A No.

Q Did you in October? A Yes.

Q About what time? A I couldn't exactly state the date.

Q What was the conversation? A On the same subject.

Q What was it? A That I must show that I sold to two private persons.

Q For the purpose of refreshing your recollection I will ask you if you had a conversation with the defendant Saitta, with reference to his having been to this office, the office of the District Attorney? A Yes.

Q What was it and when was it? A Those days that he came here I don't know the exact date.

Q As near as you can tell? A I think it was in December.

Q Did he refer to his having been here to the District Attorney's office? A Yes.

Q Now, tell us exactly what he said about that. A That he called to the District Attorney and that he wanted matters so that I (the witness) will not fear anything.

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Q Did he tell you anything that he had told the District Attorney's office, give me the exact words as near as you can remember.

THE COURT: Was this after the indictment?

MR. HAYWARD: No, before.

THE WITNESS: Told me that he seen the District Attorney on the point that this case would not take a criminal procedure but will take a civil procedure.

THE COURT: What case?

THE WITNESS: This very case of the lemons.

THE COURT: Case against whom?

THE WITNESS: Against myself.

BY MR. HAYWARD:

Q Can you think of anything else that he told you about this transaction or that he told you that he had said to anyone here in the District Attorney's office? A All that I remember is that he said, "In time I will tell you what you have to say."

Q Can you thing of anything else that he showed you? A That was all.

Q Now for the purpose of refreshing your recollection I will ask you to state whether or not he told you anything regarding whom he had said at the District Attorney's office the money was owing to for the lemons. A No.

Q Did you say anything to him at about that time regarding the person to whom the proceeds of the lemons should go?

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THE COURT: The proceeds of the sale of the lemons.

MR. HAYWARD: Yes, the proceeds of the sales of the lemons.

THE WITNESS: No, I did not.

BY MR. HAYWARD:

Q Did you have a talk, after September 1913, of any kind, regarding Fazio?

THE COURT: With the defendant?

MR. HAYWARD: With the defendant.

THE WITNESS: Yes.

BY MR. HAYWARD:

Q What was it? A He always instructed me that I should not talk unless he, the defendant, should tell me what to say.

BY THE COURT:

Q That you should not talk to whom? A With nobody who made inquiries.

Q Inquiries about what? A Either a friend or a merchant who knew him, or workmen, or doing business with him.

BY MR. HAYWARD:

Q Were you in Mr. Saitta's office last February? A Yes, sir; every day.

Q Tell us what went on during your visits there.

THE COURT: What February was that?

MR. HAYWARD: February 1914.

THE COURT: Last month?

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MR. HAYWARD: Yes, and prior to the 18th of February.

THE WITNESS: He asked me the date of the subpoena, what date would be that I should go to court.

BY MR. HAYWARD:

Q What else was said between the two of you? A He told me to regulate myself with the statement or declaration that the defendant would make -- that I should accordingly regulate myself with that statement.

Q Was the statement prepared? A I think it was by him -- perhaps he made it -- I don't know.

Q Who showed it to you, who had it when you saw it? A He, the defendant, had it typewritten with a machine.

Q What language was it written in? A In English.

Q Had you been in his office and conversed with the defendant between October and the date when this statement was prepared in English? A Yes.

Q Now go on and tell us about your visits to the defendant's office, during that time, and what was said by each of you? A I went there nearly every day. We did not talk. He did not say anything.

BY THE COURT:

Q What did you do when you went there almost every day and he did not talk? A I used to go there to find my name on checks that I would have them cashed and I would cash them in the bank.

BY MR. HAYWARD:

Q How often did that happen? A From the month of July up

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until November.

BY THE COURT:

Q He had the check book, did he, in his office?

MR. MOSS: What check book?

THE COURT: The firm's check book.

THE WITNESS: I used to have --

MR. MOSS: What firm?

THE COURT: Gatto & Company.

MR. MOSS: Did he say that?

THE COURT: He did before and I am trying to get, if that is so, or not.

THE WITNESS: From the Corn Exchange Bank.

BY THE COURT:

Q Where was the check book? A In my house and I used to tear cut blanks and bring them to his office.

BY MR. HAYWARD:

Q Now, what would you do with them when you got to his office? A I used to -- he used to fill out the body of the checks or I used to fill them and then I used to sign them and go to a friend of mine by the name of Calandrio and he would cash them for me.

BY MR. HAYWARD:

Q What would you do with the cash? A I would bring the cash to Mr. Saitta.

Q Would you give it to Mr. Saitta? A Yes.

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MR. MOSS: Do not lead the witness.

THE COURT: Just ask him what he did with the cash.

MR. HAYWARD: He said he brought the cash back to Saitta -- perhaps I did lead him.

BY MR. HAYWARD:

Q Did you get any checks from Saitta during the same period of time? A Which check?

Q Did you receive any checks from Saitta during this same time you say you were cashing checks on your own account and giving him the money? A Either cash or check I used to get to cover up the accounts in the bank.

Q In what bank?

MR. MOSS: Either checks or cash -- get from whom?

THE WITNESS: From Calandrio.

BY MR. HAYWARD:

Q Who would you get the checks from? A It was checks on my bank.

Q Did you ever receive any checks during this time signed by Saitta drawn on his account? A Yes.

Q About how many? A Many..

Q What did you do with them? A I used to cash them and bring him the money.

Q Did you ever do anything else with any of his checks?

A No.

BY THE COURT:

Q What was the occasion of your cashing checks for Saitta

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and taking him the money? A Because Saitta used to take money and cover his accounts up in the bank and in fact I don't know why.

BY MR. HAYWARD:

Q Tell every bit of conversation you had during that period of time with the defendant either regarding his checks to you or your checks to him? A I told you before that I used to cash the checks of Saitta, get the money and bring it to Mr. Saitta, so Mr. Saitta probably was covering his accounts in the bank and then I would go also and bring money to the bank or go and cash the checks, but at last I refused because I did not care to cash any more.

Q When you say you would go and bring money to the bank, what bank do you mean? A The Corn Exchange Bank.

Q What would you do with the money when you got it to the bank? A I used to make up the slip and deposit it, to cover up what we had withdrawn the previous day.

Q What do you mean when you say you got ashamed to do that finally?

MR. MOSS: He did not say ashamed.

MR. HAYWARD: He said: "I refused because I did not care to go there any more."

BY MR. HAYWARD:

Q Why didn't you care to go there any more?

Objected to.

THE COURT: You can ask him if anything happened that caused his

visits there to cease and if so, what. He refers to the defendant's office?

MR. HAYWARD: No, to the bank. He is trying to tell us why he did not want to go and take this money from Saitta any more back to his bank in Brooklyn -- I think it is part of the whole transaction.

MR. MOSS: The whole transaction is I think rather remote. I have not objected so far but when it comes to a man's feelings --

THE COURT: I have no idea what the defense is and things might be very material provided the defense is one thing and would not be at all material provided the defense was another thing and there is no way of my knowing. I cannot tell what the defense is:

MR. MOSS: We seldom try the case from the standpoint of the prosecution theorising on the defense.

THE COURT: No, the defense is a general denial or not guilty and the case has to be tried upon every theory the defense could introduce.

MR. HAYWARD: That was my idea of it but I do not care to pursue this beyond the point you want us to go.

MR. MOSS: If it is going to lead to any discussion I will withdraw the objection, but I thought I would object to it because it was asking to have his feelings put on the record.

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BY MR. HAYWARD:

Q Why didn't you care to go there any more? A Because the bank made remarks that the deposits were coming in too late.

Q Did you have any conversation with Mr. Saitta in his office about your taking this money to the bank? A I refused to bring the money in the bank any longer and then he would send the money over with his son or his clerk or a messenger.

Q Send it to where? A To the Corn Exchange Bank to cover up the account.

THE COURT: You mean the Gatto and Company account?

THE WITNESS: Yes.

BY THE COURT:

Q Did you ever fill out any of the checks of Gatto & Company in your own handwriting, that is, the body of the checks? A Yes, sir; I did.

Q Did the defendant Saitta ever fill out any other checks of Gatto & Company except the \$2000 check that you say you sent to Fazio? A Yes, sir; several.

Q About how many? A Fifteen or twenty.

BY MR. HAYWARD:

Q I hand you deposit slips of S. E. Gatto & Company in the Corn Exchange Bank and I ask you to run through those deposit slips and pick out those deposit slips which are not in your handwriting. A These are not my own but those are (indicating).

Q Do you know who made these out?

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THE COURT: Referring to those not in your handwriting.

THE WITNESS: Let me see the handwriting.

(The witness examines the paper.)

THE WITNESS: This one is from the clerk (indicating).

BY MR. HAYWARD:

Q Whose clerk? A Saitta's clerk.

THE COURT: That means by the clerk.

THE WITNESS. Written by the clerk. These three I do not know. They are not my own handwriting anyway.

(The paper is said to be written by the clerk and is now marked for Identification, People's Exhibit No. 44. The other three are marked People's Exhibits 45, 46 and 47 for Identification)

BY MR. HAYWARD:

Q Are the remaining deposit slips which were shown to you in your handwriting? A Yes.

(These various deposit slips are placed in one envelope and marked People's Exhibit No. 48 for Identification).

BY MR. HAYWARD:

Q At the time the defendant Saitta gave you these checks drawn on his own account, state whether or not he ever said what they were for? A He said he needed them. He needed the cash.

Q Did the defendant, during this time, or at any other time, ever pay you any money of any kind on the Fazio account or on account of the sale of the Fazio lemons?

MR. MOSS: I object, as to that particular limitation, because that would depend on the way the man looked at it in his own mind. If he paid any money, we ought to see what it is.

THE COURT: I understand the witness that all the checks that the defendant gave him on the defendant's bank account, that the witness cashed for the defendant and gave him the cash for it.

MR. MOSS: I do not think that he said that.

THE COURT: Let us ask him that specific question.

BY THE COURT:

Q Did you state that all the checks that the defendant Saitta gave to you, that you cashed them at his request and handed the money to him?

MR. HAYWARD: May I add ^{to} that: Or deposit it -- he deposited some of these ~~5~~ think in his own account, if your Honor please, and I think that ought to be incorporated. But, let the question go as the Court puts it, first.

BY THE COURT:

Q Did you deposit in the Gatto & Company's account any of the checks which the defendant Saitta gave to you drawn upon Saitta's account, Saitta's personal account in the Chatham National Bank? A Yes.

Q How many of them did you deposit in the Gatto & Company account? A I can't remember now how many.

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Q What did they amount to all told? A Since we opened the account?

Q Yes. A More than \$9,000.

Q What was the occasion of depositing Saitta's checks in the Gatto & Company account? A It was an exchange of checks.

Q Do you say that every time he gave you a check, his individual check on the Chatham National Bank, that you would give him Gatto & Company's check for the same amount? A Yes.

Q Did you ever deposit one of Saitta's checks drawn on the Chatham National Bank in the account of Gatto & Company, the Corn Exchange Bank in Brooklyn, that you did not give him one of your own checks in exchange? A No.

Q What has become of your cancelled checks on the Corn Exchange Bank in Brooklyn -- when I say yours I mean Gatto and Company's cancelled checks? A I withdrew them afterwards.

Q Where are they now? A They are in the possession of the District Attorney now.

BY MR. HAYWARD:

Q Mr. Gatto, do you mean that each check that you gave to Saitta was in exactly the same amount of the check that he had previously given to you, or do you mean that by the exchange of checks you checked it out to him an amount equivalent or greater than the amount he checked it to you? A Sometimes he used to give me exactly the same amount in exchange for his check. Sometimes he used to be a hundred dollars short and then I would

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give a check to cover that amount up in the bank.

Q Did he always make his checks to you, or you your checks to him, in even figures? A Many times, yes.

Q How about the other times? A Sometimes it was not even money, but the check was not made to him, it was made to Calandrio.
BY THE COURT:

Q Who is Calandrio? A A fruit merchant in Reade Street.

Q Reade Street, New York? A Reade Street.

BY MR. HAYWARD:

Q Is he the Calandrio you referred to who oftend cashed your checks? A Yes.

Q And how did you come to go to him for that purpose?

A Because he was a friend of Saitta and Saitta had already informed him to cash the checks.

Q Did Saitta tell you that he had informed him, is that what you mean? A Yes.

BY THE COURT:

Q When you-cashed checks for Saitta, the defendant, and turned the money over to him, where did you cash Saitta's checks?

A In Brooklyn, in New York, at Mr. Peraras -- that is all.

Q Were they friends of yours or of Saitta's? A My friends, but they knew Saitta.

Q How many times did you cash checks for the defendant, Saitta, at his request and bring the money back to him, - about how many times? A About sixty times.

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Q What did he tell you when he would hand you one of these checks? A He used to tell me do me the favor to go and cash the check because I need money to cover up my bank.

BY MR. MOSS:

Q He cashed a check on the bank to get money to put it in the bank.

BY THE COURT:

Q What did he tell you about whether or not he had the money in his bank? A Because there were some of his own checks out that had to be paid and that he was short in the bank.

Q When did you first discover that the defendant had received the money on the sale of the lemons from the auctioneers?

A About the 15th of August.

Q About the 15th of August? A Yes.

Q What did you say to him then about the money that he collected from the sale of the lemons, from the auctioneers?

A I told him to deposit it and he said: "There is plenty of time and we will wait."

Q Why didn't you see that it was sent over to Faziom the man that sent you the lemons?

THE COURT: Do you object to that, Mr. Moss?

MR. MOSS: No.

BY THE COURT:

Q Why didn't you see to it that the money was sent over to Fazio, the man that sent you the lemons? A I told him about it

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and he said: "There is plenty of time; we will wait," and I had great confidence in him and therefore I did not ask him any further.

MR. HAYWARD: If your Honor please, while you are asking that, would you mind asking him in what months he was cashing all these checks for Saitta?

THE COURT: Yes.

BY THE COURT:

Q During what months did you cash these 60 checks, where you say you turned the money in to Mr. Saitta or delivered the money to Saitta? A From the month of July until the last of January.

MR. MOSS: That is, this last January.

THE COURT: Yes, this last January.

BY THE COURT:

Q Now, did you know up to January 1st, that no money had been sent to Fazio in Italy for the lemons? A Certainly.

Q Why didn't you see to it between January or between July and January, that the money was sent over to Mr. Fazio?

MR. MOSS: Especially when Saitta was telling him that he needed money for his bank account.

THE WITNESS: I asked him. I said send it, and he said there is plenty of time.

BY THE COURT:

Q How about up to the 1st of January; don't you think

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plenty of time had expired by that time to send money to the man that you got the lemons from? A I did not wait such a long time. I had already notified him long before. I told him in August, September and October.

Q How much was due to Fazio for the lemons that he actually delivered? A \$1800 in all, about that.

Q Did you ever have \$1800 in the account of Gatto & Company here, we will say from July 24th up to January 1st, at any one time? A No, never.

Q What was the largest amount or balance that you had in the bank account of Gatto & Company between July 14th and January 1st? A Not more than \$500.

Q That is the largest amount that you had at any time, the largest balance, is it? A Yes.

Q Now, where did you expect to get the money from to pay to Fazio? A From Saitta.

Q The name of your firm was Gatto & Company, was it not? A Yes.

Q Who was the company? A Salvatore Gatto, myself.

Q It was S. E. Gatto & Company, was it not? A Yes.

Q You were the S. E. Gatto? A Yes, and I was the company.

Q Who was the "& Company"? A Nobody.

Q I notice that you endorse on the back of the bill of lading that the office of the company was at 258 Broadway and the branch office in Brooklyn. Who did that; who put that on? A It was a stamp which I had made.

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Q Was it a rubber stamp? A Yes.

Q How did you happen to come to make a rubber stamp this way: "S. E. Gatto & Company, 258 Broadway, branch office, 710 Henry Street, Brooklyn" -- how did you happen to make such a rubber stamp as that? A Just to show that I was giving all documents in that office in Broadway to Mr. Saitta.

Q Did that original bill of lading, having that endorsement on it, S. E. Gatto & Company, 258 Broadway, New York, branch office 710 Henry Street, Brooklyn, did that have that rubber stamp on it when you delivered it to Saitta? A Yes.

Q Did he say anything about that part of it that says 258 Broadway, New York, is the main office? A Yes, sir; the first time. The first time he did not say anything but the second time he said "You must not put this stamp on it any more".

Q Was that his number, 258 Broadway, Saitta's? A Yes.

Q That is his office number or office address? A Yes.

Q What did he say when he asked you not to have that on there any more -- did he make any reason for your not putting it there any more? A So as not to show that my office was at 258 Broadway.

Q Now, was this shipment of lemons from Fazio & Company, the first time that you used 258 Broadway as the main office address of Gatto & Company? A Yes.

Q Had you ever used 258 Broadway as the office address of Gatto & Company before the shipment of lemons from Fazio? A Yes,

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before in the month of January.

Q The month of January, 1913? A Yes.

Q What was the occasion of your using 258 Broadway as your office, in January, 1913? A Because Mr. Saitta bought 600 cases of lemons, which I sold through my brother in law.

Q That was the case of lemons that you sold to Zimbaro?

A Yes, sir.

Q That was in January, 1913? A Yes.

Q Did you ever take the check book of Gatto & Company over to 258 Broadway? A That time, we had no account in the bank.

Q I mean, after you opened the account in the bank. A No, I never did, but I used to have blank checks in my pocket which I used to fill in.

Q Who filled them in? A I did not write the checks, but I used to write in the check book the sums and then the checks would be written by somebody else.

Q Why didn't you ask Saitta for the money from the lemons in September and in October, 1913? A I did, every month I would ask him.

Q And what did he say? A He would always say: There is plenty of time; plenty of time.

Q When did you first speak to him or when did he first speak to you about any possible criminal prosecution against you, because you had not sent a check for the lemons to Fazio? A When Mr. Saitta was called to the District Attorney's office.

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Q Was called to the District Attorney's office? A Yes.

Q How do you know he was called to the District Attorney's office? A He told me so.

Q He told you that he was called to the District Attorney's office? A Yes.

Q And what did he say about that? A He told me: "Leave this thing to me and we will see what course it will take and then I will advise you what to do.

Q In August, 1913, did you owe Saitta any money? A Yes, sir; an old account.

Q How much? A About \$150.

Q In September did you owe him any money? A It was in the month of September, that was the amount I owed him.

Q About \$150? A Yes.

Q An old account, how old was that? A About a year before.

Q How much did you owe him in October, 1913? A The same amount.

Q If you only owed him \$150 in August and September and October, why did you let him keep all this money he had collected from the sale of the lemons?

THE COURT: Do you object to these questions, Mr. Moss?

MR. MOSS: No.

THE WITNESS: A I could not compel him to send it because he told me there was time.

BY THE COURT:

Q Couldn't you sue him for it? Didn't you think you

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could sue him for it and get the money? A Because I had full confidence in him and his word was good enough for me.

Q Did you owe him any money for lawyer's work that he had done for you, for legal services as a lawyer? A No, I had no case at all.

BY MR. HAYWARD:

Q Mr. Gatto, the Court asked you why you did not insist that Saitta send this money to Fazio some time between August and January? A Because I had full confidence in him.

Q I did not ask you that -- you have already told us that -- when was it, as near as you can remember that the defendant told you he had been called to the District Attorney's office and you were not to say anything about this transaction to any person?

A In the month of December.

BY THE COURT:

Q Now, when Saitta dictated and gave you the memorandum of how to write out a stop order on that \$2000 check which you had sent over to Fazio, because the amount was \$200 more than the amount due Fazio, why didn't you see to it that he gave you a check or wrote out a check for you for \$1800, the amount actually due to Fazio? A Because he said there is plenty of time and they have to pay the expenses.

BY THE COURT:

Q What expenses? A The two shipments that were stopped on the way here.

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Q I show you the \$2000 check, People's Exhibit 8, and I show you the number of the check, 5001, who wrote in that number, 5001, for the number of that check? A Mr. Saitta.

Q And that was one of the first checks drawn on the bank?

A Yes, sir; the first check.

BY MR. HAYWARD:

Q You told us about a statement that Mr. Saitta prepared in English and handed to you, I think this morning -- do you remember when that was? A On the morning of the fourth of February.

THE COURT: Just another question -- did you make any claim against Fazio for counterclaim, because he had stopped that last order of lemons that you gave?

THE WITNESS: No, but we wrote him a letter saying we were surprised that he should do such a thing as that and stop the shipment.

BY THE COURT:

Q Did you make any monetary claim against him for damages because he had not delivered to you that last order of lemons?

A No.

Q That is the shipment of lemons that he sent to Ferdinand Gatto, that he finally had deflected and sent to Ferdinand Gatto-- that is what I refer to. A I don't know; perhaps, of course -- I know it was stopped, but I don't know to whom they were sent.

Q What I want to get at is this, did you ever tell Saitta, the defendant, that you had a claim or counterclaim, or any claim

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against Fazio which would offset the \$1800 which you owed Fazio?

A No.

(A paper is now marked People's Exhibit No. 49 for Identification).

BY MR. HAYWARD:

Q When the defendant Saitta produced the written statement in English which you have told us about what did he say to you if anything? A I told him that I did not understand the whole thing at all.

Q What did he say to you? A He told me "this is for your own good, you must sign it, and then you will be safe and secure of anything.

Q Did you sign it? A I did, because I had respect but did not sign it with pleasure.

Q Is that your signature to People's Exhibit for Identification 49? A This is my signature.

Q What did you do with it after you signed it? A It remained with Saitta and he gave me a copy.

BY THE COURT:

Q What did you do with the copy? A I went home and with the help of a vocabulary --

THE COURT: Dictionary?

THE WITNESS: Dictionary, I found out did not do right to have it signed.

BY MR. HAYWARD:

Q When you found out by the aid of a dictionary what was

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in this affidavit which you had signed, what did you then do?

A I called Mr. Saitta on the telephone and I said to him: "What I signed is very bad for me," and Mr. Saitta answered "No, it is all right; wait, I will see you tomorrow morning".

Q What else did you do? A The next morning he came in my own house and he told me again the next morning at my house, "Fear nothing, this is for your own good, everything will be all right."

Q Are the statements contained in this affidavit as you now know them to be, are those statements true?

MR. MOSS: I object.

THE COURT: You might read them to him and ask him as to one statement after another, if it is true.

MR. MOSS: Perhaps I can shorten the matter. I have no objection to his giving an answer but there are many things in it that are not true and having his attention directed to them afterwards.

THE COURT: Very well.

MR. MOSS: Would it not be better to put it in evidence and read it and then say what we will do with it?

THE COURT: Why not put it in evidence then?

MR. HAYWARD: I will offer it in evidence.

(People's Exhibit 49 for Identification is now offered and received in evidence and so marked).

BY THE COURT:

Q Can you read English? A A little.

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Q Could you read or did you read that affidavit which you say you signed at the request of the defendant? A I did not.

BY MR. HAYWARD:

Q After the defendant came to your house, what did you next do in regard to this affidavit? A I came to the District Attorney and when the thing was explained to me, then I told the truth to the District Attorney.

Q Did you make any sworn affidavit at that time?

THE COURT: What time?

MR. HAYWARD: When he came to the District Attorney.

THE WITNESS: Yes, I made another affidavit there.

THE COURT: How would it do if you would read over that affidavit he said he made at the request of the defendant and ask him what parts are true and what parts are false?

MR. MOSS: Suppose you read it?

MR. HAYWARD: I will read.

THE COURT: Read it all out and ask him statement after statement which parts are false, so that we can find out what he says is false and what is true.

MR. HAYWARD: Would it be your idea that we interpret it as we go along?

THE COURT: No, read the whole affidavit first and then after that get from him his statement as to which parts of that he says are false.

What is the date of it and before whom was it taken?

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MR. HAYWARD: "Sworn to before me this fourth day of February, 1914. Dorothy I. Distler, Commissioner of Deeds for the City of New York."

(Here Mr. Hayward read to the jury People's Exhibit No. 49).

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MR. HAYWARD reads People's Exhibit 49 in evidence to the jury as follows:

"STATE OF NEW YORK)
CITY OF NEW YORK) SS.
COUNTY OF NEW YORK)

SALVATORE GATTO being duly sworn deposes and says:

I reside at No. 132 West 9th Street in the Borough of Brooklyn, City of New York.

I have examined the statement made up by Mr. Philip S. Saitta in his ledger on page 134 and find the same to be correct in every detail. I further say that according to the said ledger there is a balance of \$181.07 which appears to be due to me, but I am indebted to Mr. Saitta for professional services which must be deducted from said amount.

I further say that I have known Mr. Saitta since the year 1910 at which time Mr. Saitta loaned me the sum of Twenty Dollars.

In February last, finding myself somewhat in need of money I applied to Mr. Saitta who again loaned me some money. After having borrowed some money, I induced Mr. Saitta to open a letter of credit for me in favor of Salvatore Zimbaro through the Irving National Exchange Bank for six hundred boxes of lemons. At the time the market was very good and I guaranteed Mr. Saitta that my people would ship good stuff and therefore he would not run any risk, however, after the lemons arrived in this City the market was not very good and furthermore the lemons did not turn out to be of the kind and quality that I had purchased from Zimbaro,

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therefore there ~~was~~ a loss after the same were sold at public sale of \$703.22, which together with the money advanced by Mr. Saitta in 1911 and \$193. advanced thereafter, made a total of \$916.22.

After I received the Zimbaro lemons I continued to solicit business from Europe unbeknown to Mr. Saitta and accordingly wrote some friends in Italy to ship lemons as I contemplated that the market was going to advance. Sometime on or about the month of July I received some documents both of lemons and other merchandise, and I immediately went over to Mr. Saitta's home at 85th Street and 2nd Avenue in the Borough of Brooklyn, and took the same to him to sell for my account. At the time when I received the above mentioned merchandise from Giuseppe Fazio I told Mr. Saitta that I was going to receive large shipments of lemons and that I was very grateful, for if such was the case I could pay him what I owed him. I also assured him that I was going to receive other merchandise as some of my friends were again shipping to me.

Some few days thereafter I again received a further shipment from the said Giuseppe Fazio which I also took over to Mr. Saitta's house in Brooklyn to sell for my account and at that time having received word from Mr. Fazio that there were large shipments on the way, I told Mr. Saitta that he could keep whatever he desired on account of my old debt. Mr. Saitta then gave me money from time to time on account of said shipments, amounting to about \$2,953.31 this included freight and duty which he

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paid on the lemons and also some freight and duty which he paid on other merchandise and a draft which he also paid for my account for merchandise.

After the said Fazio had made the second shipment and after he had sent me repeated telegrams notifying me of the large shipments in transit, I entered into negotiations with other people to sell the lemons at a private sale, thinking that the same would be sold to better advantage and obtain better results, but to my sorrow after doing so I was informed that the said Fazio had stopped my mail upon which there were three separate shipments of merchandise. Prior to that time I had sent Giuseppe Fazio on account, a check for \$2,000 which was a great deal more than there was due him on this merchandise which I had on hand, but upon his promise that there was considerable merchandise in transit I made the check for \$2,000. Upon seeing that he had stopped shipment of the merchandise I naturally stopped payment on my check. Since that time I have been threatened with law suits from the parties to whom I sold the lemons and for that reason I have not adjusted the matter with Giuseppe Fazio but am ready and willing to adjust with him providing he will make good whatever loss I have sustained.

Sworn to before me this)
4th day of February, 1914) Salvatore E. Gatto
Dorothy I. Distler,
Commissioner of Deeds for the
City of New York."

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MR. HAYWARD: If your Honor please, I have a witness here who will be very short. He should have been here this morning, but, morning is his busy time and I promised he would go on the stand this afternoon. It would not take but a little time if Mr. Moss will consent.

MR. MOSS: Certainly.

THE COURT: We will have to have the witness Gatto called again. The further examination of the witness Gatta is suspended.

V I N C E N T I N G U G L I A, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 2407 85th Street, Brooklyn).

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your business? A Customs house broker.

Q How long have you been in that business? A Four years.

Q As such Customs House broker have you familiarized yourself with the several laws regarding importations of merchandise, and with the Treasury decisions and the regulations which are used in this Port? A Yes.

Q Do you remember on an occasion being called upon to explain some of those customs to a Sheriff's Jury? A Yes, sir; I did.

Q And who called you for that purpose? A The defendant.

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Q Mr. Saitta? A Yes.

Q He was the attorney? A Yes.

Q You were called as an expert? A Yes.

Q What particular custom was it that he called you to testify to before that jury?

MR. MOSS: I will concede that he is qualified to testify as an expert.

MR. HAYWARD: That is not the purpose of my examination, Mr. Moss.

BY MR. HAYWARD:

Q What particular custom was it that he called you to explain to this jury?

MR. MOSS: I object to it as incompetent, irrelevant and immaterial to this issue. I have conceded that the witness is qualified to testify as an expert.

MR. HAYWARD: That is not what I ask this question for. I want to show that the defendant knew the difference between the affidavits that he signed in connection with these shipments as to the consignor being the owner and continuing to be the owner or otherwise.

THE COURT: If there is any question on that point --

MR. MOSS: No question raised on that point.

THE COURT: Then it is conceded that the defendant knew, that he was signing an affidavit, that the blank form he was signing in getting the lemons through the custom House was

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the form where the consignee was not the owner of the goods, is that it?

MR. HAYWARD: Yes.

MR. MOSS: Appears on the face as not being the owner. That is all. He might be the owner, but it appears on the face that he is not.

MR. HAYWARD: Also perhaps they will be willing to concede that there is a difference in the colors of the invoices used, the white invoice in both the Fazio shipments being on white invoices, those white invoices being used only where the consignee is not the owner.

MR. MOSS: We do not concede the fact as to this particular case. We concede that it is the custom to use the white form in the manner indicated by Mr. Hayward's statement.

THE COURT: He wants to show that the defendant Saitta knew it.

MR. MOSS: He knew that was the custom, certainly.

THE COURT: He offers this witness, as I understand, to show that the defendant produced this witness once in a lawsuit to prove that very fact.

MR. MOSS: That is the very thing I am trying to concede.

THE COURT: That the defendant Saitta knew those facts.

BY MR. HAYWARD:

Do you remember two shipments of lemons coming to this

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country on the Ivernia and Ultonia, in the summer of 1913? A
From whom?

Q From Guiseppe Fazio in Catania, billed to S. E. Gatto &
Company of this city, which Mr. Saitta brought to you? A I do
not know anything about the shipper or the endorsement on the
bill of lading. All I know is the importer's name.

Q Handing you People's Exhibit 9-C, I ask you to state if
that is your genuine signature attached to the affidavit on the
back of the import blank? A Yes, sir; that is my signature as
a notary.

Q Are you familiar with the signature "P. H. S. Saitta"?

A "P. S. Saitta", yes.

Q Who signed that P. S. Saitta? A Mr. Saitta himself.

THE COURT: The defendant?

THE WITNESS: Yes.

BY MR. HAYWARD:

Q What condition was the affidavit in as to the body of
it, at the time he signed it? A All full with what it is now.

Q In the same condition? A Yes, complete.

Q Did he swear to that? A Yes.

Q In your presence as a notary? A Yes, sir; he did.

Q I hand you people's Exhibit 10-C, being another import
blank and direct your attention to a signature, Vincent Inguglia,
on the back of that blank, is that your signature? A Yes.

Q As notary public? A Yes, as notary public.

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Q The signature, Philip S. Saitta, appearing there, whose signature is that? A The defendant's signature, Mr. Saitta.

Q What is the condition of this affidavit now with reference to the condition it was in when he signed it? A It was complete at the time he signed it.

Q It was filled out? A Yes, sir; as it is now.

Q Directing your particular attention to the words Guiseppe Fazio Massena, written in the affidavit, were they written in the affidavit when he signed it? A Yes, sir; because the consular invoice calls for that, that he was the owner of the goods, the shipper.

Q And so with the other document I showed you first? A Yes.

CROSS EXAMINATION BY MR. MOSS:

Q Referring to these documents which Mr. Hayward has just shown you, these documents could have been sold by Mr. Gatto?

A I don't know.

Q They were assigned to him? A I saw that endorsement, that they are O. K.

Q And that they could be sold, couldn't they? A Well, yes.

Q Such documents can be sold? A Yes.

Q I ask you about your knowledge of the custom -- now, if Gatto had sold those documents when he received them would the purchaser have made the same entry upon them that you see there, by Mr. Saitta? A Yes, sir; because the consular invoice calls for the shippers as being the owner of the goods.

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Q That is the way the paper calls? A Yes.

Q That the shipper was the owner of the goods? A Yes.

Q So, Gatto having a right by the assignment to him to sell those documents, the man to whom he sold them, would have to fill it out just as Saitta did? A Well, that is something -- anyway, he has a right to sell, according to my experience.

THE COURT: Can a man sell what is not his own? For instance, if these goods were sent by Fazio to Gatto and Company, as consignees, could the consignee sell what he did not own?

MR. MOSS: That is not the case, because the assignment is a positive assignment ^{not} and/a consignee. The assignment on the back of these bills of lading is a positive assignment and passed title. Title was passed by Fazio to Gatto, and therefore my question is the question that comes to this witness.

BY MR. MOSS:

Q Did you at the time you received these documents, did you know whether or not they were purchased or consigned? A I did not know anything about it.

Q Not even by the color of the paper? A According to the paper it calls as agent, the consignment.

Q You make nothing even of that? A No.

Q The fact of the consular invoice was white and upon its face showed that it was consigned goods, could that make the

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holder of the bill of lading the owner? A According to the law, I understand that the holder of the Bill of Lading is the owner of the goods.

Q In the event that an owner of merchandise should receive a white consular invoice, can he make an entry at the Customs House as owner or must he make the entry as consignee? A According to how the consular invoice is drawn on the other side.

Q The way it is drawn on the other side? A Yes.

Q That is, if it is white, he has got to do it in that form?

A As agent.

Q No matter what the fact is? A Yes.

Q No matter what the fact is? A Yes.

Q Have you made any entries, at any time, for any one, with a white consular invoice, when they have been as a matter of fact the owner of the goods, and have you made at any time any entry in the blue consular invoice as owner, when as matter of fact the person holding the documents was not the owner but only the consignee? A It is not supposed to know the transaction, because that is not my business to inquire, if the goods is bought or on consignment. I go according to the papers which are handed to me.

Q Don't you know, as matter of fact that sometimes the transactions are had in the way I have indicated in my questions?

A Can I answer an explanation? Are you asking me for my experience as a Customs House broker?

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THE COURT: Yes.

THE WITNESS: Then I do not know anything about it.

BY MR. MOSS:

Q Is there any provision at the Customs House in the making of an entry, whereby the form of the consular invoice could be changed from white to blue or from blue to white, so as to change a shipment of consigned goods to a shipment of goods sold, or, from the shipment of goods sold to a shipment of goods consigned; is there any way of changing in the Customs House? A We do not change the consular invoice. We only, when the importers let us know that the goods is for his own account, then we can give a bond to the Customs House, which bond requires to produce the right consular invoice within thirty days, and then the Customs House allows it as a regular entry.

Q As a matter of practice in the Customs House the transaction has to follow the color of the paper that comes over? A Yes, sir; certainly.

Q And if the entry has not been made in the form that it was made upon this paper, the goods could not have come out, could they? A What?

Q If the entry has not been made in the form that was on these papers, the goods would not have come out? A No, they do not let them pass the entry -- the Customs House don't let them pass the entry.

Q. Have you had any conversations with Salvatore Gatto?

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A I don't remember.

Q You saw Gatto upon the stand, didn't you? A Yes.

Q Have you ever talked with him? A Since when?

Q Within the last year? A I saw him very often.

Q Have you ever had any conversation with him about his entries in the Customs House? A I spoke to him very often about giving me his business because I heard he was in business again.

Q You heard he was in business again? A Yes, sir.

Q Did you ask him why he did not make his entries direct instead of going through Saitta? A Well, about that, there was-- I remember -- in the time those two entries were made I asked Mr. Saitta if he has any lemons and he told me that he had none --

MR. HAYWARD: Is this a conversation with Mr. Gato?

THE WITNESS: With Mr. Saitta.

BY MR. MOSS:

Q I do not ask you for a conversation with Saitta but with Gatto? A I met Gatto after, after Saitta told me he has nothing to do with them, with that importation that this belonged to Gatto

Q Saitta told you that? A Yes, by phone.

Q Did you repeat that to Gatto? A Of course, yes, the day after I told him I said: "You have some lemons." He told me that Mr. Gatto was going to take care of those until he can take care of that himself.

Q Gatto told you that Saitta was going to take care of those lemons until Gatto was able to do the thing himself? A Yes.

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Q Was that all he told you? A That was all, because I did not go further.

BY THE COURT:

Q With your assistance as Customs House broker, why could not anybody put that bill of lading through? A I beg your pardon?

Q You, as a Customs House broker, why couldn't you put that through for Gatto, as well as you could for Saitta? A Because the papers were handed to me by Saitta.

Q But if they had been handed by Gatto -- all Gatto would have to do would be to hand you the papers? A Yes.

Q And you would do the rest? A Yes, sir; and fill out the blanks and let him sign after.

BY MR. MOSS:

Q Did not Mr. Gatto tell you something about his relations with Saitta as a reason why Saitta was handling it? A No.

Q Didn't he tell you that he owed Saitta money? A No, no; that is some personal opinion, my own opinion. I understood, in Sicilian, in the dialect, but maybe Mr. Gatto had some transaction with Mr. Saitta, but that was my personal opinion. I understood maybe he owed Saitta. I don't know.

Q Did Gatto tell you anything about there being a judgment against him, Gatto? A No, did not say to me anything.

Q Are you sure Gatto did not state any reason at all why Saitta was handling this matter for him? A Not, really, no.

Q Didn't he say, just for the purposes of refreshing your

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recollection, didn't he say that he would give you his business after he had finished paying Saitta? A Well, he told me that these two entries must be handled by Saitta, and to tell me in that way I understood that there was something between Mr. Saitta and Mr. Gatto.

Q Something what? A Something -- maybe that Gatto owed money to Mr. Saitta. That was my opinion, the way he talked to me.

Q The way he talked to you? A Yes, sir; because in our dialect we get something to understand that.

BY THE COURT:

Q What dialect? A The Sicilian.

Q Is Gatto a Sicilian? A Yes.

Q Are you a Sicilian? A Yes.

Q Is Saitta a Sicilian? A I think he is a Sicilian too -- I suppose so -- that is my opinion; I don't know if he is or not.

MR. HAYWARD: I have no objection to any statement made by any person, but I have an objection to any conclusion that this witness draws or an opinion he may have formed.

THE COURT: Yes, the witness' opinion that there might be something due is not evidence.

MR. HAYWARD: And I ask to strike it out.

MR. MOSS: I think his statement bears the interpretation that what Gatto said to him in the Sicilian dialect was to the effect that Gatto was owing money to Saitta.

THE COURT: No -- we will have to ask him what Gatto said.

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BY THE COURT:

Q Did Gatto say he owed money to Saitta? A He did not say it to me plain.

BY MR. MOSS:

Q How did he say it? A He said: "Mr. Inguglia, I cannot give you this paper direct now, it is necessary that it must be handled by Mr. Saitta," and in my dialect, I understood --

Q He simply said: I cannot give these papers to you direct now? A Yes.

Q They must be handled by Mr. Saitta? A Yes.

BY MR. HAYWARD:

Q And you drew the conclusion from that as to the reason?

A That is in our dialect, personal opinion, that is all.

Q I call your attention, on the back of People's Exhibit 10-C, to the beginning of the affidavit, you say the defendant swore to, which reads: "I, Philip S. Saitta, do solemnly and truly declare that I am the consignee, importer or agent of the merchandise described in the annexed entry and invoice and I do further solemnly and truly declare that to the best of my knowledge and belief Giuseppe Fazio of Massena, is the owner of the goods, wares and merchandise mentioned in the annexed entry", and so forth -- that is the one he signed? A Yes.

Q I call your attention on the back of the same Exhibit to another affidavit in blank, which is not filled out, entitled "Declaration of owner in cases where merchandise has been

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actually purchased," which reads: "I, blank, do solemnly and truly declare that I am the owner by purchase of the merchandise described in the annexed entry and invoice" -- now, both these were in blank? A Yes.

Q When they came to you? A No, sir; what do you mean in blank?

Q Neither of them had been filled out? A There was no signature at all. I keep the blanks in my office.

Q You keep these blanks? A Yes.

Q You filled out the upper one I have read: "Declaration of consignee, importer or agent" -- not the owner -- and the one you filled out the defendant signed and swore to? A Yes, sir.

Q And it was the same with the other import blank? A Yes.

Q By the other import blank I refer to People's Exhibit 9-C, that one. A Yes, sir; that you showed me before.

S A L V A T O R E E. G A T T O, resumes the stand:

DIRECT EXAMINATION (Resumed) BY MR. HAYWARD:

Q I am about to read from the affidavit you say you signed in the defendant's office on the fourth day of February, 1914, marked People's Exhibit No. 49. As I read the separate paragraphs or sentences, the interpreter will translate the same to you in Italian and after he has done so I want you to say whether the statement so translated or the sentence so translated is a true statement of fact or otherwise: "I

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reside at No. 132 West Ninth Street, in the Borough of Brooklyn, City of New York". A Yes, sir. That is true.

Q "I have examined the statement made up by Mr. Philip S. Saitta in his ledger on page 134" -- A I did not see any ledger. That is not so.

MR. HAYWARD: I want to finish this.

Q "And find the same to be correct in every detail". A That is not true.

Q "I further say that according to the said ledger there is a balance of \$181.07, which appears to be due to me". A That is not true, because I did not see the ledger and I did not read anything in the ledger.

Q "But I am indebted to Mr. Saitta for professional services which must be deducted from said amount". A No, that is not true I never had any legal services or professional services.

Q "I further say that I have known Mr. Saitta since the year 1910 at which time Mr. Saitta loaned me the sum of \$20."

A That part is true.

Q "In February last, finding myself somewhat in need of money I applied to Mr. Saitta, who again loaned me some money".

A Yes, sir; that part is correct.

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Q "After having borrowed some money I induced Mr. Saitta to open a letter of credit for me in favor of Salvatore Zimbaro through the Irving National Exchange Bank for six hundred boxes of lemons"? A Not for me, but for him.

THE COURT: Who is he?

THE WITNESS: Mr. Saitta.

BY MR. HAYWARD:

Q "At the time the market was very good and I guaranteed Mr. Saitta that my people would ship good stuff and therefore he would not run any risk"? A That is true.

Q "However, after the lemons arrived in this City the market was not very good and furthermore the lemons did not turn out to be of the kind and quality that I had purchased from Zimbaro"? A

Only the market was not very good, but not the rest.

Q You say the rest is untrue? A There were a few rotten ones.

Q Where it says "I have purchased from Zimbaro" -- I will directly ask you whether or not you had purchased any lemons from Zimbaro?

A I never bought any lemons from Zimbaro.

Q Who bought them? A Saitta.

Q "Therefore there was a loss after the same were sold at public sale of \$703.22"? A There must have been a loss.

BY THE COURT:

Q Do you know anything about it? A Yes, sir, there was a loss but I did not see the account because the market was very low at the time.

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Q Was it a loss sustained by you? A No, sir, Saitta.

BY MR. HAYWARD:

Q "Which together with the money advanced by Mr. Saitta in 1911, and \$193. advanced thereafter, made a total of \$916.22?"

A That is what Saitta said, not me.

Q "After I received these Zimbaro lemons, I continued to solicit business from Europe unbeknown to Mr. Saitta"? A That is not true.

Q "And accordingly wrote some friends in Italy to ship lemons, as I contemplated that the market was going to advance"?

A I did say that but I did not mean that. It was Saitta told me to make that statement.

Q "Sometime on or about the month of July I received some documents both of lemons and other merchandise"? A That is true.

Q "And I immediately went over to Mr. Saitta's home at 85th street and 2nd avenue in the Borough of Brooklyn"? A That is not true. I went to Broadway, New York, 258.

Q "And took the same to him to sell for my account"? A Yes.

Q "At the time when I received the above mentioned merchandise from Guiseppe Fazio, I told Mr. Saitta that I was going to receive large shipments of lemons and that I was very grateful"? A That is right.

Q (Continued) "For if such was the case I could pay him what I owed him"? A On the commission that I would receive.

Q "I also assured him that I was going to receive other

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merchandise as some of my friends were again shipping to me?"

A Perhaps that is true.

Q "Some few days thereafter I again received a further shipment from the said Guiseppe Fazio"? A That is true.

Q "Which I also took over to Mr. Saitta's house in Brooklyn to sell for my account"? A That part about Saitta's house is not true, but that I brought them to 258 Broadway.

Q (Continued) "And at that time having received word from Mr. Fazio that there were large shipments on the way, I told Mr. Saitta that he could keep whatever he desired on account of my old debt"? A Always on the point of commission, on account.

Q "Mr. Saitta then gave me money from time to time on account of said shipment"? A Yes, sir, that is true.

Q "Amounting to about \$2,953.31"? A No, that is not true.

Q "This included freight and duty which he paid on the lemons and also some freight and duty which he paid on other merchandise"? A Maybe that is true but I did not make the account.

Q "And a draft which he also paid for my account for merchandise"? A That is true.

Q "After the said Fazio had made the second shipment and after he had sent me repeated telegrams notifying me of the large shipments in transit, I entered into negotiations with other people to sell the lemons at a private sale"? A That is not true.

Q "Thinking that the same would be sold to better advantage and obtain better results"? A Perhaps they have been sold with
might

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better results.

Q "But to my sorrow after doing so I was informed that the said Fazio had stopped my mail upon which there were three separate shipments of merchandise"? A That is true.

Q "Prior to that time I had sent Guiseppe Fazio on account a check for \$2,000."? A That is true.

Q "Which was a great deal more than there was due him on this merchandise which I had on hand"? A That is true.

Q "But upon his promise that there was considerable merchandise in transit I made the check for \$2,000"? A That is true.

Q "Upon seeing that he had stopped shipment of the merchandise, I naturally stopped payment on my check"? A That is true.

Q "Since that time I have been threatened with lawsuits from the parties to whom I sold the lemons"? A That is not true.

BY THE COURT:

Q Did anybody threaten to sue you for these lemons, the Fazio lemons that were sold? A No, sir, but there was something, a few words said in the office of Mr. Saitta about Calandrio, but I had no contract made with anybody. It was only in a verbal way my business transactions.

BY MR. HAYWARD:

Q "And for that reason I have not adjusted the matter with Guiseppe Fazio"? A I did not say that.

Q "But am ready and willing to adjust with him providing he will make good whatever loss I have sustained"?

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A That is not true.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until to-morrow morning, March 24th, 1914, at 10:30 o'clock.

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New York, March 24th, 1914,

Trial resumed.

SALVATORE E. GATTO resumes the stand:

DIRECT EXAMINATION (continued) through the Official Interpreter,
Mr. Villamena:

Q In reply to a question directed to you yesterday, regarding the affidavit or statement you signed in Mr. Saitta's office, the particular statement being "Mr. Saitta then gave me money from time to time on account of the said shipments, amounting to about \$2,953.31", you said "No" to the amount? A Yes, sir.

Q But that was not true, but, in reply to the first part of the paragraph you said "Yes"? A Yes.

Q Now, please tell the jury whether or not Mr. Saitta ever gave you any money on account of the lemon shipments or any other shipments?

MR. MOSS: The witness has already said that he did, and I submit that the question is impeaching his own witness.

THE COURT: No, he might want to correct the statement.

MR. MOSS: The question is not if he would like to correct the statement.

THE COURT: Then ask him if he would like to correct the statement.

MR. MOSS: Or explain it.

BY MR. HAYWARD:

Q I will ask you if you would like to explain what you meant

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when you said yes to the first part of that paragraph, and tell exactly what did happen in regard to any payments? A Mr. Saitta gave me a check for \$210. in order that I may open an account in the bank, and then he pay me a draft of \$92., and that was all.

THE COURT: That would be \$210. and \$92., is that right?

THE WITNESS: That is right.

BY THE COURT:

Q That is all he paid you? A Yes.

BY MR. HAYWARD:

Q Do you mean all that he paid you in connection with the lemon transaction? A No, we never talked about lemons.

Q At the time you started the bank account in the Corn Exchange Bank and secured the check book, what did you do with the check book? A I kept it with all the checks because I saw there was something mysterious.

Q Directing your attention to the S. E. Gatto & Company stamped on the bottom of the \$2,000. check, People's Exhibit 8, when was that stamp put on? A It was made right after I got the bank book, and Mr. Saitta told me to stamp all the checks and have it ready.

Q Were all the checks in your check book so stamped? A They were all stamped that way.

Q And stamped when you got the book and before any of these were written or filled out? A Yes.

Q About when was the Corn Exchange Bank account closed or

discontinued? A In November.

Q Did you have a talk with Mr. Saitta at about that time?

A Yes.

Q With regard to that account or anything in connection with it? A Yes.

Q If so, state what it was? A Mr. Saitta told me several times to bring those checks over to his office and destroy them.

Q To bring what checks? A The checks that were paid at the bank and returned to me.

Q How many times did he ask you to do that? A More than twenty times. I said "Yes" to him, but suspecting something mysterious I gave those checks and bank book to my wife, and when we moved from the house where we did live, I told Mr. Saitta that I lost them.

BY THE COURT:

Q What did the defendant Saitta tell you or give you as a reason, if any, for wanting you to bring him the cancelled checks, the vouchers from the bank? A No reason whatever. He was telling me in a smiling way bring those checks here and we will destroy them.

Q Did he say why he wanted you to bring them there to be destroyed? A No, no reason whatsoever.

MR. MOSS: May I suggest to your Honor right in line with your Honor's question, would you mind asking him if he felt so mysterious about the check book and this request of

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Saitta, why didn't he take care of the shipper at the time you asked him yesterday -- you asked him why he didn't do something for Fazio, and he said he trusted Saitta. Won't you ask him now, if this was so mysterious, why did he trust him.

THE COURT: First I will ask him this.

BY THE COURT:

Q When was it you gave the cancelled checks to your wife, about when? A When the bank account was closed in the month of November or December.

Q When the bank account was closed in December? A In November.

Q When you began to suspect -- was it then you began to suspect the defendant Saitta? A Exactly.

Q If you suspected Saitta then, in November so much that you took the cancelled checks and gave them to your wife, and told him, Mr. Saitta, that you lost them, why didn't you make a demand upon him to send a check to Fazio for the amount that was due Fazio? A Certainly, because Saitta told me "Don't bother with this, don't be afraid of anything and I will take care of this. I will do it all myself."

Q Do all of what? A He would regulate everything himself without having any fraud.

BY MR. HAYWARD:

Q The Court asked you why you did not sue Saitta -- why didn't you sue Saitta, why didn't you begin an action against

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Saitta? A Because Saitta had a nice position and he was also a lawyer and I never distrusted him and never thought he would betray me in this way.

Q Now I hand you a series of checks on the Corn Exchange Bank of South Brooklyn, running serially from No. 5,002 to 5,080, and I ask you to examine those checks and state whether or not those checks were signed by you and passed through your bank account or the bank account in the name of S. E. Gatto & Company in this bank in Brooklyn, and were returned in the form they are now in? A Exactly.

MR. HAYWARD: I offer these checks in evidence.

MR. MOSS: No objection.

(The bundle of checks is now marked People's Exhibit 50 in evidence).

BY MR. HAYWARD:

Q In connection with the deposits in the Corn Exchange Bank was the money that you received either in check from Saitta or when you had checks cashed through Saitta or Calandra, as you have told about, was that the only money that was deposited in your bank in Brooklyn? A Each check I would bring Calandra to have him cash it --

MR. MOSS: That is not an answer to the question.

MR. HAYWARD: I will withdraw the question.

BY MR. HAYWARD:

Q Were you continuing your business in Brooklyn during this

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period of time when the deposits were made in a bank? A Yes, sir.

Q What were you making out of your business over there, your macaroni and olive oil business? A Well, I was making a profit of \$15. or \$20. a week.

Q What is the most it ever ran to during this time? A Well, in the month of July or August I made sometimes more than \$40. a week.

Q Did you use this bank account in the Corn Exchange Bank at all in connection with your own business? A Yes.

Q And did you make some deposits in this bank of moneys that you did not receive through Saitta or Calandra? A Yes.

Q Are you able by examining the deposit slips, Exhibit 48 for Identification, to tell which deposits were your own deposits from your business and which were the deposits of moneys obtained as you told us about yesterday from Saitta and Calandra? A Yes, sir, I believe so.

Q I will ask you to do so -- these are all in evidence?

A Those two, as far as I remember, are slips representing money made by me.

Q One of \$78. and one \$25.? A This is as far as I could remember.

BY THE COURT:

Q What do you mean by your own money? A Money that was coming from my business.

MR. HAYWARD: I offer all the slips in evidence, marked People's Exhibit 48 for Identification.

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MR. MOSS: No objection.

(The bundle of slips referred to are received in evidence and marked People's Exhibit 48).

BY MR. HAYWARD:

Q Handing you the cancelled checks, People's Exhibit 50, will you please examine them and state what was done with the proceeds of each of those checks? A These checks were cashed by Calandra or some one else, and the money brought to Saitta and Saitta would cover them.

MR. MOSS: What?

THE INTERPRETER: Make it all right.

BY MR. HAYWARD:

Q How would he cover them? A I mean that the day after, or two days after, he would give me the check for that amount and I would make the bank slip and deposit it in the bank.

Q Would he always give you the check for exactly the same amount or for different amounts? A Sometimes he would give me the money, sometimes he would give me a check, and sometimes check and money.

Q What are those other checks you held in your hand? A Those are checks representing the payment for my own business.

(Referrings to checks Nos. 5,002, 5,012, 5,019, 5,047, 5,068, 5,070.)

BY MR. HAYWARD:

Q Directing your attention to check No. 5,007, payable to

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Dingelstedt & Company, I will ask you to state what that check was for, \$250. a check? A Mr. Saitta had this check written already when I got there and he made me sign the check.

Q Do you know what it was for? A I do not know.

Q I hand you checks Nos. 5,075, 5,079, each for \$100., and each payable to Y. Capuano, and ask you to state what the proceeds of those checks were used for, if you know? A I would fill the checks and go to Saitta and Saitta I suppose would give it to his Capuano and I believe Capuano would bring the money to Saitta.

BY THE COURT:

Q Were those checks given for business transactions of yours, for something that you owed to Capuano? A No.

Q You did not owe Capuano either amount named in those checks? A I never had any business with him.

Q No business transactions with Capuano? A No, sir.

Q Did you know Capuano? A Yes, sir, I met him in the office Mr. Saitta.

Q What is his business, if any, if you know? A At that time believe he had a doll factory.

Q When you signed those checks, who did you give them to, those two last ones? A Mr. Saitta.

MR. HAYWARD: I would like to say to Mr. Moss that it is my intention to offer in evidence the Saitta checks, which were furnished to this office by Mr. Saitta, at our request, and I am not doing it at this moment, because I want to offer

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MR. HAYWARD: I would like to say to Mr. Moss that it is my intention to offer in evidence the Saitta checks, which were furnished to this office by Mr. Saitta, at our request, and I am not doing it at this moment, because I want to offer

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the preliminary proof of how they came to this office first. I do not want Mr. Moss to think I am offering mine and not his, because I intend to offer Mr. Saitta's checks little later.

MR. MOSS: Very well.

BY MR. HAYWARD:

Q You were arrested, were you not, some time in January, 1914? A Yes, sir.

Q What for? A Because my company was not registered.

THE COURT: The words "and company".

A Yes.

BY MR. HAYWARD:

Q And in what county were you arrested? A Brooklyn.

Q Where were you tried, if you were tried? A In New York, Special Sessions.

BY THE COURT:

Q In New York County or Brooklyn? A In New York.

MR. MOSS: Downstairs.

BY MR. HAYWARD:

Q You were charged with doing business in New York County without registering your business? A Exactly.

THE COURT: Was that under that old statute that says anybody that uses the words "and company" and there is nobody to represent the "and company", that it is a misdemeanor

MR. HAYWARD: Yes, Section 440, I think it is.

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BY MR. HAYWARD:

Q Who appeared for you? A Mr. Saitta came over here and he made me plead guilty and then I did not hear any more about it.

Q Were you familiar at any time, up to the time that you were arrested and pleaded guilty, with the law requiring a firm's name to be registered in each county where business is transacted?

A No, sir, I did not know, otherwise I would have done it.

Q Did you transact any business in New York County except in connection with these Fazio lemons? A I had business before in New York but not the name of a firm, only my own name, Salvatore Gatto.

Q What was the only business you transacted in New York County under the name of S. Gatto & Company? A I made a transaction in some oil business that I did not finish to pay, I remained to pay \$70., an indebtedness.

Q Was that in New York County? A Brooklyn.

Q I asked you about New York County? A No, I never did any business in New York.

Q At the times you speak of when you were in Saitta's office at 258 Broadway, you mean, do you, 258 Broadway in the city and county of New York? A Yes.

BY THE COURT:

Q Do you know who lodged the complaint against you at Special Sessions Court, charging you with doing business under a firm name without there being any partner? A A man named Luigi Bonano.

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Q Was he a customer of yours? A No, sir, I never had any business with him.

Q Do you know how he came to lodge that complaint against you? A Because he was with a lawyer named Nicchia, 256 Broadway.

Q Did Nicchia have a claim against you? A No, sir.

Q How did they happen to make this charge against you? A I do not know.

CROSS EXAMINATION BY MR. MOSS:

Q You do not know why Nicchia took an interest in this matter? A No, sir.

Q Did not Nicchia make a demand upon you that you pay the money to Fazio? A I never saw Nicchia.

Q You saw Bonano, didn't you, from Nicchia's office? A I never was in Nicchia's office.

Q I did not ask you that -- you saw Bonano, didn't you? A No, sir, never.

Q Who did you see about the claim made by Mr. Fazio? A A man named Hess.

Q Samuel J. Hess? A I believe, yes, he came to my house and claimed that money.

Q And he was connected with Nicchia, wasn't he? A I believe so, yes.

Q And with Bonano? A Yes, sir, and Bonano.

Q And you knew that it was on account of Fazio's claim that

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you were being prosecuted about this name business, didn't you?

A I believe, yes.

Q Why did you say you did not know what interest Nicchia had in it? A Certainly, because Bonano never had any business transactions with me.

Q How did you know he was connected with Nicchia? A I knowed that afterwards.

Q How did you know it, I ask you? A Because I saw him here in the District Attorney's office.

Q What is your name -- did you have to turn to the interpreter to know what I asked you when I said, what is your name -- don't you understand me -- look at me a minute -- don't you understand me -- you looked at me when I asked you to look at me -- don't you understand me when I ask you what is your name?

THE WITNESS (in English): Yes.

Q Then why don't you answer me instead of looking at the interpreter? A (In English) Salvatore E. Gatto.

Q Where do you live, look at me? A (In English) Brooklyn.

Q What part of Brooklyn -- look at me now, don't you understand me? A I understand the word what.

Q You said on the stand to me "I understand the word what"-- did you say understand? A What.

Q You said I understood what -- how long have you lived in America -- don't look at that gentleman (referring to the interpreter), look at me, you keep looking at that gentleman?

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A (In English) Well, if I cannot understand.

Q Say it to me, don't you understand that question -- you just said understand and I said understand -- don't you understand me -- don't look at him please, don't you understand me -- how long did you live in England? A (In English) In America.

Q In America -- I said that first -- how long in America?

A (In English) Eight years.

Q How long in England? A Never (in English).

(The following answers are all given in English except where indicated by using the word interpreter).

Q Did you never live in England? A In Angleterre?

Q Yes? A Never.

Q Do you speak French? A Yes.

Q Do you speak German? A A little.

Q Do you speak Italian? A Yes.

Q Do you speak Spanish? A Yes.

Q Do you speak English? A Very little.

Q Do you know Dr. Wagner? A I can't understand.

Q Don't you understand the name Wagner? A That gentleman (indicating)?

Q Do you know Dr. Wagner (indicating)? A Yes.

Q Did you talk English to Dr. Wagner? A No.

Q No? A About my mother-in-law who is sick.

Q Two months ago you employed Dr. Wagner, did you not? A Yes.

Q And Dr. Wagner was introduced to you by Mr. Saitta, was he

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not -- Saitta introduced Dr. Wagner?

THE COURT: Mr. Moss, I would not make gestures and point, because he would understand that anyway -- you point to Saitta and then to Dr. Wagner and between the two he is very apt to understand you anyway, even if you did not utter a word.

BY MR. MOSS:

Q Did Saitta introduce you to Dr. Wagner? A Yes, sir.

Q And Dr. Wagner attended your mother-in-law, didn't he?

A Yes.

Q Who was very sick about two months ago, is not that so?

A Yes.

Q And you interpreted between your mother-in-law and Dr. Wagner, didn't you? A No, sir, Mr. Saitta interpreted.

Q But Mr. Saitta was not always there? A Oh, Saitta spoke in the night by phone to the doctor.

Q When the doctor called upon your mother-in-law you interpreted for your mother-in-law to the doctor, didn't you? A What did I interpret?

Q Whatever was necessary? A I don't remember.

Q What? A I don't think so.

Q You don't think so? A No.

Q Didn't you talk in English to Dr. Wagner? A Very little I talked.

Q You told him what was the matter with your mother-in-law?

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(The witness feels and rubs his hands over his stomach and makes reply -)

A I don't know in English what that is.

Q Medical terms are very difficult to express, I admit that-- do you know Dr. Galloway, the insurance doctor? A Yes.

Q You had some insurance, didn't you? A Yes.

Q You signed an application, didn't you, you signed the questions and the answers on the policy? (Paper is shown witness)

A What I signed?

Q Look at the bottom there and see the photograph of your signature there? A Yes, I signed this.

Q You signed that? A Yes.

Q Those were the questions, were they not? A Questions told me in Italian by one agent come to see me.

Q You signed it, didn't you? A Yes.

Q Those are the doctor's questions, are they not, those are the doctor's questions, are they? A I don't understand.

Q Do you see Dr. Galloway here? A Yes.

Q You did not talk Italian to Dr. Galloway, did you? A No.

Q You talked with Dr. Galloway in English, didn't you?

A Very very small words.

Q Enough to have those questions written out? A These questions bring to me one Italian agent of the company.

Q The Italian agent did not talk with you, with Dr. Galloway? A No.

Q How did you talk to Dr. Galloway who examined you? A Dr. Galloway examined me?

Q Didn't he? A Yes.

Q He asked you questions? A No questions.

Q You answered him? A No questions -- what questions -- I don't remember the questions.

Q Did you ever write anything in English? A Never.

Q Didn't you write an English letter? A By copy.

Q Can you write an English letter by copy? A Copy given to me by Mr. Saitta to write in English.

Q Can you write an English letter by copying? A I can't understand.

THE WITNESS (through the interpreter) I couldn't answer that question, I can't understand, it is very funny, the trouble about this doctor, the question that he put to me.

Q Did not the doctor ask you any questions? A Yes.

Q Did you answer them?

THE WITNESS (through the interpreter) Yes, I answered the questions that I was able to understand. What I was not able to understand I did not answer.

Q Did you ever write an English letter?

(The witness now testifies through the official interpreter, Mr. Villamena).

A Yes, sir, if somebody would write the original I would copy them.

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Q What letters have you written in English? A I don't remember.

Q You can read a little English, can't you? A Yes, sir, very little.

Q I am holding here the affidavit -- couldn't you read any of that affidavit, People's Exhibit 49? A What should I read. I signed that affidavit in good faith. Mr. Saitta asked me to sign it and I did sign it.

Q I did not ask you that, couldn't you read any part of that affidavit? A With the aid of the dictionary, yes.

Q Couldn't you read any of it without the aid of the dictionary? A No.

Q Did Mr. Saitta give you a copy of it? A Yes.

Q You took the copy away with you, didn't you? A Yes.

Q Did he say anything to you? A I said, I admitted that I had somebody to read that to me in the house in the evening and I read it myself.

Q Did he say anything to you when he gave you the copy? A Saitta told me to be careful and study it, whatever was in the affidavit and learn what was in there by memory.

Q Is that all he said -- if you have anything more to say, please let us have it? A That is all.

Q Did Saitta show you this book, or did you see this book? (A book is shown the witness)?

BY MR. MOSS (continuing)

A And direct your attention to what purports to be the page

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of a ledger? A No.

THE COURT: Handing witness defendant's office ledger?

MR. MOSS: Yes.

THE WITNESS: He showed me this book two or three months before but not when I signed the affidavit.

(Page 134 of the book is now marked for identification Defendant's Exhibit A).

BY MR. MOSS:

Q How, did you say you signed that in good faith, bona fides? A Yes (referring to the affidavit, People's Exhibit 49).

Q Then why did you have to study a copy of it? A Because Mr. Saitta told me, you must say everything that is in this affidavit.

Q Was it true?

BY THE COURT:

Q Was the affidavit true? A No.

BY MR. MOSS:

Q How can you say you signed it in good faith? A Certainly, because he told me, you must sign this, it is for your own good.

Q You were suspicious at that time, were you not? A Certainly

Q You were so suspicious that you were preserving your checks and check books, weren't you? A That was before.

Q That was before?

THE COURT: What is the date of the affidavit?

MR. HAYWARD: February 4th.

THE COURT: He says that he gave his check book to his wife when?

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MR. MOSS: In November.

BY MR. MOSS:

Q If you were suspicious about these check books before, in November, why did you sign an affidavit and swear to it, when you did not know what was in it? A He made me sign that by force.

BY THE COURT:

Q What do you mean by that?

BY MR. MOSS:

Q Took you by the throat? A He told me this, you must sign because it is for your own good. You must sign, because it is for your own good.

BY THE COURT:

Q Did he use any physical force? A No, he looked at me with his open eyes, eyes as big as this (indicating).

BY MR. MOSS:

Q Did you look back with your eyes? A Why certainly.

Q Do you know that it is perjury to swear to a thing when you don't know that it is true? A Yes, sir, certainly.

Q Did you sign an affidavit that you did not know anything about and swear to it just because Saitta looked at you with big eyes? A Certainly, the affidavit was written in English and what did I know about it?

Q Why did you sign it and why did you swear to it? A Because I had the greatest esteem for Mr. Saitta and I know Mr. Saitta was a lawyer and a lawyer could not do such a thing.

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Q But you were suspicious of him, were you not? A After I signed the affidavit, yes, then I was more suspicious.

Q You were suspicious in November, were you not? A About the checks, yes, because he wanted me to destroy those checks.

Q And many months had elapsed since the lemons had been sold? A Yes, sir.

Q And you had not sent any money to Fazio, had you? A I could not send any money to Fazio, because Mr. Saitta was saying to me "There is lots of time, there is lots of time" and besides that he was managing all those things.

Q And so you signed an affidavit that you did not know anything about, is that so? A Certainly.

Q At that time, had any demand been made upon you that you pay up to Fazio? A None.

Q Mr. Hess saw you before you signed that affidavit, didn't he? A Yes, but I did not see Mr. Hess -- Mr. Hess was at my house. I was not in and he spoke with my wife.

Q You had been arrested before you signed that affidavit, hadn't you? A Yes.

Q And you had been down to see the District Attorney before you signed that affidavit, hadn't you? A Yes.

Q And signed your name Rugerri? A No, Gatto Ruggieri. Gatto is my father's name and Ruggieri is my mother's name -- family names.

Q When did you become known as Salvatore? A Salvatore is my Christian name.

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Q Did you do business in Italy as Ruggieri? A No.

Q Is your wife living in Italy? A My wife is in America with me.

Q Did you ever have a wife in Italy? A My first wife that died at the time of the disaster.

Q The time of what? A The disaster in Italy, the earthquake.

BY THE COURT:

Q What disaster? A The earthquake, in 1908.

THE COURT: Is it customary in Italy, especially in certain parts of it, for a man to have both names, his father's and mother's?

THE INTERPRETER: Sometimes, when the mother or the father comes from a noble family, they generally have both names, the name of the father and of the mother.

BY MR. MOSS:

Q At the time these invoices came over from Fazio about the lemons, did you have a judgment against you? A Yes, sir, a judgment for the oil.

Q For five barrels of oil? A Yes.

Q And that judgment is about two years old, is it not?

THE COURT: What is the exact date and the amount of it.

MR. MOSS: I have not got the exact date.

THE COURT: Have you got it, Mr. District Attorney?

MR. HAYWARD : No, that was what he told us about on his direct-examination -- about \$90., I think.

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THE WITNESS: Yes, I believe that is about the date.

BY MR. MOSS:

Q For \$224.? A \$224. is the original amount, but I paid some and I left a balance of about \$70.

Q That judgment was obtained by Emanuel Patti, was it not?

A Emanuel Patti.

Q Didn't you get that oil from Patti by representing to him that you were a large merchant doing a large business? A No, sir, Patti was my friend, Patti was coming over to my house and he knew I was doing a little business, that I was paying him a little at a time.

Q Have you seen Patti in court? A Which court?

Q This court, didn't you see Mr. Patti come and speak to me the other day in court? A Yes, I saw him.

Q I ask you now if your recollection is not refreshed, didn't you get credit on that oil from patti by representing that you were a merchant doing a large business? A No, sir, Patti sold me the oil by making weekly payments, because I knew him, because he was a friend of mine and because he trusted me.

Q Have you received any goods by consignment within the last well, since the lemons, have you received any goods by consignment since Fazio's lemons? A No, sir, not by consignment.

Q Have you received any goods by consignment within the last two years? A No, sir.

Q Have you purchased any goods since the lemon transaction

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of Fazio? A I received some macaroni and I paid for it.

Q Was it c.o.d.? A The draft was attached to the bill of lading.

Q Have you bought any goods in the last two years, on credit, and for which you have paid?

THE COURT: You have two questions there, Mr. Moss.

Had you not better put it "Have you bought any goods within the last two years on credit" and then ask him another question as to whether he has paid for it?

BY MR. MOSS:

Q Have you bought any goods in the last two years on credit?

A The oil.

Q Anything else? A Nothing else.

Q What about the tomato paste? A I got that paste in storage, because I could not sell it.

Q Did you buy it on credit? A Yes, sir, I bought that paste on credit, but I have got an understanding with the house in Turino from where the goods comes from, that the goods is waiting in storage and they will not force me to pay for it until I sell it.

Q Didn't you borrow \$450. on it? A I pawned it to a friend of Mr. Saitta's.

Q Who? A Carlo Andres.

Q And Andres was a friend of yours? A Sure.

Q You showed us a check of \$250. to the order of Dinglesteadt, didn't you give that check to Mr. Andres for a business

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matter between you and Andres? A No.

Q In whose handwriting is that check (showing check)?

A I don't know. The check was written already when I got to the office of Mr. Saitta.

Q Was not that check used in a transaction between you and Andres? A No, sir.

Q Have you told us all the goods you bought on credit?

A That is all I remember.

Q Do you remember some goods that you bought from Alberto Petreroja? A Yes, sir, some garlic.

Q Did you pay for it? A Certainly I paid for it.

Q How much of it did you pay for? A I believe that we paid a draft of \$520. or \$522.

Q That was one half, about one half? A Yes, it was half, but the garlic was not in good condition when it arrived here and the house that sent the garlic over here withdrew the draft and that payment that we made, it was all right.

Q Did you sell those goods to Vincent Labate & Company?

A Well, I wanted to sell this garlic to Labate & Company but owing to the fact that the garlic was in bad condition I would not give it to him.

Q You accepted money from them, didn't you? A Well, Labate loaned me about \$40.

Q Loaned you, he paid you on account of that garlic, didn't he? A No, he loaned me \$40.

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Q Will you please read your own writing on the back of that bill, and see if you still persist in saying that he loaned you the money? A Yes, sir, he loaned me \$30.

Q Is that the bill for the garlic we are talking about? A Yes.

Q Will you kindly read what you have written on the back of it? A The goods right in back of this paper marked, that is 364 baskets of garlic on this bill mentioned are by me sold to the firm of Vincent Labate & Company of Brooklyn, New York, at a price of four cents and a quarter per pound, to be taken from the dock and duty paid, with the exception of the approval of the quality from Mr. Labate & Company, on account of such sale I received this day the check of \$30."

Q Why did you say that was a loan? A A loan on account of the goods that was coming.

Q Did you receive from Labate \$30. on account of the sale of that garlic which you just read to us? A Yes.

Q Did you sell the same goods to Mr. Andres? A We sold that merchandise, yes.

Q To Mr. Andres? A I and Mr. Andres sold the garlic together. Mr. Andres came and paid the draft and when we saw the garlic was bad we sold it to somebody else.

Q Did Labate get back his \$30.? A No, I did not give it to him, but I will pay him back. This is a private matter between him and me.

Q You sold the same goods twice, took \$30. from the pur-

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chaser and haven't paid it back, is that right? A No, sir, the goods was not sold twice. The goods was not here at the time, the goods was on the way here when I got the money.

Q But they were represented by that bill, were they not? A Yes

Q I will refresh your recollection if I can about that Patti suit again; you were served with a complaint, were you not?

A Yes.

Q And you suffered judgment by default, didn't you? A I was in court at the time, but the day I was in court Patti took judgment against me.

BY THE COURT:

Q Who was your lawyer in that case? A I had no lawyer.

BY MR. MOSS:

Q Didn't you purchase that olive oil from Mr. Patti by representing to him that you were solvent and that immediately upon the delivery of the goods you would pay for them? A No, the oil was bought at sixty days' time.

Q Then when he made a complaint against you in court, upon those allegations, why didn't you defend the case? A Well, I didn't put no defense in because I did not speak English and because I had no lawyer and besides that I made an agreement with him to pay so much a week.

Q You know Mr. Cavallaro, don't you? A Yes, sir, I know him.

THE COURT: Mr. Moss, in any there is any of these collateral matters that you would like stipulated upon the

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record, to save time, just suggest it -- for instance, like this, that Gatto was a judgment debtor, this witness was a judgment debtor, that a judgment for so much was entered against him on such and such a date, and that it never has been paid. We could put that on the record.

MR. MOSS: I think so far as the Patti case is concerned, there is sufficient on the record about that, but I have another little judgment back in 1911 for a telephone bill.

THE COURT: Let us put that right in -- have you the search?

MR. MOSS: No, I have the judgment roll.

THE COURT: Have you a search, a judgment search against the witness?

MR. HAYWARD: No, I have not.

THE COURT: When I suggested it, I thought probably the District Attorney knew of the judgments against Gatto and could then put them on the record.

MR. HAYWARD: I know just what he told us. I knew of the judgment for the oil.

THE COURT: Is there any question in your mind that Gatto was execution proof?

MR. HAYWARD: What is that?

THE COURT: Is there any question in your mind on the question of whether or not Gatto was execution proof?

MR. HAYWARD: None in my mind.

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MR. MOSS: There is a judgment for a telephone bill of eighteen dollars and some cents back in 1911.

MR. HAYWARD: If the witness says he owes this, I will be glad to concede it and save time.

THE COURT: Ask him.

MR. HAYWARD (to the interpreter) Ask him if he owes the judgment of the telephone company for \$19.?

THE WITNESS: Yes.

THE COURT: You have not paid it?

THE WITNESS: No, I did not pay it.

BY THE COURT:

Q How many judgments are against you? A Those two, no other ones.

Q Any other? A No, sir.

Q There was not anything that you had that the Sheriff could get and satisfy any of these judgments, was there? A No, sir.

BY MR. MOSS:

Q Over there in Brooklyn, where you have your address, you have not any store, have you? A Not now.

BY THE COURT:

Q Did you have? A In my own house I had a room where I kept the stock and sold it.

BY MR. MOSS:

Q In your house? A Yes.

BY THE COURT:

Q On what floor? A The ground floor.

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Q Did you have a sign out? A No, sir.

Q Did you have any sign on the window S. E. Gatto & Company?

A No, sir, nothing.

Q Did you have any stock that anybody could see? A No.

Q Nobody could see any merchandise, passing along the street or from the street? A No, sir.

THE COURT: Mr. Moss, you do not mind these questions?

MR. MOSS: I am very glad to have your Honor ask them.

BY MR. MOSS:

Q Did you ever send any cablegrams or telegrams from Brooklyn? A Yes.

Q From what station? A Cort Street and Remsen Street.

Q Whom did you send them to? A About the matter of the lemons.

Q Did you send cablegrams to Fazio? A Yes, sir, I sent him several.

Q From Brooklyn? A Yes.

Q Where were those telegrams written? A Written in the office of Mr. Saitta.

Q Why did you go to Brooklyn to send them? A Because at that time the account with the Telegraph Company was closed, and I went to Brooklyn to send these telegrams from there.

Q Did you not know that Mr. Saitta had a telegraph account, a charge account? A Yes, sir, I know, because he told me.

Q Why didn't you send them from New York instead of from

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Brooklyn? A Because he told me to send that from Brooklyn.

Q He told you to do that, did he? A Yes.

Q Were there not plenty of telegraph offices in New York?

A Yes, sir.

Q And when you sent these cables from Brooklyn, you spent your own money out of your own pocket? A Yes.

Q Why didn't you send them on Mr. Saitta's charge account?

A Because the account down in Broadway was closed.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:15.

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AFTER RECESS. TRIAL RESUMED.

SALVATORE E. GATTO, resumes the stand:

CROSS EXAMINATION (Continued) BY MR. MOSS:

Q You know this gentleman here (indicating)? A Which one?

Q The gentleman sitting there (indicating). Mr. Cavalaro?

A Yes, sir.

Q Between April and May last did you go to the office of Mr. Cavalaro and endeavor to borrow some money? A Yes, sir; I went there.

Q And do you remember his going out of the office to change a bill so that he could lend you some money? A Yes, sir; I remember that.

Q And while he was out did you take his meerschaum pipe?

A Yes, sir; I did that for a joke. He knows that.

Q Did you pawn it? A Yes, sir.

Q For a joke? A Yes, sir; and I told him.

Q Afterwards? A Yes, I told him.

Q How much did you get on it? A One dollar.

Q Some time after that when Mr. Cavalaro missed his pipe, he asked you for it and you said you did not have it, didn't you?

A I told him it was a joke I made upon him.

Q You told him that you did not have it, didn't you?

A I gave him the ticket, the pawn ticket, and told him that it was a joke.

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Q Didn't you tell him that you did not have it, yes or no?

A I told him that it was a joke that I played upon him and he was satisfied with that.

Q Didn't you tell him that you did not have it, yes or no?

A No, sir; I told him that I had the pipe.

Q Didn't he tell you that he had missed the pipe after you had gone out and didn't you say you did not have it? A No, sir; he did not ask me those questions.

Q Didn't he tell you he would knock your head off if you did not produce that pipe? A No, sir; we did not have such a conversation.

Q Didn't he tell you that he believed you had pawned it?

A Yes, sir; he told me because I told him.

Q You produced the pawn ticket and gave it to him when he threatened you, didn't you? A No, it was no threatening whatsoever. I gave the ticket for the pawnbroker right away.

Q How long after was it that you took the pipe that you gave him the pawn ticket? A Eight or ten days.

Q Did you give him the money? A No.

Q Did you redeem the pipe? A He redeemed it.

Q Did you give him back the money? A No, we had an account with him and he said "that is all right, that is nothing, we will square this up".

Q Did he say that -- you see him sitting there and I want you to look at him and tell me did he say it would be all right,

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it would be on account? A Yes, sir; that was what he told me.

Q Are you an-English subject? A No, sir; I am an Italian citizen.

BY THE COURT:

Q What is Mr. Cavalaro's business? A Fruit.

Q Importer of fruit? A Importer of fruit, yes.

Q When was this that you went into his office and took his pipe? A Last May.

Q Last May, that was two months before you ordered these goods from Fazio; the first order of goods from Fazio, about two months before that? A I believe so, yes. I don't remember exactly the date.

Q Two months before you ordered the goods from Fazio, were you so hard up that you had to get one dollar by going into a man's office and pawning his meerschaum pipe, were you so hard up as that for money? A That was a joke I played upon Cavalaro.

BY MR. MOSS:

Q The joke is on Cavalaro, he is out a dollar? A Yes.

BY THE COURT:

Q Did you ever make good that dollar to him? A Well, I had an account with him and that dollar was included in the account.

Q Was that added to what you owed him? A Yes, sir. I borrowed some money from him at different times and I returned that money.

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Q How much did you owe him then? A About twenty dollars.

BY MR. MOSS:

Q What account did you have with him, any business account?

A No, no business account.

Q You never did any business with him?

THE COURT: Sort of a borrowing account, is that it?

THE WITNESS: Yes, sir, a borrowing account.

BY MR. MOSS:

Q Now then, you bought some jewelry after that, didn't you?

A Yes.

Q When did you buy the jewelry? A I bought the jewelry last November but I did not pay for it. I am paying now weekly.

Q Last November, how much worth of jewelry did you buy?

A Seventy dollars.

Q Seventy dollars? A Yes, a watch and chain.

Q You were sued for \$175 worth, were you not? A That is not for the chain, because I bought and paid for the chain but they sued me for the ring.

Q How much jewelry did you buy and pay for, if any? A \$70 for the watch and chain and the ring I paid \$50 on account.

Q Didn't you buy a pair of diamond earrings? A No.

Q Didn't you buy several chains? A No, sir.

Q Didn't you buy lockets for your children? A Those are not gold. They are imitation of gold.

Q Didn't you buy several hundred dollars worth of jewelry?

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A No, sir.

Q Did you buy new furniture? A No, sir; I only bought a couch and a desk and I am paying five dollars a week.

Q Didn't you buy new carpets? A Oil cloth.

Q How much did you pay for it? A I pay five dollars a week.

Q Did you buy a fur coat? A Yes, sir.

Q Did you pay \$90 for it? A No, sir.

Q How much did you pay for it? A \$21.

Q Did you buy any cuff buttons --

THE COURT: By the way, is there any special point to this, Mr. Moss? Would that affect the question of whether or not this defendant at the Bar has stolen \$1800 or not -- as to whether this man bought cuff buttons?

MR. MOSS: Yes.

THE COURT: If you think so, if you think it even indirectly affects the issue, proceed.

MR. MOSS: I think it does.

THE COURT: Proceed then.

BY MR. MOSS:

(Question repeated).

A Yes.

Q Did you increase your house rent? A No.

Q Did you pay \$20 instead of \$12? A I am paying \$12.

Q These things that you bought, didn't you buy them out of

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money that came from the lemons which you received from Saitta?

A No, sir.

Q You were owing money on judgment and to the people such as we have asked you about, how were you able to buy these things, if you did not buy them out of the moneys that came from Fazio through Saitta? A I was selling oil and macaroni every week and I generally made from \$30 to \$40 and \$50 a week.

Q If you were making these sums per week, how could it be, when you had judgments unpaid and when you owed money for bills unpaid and these things you have admitted today?

THE COURT: Do you understand that? I do not.

(The question is repeated).

MR. MOSS: I will reframe the question.

BY MR. MOSS:

Q How could it be that you were making such sums per week when you had judgments unpaid, bills unpaid and accounts unpaid, and such as you have testified to? A Well, those judgments were judgments taken long ago and they did not come to see me. If they would come over to see me I would pay them so much a week.

BY THE COURT:

Q Did you have any property in your house that the Sheriff could levy on -- I think you said you had no stock in trade at all? A Yes, I had some macaroni and I had some oil.

BY MR. MOSS:

Q Did you have any wine? A Grape juice.

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Q Did you have fifty cases of Chianti? A No, I never kept any wine in my house.

Q Didn't you buy fifty cases of Chianti and forget to pay for them? A No, sir.

Q You say you never sold wine? A No, sir.

Q Please look at your billhead here-- I show you a paper and I ask you if you wrote that letter and if that is your bill head?

THE COURT: What is the date of that?

MR. MOSS: June, I think, 1913.

THE INTERPRETER: June, 1913.

THE WITNESS: What has that to do with it.

BY MR. MOSS:

Q First, did you write the letter? A Yes.

Q Is that your letter paper? A Yes.

Q I ask you again, did you ever sell wine? A No.

Q You did not have any license to sell wine, did you?

A I, as a broker, and agent of some importing house, I received some wine and I give it to some friends of mine to introduce that kind of wine.

Q How much wine did you receive? A Fifty cases. It was an exporting house sent me this wine here as a sample so I could introduce that brand in the market.

Q Was that five or six months ago? A No, a little while ago, last January.

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Q Was there a draft against you and did it go to protest?

THE COURT: You mean for the wine?

MR. MOSS: Yes.

THE WITNESS: I did not sell this wine. A friend of mine has got that wine on deposit, and I was in the House of Detention. I could not pay for it.

BY MR. MOSS:

Q I did not ask you that; I ask you if there was a draft on that and did it go to protest? A No, I did not accept that draft.

Q Didn't you conduct business of your own through the Customs House entirely apart from Mr. Saitta? A Yes.

Q Didn't you employ a Customs House broker named Charles Friedenbourg? A Yes.

Q Didn't you have at least six transaction through Mr. Friedenbourg, through the Customs House, between August 1913 and January 1914? A Yes.

Q And as late as January, 1914, did you not import through Friedenbourg as your broker, by the Steamer Adriatic, fifty cases of common wine? A That is exactly those fifty cases that came over here for samples, because I had introduced that kind of wine here in America.

BY THE COURT:

Q Are those fifty cases the same that you spoke about before? A Exactly the same cases we spoke of before.

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Q Did you get any more wines except that fifty cases? A No.
BY MR. MOSS:

Q On these transactions which you had with Friedenborg as your broker through the Customs House, did Mr. Friedenborg advance the duties? A Yes.

Q And at the time that there was money in Mr. Saitta's hands coming from the lemons of Faziom did you request and did Mr. Saitta pay any of those bills of Mr. Friedenborg for duty upon your importations? A Yes, sir; Mr. Saitta gave me once a check for over \$200, when I owed Mr. Friedenborg only \$70 and I brought the check to Mr. Friedenborg and Friedenborg gave me a check for the balance of the check that Saitta gave to me, and I brought back to Mr. Saitta the check that I received from Mr. Friedenborg.

Q Take the bill of January of 1914, have you paid that?

THE COURT: What is the amount of that?

MR. MOSS: \$117.90.

THE COURT: Had you not better show it to him?

(Paper is shown to witness).

THE WITNESS: No, sir; I did not pay that.

THE COURT: What is the amount of it?

THE WITNESS: Because I was in the House of Detention.

They wrote me and I did not pay \$117.90.

BY MR. MOSS:

Q That was in January and a spot cash bill, was it not?

A Yes, sir.

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BY THE COURT:

Q Is it not a bill of Friedenburs's?

MR. MOSS: Yes. Gatto to Friednensburg.

THE COURT: He is the Customs House broker?

MR. MOSS: Yes.

BY MR. MOSS:

Q When did you go into the house of Detention, what date?

A The 18th day of February.

Q Do you know where are the accounts of Brown & Seccomb showing the lemon transactions? A What account do you mean?

Q The accounts of the lemon sales, the original account sales? A Mr. Saitta had them.

Q Didn't you have them? A No, they were in the office of Mr. Saitta.

Q Have not you or the District Attorney got all of those Brown & Seccomb accounts? A I don't remember. Maybe they have them.

Q You know Mr. Andres -- do you see Mr. Andres in Court?

A Yes, I see him.

Q I want to ask you a few questions about conversations with Mr. Andres and first direct your attention to the 600 boxes of lemons from Zimbaro. A Zimbaro.

Q Did you tell Mr. Andres that those were your lemons?

A I could not tell him it was my lemons, because the lemons arrived here under the name of Philip S. Saitta.

Q I did not ask you that, I asked you did you tell --
I did not ask you what you could tell -- but, did you tell Mr.
Andres that these were your lemons? A No.

Q Did you tell Mr. Andres that you were heavily indebted
to Mr. Saitta? A No, sir.

Q Did you tell Mr. Andres to put in a good word for you so
that Mr. Saitta would help you? A No.

Q Did you tell Mr. Andres that if Mr. Saitta would help
you, you could do a good business? A No, sir.

Q You have testified that you sent out a lot of cables
to Italy, in working up a lemons trade, do you remember that?

A Yes, telegram to Fazio.

Q Did you send out a large number of those cables in Mr.
Saitta's charge account, cable account in New York? A Yes, sir.

Q And did Mr. Saitta order you to stop it? A When the
company sent the account to him then he said to me don't make
any more telegrams.

Q Didn't he order you to stop it when he first heard that
you were doing it? A When he received the account, yes.

Q After he ordered you to stop, didn't you continue to
send more? A No.

Q Did not Mr. Saitta threaten to have you arrested for
using his charge account? A No.

Q Did you in the presence of this same Mr. Andres, say
that you had done wrong in using Mr. Saitta's credit at the

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cable company's office, without his consent? A No, sir.

Q Did you say if Mr. Saitta would not make any trouble for you about that, you would pay it in a few days? A No, sir; it is not true.

THE COURT: Have you a list of the times when he sent those cables?

MR. MOSS: No, I have not but they must be here in the office or in Court -- perhaps I have something here that can give you approximately the date.

THE COURT: Yes, so that we can know about when.

MR. MOSS: From some correspondence I have here I think I am justified in saying that the date was in the early part of June, 1913 and related to the cablegrams from March up to that time.

THE COURT: Have you any copies of them?

MR. HAYWARD: Those would not be the ones we have, because ours were a later date than that.

MR. MOSS: I presume it was the various fruit dealers in Italy.

BY THE COURT:

Q Did you send cablegrams to various fruit dealers in Italy? A Yes.

Q To how many different fruit dealer in Italy did you send cablegrams? A Three or four.

BY MR. MOSS:

Q Didn't you send over \$200 worth of cable in Mr.

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Saitta's charge account, between March and June 1913? A Well,
Saitta gave us permission to accept the telegrams.

Q I did not ask you that -- I ask you if you did it?

A Yes, sir.

BY THE COURT:

Q \$200 worth? A Yes.

BY MR. MOSS:

Q Did not Mr. Saitta threaten to have you arrested for
using his charge account in that way? A No.

Q In the presence of Mr. Andres and of Mr. Lauria and in
the presence of an officer or employe of the Cable Company, did
you not say that if Mr. Saitta would not make you any trouble
about that, you would pay the amount in a few days? A Mr.
Saitta spoke in English with the officer of the telegram company
and I did not understand what he said to him.

BY THE COURT:

Q How were these cables signed, with whose name? A Gatto.
BY MR. MOSS:

Q I did not ask you about what Mr. Saitta said to the officer.
I asked you if -- about what you said, did you say that if Mr.
Saitta would not make you any trouble, you would pay it in a few
days? A No, I did not say nothing.

Q Did you tell Mr. Andres that you had put some documents
into Mr. Saitta's hands, from which he would pay himself the money
that you owed him? A No, sir.

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Q Did you go to Mr. Andres and try to borrow some money; did he say to you "why don't you see Mr. Saitta about it", and did you answer "I have paid Mr. Saitta now and Mr. Saitta does not care to do any more business with me"?

THE COURT: When was this?

MR. MOSS: I think the date approximately -- I will fix it as definitely as August, in August.

A No, sir.

BY MR. MOSS:

Q After you had stopped payment of the \$2000 Fazio check, did you see Mr. Andres and did you tell him that Fazio had broken the contract with you and did you talk with him about the stopping of that check? A Yes, sir.

Q Did you tell Mr. Andres in words or in substance that Mr. Saitta had paid you nearly all of the Fazio money?

THE COURT: When? Better get about the date as nearly as you can.

MR. MOSS: That would be approximately in August or September.

A No, sir.

BY MR. MOSS:

Q Will you tell us what day it was that you were arrested for having made use of a wrong business name?

MR. HAYWARD: I object to the form of the question. There is nothing to show what he was ever arrested for

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making use of a wrong business name. It was for failure to file certificates in the County Clerk's office.

MR. MOSS: Whatever it was, I do not care about the form of it.

BY MR. MOSS:

Q What was the date of the arrest that you told Mr. Hayward about?

THE COURT: For failing to file in the County Clerk's office a certificate giving the names of the members of the firm, if any.

THE WITNESS: The 22nd of January, this year.

BY THE COURT:

Q The 22nd or the 27th? A The 22nd.

BY MR. MOSS:

Q Of January? A Of January.

Q Did you go to Mr. Saitta about that? A Yes, sir; he knows it.

Q I ask you, it is the jury that want to know -- had you any suspicion of Mr. Saitta at the time that you took that case to him? A What suspicion?

Q The suspicion you talked about yourself? A In my own mind I doubted about Mr. Saitta -- I thought there was something in it but I had no proof of it.

BY THE COURT:

Q What? A I had doubt in my own mind about Mr. Saitta.

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I thought there was something in this matter but I never had any proof of it.

Q In what matter? A In the matter of the lemons.

BY MR. MOSS:

Q You knew Fazio had not been paid, didn't you? A Yes, I knew that.

Q Why did you take your case to Mr. Saitta, when it affected your own liberty? A Because Saitta was my own lawyer, because Saitta had my confidence, as a lawyer, and Saitta knew all my business.

Q You had been dealing with Mr. Friedenburt at that time in the County of New York, hadn't you?

THE COURT: He is a Customs House broker and not a lawyer.

MR. MOSS: Customs House broker.

THE WITNESS: This is a Customs House broker.

BY MR. MOSS:

Q You have been receiving shipments where you had used Mr. Friedenburt as the Customs House broker, in your own name, in the County of New York, hadn't you? A Certainly.

Q You had Mr. Saitta give you some money with which to pay some of these bills, didn't you? A Yes, sir; he gave me a check for over \$200 to pay a bill of \$70. I brought that check over there and the balance I received another check, which check I brought back to Mr. Saitta.

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Q You knew you had done business in the County of New York under the name of S. E. Gatto & Company, didn't you? A Yes.

Q And you knew that you had not filed any certificate in New York County, didn't you? A I did not know there was such a law.

Q I knew, but you did it, didn't you? A Yes.

Q You did not file any certificate? A Yes.

Q And Mr. Saitta advised you to plead guilty in the Court of Special Sessions and throw yourself on the mercy of the Court, did he not?

THE COURT: Would the mere receipt of goods, from a foreign port through the New York Customs House be doing business in the County of New York within the meaning of that Statute, Mr. Moss?

MR. MOSS: I think it would in the way these bills are made out.

THE COURT: Are these imports?

MR. MOSS: Yes.

THE COURT: Would not every man in the United States, every firm in the United States practically be doing business in the City of New York under that rule? Do they not all get their goods from abroad through New York or a majority of them?

MR. MOSS: If they employ Customs House brokers in the City of New York, in the County of New York, to do work

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for them under the firm name in the County of New York, they are transacting business in the County of New York.

THE COURT: Well, that amazes me.

MR. MOSS: And I would so advise a client.

MR. HAYWARD: I would not.

THE COURT: If the client should ask me I should very candidly tell him: No. Suppose a man has got a bank account in New York and he is over in Brooklyn, is that transacting business in New York? I should not think so.

MR. MOSS: No, but if he employs somebody in New York under the name of S. E. Gatto & Company, as he did in this case, he is doing business in New York, he is employing a man in the County of New York under that name.

THE COURT: If a man comes and buys goods from a merchant in New York and has them shipped out west, he is not doing business in New York. He is doing business in the west.

BY MR. MOSS:

Q Didn't you do business with Andres in the County of New York? A Yes.

Q Didn't you sell macaroni in the County of New York?

THE INTERPRETER: The witness was not through.

THE WITNESS (continuing): With Andres, yes, I give him a bill for that tomato paste and he pounded that tomato paste out for me.

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BY MR. MOSS:

Q Didn't you sell macaroni to people in New York County?

A I did not sell any macaroni here in New York. I give this macaroni to Andres and he sold it to some friend of his.

Q In the County of New York? A I give him the invoice and he sold it.

Q Were not bills rendered in the County of New York, in the name of S. E. Gatto and Company? A No, sir.

Q Didn't you sell to Capuano? A I did not sell any macaroni to Capuano.

Q What did you sell? A Miccia sent these macaroni to Capuano, four boxes.

Q It was your transaction, was it not? A I told Miccia to send this macaroni to him and Miccia sent it and I made a bill for it.

Q In the name of S. E. Gatto & Company, didn't you? A Yes.

Q You told these things to Mr. Saitta, didn't you? A Mr. Saitta knows all about it, Capuano was inside the office, pretty near every day.

Q So that Mr. Saitta knew about these transactions with these people in New York County, didn't he? A This is no business. This is no business transaction. This is only family affair.

Q Mr. Saitta advised you to plead guilty and throw yourself upon the mercy of the Court, didn't he, in the Court of Special Sessions? A Yes, sir.

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Q And you did so, did you not? A Yes.

Q And while you were down in Court here, upon that matter, you were subpoenaed to appear before the Grand Jury in the Fazio matter, were you not, the very same day? A Yes, sir.

Q On the very same day you were seen by Assistant District Attorney Buell, who has been sitting here in Court here through this trial, were you not? A Yes.

Q Did Mr. Buell tell you whether or not he had anything to do with your being arrested on the name business? A No, he did not say nothing.

Q Did Mr. Buell begin to ask you about the Fazio transactions? A Yes, sir.

Q And did you go before the Grand Jury that day? A That day, no.

Q And were you subpoenaed to come down the next day? A Yes.

Q Were you again examined by Mr. Buell? A Yes, I was examined also by Mr. Embree.

Q And were you taken before the Grand Jury? A After.

Q How long after, how many days after? A About four or five days.

Q Was it not longer than that? A I believe not.

Q You were brought down day after day, were you not? A Yes.

Q You would remain down here in this building from morning until night, wouldn't you? A Until they were through interrogating me.

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Q I know, but you would come down in the morning and you would not go home until later in the afternoon, would you?

THE COURT: Do you mean once or twice or every day?

MR. MOSS: Day after day, right along.

THE WITNESS: Yes.

BY MR. MOSS:

Q Did either of these gentlemen connected with the District Attorney's office tell you that Mr. Saitta had abandoned you and had done wrong in pleading guilty? A No, sir; no one told me that.

Q Didn't they tell you that you would get a year in prison? And a fine of five hundred dollars? A No, sir; they did not say that, no.

Q Didn't they tell you that you would be prosecuted for Grand larceny for getting money from Fazio? A No, sir; they did not say that.

Q Didn't they ask you anything about your own guilt, in connection with Fazio?

THE COURT: Is there any question here of any guilt on the part of Gatto, the witness, in regard to the Fazio matter?

MR. MOSS: I should think there was, certainly.

THE COURT: So far as he is concerned, suppose he did receive all of the money from the sale of the lemons, would he be guilty of a crime if he did not pay Fazio? Would it

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not be an ordinary debtor and creditor?

MR. MOSS: That depends altogether upon the circumstance.

THE COURT: Let us assume that he got all the money in his hand. Could the District Attorney present his case to the Grand Jury? If he could, then could he not present to the Grand Jury any man that does not pay for the importation of lemons or any man that does not pay a debt? Is not that ordinary debtor and creditor?

MR. MOSS: I think it will be very unfortunate for us to get into a discussion of that question now. I would be led to say some things regarding Mr. Saitta's relations to this thing which ought to be held back until all the evidence is in.

THE COURT: You need not save my feelings.

MR. MOSS: I am not saving your feelings. You are not suppose to have any, any more than I have, but I have respect for the orderly procedure of the case, and I suggest we do not get into a discussion of that kind now.

THE COURT: The only question was, you said "your guilt" in questioning this witness. You see that assumed that he was criminally liable for his share, as you expressed it, in the lemon transaction.

MR. MOSS: I did not assume any such thing. I asked him if the District Attorney spoke to him about such a thing.

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(The last question by Mr. Moss is repeated by the Stenographer).

THE COURT: I thought you clearly assumed that he was guilty.

MR. MOSS: It does not assume any such thing but if I must be forced along that line, I would say this: That the assumption of the People's case seems to be that Gatto and Saitta were acting together. If so, and either one of them was guilty of larceny, they were both guilty of larceny. What I want to get at is not whether this man was guilty of larceny or not legally, but what was said to him in the District Attorney's office at that critical time, that is the purpose of my question. I will reframe my question.

BY MR. MOSS:

Q What, if anything, was said to you by any Assistant District Attorney concerning your ~~own~~ guilt in this Fazio transaction? A Didn't say nothing.

Q There had been a demand made upon you by Mr. Hess, had there not? A Yes.

Q Did not the District Attorney ask you what you had done yourself in that Fazio transaction? A Yes, Mr. Embree and Mr. Buell asked me and they wrote down everything I said to them.

Q Were you not told if you did not make a statement you would get the full limit? A They told me that I must tell the truth, certainly.

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Q Didn't they tell you that you would be punished if you did not?

THE COURT: You mean punished on this judgment in the Special Sessions?

MR. MOSS: Punished on the judgment in Special Sessions and punished on the lemon transaction also if he did not made a statement.

THE WITNESS: No, they did not say nothing.

BY MR. MOSS:

Q Didn't you tell Mr. Saitta that the District Attorney's office was pressing you to make a statement? A I have have said that.

Q And that they were threatening you? A No, sir; not threatening.

Q That they were demanding that you sign an affidavit and that you had refused to? A No, sir; I don't remember that.

Q Didn't you tell Mr. Saitta that you told the District Attorney you were ready and willing to give a bond to the man in Italy, if he would bring suit against you and you would guarantee to pay any judgment that he would get? A No, sir; I did not say nothing about that.

Q Didn't you tell Mr. Saitta that you had told the District Attorney that as Fazio had stopped the shipments and broken his contract with you, you were willing that he should sue you and you would guarantee to pay any judgment that he got on the

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stopped check? A No, sir; I did not say that.

Q Have you since you gave your testimony before the Grand Jury stated that whatever you said you were compelled to say?

A I did not say nothing.

Q Didn't you know there was a charge pending against you against yourself, on the name case in Special Sessions?

THE COURT: To which you afterwards pleaded guilty.

THE WITNESS: Yes, I know that.

BY MR. MOSS:

Q Do you know the District Attorney has charge of that case?

A No, sir.

Q And that case has never come up in Court since, has it?

A No, I know nothing until now.

Q Whether you are to be sent to prison or not, you do not know yet, do you? A No, sir; I know nothing.

Q That depends upon what the District Attorney does, don't you think so? A I don't know nothing about law.

Q You are leaving that in the hands of the District Attorney, are you not? A Why certainly, sure.

Q You know there might be a charge against you for swindling Fazio, don't you? A I don't know that I tried to swindle Fazio. Who said that?

Q There might be a charge against you, might there not?

THE COURT: That is a very difficult thing for him to say.

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MR. MOSS: Let us see what he does say.

THE WITNESS: I do not know.

BY MR. MOSS:

Q That is in the hands of the District Attorney too, is it not? A I believe, I don't know.

Q You are not worrying about it, are you? A No, why should I be worried?

Q I show you the back of Check No. 5079 and I ask you if you know what was written on the back of that check -- I want you to say if you know what is on the back. Take it in your hand.

A I don't know. Must be an endorsement.

BY THE COURT:

Q Look at the front of the check and the handwriting.

A I believe it was the signature of Capuano.

MR. MOSS: There is more than that on it.

THE COURT: Whose check is it?

MR. MOSS: The check of this witness, is it not?

THE WITNESS: I received it that way.

BY MR. MOSS:

Q You received it that way from the bank, it is a returned check, is it not? A This check did not come back from the bank. This check was given to me by Mr. Capuano. He is the one that returned it to me.

BY THE COURT:

Q It was never put through the bank, is that it?

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MR. MOSS: It was offered as one of his returned vouchers. It is signed S. E. Gatto & Company.

THE COURT: Has the bank got its paid mark stamped on it?

MR. MOSS: There has something been erased on the back of it and I do not know what it is.

THE COURT: He says that it was given to him by the man whose name is on the back of it. It evidently came back bad and the endorser has scratched his name off before giving it up.

MR. MOSS: It does not appear to have come back bad. These are two checks, which were offered in evidence this morning by the prosecution as two checks that came back from the bank.

THE COURT: Compare it with the other cancelled vouchers and see if there is any difference between that and a paid check.

MR. MOSS: November 7th seems to be a perfectly straight check, the other check it has not been stamped is a later check, so it could not have been a bad check taken up before the first -- I want to see what it is.-- It was offered as a paid voucher and it looks queer to me.

THE COURT: Hand it to him.

BY THE COURT:

Q He wants to know about that check with the endorsement.

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scratched off the back. Tell us all about it, what was it given for and why was the endorsement scratched off? A This check was given to Capuano in the office of Mr. Saitta and Capuano did not pass this check into the bank.

Q Did not pass the check through the bank? A Through the bank. He gave me the check back and he scratched off the endorsement. Scratched off the endorsement on the back before he gave it back to me.

Q What about the other check, is it for the same amount? A That is one of the checks that I made Saitta, that Saitta give to Capuano and Capuano would give the cash to him.

Q Capuano would give the cash to Saitta? A Yes.

MR. MOSS: I wish to offer in evidence this letter marked for identification, Defendant's Exhibit B, which the witness has already looked at.

(Defendant's Exhibit B for Identification, is received in evidence and so marked).

MR. MOSS: I will let the interpreter read it if he will.

The Interpreter reads Exhibit B as follows:

"Worthy Mr. Saitta"--

MR. MOSS: Give us the date.

THE INTERPRETER: (Reading) "Brooklyn, N. Y.,
4th of June, 1913."

MR. MOSS: That locates it close to that cable episode,

upon which I questioned him.

THE COURT: This was before the goods were ordered from Fazio.

MR. MOSS: Yes, at the time he was sending cables to Italy to numerous persons and my questions were as to whether there was not a dispute between him and Saitta about it.

THE COURT: Very well. It is signed by Gatto?

THE INTERPRETER: Yes.

THE COURT: A letter from Gatto to the defendant Saitta. Read it.

The interpreters read the Exhibit as follows:

"Worthy Mr. Saitta. I received this morning your esteemed letter of yesterday. You will wish me to be to your place but I am still in no condition to walk. You do not believe me, but I am three quarters dead with nefitico at the left side, deprived of any help, and I did ask my family in Massena, if you need me you could send Arturo" --

MR. MOSS: That is undoubtedly the clerk mentioned in Mr. Saitta's office.

THE COURT: Yes, Mr. Saitta's clerk.

THE INTERPRETER: (Continuing) "And soon that I could I will come to you. From Massena they hold me responsible for 10,000 cases of verdelli, but what can I do? Regards yours S. E. Gatto. "

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BY MR. MOSS:

Q On the day before that you received a letter from Mr. Saitta asking you to call at his office, didn't you? A Yes.

Q He wrote you that he asked you to come twice before and you failed? And it would be the last time, didn't he? A I have not got that letter.

THE COURT: Have you a copy of it?

MR. MOSS: Yes.

THE COURT: Show it to him and it may refresh his recollection.

(Letter is shown witness).

THE WITNESS: I never received this letter.

BY MR. MOSS:

Q Did you ever receive a letter in English from Mr. Saitta?

A I never received this letter.

Q Did you ever receive a letter in English from Mr. Saitta?

A Mr. Saitta knows well I did not read English and would not write me in English.

Q I did not ask you that, answer the question. A I believe that I did not receive them.

Q Was the meeting that Mr. Saitta was asking for with reference to these cables that you had been sending to Italy?

A I do not know.

Q Did you endeavor to get Mr. Saitta to handle some more lemons from Italy, from your brother in law, Zimbaro?

BY MR. MOSS:

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(Letter is shown witness).

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THE COURT: From the witness' brother in law?

MR. MOSS: Yes.

THE WITNESS: Yes.

BY MR. MOSS:

Q He had handled the 600 boxes?

THE COURT: That is Saitta?

MR. MOSS: Saitta that had handled the 600 boxes of
Zimbaro?

THE WITNESS: That is a year ago.

BY MR. MOSS:

Q And you wanted him to handle ten thousand more boxes from
the same party, didn't you? A It was already arranged with
Saitta that we were going to make a contract in order to have
these goods come in each ship.

Q Didn't he decline to do any more business for you with
Zimbaro because the first lot was bad and had resulted in a loss
of \$700 which you did not pay? A No, sir; it was we -- we did
not keep the contract.

Q That 600 boxes resulted in a loss of about \$700? A Yes,
sir; I believe, yes.

Q You did not pay it, did you? A No, I did not pay
nothing.

Q And Mr. Saitta claims that you owed it to him, didn't he?

A Yes.

Q Then you ask him in this letter to handle 10,000 more

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boxes, didn't you? A No, that was already arranged, that affair.

Q It was already on the way, wasn't it? A If we would open an account, yes, it would come.

Q But he did not do it? A No.

Q He did not handle it? A No.

Q He refused to do it, didn't he? A I did not speak to him any more.

Q Didn't he refuse, upon the ground that the lemons from that other man had gone bad and there was a loss on his transaction which you had not paid? A Maybe it was this way, yes.

BY THE COURT:

Q Did he ever render you a bill for the loss on the 600 boxes of lemons? A No, sir.

Q Did he ever tell you that you owed him money on a loss on that 600 boxes? A Yes, sir; he said that.

Q Do you know whether it was correct or not? A I do not know if it was right or not, because I did not see the account.

Q Well, tell us about that 600 boxes, how did the 600 boxes, or what were the relations between you and Saitta in regard to the 600 boxes if any? A I received these 600 cases and give these 600 cases to Mr. Saitta, and Mr. Saitta then sold these and my brother in law then would open an account in the bank and Mr. Saitta then opened an account in the name of Philip S. Saitta in the bank and the money was sent and the

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lemons came.

BY THE COURT:

Q Where is Zimbaro? A In Massena.

Q Did Zimbaro send the 600 boxes of lemons?

MR. MOSS: Didn't he say Mr. Saitta opened the credit?

THE INTERPRETER: Opened account in a bank.

MR. MOSS: Not account, didn't he say open a credit in a bank?

THE WITNESS: (Through the interpreter) The credit in the bank, yes.

MR. MOSS: Did he say Zimbaro drew on the credit.

THE INTERPRETER: No, he did not say that.

(The question is put through the interpreter).

THE WITNESS: Yes, he took the money from the bank and the draft with the bill of lading --

MR. MOSS: I think it was the ordinary transaction, where Saitta opened the credit and then the shipper draws on the credit and of course the money has to come out of Saitta's account, because he has opened the credit.

BY THE COURT:

Q Where did you come in that 600 box transaction -- did you sell the 600 boxes to Saitta? A I sold to Saitta as broker and my brother in law would pay me the commission.

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BY MR. MOSS:

Q Was not the fact this, that you owed Saitta money that he loaned you in your distress and you brought in this Zimbaro account so that he might make some money on it and pay himself for what he had loaned you? A Saitta opened the credit in a bank in the name of Philip S. Saitta, because the market at that time was good. Certainly if Saitta would make money, he would not give me none of that money.

Q You were poor and in distress? A Certainly I am not rich.

Q You borrowed \$5., that was the first time, wasn't it? A Yes

Q And then you borrowed \$10. more? A Yes.

Q And by and by you owed him quite a lot of money, didn't you? A Yes.

Q And you got some of that money on the plea that your family was in distress and as a brother Italian he helped you, is not that so -- then you went to him later and you said you had a brother-in-law in Italy who was going to send over some lemons and he could take that transaction, make some money and pay himself out of it, didn't you do that? A I told him that the market was good and the fruit was good, and he accepted to buy.

Q Instead of that it turned out the market was bad and the fruit was not good, and there was a loss, is not that so? A Certainly, but that was not my fault.

Q But Saitta had to pay the loss, didn't he? A Yes.

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Q And then he was out \$700. more besides what he had loaned you, wasn't he? A Well, yes.

Q That left him about \$700. out from his acquaintance with you? A Yes, sir, as he claimed, yes.

Q You do not dispute it, do you?

THE COURT: Is it a fact?

THE WITNESS: Yes, it is a fact, he has the document.

BY MR. MOSS:

Q Later on you went to him with these Fazio invoices and you said to him "Here is a chance, Mr. Saitta, take these and pay yourself what is due you, didn't you? A I told him "Pay yourself, yes, from the commission that would come to me, not from the bill of lading, because that was not my goods.

Q But on the strength of it you borrowed some more money, didn't you? Three different sums? A Whatever shows up there, -- that is, he opened the account in the bank and the payment of the draft.

Q Yet you drew from Saitta on the strength of these Fazio papers before you opened any bank account at all, over \$600. by checks? A No, sir.

Q Didn't you give to him papers endorsed to you by Fazio absolutely?

THE COURT: You had better make him understand the difference between delivering to him and --

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

Q Didn't you deliver to Mr. Saitta bills of lading endorsed, when you delivered them by Fazio, absolutely to you?

THE COURT: What do you mean by absolutely?

MR. MOSS: Absolute endorsements, positive endorsements-- you have seen them yourself?

THE COURT: Yes.

MR. MOSS: I will change the question.

THE COURT: The word "absolutely" is indefinite.

MR. MOSS: I will change the form.

BY MR. MOSS:

Q Didn't you deliver to Mr. Saitta the bills of sale, or bills of lading which are in evidence here, with Mr. Fazio's endorsement on them as they appear here now on these papers? A Yes, sir, I give it to him.

Q Didn't you tell him that they were yours, and that he should pay himself out of them? A No, I said to him that this bill of lading was sent to me on consignment, as you can see it or as the result of a paper that comes from the American Consul. Those goods were in consignment and I told him that he could retain half of my commission or all of the commission if he wanted to, in order to pay my indebtedness to him.

BY THE COURT:

Q That commission was 5%, was it not? A Yes, sir, 5%.

Q You had no ownership in the lemons yourself, did you? A No.

Q The lemons were owned by Fazio and you were to sell them.

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as a broker at 5% commission, is that it? A Yes, sir.

Q Now let us just a moment get back to the lemons, that 600 boxes of lemon from Zimbaro, were they sent over from Sicily on consignment, the 600 boxes of lemons sent by Zimbaro, your brother-in-law? A No, they were sold. Mr. Saitta bought them.

Q Bought them from whom? A From my brother-in-law through me.

Q Did you get any commission on that? A My brother-in-law from Messina is supposed to pay that commission.

Q Did he pay you the commission, did Zimbaro pay you a commission? A No, between brother-in-laws we did not have no account and I was waiting that we would do more business with him.

Q Well now, you have just testified that that was a sale by you as a broker, was it, on commission? A Yes.

Q Was the money handled by you or was the money paid direct to Zimbaro by Saitta? A Saitta opened a credit up at the Irving National Bank and my brother-in-law sent a draft to that bank and it was paid this way.

Q Did you ever see the lemons contained in the 600 boxes that your brother-in-law, Zimbaro, sent over? A Yes, I saw them.

Q Well, could you tell what the condition was, what the condition of the lemons was when they arrived? A They were not very good, there were some rotten ones.

BY MR. MOSS:

Q Did you attend the sale of these 600 boxes at the auction

rooms? A No, sir; I was not there.

THE COURT: What I was trying to bring out from the facts was, to determine whether or not there was any relation of debtor and creditor between Saitta and Gatto in regard to this 600 boxes, or was it the relation of debtor and creditor, or the transactions, between Zimbaro on the one hand, the seller, through a broker, this Gatto here -- that is the only thing I was asking him.

BY MR. MOSS:

Q Did Mr. Saitta have anything to do with Zimbaro at all?

A I sent a telegram and he bought the cases.

Q I did not ask you that, did Mr. Saitta come in contact with Mr. Zimbaro at all? A No, sir.

THE COURT: He said that he opened an account and that Zimbaro drew directly upon Saitta and got his pay for the lemons from Saitta direct. This witness swears he never handled any of the money and that the shipment was sent by Zimbaro directly over here. If that was the case -- just to discuss this part of it -- if such was the case, would Saitta be justified in charging that loss to Gatto?

MR. MOSS: If it were the arrangement between him and Gatto --

THE COURT: If Gatto was a mere broker in the transaction, not a factor, not in possession of the goods, and he says there is a man over in Italy, my brother in law, who

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has 600 cases of lemons, will you take them, and Saitta says yes, I will take them on a five per cent. basis, -- and the transaction occurred and the money was passed directly between Saitta and Zimbaro, would that justify Saitta, in case of a total loss, of charging it up to Gatto?

MR. MOSS: Of course, in a civil action, the issues would be entirely different from a criminal action. In a criminal action the main question is the question of intent. Whatever may have been the from of the transaction that was adopted for the mutual convenience of these two men, if it was in fact such a transaction as indicated by his answers to me, namely that because he owed Saitta money, he brought this matter to him, in order that he might recoup himself and instead of recouping, it was a loss, it left, in morals between these two men, an obligation against Gatto in favor of Saitta, because Saitta had taken up Gatto's burden which Gatto could not carry, because he had judgments against him and was in all kinds of trouble.

THE COURT: On the other hand, would that justify Saitta in taking \$1800., the proceeds of Fazio's property, and applying them to a debt that was due to him, we will say from Gatto or whoever the debtor might have been.

MR. MOSS: Again that is a question.

THE COURT: You say that amounted to \$700 or \$900 and that Saitta has deducted that \$700 from the proceeds of the

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Fazio sale. According to the evidence as it now stands, of course the Jury would be justified in finding according to this evidence as it now stands, that Fazio really owned these lemons we are talking about, the Fazio lemons, and was entitled to all the net proceeds over and above the five per cent brokerage and the actual expenses of the sale, and Fazio's money could not be taken to satisfy a debt due to Saitta by Zimbaro or Gatto.

MR. MOSS: As so much has been said, again I repeat, we are trying a civil action. If Mr. Fazio were suing Mr. Saitta, a number of questions might arise, and the question of money judgment would be the thing in issue, but the question now is a question of criminal intent; criminal intent is the thing that must be looked for, no matter what the form of the transaction. If Mr. Saitta were not guilty of any criminal intent, no jury can find him guilty of a crime. Now then, if it be, as indicated by this man's affidavit, if it be that when he brought that bill of lading to Mr. Saitta, he gave Mr. Saitta to understand that that was his bill of lading, that he had the right to use it, and that it was passed over to Saitta for the primary purpose of paying this indebtedness that had grown up, that offer by this witness was powerfully backed up by the endorsement of Fazio, which was an absolute positive endorsement of these papers to Gatto.

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THE COURT: I thought the evidence was that Fazio's letter distinctly speaks of it as a consignment, and hopes they will get a good price for them.

MR. MOSS: Fazio's letter was not written to Saitta but to Gatto.

THE COURT: This witness testifies --

MR. MOSS: That is what he said but we have not been heard.

MR. HAYWARD: I do not want to debate this case now, but as long as this much has come out, I would like to say a few words on it; that is, that we contend that the fact that in the Zimbaro transaction, this defendant put up the money in advance, and in the Fazio transaction nothing of the kind occurred, together with all the papers and documents which we expect to offer before we get through, will show the difference between the two transactions; that the Zimbaro transaction was a sale to Saitta; that the second transaction, the Fazio transaction was not a sale, and we contend that for that reason this witness on the stand did not owe Saitta anything that Saitta may have lost on the Zimbaro transaction, and we also contend that even if he did owe him, if the defendant on trial knew those lemons were Fazio's lemons when they came here, and knew that no money had been put up in that transaction, as he had done in the prior transactions, he knew Fazio was entitled to

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that money, then he stole the \$1800, no matter whether he claimed this man owed him \$500 or \$800, and as matter of fact it does not make any difference whether this witness did owe him that or not. That is the theory of the people, as distinguished from what Mr. Moss says his theory is.

MR. MOSS: I will have to meet that when I come to sum up, but I take it that if Mr. Fazio thinks that anything has been done which is contrary to business law, there is a remedy by suit, and a responsible man to be sued and no doubt a suit against Mr. Saitta, if it turned out in that suit that under business law money was due to Fazio, judgment would be obtained and that judgment would be paid.

Good business men sometimes make mistakes and have to pay for them in the civil courts, but the question here is a larger one, a question of human liberty, a question of criminality, and we have to get at the intent of this thing, and, thanking Mr. Hayward for his frank statement of the State's position which it will maintain at the end of the case, my position will be that Mr. Saitta's intent has been a perfectly honest one. If he made a mistake in business at all, that will be adjudicated in some other tribunal, and he will bond any claim that may be made and will pay any claim that may be established by a petit jury in a civil court. I am thankful to Mr. Hayward for having said so much, for it gives me opportunity to say at this point that the criminality of

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of this thing is the thing that is denied, and the honor of the defendant is that which I am maintaining.

THE COURT: I am glad that I brought it out. It might simplify the case, if we could only agree on the facts, and then it resolves itself into a question of law largely, except as to the intent. That is a question of fact, of course.

MR. MOSS: If I thought the discussion we have had would seriously jeopardize the defendant's position, I would take an exception to it, but I do not, and I am glad we have had it.

MR. HAYWARD: I might want to have some redirect of Mr. Gatto, but I have a witness here whom I would like to put on the stand who is a juror in Part Three.

(The further examination of this witness is suspended for the present).

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S A M U E L J. H E S S, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:
(Residence 316 West 97th street).

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your business? A Mercantile collections.

BY THE COURT:

Q Give us the name of the firm and all? A The firm name is Browse & Hess.

BY MR. HAYWARD: _

Q You are a member of the jury panel in Part III this month?

A Yes.

Q That is the reason I called you out of order, because you were excused for the day. I will ask you to state if you are acquainted with a man by the name of Nicchia? A Yes, sir.

Q Does he office near you? A On the same floor.

Q Where is your office? A 256 Broadway.

Q Are you acquainted with the defendant, Philip S. Saitta?

A I am, yes.

Q How long have you known him? A Possibly a year.

Q A speaking acquaintance with him, know him when you see him? A Yes.

Q He knows you? A Yes.

Q I hand you people's Exhibit 1 for Identification, being a check for \$2,000. on the Corn Exchange Bank, and I ask you if you ever saw that exhibit before? A I have seen this check before.

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Q When? A The latter part of August, last year.

Q Tell us how you came to see it, and what you did with it?

A This check was brought into my office by Mr. Nicchia who asked me to take it up and try to collect it. At the same time he gave me the address of Gatto, which I believe was 710 Henry Street, Brooklyn.

MR. MOSS: I object to conversations between this witness and Gatto.

THE WITNESS: I took the check from Nicchia intending to send my city collector to Brooklyn, but he being unable to go that particular night, I went myself, and when I arrived at the premises of 710 Henry Street, Mr. Gatto was not there, but through the kindness of an Italian living in the premises he took me to the apartment occupied by Mr. Gatto and introduced a lady as his wife. I told Mrs. Gatto that I had an item of \$2,000 to collect --

MR. MOSS: I object to that.

THE COURT: Strike it out.

BY MR. HAYWARD:

Q Do not say what you said to her or what she said to you, but what you did after having a talk there with her? A I had a talk there and left my card.

Q Left what? A My business card, the intent of which was to have Gatto call at my office. He did not call, and the following night I went over again. Now, there was a conversation there--

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Q Mr. Moss does not want you to state what the conversation was? A I went over a second time and Mr. Gatto was not there. I came back to my office and the following morning I told Mr. Nicchia that Gatto was not there.

Q Then some suggestion was made to you by Mr. Nicchia?

A No, sir, prior to that there was a suggestion made to me --

MR. MOSS: Do not say what it was.

THE WITNESS: You had better lead me or I will have to give a conversation.
some time

Q Did you find out during what you have been telling us about that Saitta, or, were you informed at some time that Saitta was Gatto's lawyer? A Yes.

Q What did you do when you found that out? A That information I conveyed to Mr. Nicchia. On the following morning after my second visit to Brooklyn. He said "you know Mr. Saitta" --

MR. MOSS: Never mind that.

THE WITNESS: I then went to see Mr. Saitta.

BY MR. HAYWARD:

Q Tell what happened there when you took the check to Saitta? A I showed Mr. Saitta the check and he said "Mr. Hess, I know all about it." He said "Mr. Gatto owed me a lot of money and I took the goods." I said "How about paying it." He said "Gatto has not got a dollar." I took the check back to Mr. Nicchia, and that was all.

BY THE COURT:

Q Did you ask Saitta to go into the details -- you can say

anything he told you? A I knew nothing about the incident to ask him any questions. I did not know anything except it was an N.G. check.

BY MR. HAYWARD:

Q You mean by an N. G. check, a no good check? A A stopped payment check.

CROSS-EXAMINATION BY MR. NOSS:

Q What is your occupation? A Mercantile collections.

Q Are you connected with Mr. Nicchia? A No, sir.

Q Do you do business frequently with him? A We do have matters together.

Q You have interchanges? A Yes, sir.

Q You were calling on a lawyer and knew it? A Yes.

Q Do you say that this lawyer said to you "I took the goods, Gatto has not got a dollar"? A He said "I took the goods. Gatto owes me a lot of money." Then I said "Well, will Gatto pay the bill, pay the check" and he said "Gatto has not got a dollar."

Q You say this lawyer used those words "I took the goods"?

A Yes, sir, that is to the best of my recollection, yes.

Q The best of your recollection, you said it very positively? A I did, yes, that was what the conversation was to my mind.

Q To your mind? A I recall nothing else and no other words.

Q "To the best of my recollection" and "to my mind" -- can you state positively, accurately, completely -- A And honestly those are the words.

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Q I did not use the word honestly? A I will say that.

Q I assume that any witness who swears is going to talk honestly. I did not touch the question of honesty. I touched the question of an operation of your mind, for minds differ -- can you swear positively, accurately, that those were the words Saitta used "I took the goods"? A That Saitta used?

Q Yes, Saitta? A Yes, sir.

Q It is not a question in your mind or best recollection, but it is positive? A He used that entire sentence.

Q Did he use those words "I took the goods"? A In the sentence he did, yes.

BY THE COURT:

Q Did he say Gatto owed him a lot of money? A Yes.

Q He told you that -- did you ask him about Gatto's ability to pay the check? A I asked him if Gatto would pay it and he said "Gatto has not got a dollar."

BY MR. MOSS:

Q Have you any ill feeling against Mr. Saitta? A No.

Q Did Saitta ever accuse you of a crime? A No.

Q Did you ever hear that he ever accused you of a crime? A No.

Q Is this the first time you ever knew it? A I do not know it now that he accused me of a crime.

Q Did he ever accuse you of anything that was not right?

A Not to my knowledge, no, sir.

Q Is this the first time you have ever heard of any insinua-

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tion by Mr. Saitta against any act of yours? A Absolutely, yes.

Q Did you ever know of his saying anything to Mr. Nicchia about a joint action of yours and Nicchia's which was not right or which he said was not right? A No, sir.

Q Were you a trustee in bankruptcy in the case of Frank Miletello, a bankrupt? A Yes.

Q Was Mr. Nicchia your counsel in that matter? A Yes.

Q Did Miletello desire to make a compromise with his creditors and express that desire at some time? A He did.

Q And did you or did Nicchia, or did you and Nicchia together ask for \$1,000. from Mr. Miletello, in order that your consent might be had to that operation? A I do not understand the question.

Q (The question is repeated)? A The settlement made with the creditors was \$1,000. cash and three notes.

Q I speak of a thousand dollars additional to that? A No, sir.

BY THE COURT:

Q The substance of it is, did you ever demand of Miletello a thousand dollars for yourself or for yourself and Nicchia as a consideration for you, the trustee in bankruptcy, agreeing to a settlement with the creditors? A No.

Q Any amount? A No, sir.

BY MR. MOSS:

Q Was a thousand dollars in bills paid -- \$900. in bills paid on the 11th day of June by Mr. Miletello to you or to Nic-

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chia or both of you? A No.

Q In bills? A No, sir.

Q In the corridor or in front of the building 2 Rector Street? A No.

Q Was not \$900. in bills paid by Miletello to you or to Nicchia or to you together on the 11th day of last June? A No, sir, never to me or to Nicchia with me, no, sir.

Q Didn't you demand from Miletello another hundred dollars?
A No, sir.

Q Did you ever go or did Nicchia ever go, with your knowledge to Saitta and demand the other one hundred dollars? A I don't know that he ever demanded a dollar from Mr. Saitta.

Q Did Mr. Saitta ever reproach you or Nicchia, to your knowledge, or you two together, for having taken that money and demanded that money? A No, sir.

Q You say he never to your face denounced that as an illegal action? A No.

Q Nothing of that kind ever occurred in the past? A No.

Q Did he ever say to you in the presence of his clerk, Mr. Canfora, not to come in his office, not to come to his office any more for that one hundred dollars, he would have nothing to do with it? A No, never.

BY THE COURT:

Q When you went to present that \$2,000. check to Mr. Saitta, did he make any objection to you coming to his office? A No, sir,

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he was very pleasant.

Q I show you something on that check, it is signed Gatto & Company, you understand? A Yes.

Q You say he told you that gatto had not a dollar, did you ask him anything about the "and company?" A I did not. I knew nothing about it except it was given to me for collection.

BY MR. MOSS:

Q Now, this man Miletello you knew very well, you have known him? A Yes, I was his trustee in bankruptcy.

Q And Mr. Saitta represented him after he became a bankrupt? A While he was in the bankruptcy court Mr. Saitta --

Q He came into the matter? A He came into the matter while he was in the bankruptcy court.

Q Do you say that Mr. Miletello himself did not hand you that money or to any one in your company, A No, sir, he did not.

Q Did you have anything to do with the arrest of Gatto in connection with his failure to file a certificate in this county? A I knew nothing about this entire matter until I got a subpoena from the Grand Jury.

Q I did not ask you that -- did you ever talk with Mr. Nicchia so that you knew from Mr. Nicchia that there was a proceeding against Gatto in that respect? A No, not until the District Attorney subpoenaed me before the Grand Jury. Then I asked Nicchia what it was about.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until to-morrow morning, March 25th, 1914, at 10:30.

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New York, March 25th, 1914,

Trial resumed.

SALVATORE E. GATTO resumes the stand and testifies through the official interpreter, Mr. Villamena:

(A paper is now marked People's Exhibit 51A for Identification and the translation marked People's Exhibit 51-B.)

BY MR. HAYWARD:

Q Mr. Moss asked you yesterday about a man by the name of Cavalaro, do you remember that man that stood up in the court room? A Yes, sir.

Q Did you ever see that man in Mr. Saitta's office? A Yes.

Q About when was it? A The month of August.

Q Who got there first, you or Cavalaro? A I was there.

Q Tell the jury exactly what happened on that occasion, what was said, so long as it was said in the presence of the defendant here?

MR. MOSS: I object as incompetent, irrelevant and immaterial.

THE COURT: Was that the pipe incident?

MR. HAYWARD: No, the same man, but another matter, in the office of Mr. Saitta, and I offer it for the purpose of showing the statements of the defendant.

THE COURT: Would it be relevant?

MR. MOSS: Entirely disconnected from the incident I referred to?

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MR. HAYWARD: Entirely disconnected from the incident you brought out.

THE COURT: Would it be relevant to the issue in this case as to whether or not the defendant was guilty of the larceny of moneys?

MR. HAYWARD: Yes, I think it is. It will show a demand by a person acting on behalf of Fazio upon the defendant, and his reply at that time.

THE COURT: If that is the case, it seems to me it might be relevant. Proceed.

A I was in Mr. Saitta's room and Mr. Saitta told me "You must say everything that I say. You must say yes." Then Mr. Saitta called Mr. Cavalaro and Cavalaro came in. Mr. Cavalaro then asked an explanation about the Fazio money. Mr. Saitta then said to Cavalaro "Gatto has got no money, he has not got a penny, but he is an honest man and he is a good man." Then Mr. Saitta said "Mr. Gatto owes me about \$1400. and in this transaction I act as a banker. I received the policy -- the bill of lading -- as a banker.

BY MR. HAYWARD:

Q What did Mr. Cavalaro say? A Then Mr. Cavalaro said to Mr. Saitta "You could not hold Fazio's money because Gatto owes you money."

Q What did Mr. Saitta say to that? A Mr. Saitta wanted to show Cavalaro the books, and Cavalaro says "I don't need to see the books."

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Q What was said next by either of them? A Cavalaro told me after that I was --

Objected to.

Q Was this in the presence of the defendant? A Yes, sir, in the presence of Mr. Saitta. Cavalaro said to me after that I was a stupid.

Q What else was said between Cavalaro and Saitta? A Then Mr. Saitta says to Cavalaro that he was willing to pay a check of five or six hundred dollars -- six or seven hundred dollars and Cavalaro says to him, "Well, if this check is certified I will telegraph to the house in Catania for adjusting the matter."

Q What was done after that, anything? A Nothing else.

Q Where were you sitting when Cavalaro came in? A I was in the anteroom.

Q Where did this talk take place? A In the room of Mr. Saitta.

Q I understood you to say that Saitta called Cavalaro into where you were, or did he call you in where Cavalaro was? A Mr. Saitta called Cavalaro where I was waiting in the room.

Q I hand you a letter marked for Identification People's Exhibit 51-A, state if you know whose handwriting that is in, and if you ever saw it before? A That is Mr. Saitta's handwriting.

Q Who gave it to you? A Mr. Saitta.

(The paper is handed to Mr. Moss by Mr. Hayward).

MR. MOSS: I concede that the translation is correct,

51-B.

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BY MR. HAYWARD:

Q Calling your attention to the address B. Calandra, 184 Reade street, on the reverse side of this exhibit, who wrote that on there? A Mr. Saitta.

Q Did you say Mr. Saitta gave you this? A Yes.

Q What did you do with it? A I went to Mr. Calandra and found Mr. Calandra at Pier 20, at an auction room, they were selling the lemons -- to ask for the money that is called for in that latter.

MR. HAYWARD: I offer the letter People's Exhibit 51-A, and the translation, 51-B, in evidence.

MR. MOSS: I have no objection.

(Exhibit 51-A and 51-B, for Identification, are received in evidence).

MR. MOSS: That has nothing to do with the Cavalaro matter.

MR. HAYWARD: No. This is a letter addressed to B. Calandra, 184 Reade Street. It is signed Philip S. Saitta and it says

"Dear Biagio, I beg you to deliver to Mr. Gatto all the money that you have and a check for the balance to comply with the three hundred dollars."

THE COURT: What does that mean, to comply with?

MR. MOSS: I consent that the translation be amended by putting the word "complete" in place of the word "comply."

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THE COURT: You complete the \$300., really meaning to pay the balance of the \$300.?

MR. MOSS: I think that is what it means.

BY MR. HAYWARD:

Q What happened when you took this letter to B. Calandra?

A Calandra wrote something on the back of that letter and told me to go to his bookkeeper. I went to his bookkeeper and got the money and check, which I brought to Mr. Saitta.

THE COURT: What is on the back of it?

MR. HAYWARD: Please exchange check --

MR. MOSS: That is not in evidence.

MR. HAYWARD: I offer it in evidence at this time.

MR. MOSS: All right, let it come in.

(Mr. Hayward reads as follows: "Please exchange check make to the order of Saitta Signed B. Calandra).)

BY THE COURT:

Q Did the letter 51-A from Saitta to Calandra contain a check? A No, sir.

BY MR. HAYWARD:

Q Who was this writing on the back signed by Calandra, who was that directed to? A Mr. Calandra's bookkeeper.

Q It was an order from Calandra to his bookkeeper to make out this check, was it? A Yes, sir.

MR. MOSS: Will you give me the date of that?

MR. HAYWARD: This document itself is not dated. I am

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going to get them in as near as he can tell. There is no date on it at all.

BY MR. HAYWARD:

Q As near as you can tell, when was this?

BY THE COURT:

Q When was this visit to Canaldra as near as you possibly can tell? A About the month of September or October. I could not exactly state the date.

BY MR. HAYWARD:

Q Well, what lemons do you mean were being sold about this time -- didn't you say some lemons were being sold about this time -- what lemons did you mean? A He was selling some goods from California.

Q You think it was in the month of September or October? A Yes

(Certain papers are now marked for identification People's Exhibit 52-A, 52-B and 52-C, and the telegram is marked for identification People's Exhibit 53).

BY MR. HAYWARD:

Q (Handing you People's Exhibit for Identification 53,) I ask you to state if that telegram was received by you on the date it purports to bear? A Yes, sir, in the evening.

Q Handing you People's Exhibit 52-B, I will ask you to state whose check that is? A Mr. Saitta's.

Q And state how you received it? A I received that check to cash it.

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Q What did you do with it? A I went to Cali and I exchanged this check and brought him the money.

Q Brought whom the money? A Mr. Saitta.

Q At or about the time it purports to bear date, December 11th, 1913? A Exactly.

MR. HAYWARD: I offer this check and telegram in evidence, check payable to S. Gatto, payment stopped across the front of it, signed P. S. Saitta on the Chatham & Phoenix National Bank, endorsed S. E. Gatto, and I offer the telegram which it is conceded by the defendant was sent upon the date it purports to bear and filed in the office of the Telegraph Company, bearing his signature, and it is admitted that the lead pencil translation appearing on the bottom of said Exhibit is a correct translation.

(People's Exhibit 53 for Identification is received in evidence without objection, and so marked.)

(People's Exhibit 52-A, 52-B and 52-C are also received in evidence without objection, and marked in evidence).

MR. HAYWARD: I will read the telegram, which is dated December 17, 1913 -- the translation reads as follows:

"Your way of acting incredible. Check Cali presented today. Do you want to ruin me. Will await your call at nine this evening. Signed Saitta."

MR. HAYWARD: I now offer in evidence a statement prepared by Mr. Saitta, the defendant, and signed by him and

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furnished to the Fruitman's Guide, to which I understand there is no objection -- the typewritten portion and the signature only.

Received in evidence and marked People's Exhibit 54.

CROSS EXAMINATION BY MR. MOSS:

Q I am looking at this check signed Saitta for \$127.50. What did Mr. Saitta give you that check for, Exhibit 52-C? A To have it cashed and bring back the money to him.

Q You were to bring back the \$127.50 to Mr. Saitta, were you not? A Yes, sir, exactly.

Q Did you bring it to him? A Certainly, sure.

Q Didn't you keep that \$127.50 yourself? A No, sir.

Q Did not Mr. Saitta on the 16th day of December, give to Mr. Cali another check for \$127.50 to make good this check? A No, sir, he did not give him on the 16th. He must have given it to him after the 16th.

Q Why did he have to give Mr. Cali a check for \$127.50 after the 16th? A To cover this check here that you have before you, because on that check he stopped payment and he did that not to look bad with the bank.

Q Didn't you keep the money, didn't you have that \$127.50 and didn't you put it into your pocket and keep it? A No, sir.

Q Didn't you stay away from Mr. Saitta after that? A No, sir, he telegraphed me because he wants me to change some other check and I did not want to hear any more about it.

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Q Listento this telegram from Saitta to you: "Your way of acting incredible. Check Cali presentedto-day. Do you want to ruin me. Will await your call at nine this evening." What was that about? A At that time Mr. Saitta did not have enough money in the bank and he wants me to exchange more checks for him in order to cover that check and I did not want to have anything to do with it any more.

Q When did you get to Mr. Saitta's office? A The day after, I believe.

Q Did he ask you why you kept the money? A I did not keep that money. We did not speak about that money.

Q Did he ask you why you kept the money? A No, sir.

Q Did he send for an officer to have you arrested for having kept the money -- I will change the form of the question -- did he tell Arthur in your presence, to go and get an officer? A No, sir, he could say whatever he feels like.

Q Did you, after that interview with Mr. Saitta about that money, go out and pawn your watch and chain and bring him -- I will re-frame that question -- did you at that time, and after that interview, go to a pawnbroker named Stephen Hagan, 29 Woodhouse Street, Brooklyn, and pawn your watch and chain and bring Mr. Saitta \$120. to try to make good that transaction? A No, that happened on the 19th, two days after.

Q Two days afterwards did you pawn your watch and chain, two days after? A Yes, I pawned my watch and chain because Mr.

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Saitta told me that he needed some money. I pawned that watch and chain and I did not give him the money to him, but I went with his son to the bank and deposited that money in the bank with some of his money.

Q You deposited the money that you got upon pawning your watch and chain, after an interview with Mr. Saitta, didn't you?

A Yes.

Q And it was after he threatened to send for an officer, was it not, that you went and pawned your watch? A No, sir, he never threatened me.

Q He struck you, did he not? A It was not that day. It was the day before when he asked me to exchange more checks for him and I refused to do it. It was then that he struck me and I started to cry after it, thinking after so many good things I did for him, he should strike me.

Q After he struck you you went and pawned your watch and brought him \$120.? A I don't remember if it was on that day. I don't remember when it was. I know I had enough.

Q If he owed you a lot of money on the Fazio account, why did you go and pawn your watch and chain and bring him \$120. after he struck you? A He had me entirely under his control and he could do for me anything that he wants.

BY THE COURT:

Q Do with me, you mean? A Do with me anything he wants.

Q What do you mean by that, that he had you under his con-

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trol -- do you object to that question, Mr. Moss?

MR. MOSS: No.

BY THE COURT:

Q What do you mean by that, that he had you under control?

A He had me in his power, I mean to say that he would suggest to me and I would do anything that he wants with me.

Q I was asking you about some wine yesterday and you said you had not sold any, did you sell thirty-three cases of wine to Wirebello for \$200.? A I did not sell nothing.

Q Did you buy two barrels of wine from N. Santoro of Thompson Street? A I bought some grape juice, not wine.

Q At thirty-seven cents a gallon? A Yes, sir, I believe.

Q Will you kindly look at that bill and see if it refreshes your recollection as to whether it was grape juice or fermented grape juice? A Yes, sir, that was grape juice. I did not want to take it because it was no good. It looked like water in color.

Q You did not pay for it, did you? A Certainly I refused to accept it.

Q Didn't you have it in your premises? A Yes, sir, but he did not come; he did not want to take it back.

Q He never took it back, did he? A No, sir.

Q You said you were earning \$40. to \$50. a week, will you name a single man to whom you sold any goods while you were making \$40. or \$50. a week? A I don't remember it now.

Q How much goods would you have to sell to make \$40. or \$50.

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a week profit? A Twenty gallons of oil.

Q At how much a gallon is oil? A Two dollars and a half, two sixty, three dollars a gallon.

Q You did not understand my question, how much stuff in value would you have to sell in order to make a profit of \$40. or \$50.? A I would sell \$160. or \$190. of oil.

Q You cannot tell the name of any one to whom you sold it, can you? A They would come in my house and get the merchandise.

Q You kept no store, did you? A No, sir, I was selling in my house.

Q You kept no merchandise in your house, did you? A Yes, I had in my house oil, macaroni and olives.

Q Didn't you say to us yesterday that you did not keep any stock in your house? A I said yesterday that I had some merchandise, merchandise that I was selling.

Q Did you have any sign out? A No, sir.

MR. HAYWARD: If your Honor please, it is admitted that Exhibit 54 in evidence was prepared and signed by the defendant and turned over to the Fruitman's Guide about February 27th, 1914. I will read it to the jury.

THE COURT: This was a statement made by the defendant and published in what?

MR. HAYWARD: Furnished to the Fruitman's Guide, a newspaper published in this city -- at his request.

THE COURT: In his own handwriting?

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MR. HAYWARD: It is typewritten, but signed by him.

MR. MOSS: It is obviously not the whole story, but what it is we concede we wrote.

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MR. HAYWARD reads People's Exhibit 54 in evidence to the jury as follows:

"FRUITMAN'S GUIDE: Out of charity I assisted one Salvatore E. Gatto from time to time, loaning him different sums of money, until he owed me over Two Hundred Dollars. Sometime during the early spring, Mr. Gatto induced me, owing to the condition of the lemon market, to open a letter of credit in favor of a relative of his in Messina, which I did, on six hundred boxes of lemons, through the Irving National Exchange Bank. After the lemons arrived in New York the same were sold through Brown & Seccomb at a loss of Seven hundred and three (\$703) Dollars. Owing to this loss I had some words with Mr. Gatto, who was still endeavoring to obtain shipments from the other side, and told him that I did not care to have any further business with him in any way, shape or form.

"Sometime in the early part of July he came to my house bringing me a bill of lading of some shipments of lemons and asked me to make a loan on them and that if I would do so I should keep what money he owed me and also stated that he had large consignments on the way, and that he was going to get on his feet if I would only help him in making these further advances. Seeing no reason why I should not make a further advance on the lemons, when I had a chance to get back the money due me, I accepted them and within a few days

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thereafter Mr. Gatto brought me a second shipment, which I also accepted, made the entry in my own name and sold the same at Brown & Seccomb's. In the meantime I had made other advances to him, until the latter part of September, when I balanced up the account wherein it showed that I still owed Mr. Gatto the sum of Three hundred and four Dollars, after deducting all that he owed me, plus some eight or nine hundred dollars, which I had given him in addition to the old debt.

"In the meantime I was informed that Mr. Gatto had had some trouble with the shipper, a man by the name of Fazio, who had stopped several shipments in transit and was demanding from Gatto his money.

"The matter was then presented to the District Attorney, and thereafter I was called in by the District Attorney to whom I explained my position, showing what checks I had given Gatto and an exact copy of the account was submitted to him. I also stated to him that I had this three hundred and some odd dollars yet in my hands, and that I was willing and ready to turn it over to the right person, but unless I was in some way stopped I would be compelled to give it to Mr. Gatto, if called upon by him to do so, as I knew nobody else but Gatto in the transaction. As the District Attorney took no steps whatever to stop that money, and Gatto kept on calling upon me for money, I was forced to give him an additional One hun-

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dred and eighty-one (\$181) Dollars.

"In the meantime, Gatto was arrested for not having filed a certificate in the County of New York, that he was doing business as S. E. Gatto & Co., when as a matter of fact he was the only member of the firm. I appeared for him and pleaded guilty, although I explained to the Court that Mr. Gatto was not doing business in New York, as his place of business was in Brooklyn, as Gatto had never done any business whatever in New York City. He received all his mail and transacted all his business at 710 Henry Street, Brooklyn. After I pleaded guilty for him the matter was adjourned for two weeks for sentence, at the request of the District Attorney. In the meantime I obtained an affidavit from Mr. Gatto showing exactly how the account stood in detail and also showing that what I told the District Attorney was the honest truth. This, together with my checks I took to the District Attorney and the same is now in his possession.

"On the day that Gatto's sentence was postponed he was subpoenaed to appear before the Grand Jury every single day; although the subpoena called for him to appear before the Grand Jury he was never taken before the Grand Jury, but taken into the District Attorney's private office and there was told that he was going to be sentenced to at least a year's imprisonment, and in short words he was threatened in

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many other ways by the District Attorney and was told that he would be surely sent to State's prison unless he would complicate somebody else in the case.

"On the day set for the sentence Mr. Gatto called me up and told me that it was not necessary to appear in Court, that the District Attorney was going to postpone the sentence. It now appears that on that day he was taken before the Grand Jury and must have made some false statements against me upon which the indictment was founded.

"I never knew that Gatto was getting goods from Fazio until I saw the bill of lading and never had any idea that he was soliciting merchandise from him.

"I acted absolutely in good faith and the same as any other person would have under the circumstances.

"In my life I have done millions of dollars' worth of business in the same way that I did with Gatto, and all I did in the matter was to keep back what money Gatto authorized me to keep back which he owed me.

"If a man by doing what I have done as above stated is guilty of a crime, I think it is about time that all business men take up their duds and get out of this glorious country.

P. S. Saitta."

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E. DEXTER KNAPPEN, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 23 West 9th street, Borough of Manhattan).

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your occupation? A Stenographer.

Q Where are you employed? A In the office of the District Attorney, New York County.

Q Are you a shorthandreporter? A I have been, yes.

Q How long have you been a shorthand reporter? A A matter of many years.

MR. HAYWARD: Will you admit his qualifications?

MR. MOSES: Yes.

MR. HAYWARD: Then his qualification is admitted to save time.

BY MR. HAYWARD:

Q Were you present in the office of Mr. Millard H. Ellison an Assistant District Attorney here, on the 24th day of September, 1913, when the defendant was also present? A Yes, sir.

Q Philip S. Saitta? A Yes.

Q And at that time did you take down in shorthand the questions that Mr. Ellison asked the defendant and the defendant's replies? A Yes, sir.

Q Have you the shorthand notes that you made at that time and are you able to read them to us now? A Yes.

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Q Please do so? A "Mr. Ellison: I desire to inform you that there is a complaint lodged against you in this office by one Giuseppe Fazio, who is represented by Mr. Joseph Nicchia, an attorney, and I understand you are an attorney at law. I desire to know whether you are willing to answer such questions as I put to you, with the knowledge that any information that you may give here may be used against you, in the event of any criminal prosecution against you, or one S. E. Gatto? A --

MR. HAYWARD: Whose answers are those you are about to read?

MR. MOSS: We will understand that these are all Mr. Saitta's answers.

THE WITNESS: Mr. Saitta's -- A "I do not see what I have got to do with it. Q I did not ask you that, I wish to know whether you are willing to answer questions? A Yes. Q Do you know a man by the name of S. E. Gatto and had he an office with you? A No. Q Is he in your office? A He is in there once in awhile. Q How are you connected with him? A No connection whatever. Q Are you his attorney? A I never had any cases to represent him. Q Did you have any official transactions with him"--

MR. HAYWARD: Could that be financial?

THE WITNESS: "Q Did you have any financial transactions with him? A I have had, yes. Q Do you know of any of his dealings or the dealings of S. E. Gatto & Co. with Joseph

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Fazio? A Not until he received some merchandise from them. Q And what, if any conversation, did he have with you about that matter? A No more than I had dealings with him before. I opened a credit for him in other transactions and I sold the stuff for his account. Then later on he brought me some of those invoices, bills of lading to do the same thing as I done before, which I did. Q What did you do? A I sold it, the same as I did before, and turned over the proceeds less any balance that was due him."

MR. MOSS: Should that be balance due him or due me.

THE WITNESS: "Due me. Q What part of the proceeds did you get? A A small commission. Q What commission? A For financing the matter, &c. Q I want to know how much? A I have not got any account of sale yet. I generally charged 2%. Q Now referring specifically to the transactions had by Gatto & Company with Fazio, in Italy, I want to know how much you got out of it? A About \$35. or \$40., something like that, may be a little more -- maybe altogether it would amount to \$75. Q Did you endorse the bills of lading yourself? A After he endorsed them, yes. Q What was the object of that? A To make an entry to the Customs House. Q What are you, lawyer, Customs broker, or what? A I am a lawyer, but do business in that line, and have for years and years. I done millions of dollars' worth of business. Q For whom? A Different people. Q Give me the names,

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please? A I have only had three transactions with Gato.

Q Were they the three transactions that Gatto & Company had with Fazio? A There were two or three and one prior to that

time for somebody else. Q Will you tell me for whom else

you did that same kind of business outside of Gatto & Com-

pany? A Oh, a number of people; I couldn't tell you right

now. I could give you a list. Q And I assume that you

have books in your office which would show these transactions

wouldn't they? A I have some records that would show the

transactions, yes. Q Have you any records that would show

your transactions in regard to the Fazio account? A Certain-

ly. Q Will you produce those records here? A If it is nec-

essary. Q Did you know that S. E. Gatto & Company were

sending out circulars? A I did not. Q And representing

themselves as commission merchants and giving their office

as your office at 258 Broadway? A No, sir. Q You say you

never heard of that before? A No, sir. Q And you never

heard of any such circular? A No. Q And how long have

you known S. E. Gatto? A Two or three years. Q Do you know

of any other commission merchant in New York who is a very

well known commission merchant of the same name? A I know a

man by the name of Ferdinand Gatto. Q And he is a very

large and reputable commission merchant in New York, as far

as you know, isn't he? A I don't know that he engaged him.

Q Where does Mr. S. E. Gatto make his office, A Somewhere

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in Brooklyn, I don't know, sir. Q But you have been carrying on transactions with him, if not at your office, wherever he is? A I believe at his own house, somewhere in Henry

Street, Brooklyn. I don't know the number. Q Where is Mr. Gatto now? A In New York or Brooklyn. Q When did you see him last? A This morning. Q You say you endorsed the bill of lading, did you not? A I had to, to make an entry. Q Did

not you notice the stamp on that bill of lading, didn't you examine that bill of lading before you endorsed it? A I certainly did. Q Don't you know in that bill of lading was stamped "S. E. Gatto & Co., 258 Broadway, New York"?

A If I did I did not notice it; if he put any such stamp on there he had no right to do so. Q And don't you know that that stamp was put on there before you endorsed it, and that that stamp was put on under your very eyes? A I got it already stamped and I did not look it over. Merely endorsed it and turned it over to the broker. If there is any such thing there I did not notice it. Q And don't you know the

very same stamp has '258 Broadway' as the office; also gives B.O. 710 Henry Street, Brooklyn? A I did not notice any such address. Q You say to your knowledge Mr. Gatto has never held out his office as being at 258 Broadway where you have your law office? A Not that I know of, and he does not have an office there. Q What other transactions have you ever had along similar lines as these, with anybody for Mr. Gatto,

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outside of the transactions with Mr. Fasio? A I had one transaction with Mr. Gatto of between \$800. and \$900. of a man by the name of Ratho in Messina."

BY MR. HAYWARD:

Q Do you recall whether that name was spelled to you at the time? A Ratho?

Q Or is that your way of spelling what you thought was said, could it have been Zimbaro, was it spelled out to you there at the time? A I don't recollect, I cannot say. I imagine it was not spelled out. Probably got the sound and put it down the best I could.

MR. HAYWARD: They pronounce it Zimbaro.

MR. MOSS: We will have it Zimbaro.

THE COURT: Then by consent we will make it Zimbaro.

THE WITNESS (continuing) "Q When was that? A Prior to this transaction. Q About how long ago, about how long before? A A few weeks. Q By the way, who received the money in payment for the merchandise represented by the bill of lading? A I sold them. I received the money.

Q To whom did you sell that merchandise? A I sold it at public auction. Q Who was the auctioneer? A Brown & Seccomb. Q And that property was sold when? A Within a short time after I received the bills of lading. Q And the checks were sent directly to you by the auctioneer? A Yes.

Q What did you do with the checks sent to you by the auc-

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tioneer? A Deposited them to my personal account. Q In what bank? A Chatham Bank. Q And those checks were received between July 14th and about August 18th? A Something like that. Q After you deposited the checks in the bank, what did you do? A I paid Gatto some money and held back sufficient to cover me for what he owed me and any deficit there may be in the Customs House for additional duty. Q Now I want to know how much of the money that you received by checks from the auctioneer you held out for yourself, out of that total amount? A I held out just what he owed, the balance on the previous transaction, eight or nine hundred dollars, and sufficient to cover my commission and any deficit. Q Tell me what you gave him out of that amount received from the auctioneer, and when? A I gave to him at different times, by checks during this same period. Q Can you tell me approximately how much? A I received about \$1800., something like that. Q You received over \$2,000. -- how much did you give him? A About eight or nine hundred dollars and I paid the labor out of that and still I am liable to the Customs House for any additional duty. Q How much do you claim was due you from the previous transaction? A Between eight and nine hundred dollars. Q Just relate the circumstances in regard to that thing fully, giving names and addresses? A Mr. Gatto came to me and said he wanted to open a letter of credit on the other side in favor of this man

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Fazio -- not Fazio -- some name I can't remember, and I opened the credit through the Irving National Bank in favor of this man in Messina, and the fruit was shipped there and I sold it for account of Mr. Gatto and the proceeds did not realize between eight and nine hundred dollars of what I paid out for his account. So I held that open against him. In the meantime he brought some more documents and out of what I got I kept what he owed me. Q Now, you knew, of course, that Mr. Gatto was only claiming to act as a commission merchant? A I don't know anything about it. Q A In his transactions with Fazio, you did not know that? A I assumed that he was acting as a commission merchant. Q You never talked that over with him? A No. Q And you received, as you knew, the proceeds of the sale of this property and merchandise, which had been sent to him as a commission man, that is the fact? A Well, it may be. Q I will request you to send to the District Attorney's office a detailed statement showing what moneys you received from the auctioneers on account of the sale of this merchandise for Gatto, and I want to know how much of that money you retained; for what purposes, and the amount that you had retained for those purposes, and I want to know how much you had paid over to Gatto; the amount; how they were paid, by check or in cash? A Mostly by check, very little cash. You can have that statement. Q Did you know that Gatto & Company had sent a

check to Mr. Pazio, a New York Bank check, to Italy, and that after another shipment of merchandise was sent to Mr. Gatto, that he then stopped payment on the check? A I heard of it. Q When did you hear about that? A Quite some time".

THE WITNESS: Then follows a little something here about his agreeing to do this and bring the statement. Would you like to have that?

THE COURT: Give it all, whatever it is.

THE WITNESS: It does not amount to anything.

MR. MOSS: That is for the jury to say.

THE COURT: Let us have it.

THE WITNESS: "You saw Mr. Gatto this morning you say at your office? A Yes. Q When do you expect he will be in again? A He may be in to-night, he may be in to-morrow. Q How can I reach Mr. Gatto, I would like to get him here to-morrow".

THE COURT: That is what Mr. Ellison, the Assistant District Attorney, said?

THE WITNESS: Yes.

THE COURT: What is the date of this interview between Mr. Ellison and the defendant, Saitta?

THE WITNESS: September 24th.

THE WITNESS (continuing reading) "Q How can I reach Mr. Gatto, I would like to get him here to-morrow? A I can reach him. Q Will you tell him I would like to see him

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here to-morrow between 9:30 and 5:15, and I would like to have you come with him and bring that statement? A Yes.

Q We will put this over until Friday, 2:30 P.M.*

MR. MOSS: Why not ask the witness why it was he thought that was a matter that did not amount to anything? Is there anything in the notes?

THE WITNESS: I summarized it at the bottom by simply saying that the witness agreed to do as Mr. Ellison wanted.

BY MR. MOSS :

Q You mean in furnishing your typewritten notes, you summarized it, A I summarized this last I have just read.

CROSS EXAMINATION BY MR. MOSS:

Q Are you sure you have everything that occurred at that meeting?

THE COURT: occurred ~~or~~ said.

THE WITNESS: Yes.

BY MR. MOSS:

Q Did you leave Mr. Saitta and Mr. Ellison together, and go out yourself? A I do not recall that. I do not recall whether I did or not.

Q Will you say whether or not Mr. Saitta said something indicating a desire to be instructed what to do with the balance in his hands? A I don't recollect it.

Q You do not know whether such a conversation occurred between him and Mr. Ellison after you left the room, do you? A No, I

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do not.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:15.

AFTER RECESS. TRIAL RESUMED.

THE COURT: Gentlemen of the Jury, we intend to discuss a question of law and so that it will not have any effect on one side or the other, I am going to ask if you will go into the jury room for a few minutes until we get through with this question of law. The jury are to decide the facts and have nothing to do with the law, but I do not want you to get confused in regard to this point of law, and it is agreed upon all sides that it would be better for you to retire.

The law says that every time you leave that jury box, I must tell you that you must not make up your minds as to the guilt or innocence of the defendant who is being tried, until you have heard all of the evidence in the case. You must be like the Judge, have your minds open, until you have heard all the evidence in the case. You understand -- otherwise, you might form an opinion upon the testimony of one witness or another witness. Wait until the whole case is in before you decide one way or the other, and in going out there I would be much obliged if you would talk about

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anything else except this case, because the law says you shall not discuss the facts in the case until you have heard all the evidence and retire for the purpose of deliberating upon your verdict. Do not say anything about the case among yourselves until you have heard all the evidence in the case.

(The jury now retire to the jury room).

P A U L C. K A S T called, affirmed, testified as follows:

BY THE COURT:

Q You reside where? A 300 West 42nd street, New York City.

Q And what is your business? A Adjuster for the Commercial Cable Company.

Q Do you know the defendant? A I do, only through business connections.

Q He has an account with your company? A Yes.

Q Were you subpoenaed here as a witness by him, for the defense? A Both sides.

Q You know him or have a personal acquaintance with him?

A No, I only became acquainted with him --

Q In a business way? A Yes, in a business way, trying to collect a bill of \$209.57.

Q Your company has a bill of \$209.57 against Saitta and of how long standing is it? A Bills of January, February, March, April, May and June, 1913.

Q Has it ever been paid? A No.

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Q Is it disputed? A It is in dispute.

Q Mr. Saitta disputes the bill? A Yes.

Q Has he guaranteed the payment of it in any way? A Mr. Saitta?

Q Yes? A No, he has not guaranteed the payment. He contends that only three or four of the cables are his in all the cables billed.

Q Has he secured it in any way? A None whatever.

MR. MOSS: He repudiates the bill, except three or four cables.

BY THE COURT:

Q While you were in attendance here as a witness, and during the lunch hour, did one of the jurors speak to you? A He spoke in my presence. I don't know as he directed his conversation to me personally.

Q Who was he speaking to? A Three or four of us standing together.

Q Who did he seem to address it to? A The gentleman here -- I would not want to say -- he was talking generally to three or four of us standing there.

Q How was the conversation opened, who started the conversation with the juror? A I don't really recall it.

Q You don't know who started it with the juror -- who opened the conversation with the juror? A I believe he was -- none of us did. It was he came there freely and commented on Mr. Hayward

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personally as to his ability.

Q Nobody said anything to him. A After he made the statement that he did make, I told him I would rather he refrained from speaking in my presence that way, as I was a witness for both sides and did not care to enter into any discussion of the matter.

BY MR. HAYWARD:

Q Was it to-day or yesterday? A Yesterday, just before court resumed.

BY THE COURT:

Q It was yesterday and not to-day? A No, not to-day.

Q Why didn't you tell somebody yesterday? A Well, I thought I closed him up.

Q Why didn't you tell Mr. Moss, counsel for the defense?

A I did not really know what to do. I simply thought --

Q Were you not sitting in court when you heard me admonish the jury every time court adjourned for lunch, or we suspended for the day, that no juror must make up his mind as to the guilt or innocence of the defendant or discuss any facts in the case among themselves or with any other person. A Yes, I did you say that.

Q And if any one should speak to a juror in regard to it, that that juror must report it to me; why didn't you do that?

A I did not really know it was up to me to do it. I thought having admonished them, his having spoken to me would be enough to have him keep quiet about it.

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Q Tell me where he was and what he said? A He was standing outside the corridor a little ways from the door, fifteen minutes or so before we resumed, and he had been to lunch and I think he had had a little drink.

Q You think he was intoxicated? A That he had a few drinks, more or less intoxicated.

Q Do you think he was under the influence of liquor? A I think it affected him somewhat. Then he began to eulogize Mr. Hayward and his career in college.

Q Whose career? A Mr. Hayward's.

Q Did he say he knew anything about Mr. Hayward's career in college? A Yes, about having passed in such a creditable manner, having gone through with such flying colors.

(The Mr. Hayward referred to is the Assistant District Attorney in charge of the case).

THE COURT: Mr. Hayward, had you ever seen that juror before?

MR. HAYWARD: I never saw him until he came in this part. I think I challenged him in the picture or film case.

THE COURT: Did you know he had any knowledge of your college course?

MR. HAYWARD: No, I was not aware of that, although while we are talking about it and this thing has come up, I think it is only fair to say that while we have been down here I think -- I am sure it is this week, this is the man

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who insisted on giving me a cigar in the hall and I said no, or something like that, and he insisted, and rather than talk, I guess I took it. These things happen and you cannot help it, but it is the same man. So far as I am aware, I never saw him until he was called in the box, in the picture case.

BY THE COURT:

Q What did he say?

THE WITNESS: Mr. Gatto had been on the stand all morning and he was still on the stand when you adjourned court and the happenings were fresh in this juror's mind no doubt, and his contention was --

BY MR. MOSS:

Q Whose contention, the juror's? A Yes.

BY THE COURT:

Q What did he say? A He said his opinion was that Mr. Saitta was the brains of this case, and that Mr. Gatto was a fool. With that I said "I would rather you refrain from discussing this matter in my presence because I am a witness for and against the defendant, and it would not behoove me to go into any argument with you on the matter at all." With that I came in and took my seat in the court room. I left.

BY MR. MOSS:

Q After you were subpoenaed by the defense, and while you were in attendance under that subpoena, you went voluntarily to

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the District Attorney to give him some information that you thought would bear upon his side of the case? A Not for that reason.

Q You thought there was evidence that would affect the case on his side? A No, none whatsoever.

Q But you went to him freely and of your own motion to communicate to him the facts you knew? A No, I went to Mr. Hayward-- my idea in going to him was this -- that having read the subpoena from the defendant's counsel I determined by producing the two letters asked for it would jeopardize the claim of the Commercial Cable Company in getting their money. This was my view: If those two letters would vindicate Mr. Saitta from having any connection with Mr. Gatto from a friendly point of view, it would automatically, I thought, also vindicate him from any connection with him on the cable charges.

Q You were looking out for the interests of the company?

A Yes, sir, and for that reason I interviewed Mr. Hayward.

MR. HAYWARD: Did you not tell Mr. Moss and me that this juror made some comments about my opening statement?

BY THE COURT:

Q Did the juror, Mr. Winton, make any statement in regard to Mr. Hayward's opening address? A None in my presence, no.

ALFRED M. RODRIGUEZ called and affirmed, testified as follows:

(Residence 656 West 178th street).

BY THE COURT:

Q What is your business? A Real estate.

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Q And the address? A 16 Court Street, Brooklyn.

Q Do you know the defendant, Saitta? A Yes.

Q How long have you known him? A About a year. He represented me in a case.

Q He was your attorney? A Yes, I knew him before that.

Q You were a witness in this case -- have you been subpoenaed here as a witness? A No.

Q What was your interest in being here? A Mr. Saitta said he would like me to testify as to Mr. Gatto's being able to speak English, and I said I would come here without a subpoena.

Q Do you know Gatto? A I have met him in Saitta's office a number of times.

Q Had any real estate dealings with him? A No.

Q Have you had any real estate dealings with Saitta? A No.

Q He was merely acting as your attorney in some matters?

A Yes.

Q And did you hear anything said by the juror Mr. Winton?

A I was present when he was talking.

Q You tell me all about it -- whom did he speak to, and how did the matter come up? A There was several of the gentleman standing around there and these gentlemen --

MR. HAYWARD: Were there any other jurors there besides Mr. Winton?

THE WITNESS: I did not recognize any others, for the simple reason I just paid attention to Mr. Winton, if that is

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his name. I did not recognize any of the others.

BY MR. MOSS:

Q How near to 2 o'clock was it? A Within quarter of an hour.

Q Before or after? A Before.

BY THE COURT:

Q How did the conversation start? A This gentleman was talking --

Q Mr. Winton? A Yes.

Q To whom? A He was talking to these gentlemen standing over around near the door there of the court room.

Q Other jurors? A I do not know who they were. I know this gentleman was present, Mr. Kast, and heard him make the remark that he would not express himself on account of being subpoenaed by both sides as a witness.

Q You heard Mr. Kast say so? A Yes.

Q What did you hear Mr. Winton say? A Mr. Winton spoke with regard to the case. He said he had made up his mind with reference to the case, that after hearing the eloquent speech of the Assistant District Attorney, that impressed him very strongly that there was an intrigue here, that Mr. Saitta was the brains, and that Mr. Gatto was the tool, that he had a large acquaintance on the other side and that he was using him for a purpose.

Q Had anybody said anything to bring that out? A Not a word was said. He did all the talking; ~~no body answered him~~ simply spontaneous on his part.

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Q No one replied to him? A No, excepting Mr. Kast.

THE COURT: Suppose we send for the juror and ask him about it, is that juror No. 2?

THE WITNESS: Juror No. 2.

THE COURT: We will send for No. 2.

MR. MOSS : Before you do that, the sending for the juror is a matter I wish you would consider carefully, because in the event that he should deny these stories, he would go back in the box and the prejudice that he might carry, no one could tell -- he might feel that he had been held up to some reprobation, and you can't tell how it would affect him. I suggest deliberation and care before that is done.

THE COURT: I thought of it in this way. We ought to give the juror an opportunity to state his side of the case or to admit or deny it, because otherwise any case, after we have been trying the case for five days, could be destroyed by anybody coming in and saying that a certain juror had expressed an opinion, and if you are not going to ask that juror whether it is true or not, why then it would be the simplest thing in the world to destroy any case by just having somebody come in and say they heard somebody express an opinion.

MR. MOSS: He being brought out of the jury room by himself would put him in a position where he is marked.

MR. HAYWARD: I was afraid of the reverse action by the juror.

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THE COURT: It seems to me that if the juror has done what he is said to have done, then he is guilty of contempt and liable to punishment, and knowing that fact, he would be more apt to try to purge himself of contempt -- more apt to endeavor to purge himself. Suppose we do this, we will withdraw the juror by consent, and substitute another juror that is agreed upon between counsel, re-swear the jury and read to the jury the testimony that has been taken.

MR. MOSS: I will not consent to that. On the situation as it now stands, so that the record may be straight, I move to withdraw a juror.

THE COURT: As the jury have retired to the jury room and have no knowledge of what we are doing now as all this proceeding is had in front of the Judge's bench and in an undertone so that nobody in the court room can hear what is being said except those immediately in front of the Judge's bench, I will send for the juror, and in the presence of counsel on both sides and the witnesses who have just testified, Mr. Kast and Mr. Rodriguez, interrogate Mr. Winton, expressed the juror whom they say has an opinion.

What do you say to that?

MR. MOSS: I have nothing to say to that.

(The juror, Mr. Winton, is sent for).

JOSEPH MILTON WINTON called:
BY THE COURT:

Q Mr. Winton, Mr. Paul C. Kast and Mr. Alfred M. Rodriguez

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here present, both of them say that yesterday, at or about or just before the close of the recess hour, that you stood near the court room door out in the corridor, and expressed an opinion one way or the other as to the guilt or innocence of the defendant, and expressed yourself very positively in regard to one way or the other as to the defendant? A I did not.

Q And Mr. Kast says that you did not address him, did not speak to him or to Mr. Rodriguez either, but you sort of addressed several persons there in which you expressed an opinion on one side or the other as to the guilt or innocence of the defendant? A I did not. Whoever said so is telling a falsehood.

Q One witness says, one gentleman says that you evidently had been drinking some, and that probably you had been drinking with your lunch, how about that, were you under the influence of liquor at all? A I was not.

Q Every time the jurors leave I am obliged under the statute to admonish them not to make up their minds either one way or the other, as to whether the defendant is innocent or as to whether he is guilty? A I have not made up my mind at all.

Q You must keep an open mind and wait until the very last word of testimony is in, before you finally make up your mind, because if a man should make up his mind one way or the other -- we will say that the defendant is innocent, and would not hear any evidence one way or the other on that question, just be settled on that, he would be a very unwise juror. Don't you see that? A Yes.

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Q And on the other hand, if you take the stand that he is guilty, it would be very unjust to the defendant. That is the reason I am obliged, under the law to admonish you that way.

Now, have you expressed an opinion either one way or the other as to whether or not the defendant is innocent or as to whether or not the defendant is guilty? A I have not. I have never even expressed an opinion and have not come to any conclusion at all. I have had no concluding evidence. I am sure I have not said a word about this case at all, because I go with a friend of mine to lunch and we are not interested in this at all, and never think of mentioning the thing.

Q Do you remember whom you were speaking to yesterday just before the close of the recess hour, say at or about 2 o'clock, out in the corridor, just before court convened, after luncheon hour -- do you happen to recall any person to whom you spoke, any person here present, a juror or any person who happens to be in the court room, that could tell me then what was said, if anything?

A I met no one outside of my friend, Mr. Vail, and he and I took dinner together.

Q Who is he, is he on the jury? A Yes..

Q Did you know Mr. Vail before you were on the jury? A Well, I know of him in business, but never got acquainted with him -- we never talked about the case in any saloon or anything. I go across the street here and get my lunch but have never mentioned the fact that I was in this case at all to any one, because I know --

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Q Do you feel that you could be thoroughly impartial either one way or the other in regard to the case? A I am sure I can.

Q And that under no circumstances would I want you to tell any of the other jurors what I have said to you now, because I do not want it to affect them either one way or the other? A I won't say a word to any one.

THE COURT: They had better not know anything about it and if they should ask you a question about it, I do not know what is the best answer to give except no answer at all. Do not want to give an answer that is wrong. You will observe ⁱⁿ all I have said to you I have never indicated to you what these two men say your opinion was. You understand, You say you did not say it?

THE WITNESS: No, I did not give an opinion.

THE COURT: Would Mr. Moss or Mr. Hayward like to ask the juror a question, or will you suggest anything that I can ask him.

MR. MOSS: I have no questions to ask.

BY THE COURT:

Q Did this other juror go to lunch with you yesterday? A We take lunch every day together.

Q Did you go in company? A I think we did, yes.

Q I mean yesterday? A I think we did.

Q As an actual fact, Mr. Winton, had you been drinking? A No.

Q One of these men said that you had evidently been drinking

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and that it made you very loquacious, and that you had been drinking enough to feel it? A I do not think so. I never take very much drink. I am not very fond of it.

THE COURT: I must say very candidly that if you were under the influence of liquor I certainly did not notice it.

THE WITNESS: No, sir, I was not.

THE COURT: All of you seem to be paying very strict and close attention to a case that must be very tedious in its details -- of course, tedious to everybody, the prosecution, the defense, the jury and the Judge, but we have to go through it. At the same time I thought the jurors seemed to be paying very close and strict attention to dry details and facts. I was surprised to hear anybody state that any member of the jury appeared to be yesterday, or at any time, under the influence of liquor.

THE WITNESS (turning to Mr. Moss) I had two glasses of beer yesterday and don't think that would affect me.

BY THE COURT:

Q Do you know Mr. Hayward? A By seeing him in court.

Q You never knew him outside court? A No.

THE COURT: I did not send for you at the suggestion of either side but it was at my own initiative. In fact, neither side thought that it was necessary, or wanted me to do so. I alone am to blame for it.

(Mr. Winton, the juror, now retires to the jury room to join the other jurors).

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THE COURT: I will take the juror's word for it. We have been five days now on the trial of the case. I do not think it will affect him one way or the other. He seems to be sincere. I certainly did not observe any signs of liquor upon him. I do not think he is an over-bright man.

MR. MOSS: In pressing my motion to withdraw a juror I state it was necessary for me to take Mr. Kast and Mr. Rodriguez out of the room, and I did so after conference with Mr. Hayward, and necessarily Mr. Winton saw me take those men out of the room, and when Mr. Winton made his explanation, having taken only two glasses of beer yesterday, he turned directly to me, giving me to understand that in his inner judgment he held me responsible for the inquiry. I think in the interests of justice I must press my motion.

THE COURT: The juror, Mr. Winton, when he turned to Mr. Moss, seemed to me to do so in a very cheerful smiling manner, and I could not construe his manner or anything that he said, into any bias towards Mr. Moss or his client. I think we ought to go on with the case.

MR. MOSS: I take an exception.

(The jury are now brought into court, and the trial is resumed).

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AFTER RECESS. Trial resumed.

JAMES B. SHOULDICE, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 591 Lexington Avenue, New York City).

DIRECT EXAMINATION BY MR. HAYWARD:

Q You are a shorthand reporter by occupation? A Yes.

Q What is your employment? A I am employed in the District Attorney's office upstairs, in this building.

Q The District Attorney of this County? A Yes.

MR. HAYWARD: Will you admit that he is qualified as a shorthand writer?

MR. MOSS: Yes, I guess he is all right; we will see how he gets along. I can tell how he reads his notes, whether he reads them fluently.

BY MR. HAYWARD:

Q Do you know the defendant, Philip S. Saitta, this man sitting next to Mr. Moss? A I have seen him before, yes.

Q Were you present when Mr. Buell, one of the assistant District Attorneys here had an interview with the defendant on the 27th day of January last year? A Yes, I was present at that examination.

Q You took shorthand notes of the questions and answers, did you? A I did.

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Q Have you those notes? A I have.

Q By reading from those notes are you able to give us the questions and answers as they were propounded and given there that day? A Yes.

Q Please do so.

THE COURT: Have you the transcript written off?

MR. HAYWARD: Yes.

THE COURT: Prepared by him?

MR. HAYWARD: I think this was prepared by him.

BY THE COURT:

Q Does the District Attorney hold in his hand a transcript of the minutes prepared by you, just look and see? A. Yes, that was prepared by me.

Q Is it correct? A Yes.

THE COURT: Mr. Moss, would you mind his reading from that or would you rather have him read from the original. Any way you choose.

MR. MOSS: I think it would be all right to read from the transcript.

THE COURT: He swears that is the transcript and probably would read it a little more fluently than from his notes.

MR. MOSS: If there seems to be anything inaccurate about it we will ask him to refer to his notes.

The witness reads the following:

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"BY MR. BUELL:

Q Mr. Saitta, Mr. Ellison some time ago asked you a number of questions? A That is the Gatto matter?

Q Yes. Among these questions he asked you to send to the District Attorney's office a detailed statement? A Which I did.

Q You have sent it? A Yes, sir.

Q And he said that he wanted to know how much you had paid over to Gatto, and whether they were paid by check or in cash, and you stated: "A. Mostly by check, very little cash. You can have that statement." Have you those checks? A Yes.

Q Have you brought them with you? A I didn't know that you wanted me for that purpose.

Q Can you bring them? A Certainly.

Q When did you pay them? A At the time that is mentioned in the memorandum.

Q Did you send that memorandum directly to Mr. Ellison?

A I think I took it to him myself.

Q Did you have the checks with you? A He didn't ask me for the checks.

Q You have looked this matter up a little more, haven't you?

A I haven't given any more thought to it at all.

Q You haven't looked up your checks at all? A No.

Q But you won't have any difficulty in getting them? A No, none whatever, sir.

Q Are you willing to produce these checks here? A Cer-

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tainly, if I have any reasonable time to get them.

Q Haven't you the checks? A We have the checks, but we file everything away.

Q How long would you like to have? A A few days -- I would get working right away.

Q When you get those vouchers back again from the bank what do you usually do with them? A I file them away with all the papers. I don't destroy anything.

Q You don't recall the exact amount out of this two thousand dollars which you have stated here that you had received from Fazio lemon sale? A I never received any two thousand dollars.

Q How much did you receive, do you recall? A Sixteen or seventeen hundred for the lemons.

Q And of that amount you said, I believe, that about eight hundred of it you retained as that amount of money was owing to you by Mr. Gatto on previous transactions between the two of you?

A Some money taken out of a previous transaction.

Q About how much have you paid him since, do you recall, on that transaction? A On that transaction, I could not tell exactly now. I think since I was downstairs he has been at me for money and I didn't want to give it to him. I held it for a long time; I didn't want to pay it over.

Q Why didn't you want to pay it over? A When the District Attorney called me I told him that I would not pay the

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money over.

Q Have you ever paid it over? A There is a balance due him yet.

Q How much? A A couple of hundred dollars.

Q How long has that balance been due to Mr. Gatto? A Since this trouble came up I told him that I wanted to see to whom the money was to be paid before I should pay any more.

Q This statement was made by you to him last September?

A I don't know when it was made.

Q Since this you haven't paid Mr. Gatto anything? A I think \$96 or something like that.

Q And previous to that time you had paid him up to within a couple of hundred dollars? A Within \$250 or something like that, I am not sure what it was.

Q How long will you want, Mr. Saitta, to produce these checks or stubs to Mr. Gatto on the Fazio account? A I didn't know it was the Fazio account; I had no idea whose stubs you wanted; all I knew was what I had seen in the papers, that is all.

Q You endorse bill of lading? A Yes.

Q You are familiar with Custom House work, aren't you?

A Yes, very.

Q Isn't it a fact that there are two different colored bills of lading for endorsement and for you to swear to? A Well, there is, but they never carry that through in the usual way. Sometimes they have that done for a purpose, have one kind of

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consular invoice and then because of these people are subject to judgment and they always have them brought here under the name of the consignor and then if any trouble comes up they will swear that black is white or that white is black.

Q Didn't you make oath that one of these consignments was sent from Mr. Fazio? A You know how that is done; when the custom house broker sends the paper you sign it and then he fills it out. We never fill them out. That is the regular custom.

Q Wouldn't you know how he would fill out such a paper?

A No, I would not.

Q Is a printed paper signed stating that the owner of the property was somebody other than yourself? A It might be, yes. But I looked upon the owner as Gatto in my transactions. I didn't go any further than that.

Q I have seen those indorsements Mr. Saitta and the statement is made that you considered Mr. Fazio the owner. I would like to have you by Monday of next week produce those checks. Will that be ample time? A I think so.

Q Mr. Saitta, what was your object in not returning this money after you called to the District Attorney's office, the money in the Fazio account? A Not the Fazio account; I eliminate Fazio; I don't know Fazio from Adam.

Q You did have some money that belonged to Mr. Gatto? A Yes.

Q You had paid him a certain amount of it up to the time when you called down to make this statement to Mr. Ellison and

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subsequent to that time you haven't paid him anything? A Well, I haven't paid him anything -- yes, I paid him something.

Q You told me a few minutes ago, unless I am mistaken, that you had kept this money and decided not to turn it over after you found that the matter was the subject of investigation by this office? A I did for a time and then he came to me and I paid him some money, I don't know exactly what the amount was, \$96 or \$100.

Q What was the object of your keeping this money after you found this office was investigating the matter? A What was the object?

Q Why did you keep it, yes? A Simply because I wanted to know whether it was to be paid to Catto or to whom it was to be paid.

Q It was Catto's money? A Yes.

Q Why didn't you give it to him? A Because he was perfectly willing to leave it to me.

Q He never made any demand upon you for it then? A No, sir.

Q Well, if you will bring or send those checks to me by next Monday I will be obliged to you. A I may be able to do it before.

Q Or inform me if you are unable to do so? A I will be very glad to do anything you want me to do."

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THE COURT: What was the date of that?

THE WITNESS: January 27th, 1914.

THE COURT: What was the date of the first time that the defendant was examined in the District Attorney's office.

MR. HAYWARD: September 24th.

THE COURT: September 24th, 1913 and January 27th, 1914.

IT IS CONSENTED TO by Mr. Moss that the word "concern" in the sentence "and they always have them brought here under the name of the concern and then if any trouble comes" and so forth, be changed to the word "consignor", and that the word "to" before the words "Mr. Fazio" in the question "Didn't you make oath that one of these consignments was sent to Mr. Fazio" be changed to the word "from" so as to make it read "Didn't you make oath that one of these consignments was sent from Mr. Fazio?".

H E N R Y J. K A P P, called as a witness in behalf of the people, being duly sworn and examined, testified as follows:

(Residence 62 Charleston Street)

DIRECT EXAMINATION BY MR. HAYWARD:

Q You are an employe of the District Attorney's office?

A Yes.

IT IS CONCEDED that Mr. Kapp is qualified as a shorthand reporter.

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MR. MOSS: You may handle that the same way.

(The witness's voice not being strong, it is consented to and agreed that the transcript be read by Mr. Buell).

IT IS AGREED that the typewritten statement to be read by Mr. D. C. Buell to the jury while the witness is in the witness chair, is a correct transcript of the shorthand notes taken by the said witness during the interview which it purports to cover and that the questions and answers to be read by Mr. Buell were actually propounded and actually given on the 11th day of February, 1914 as set out in such transcript.

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Mr. Buell now reads statement of P. S. Saitta made to Mr. Buell in the District Attorney's office, February 11th, 1914, as follows:

"Q In this affidavit Gatto says (indicating) that in July he received certain merchandise consisting of lemons from Giuseppe Facio, and that he was glad because if such was the case he could pay you what he owed you, and that he asked you to sell some of these Facio lemons and he states that he told you that you could keep whatever you desired on account of Gatto's old debt-

A You see I had no idea whether he had made any advances or arrangements -- I have no way of finding out.

Q Well, when these lemons came, I understand you to say that you didn't know anything about Facio in the account at all? A I give you my solemn word of honor that I had no information that Facio was in the matter at all -- all I know was when he came over and gave me these documents.

Q When Gatto says that "Thereafter I received a further shipment from the said Giuseppe Facio which I took over to your house to sell for my account", he took the bill of lading and invoice over to your house? A Certainly.

Q It must have appeared on the bill of lading that Facio was the shipper? A No doubt about it. We pay no attention to who the shipper may be.

Q Then you sent for Vincent Inguglio to act as your customs house broker in the transaction, that is correct? A Yes.

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Q And he did act as your customs house broker in these transactions? A Certainly.

Q Now, a part of these papers which you were required to sign to do business through Mr. Inguglio, was a declaration upon the back of the import blank to the effect that consignee was not the owner of the goods shipped, was there not? A Well, consignee would be the man who last receives the goods -- and naturally, I was not the owner.

Q On the backs of these import blanks are two declarations -- one printed above the other -- one is the "declaration of consignee importer or agent where merchandise has not been actually purchased" -- the other is: "declaration of owner in cases where merchandise has been actually purchased." Now to the declaration of consignee, importer or agent where merchandise has not been actually purchased, you signed your name, did you not? A That is right.

Q And you made a declaration under oath before Vincent Inguglia on July 19, 1913, did you not? A That's right.

Q And when you did that, you knew, did you not, that Mr. Gatto or Gatto and Company was not the owner of this merchandise? A I didn't know, no, sir -- I had no idea.

Q Why did you make an affidavit that the merchandise had not been actually purchased by the consignee? A Because as far as I knew --

Q But you were not the consignee? A Neither was Mr. Gatto.

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Q Gatto and Company? A I think it was consigned to order.

Q It was consigned to order. A Then nobody was the consignee.

Q The bill of lading was consigned to order, was it not?

A Yes.

Q Upon the back of that bill of lading was an endorsement signed by Facio, the consignor, endorsing this bill of lading over to S. E. Gatto & Company. A Then Gatto were the owners -- if there was an endorsement then Gatto were the owners.

Q Then you endorsed it under that? A Yes.

Q If there was that declaration and endorsement on the back of the bill of lading, why when did you make affidavit to the effect that the consignee was not the owner? A Because I was the consignee once they were turned over to me.

Q The consignee was Gatto & Company by endorsement by the order of Facio? A Well, I couldn't answer in my head -- unless I have the documents before me. Some documents come with blue consular invoice and some with a white consular invoice and you must make your --

Q And the consular invoice in this case was white? A I don't remember.

Q Well, you certainly would not make a declaration -- A It must have conformed to my declaration.

Q You are very familiar with custom house work? A Very.

Q You know that when you made a declaration that the con-

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signee was not the actual owner of the goods, the invoice must have been on a white invoice? A That's right. But oftentimes a man ships on a white invoice and sells the goods and the entry would have to be made in the same way because they are on a white invoice.

Q Well, on the other side of this import blank appears these words "Entry for consumption of merchandise imported by P. S. Saitta". According to that you are the importer? A Well, I don't know what the custom house broker may have done.

Q You state Mr. Saitta, that this side was not filled out when you signed it? A In some cases it is not --

Q Was it, do you recall, in this case? A I am pretty sure it could not be signed -- we look to the oath, to see that the proper oath is signed.

Q And having looked to the oath you declared that the consignee was not the actual purchaser of the goods? A That's right.

Q You say you do not recall in this particular case whether Mr. Inguglia had filled out -- A I don't; no, sir.

Q Had filled out this import blank before you were asked to make your declaration to it? A No, sir. My standing is just the same as the auction houses where they do dozens of transactions every day in the week.

Q That is you fill them out in blank? A No, where they make out white consular invoices, take off any advances, sell the

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freight and remit the balance -- all I knew was Mr. Gatto and Gatto looked to me and I had to pay him -- I had nothing to do with the shipper in any way shape or form.

Q So you don't believe that the fact that you made this affidavit to this declaration which we have been discussing here, shows that you didn't know that Mr. Gatto was not the owner of the goods? A I wouldn't know whether he was or not -- I know I was not the owner, therefore, I made the declaration according. Mr. Gatto may have been the owner and may have had an interest either jointly or by way of advances -- I had no way of finding it out -- This is a very peculiar business -- You will find out it is done every day in the week.

Q Filling out these things in blank? A Well, I don't know about filling them out in blank and making entries for other people and paying them -- we don't know the shipper from Adam -- as long as we pay we don't care anything about it.

Q Did you think that Mr. Gatto was the owner of this merchandise? A I didn't think anything, at all -- I didn't care whether he was or not.

Q It was some whether you retained the money? A. If he told me to keep the money I was justified in keeping it.

Q Well, you did keep it then? A I kept some of the money.

Q I thought these checks showed that you paid it over to him? A I may explain to you. I didn't keep the money of the

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net proceeds -- I turned over what was not due me.

Q On the back of this bill of lading there appears in Italian words to this effect-- consigned to the order S. E. Gatto and Company (the Italian words read and shown to Mr. Saitta). Now, the meaning of those Italian words is consigned to the order. A No -- deliver to the order.

Q So, "consequate" does not mean "consign"? A No, it means "delivered to the order".

Q S. E. Gatto and Company's name is signed here and yours is signed underneath? A In other words it was an absolute endorsement on the back authorizing Gatto to deliver to whom he pleased.

Q Now, you know, do you not, that the American consuls abroad are required by law to have on hand white and blue invoices to be used according to whether or not the consignor is the owner of the goods or whether the goods have been sold to the consignee? A I have already explained that to you, I think-- that is done because shippers on the other side ship goods and sell them while they are in transit -- then, of course, they leave on the white invoice, and if they do sell them they leave them just the same.

Q If the shipper on the other side has used a white invoice and sells the goods in transit, how is the seller going to get hold of them -- what procedure does he go through? A They make an entry at the custom house -- he can conscientiously make

an entry that he is the agent and not the owner..

Q Did you pay the duty? A Brown and Seccomb, they paid it, they advanced the money.

Q According to Brown and Seccomb -- do you admit that Brown and Seccomb turned you over the checks to the amount of \$2,039.07, the net proceeds from the sales of these two shipments? A I don't think so, I don't think that amount is right. The amount is somewhere around \$1700.

Q Were they doing business for you -- at that time were they selling anything else for you besides this Gatto account?

A I had other transactions --

Q During July and August? A I was doing business with other people too.

Q As a matter of fact from July 10th on, during July and August, their entire dealings were on the lemon shipments that Mr. Gatto turned over to you? A That may be -- I oftentimes do business and they sell the stuff themselves.

Q Have you those checks, Mr. Saitta? A Yes.

Q When Gatto sent a \$2,000 check to Facio, Mr. Gatto didn't have any money at the bank, at that time, to pay that check?

A I don't think he did. What he told me in that matter, that Facio had telegraphed to him, and he showed me some telegrams, that he had shipments on the way and that he wanted some money. Brown & Seccomb were paying slowly at that time -- well, he says, between what I have on hand and what I am receiving I shall owe

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him some money and -- of course, the most of this really I learned afterwards -- he sent them a check for \$2,000 expecting that what money he would get from me and what stuff there was in transit and --

Q You had not at the time received \$2,000 in from Brown and Seccomb? A Oh, no.

Q At that time you had not received much from Brown and Seccomb? and subsequently you received \$1700 or \$1800? A And there was other duty to liquidate -- sometimes additional duty or additional wharfage --

Q In this particular transaction in which Brown and Seccomb were acting as auctioneers there were not any subsequent duties?

A Oh, yes, I paid subsequent duty.

Q How much did you pay? A As late as September 25th, there was additional duty paid to Mr. Inguglia, after receiving notice.

Q Then in July Brown and Seccomb had not paid you as much as \$1500 on this? A In July, Oh, no; I don't think so, No siree! On the 25th of July I think there were two checks of Brown and Seccomb and there was no other payments until August.

Q On July 14 -- I show you here a check of Brown and Seccomb to the order of P. H. S. Saitta, endorsed by you and went through the bank, \$1500. A I couldn't answer what that one was for.

Q Then on July 23rd, they drew a check to P. W. Saitta. He is your son? A Yes.

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Q And should have been to you and you endorsed it and put it through the clearing house on the 23rd of July? A Yes.

Q Then on July 29th, Brown and Seccomb drew you a check for \$16.90 which you endorsed and put through the clearing house on August 1st? A That's right.

Q On August 1st, Brown and Seccomb drew a check on the Manhattan Company to your order for \$22.32, which you put through the Clearing House on August 2nd, that's correct, isn't it?

A Yes.

Q Then on August 6th, Brown and Seccomb drew a check on the Manhattan Company to your order for \$6.76, which you put through? A Yes.

Q Then on August 19th, Brown and Seccomb drew a check on the Irving National Exchange Bank for \$43.09, and that you endorsed and put through the Clearing House on August 21st, 1913, and the total amount of the checks that were issued to you, of which the last one was on August 19th, 1913, then figured up to \$2,039.07? A I couldn't say that -- I don't know what they all belong to that transaction --

Q I understand that you didn't have any other transactions in July and August -- what was the date of this \$2,000 check?

A I don't know.

Q There (indicating) is the total of the account which Brown and Seccomb say they paid to you for persona checks?

A Yes, that may be so, too.

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Q And according to that account on July 14th, they had paid you \$1500 and on July 21st, they had paid you \$450, which I have shown to you in these checks, which we have just been considering as drawn by Brown and Seccomb, which made a total of \$1950, which according to these checks had been paid to you by Brown and Seccomb by the 21st of July; and this check of July 23rd which was drawn by Mr. Gatto on his Corn Exchange Bank, South Brooklyn branch, you had already \$1950 of it, although a few minutes ago you stated to me that that amount had not been paid — A I said that the amount was paid to me but I couldn't keep those amounts in my head.

Q But you said it had not been paid to you? A I can't keep these —

Q Have you ever seen that check before? A I may have seen it.

Q You now admit that you had received \$1950? A That may be so, too, yes.

Q And why, if you had received \$1950, didn't you give him that money? A I had up to the time I received that — he had considerable money but I was not going to give him all the money, here's up to July 25th Gatto had all this cash here (indicating statement and checks).

Q Had you advanced that before you received payment from Brown and Seccomb? A I had advanced some to him before I received payment from Brown and Seccomb, certainly I had.

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Q You don't know then -- A All that money was advanced to him before -- before I got any money from Brown and Seccomb.

Q Brown and Seccomb's statement shows that on the 10th of July they paid you \$891.35 -- do you know what that was for?

A I think that was for duty -- they paid it to Mr. Inguglia, naturally it would be charged to the account.

Q That was duty and charged to the account? A And a check dated the 14th might not reach us until the 16th.

Q They had closed up this entire account and had given you \$2,000? A But the account was not closed then as far as the latter part of September.

Q But it was closed so far as you and Brown and Seccomb were concerned? A Certainly, but we have to pay any additional duty or get refund duty.

Q Did you know that Brown and Seccomb had overpaid you \$30 on that transaction? A I don't think Brown and Seccomb overpay anybody, they never called my attention to it.

Q Explain a little more about that additional duty to me, Mr. Saitta. A Why, the United States Government on the 21st or 22nd day of September, sent notice that additional duty had to be paid on that invoice -- in other words, the amount of pounds in the box weighed was more than what the invoice called for -- \$11.99 to Mr. Inguglia to pay to the United States Government for additional duty, and we never make up our account sale until everything is in. When the custom house and the

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steamboat company liquidate their accounts I make up my own account. I gave Mr. Gatto advances from time to time.

Q Are these your figures, this total here? A I hardly think so.

Q According to those figures you had paid Gatto up to that time that amount of money; since that time he has \$195 --

A That there was a mistake of \$65 which has to be taken off, leaving him a balance of \$155 that he has not had from me. He never called for it since this trouble came up.

Q Did you know -- you understood then it was Gatto's money? A I have been ready and willing to give it to him, but when the trouble came he didn't ask for it.

Q You have charged on July 7th, \$255.59 for additional duty, Brown and Seccomb had paid \$203.59? A Well, they didn't pay for the Customs House entry."

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(A paper is now marked in evidence People's Exhibit 55 and it is agreed that Exhibit 55 is the statement furnished to the District Attorney's office by Mr. Saitta at the same time the checks referred to in the previous statement.)

IT IS ALSO CONCEDED that all these statements made by Mr. Saitta in the presence of these stenographers and the furnishing of his checks and the furnishing of this statement, were voluntary and not rendered under any compulsion.

MR. HAYWARD: I will concede that Mr. Saitta was never placed under any compulsion by this office.

MR. MOSS: That he came here voluntarily. Will you concede that?

MR. HAYWARD: Yes, I will concede that, and that he came on request.

MR. MOSS: But voluntarily.

MR. HAYWARD: It was pursuant to a custom of this office, whenever a lawyer or attorney at law has any charge filed against him, but not in other cases, to give him an opportunity to come here and make such explanation as he desires.

MR. MOSS: And that he came and made the explanation in the way you have told the jury.

MR. HAYWARD: Yes.

MR. HAYWARD: I offer in evidence the personal checks of the defendant, P. S. Saitta, on the Chatham and Phoenix National Bank, consisting of thirty-two checks.

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(The bundle of checks referred to are received in evidence without objection and marked People's Exhibit 56).

(A paper is now marked in evidence People's Exhibit 57, and it is admitted that the information and papers attached thereto marked People's Exhibit 57, entitled the People against Salvatore E. Gatto, is the information filed in the Court of Special Sessions, City of New York, against Salvatore E. Gatto.)

SALVATORE E. GATTO, recalled, testified through the official interpreter, Mr. Villamena, as follows:

CROSS EXAMINATION BY MR. MOSS (Continued):

Q I want to refer you to the circular letters -- about one hundred of them, which you sent to Italy; are you thinking of them? A Yes.

Q You obtained Mr. Fazio's business through one of those circular letters, didn't you? A Yes.

Q Did you obtain any other business through those circular letters, and if so, state what it was? A No, sir.

Q Not another piece of business of any kind? A The circular was only for fruit business.

Q But didn't you obtain a consignment of tomato paste through one of the circulars? A No, sir.

Q Didn't you obtain an order for a shipment of Chianti, through one of these circulars? A No, sir.

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Q Was the only business you brought to Mr. Saitta out of those circulars, this business of Fazio's? A Yes.

MR. HAYWARD: The People rest.

MR. MOSS: The defendant moves for a direction of acquittal upon the ground that the crime charged has not been proven and also on the ground that the evidence does tend not/to prove the crime charged.

Motion denied. Exception.

THE COURT: Gentlemen of the Jury: Remember the admonition I have always given to you on leaving. You must, during the trial of a criminal case, keep a perfectly open mind. You must not make up your minds as to the guilt or innocence of a defendant until you have heard all the evidence on both sides; that is what the law imposes upon you and me also -- to be entirely impartial judges we must not make up our minds until we have heard all the evidence in the case, and the law requires me to instruct you not even to discuss the facts. The reason is this: A man who discusses facts sometimes has pride of opinion, and having once said a thing one way or the other he hates to change it, and the law takes cognizance of that fact, and that we are all human, and when we once express an opinion we sometimes have what we call pride of opinion and do not want to change it. The best thing to do is not to express any opinion one way or the other. Do not make up your

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minds as to the guilt or innocence of the defendant and do not express any opinion and please talk about anything else except the case, until you have heard all the evidence and retired to the jury room to deliberate upon your verdict, and then you may discuss it as much as you please. Be in your seats tomorrow morning at eleven o'clock.

(Court stands adjourned until tomorrow morning, March 26th 1914, at 10:30 o'clock).

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New York, March 26th, 1914,

Trial resumed.

Mr. Moss handed the following memorandum, by consent, to the Court. It is not read, but handed to the stenographer.

MR. MOSS: On reflection, before opening to the jury, I renew the motion to withdraw a juror on the grounds which I previously urged, and upon these further grounds:

The conduct of the juror is an indication of an atmosphere for conviction.

There have been arguments from the bench, in the presence of the jury, bearing upon questions of wrong doing both as to Gatto and as to Saitta, which appear in the minutes. At the time it seemed better to the defendant's counsel to take no exception, but now, in view of the juror's conduct, they seem to have grave significance.

The questions to Mr. Winton did not tend to relieve him from embarrassment and resentment, and the precise situation was not probed. Though I did not raise the question of his drinking at all, he addressed his explanation to me personally, and the seriousness of his demeanor since the event, shows that it has taken a strong hold upon him.

In this situation I believe the defendant will not have the fair trial to which he is entitled, and excepting to all to which I have referred, I move for the withdrawal of a juror.

Motion denied. Exception.

The Court wrote the following memorandum which was first exhibited to Mr. Moss and then handed to the stenographer in order that the subject of the motion would not be called to the attention of the jury.

The colloquies between the counsel and the Court referred to above appears in full in the minutes and occurred two days ago, and one of them at least was expressly not excepted to by counsel, but on the contrary he affirmatively expressed himself as glad that it occurred, as it tended to clarify the issue.

The juror referred to has always been most circumspect in the jury box and his conduct, deportment and demeanor in court has been above reproach. I do not know what Mr. Moss means by the above statement in reference to the juror: "The seriousness of his demeanor since the event." The juror's demeanor has not been subject to any criticism whatever in court.

If counsel will indicate wherein any "atmosphere" may be dispelled I should be more than pleased to do anything within reason to make the defendant feel that he is having a fair and impartial trial.

MR. MOSS opens the case to the jury in behalf of the defense.

THE DEFENSE.

HENRY B. HEGEMAN, having been previously sworn, is now called as a witness in behalf of the defense, and testifies as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q You have testified before, questions being asked, of you concerning the custom and operations of the fruit trade; you recall that? A Yes.

Q I wish to ask you one or two questions on that same line. I want to ask you whether, in pursuance of that custom, and in your own experience, entries have been made on white consular invoices, the oath being made that you were the agent of the consignee? A I could not testify to that. I have had very little experience in making entries. I know there is a white and blue bill of lading, but aside from that I could not -- I mean consular invoices -- but, aside from that I could not -- I am not qualified to testify.

Q When white consular invoices have been used, have you in cases paid portions of the proceeds to the importer? A We always pay the proceeds to the New York importer, whoever he may be.

Q That answers my question I think -- whether the invoice is white or blue, you pay to the importer in New York? A Yes, sir.

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Q That answers my question I think -- whether the invoice is white or blue, you pay to the importer in New York? A Yes, sir.

We do not see the bills of lading in the general course of business. It is only separate and special cases we ever see the bill of lading.

Q And he may be the consignee or owner, so far as you are concerned, you pay to him? A Yes, sir -- as far as we are concerned.

Q Do you know if your firm has made entries when there were white invoices? A We have made entries in many cases, but whether they were white or blue, I could not say. Any entries we have made, the Customs House broker has always brought the bills of lading to us, and instructed us where to sign.

Q The Customs House broker tells you where to sign, you sign where he tells you? A Yes, sir.

Q And swear to it where he tells you? A Yes, sir.

Q According to what he says? A Yes, sir.

Q Not according to your oaths? A Yes, sir.

Q Your concern is the biggest auction concern in the United States? A I think it is -- the oldest.

Q You do a business of twelve or thirteen millions a year? A No, nowheres near it.

Q You do a business of millions of dollars? A Yes, sir.

Q Does it not happen many times when importers have owed money to Brown & Seccomb on one sale or shipment, they would take such amount out of the next shipment, regardless of the fact whether or not they were consigned goods? A No, sir.

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Q Was Mr. Saitta counsel for your firm for three years?

A Yes, sir. I might say, as far as the white and blue consular invoices, that I do know, if it is a white invoice, they sign at the upper affidavit, and if it is a blue one, they sign at the bottom one, but I cannot say that I ever read the affidavit over to see why that was done.

Q Have you yourself signed such affidavits and sworn to them? A Yes, sir.

Q Without any more knowledge than you have told us? A Yes.

CROSS EXAMINATION BY MR. HAYWARD:

Q You say when the invoice is white you sign on the top blank? A Yes, sir, the top blank.

Q And when it is blue you sign on the bottom blank? A Yes, sir, the bottom blank.

Q And as matter of fact you know that the top blank, the one you sign where the invoice is white, is the one where the merchandise has not been actually purchased, and that the one on the bottom, accompanying the blue, is where the merchandise has been actually purchased? A Mr. Hayward, I cannot testify to that as I am not clear on it. We have had so few entries. We do not receive direct consignments and have little to do with the entries and so I am not a competent witness to testify to anything in regard to the bill of lading.

Q When the invoice is white, you sign the top form? A Yes.

JOHN J. WAGNER, M.D., called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 28 Seventh Avenue, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS:

Q Are you the family physician of Mr. Saitta? A I am.

Q Do you know Salvatore Gatto? A I met him last fall.

Q Where did you meet him first? A At his home, 710 Henry Street.

Q Who introduced you to him or him to you? A Mr. Gatto telephoned me to come to the house to see his mother-in-law, and Mr. Saitta later told me that Mr. Gatto was -- his mother-in-law was ill and he would like to have me take care of her as I would of his own family.

Q So, the introduction was in the way you have mentioned?
A Yes.

Q You did treat the mother-in-law? A Yes.

Q For how long? A Why, I only made one call at the house and Mr. Gatto made ~~one~~ call at my office.

Q How many times have you seen Mr. Gatto, so you have spoken with him? A I talked with him in court on Monday here, and I talked with him at his home, and at my office.

Q In what language did you talk to him? A The English.

Q Did you find free expression between you, free communication? A I had no trouble to talk to him and explain to him the condition of his mother-in-law who could not talk English. He

requested, when he telephoned me, that I make the appointment so that he could be home to interpret for his mother-in-law.

Q Did he act as interpreter between you and the mother-in-law? A He did.

CROSS EXAMINATION BY MR. HAYWARD:

Q What did he tell you -- did he tell you that she was suffering from pains in the abdomen? A He told me that he had her to either a hospital or dispensary and another physician, and they had advised operation, and as I had been Mr. Saitta's family physician and he and Mr. Saitta were intimate friends, he wanted my opinion first before he subjected her to an operation. I examined the lady in question and advised that the conditions were too far advanced for an operation, and it would not be wise to operate on the woman.

Q She was not operated on? A To my knowledge, as far as I know, she was not operated on.

Q When you spoke to him in the court, did you pass the time of day with him? A No, I sat down and talked with him -- sat down by the side of him and asked him how his mother-in-law was and he said about the same, and I asked him how the babies were and he said they were nicely, and he told me that he had moved and I asked him where he had moved to, and he gave me the address which I wrote down, his new address. He told me he had received my bill, but he had not paid me yet.

Q Had not paid you yet? A No.

Q Did he talk to you about business matters? A No.

Q Of any kind? A No.

Q Never did? A-No.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q In any of these conversations did he say anything about Mr. Saitta by way of criticism? A No --

MR. HAYWARD: I object, unless it is for the purpose of showing how much or how little English he could talk.

MR. MOSS: I take it for any purpose.

MR. HAYWARD: I object to it for that reason.

THE COURT: Why not let him answer.

MR. HAYWARD: I will withdraw the objection.

THE WITNESS: He did not. He only spoke in praise of Mr. Saitta, as he was a very dear friend of his.

BY MR. MOSS:

Q What did he say? A That he had known Saitta for a long time; and that ~~he~~ was a very dear friend of his, and before he subjected or had his mother-in-law subject to operation, he wanted my opinion as to whether it would be advisable to have her operated on.

Q When was that said to you, as near as you can give the date? A That was last fall.

THE COURT: September or October or November?

THE WITNESS: I think it was in September some time.

BY MR. MOSS:

Q And when did you see him last, before you saw him in court? A It was a few days after I called at the house. I don't remember.

Q So that that would be both in September? A Yes, sir.

FRED M. GALLOWAY, M.D., called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 1 Sherman Street, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS:

Q Are you connected with the Metropolitan Life Insurance Company in any way? A I am.

Q In what way? A Medical examiner.

Q Do you know Salvatore Gatto? A I have seen him to examine him.

Q You examined him. A I did.

Q For life insurance? A Yes.

Q When was that? A I can't remember the exact date, but I think it is within the past two months.

Q If I show you a policy, would it refresh your recollection? A I could recognize it. (A paper is shown witness).

THE WITNESS: This is the policy.

BY MR. MOSS:

Q March, what date did you say? A February 17th.

Q Last February? A Last February.

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

Q Once or more than once? A I beg pardon?

Q How many times? A Just once.

Q Where was the conversation? A At his home.

Q Did he talk with you in English? A He did.

Q What was the conversation? A In referring to the insurance, a number of questions that had to be asked and answered.

Q What were those questions, what did they relate to?

A Related to family history both past and present.

Q That is, his relatives? A His relatives.

Q Father and mother, sisters and brothers? A Yes, sir, and grandparents-- brothers and sisters, yes-- ages at the time of death, if any were dead, and the ages of those living and the condition of their health, and also a number of questions in regard to past personal history, illnesses of any kind and medical treatment, if there was any; questions in regard to weight and whether there was any loss of weight, and some questions that are not on the application that we think advisable to ask.

Q Did you have a free conversation with him? A Well, he was able to understand and answer the questions.

Q Did any one interpret for you? A His wife was present at the time I was asking the questions, and she volunteered some of the information, but he answered most of the questions himself.

Q So far as he did talk, he talked English? A Yes.

Q And you talked English to him? A Yes.

Q As between you and him, you had no interpreter? A No.

Q Did he sign a statement? A He signed the statement after the questions had been answered.

Q The statement which is made a part of the insurance policy? A Yes, sir.

Q And upon which the obligation of the company and the insured rests? A Yes.

CROSS EXAMINATION BY MR. HAYWARD:

Q In the course of this examination I presume you asked him if he ever had rheumatism, gout, scrofula, diabetes, syphilis, delirium tremens, sunstroke, unconsciousness, habitual headache, dizziness, fits or any tremors, convulsive seizures, paralysis, spinal disease, insanity, any disease of brain or spinal cord, shortness of breath, coughing of blood or spitting of blood, bronchitis, pleurisy, pneumonia, asthma, any disease of chest or lungs, palpitation, uterine or ovarine disease, menstrual derangement -- any of those things, and he answered no? A Not the latter two questions -- yes, I asked all those questions.

Q He said he never had anything like that? A Yes, he said he never had any of them.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Did you ask him those questions realizing that that would be the foundation of the contract and obligation? A Yes.

Q Did you ask him them carefully? A Yes.

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Q Did you satisfy yourself that he understood what you asked him about all dreadful diseases? A Yes. Several of these things, very few laymen understand, and some of them he did not know what they meant and I had to explain to him.

Q Were you satisfied that he understood your explanation?
A Yes.

FRANCESCO F. MENTOLA, called as a witness in behalf of the defense, being duly sworn and examined, testified through the official interpreter, Mr. Villamena, as follows:

(Residence 40th street, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A I am employed on the dock there to open cases of fruits.

Q What dock? A Any place.

Q Do you know Salvatore Gatto? A Yes.

Q Did you open any boxes of lemons for Gatto, at any time?
A Yes.

Q When was that? A Last year.

Q What month, if you can tell? A I don't remember exactly, in the month of March, I believe.

Q On what dock was that? A Once at Pier 22, Brooklyn.

Q How many boxes did you open there at Pier 22, Brooklyn?

A A little over three hundred.

Q What was in them? A Lemons.

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Q Do you know who they came from, what shipment they were?

A Were consigned to Mr. Gatto.

Q By whom, do you know? A / Zimbaro.

Q Was Mr. Gatto actually there himself? A Yes.

Q Did you talk with him? A Yes.

Q What did he say as to whose lemons they were? A Belonged to him.

Q Did you see those lemons sold? A Yes.

Q Was anybody present at the sale? A Yes, sir, he was there at the sale.

Q Did Gatto ever say anything to you about Saitta? A He told me that when I got through with my work, Mr. Saitta would pay me, but Gatto told Mr. Saitta to pay me.

Q Did Gatto say anything to you about Mr. Saitta's connection with these lemons? A No, sir.

Q Did Mr. Gatto ever say anything to you about Mr. Saitta, as to the payment for those lemons? A No, sir.

Q Have you told us all that you remember that Mr. Gatto ever said to you about Mr. Saitta in connection with these lemons or those shipments? A He told me that the shipment was of 600 cases, and after he would have a business of 10,000 cases, and Gatto told me that because Mr. Saitta lost money on this last transaction, he don't want to do any more business with me.

Q Does the "me" refer to Gatto? A Gatto, yes, Gatto is talking now -- when he told me that Mr. Saitta did not want to

have any more to do with him, that he would transact the business directly with his relative in Italy, and he did assure me that I would have lots of work to open 10,000 cases of lemons.

CROSS EXAMINATION BY MR. HAYWARD:

Q This was at the time these lemons came from Zimbaro --you can understand me well enough -- I will use simple language -- how long have you been in this country -- how long have you been in the United States? A Don't understand.

THE COURT: Put the question to him in Italian.

(The witness now testifies through the official interpreter, Mr. Villamena).

A Twenty-eight years.

Q You do not speak English? A No.

BY MR. HAYWARD:

Q How did you know the lemons you were opening were from Zimbaro? A Gatto told me.

Q And he told you that because Saitta had had a loss on the lemons that Saitta was not going to buy any more, did he? A Yes, sir, that he would not buy any more lemons.

RE-DIRECT EXAMINATION:

Q Did he say Saitta would not buy any more lemons from Gatto?

MR. MOSS: I will withdraw the question.

MR. HAYWARD: Let us have his answer.

BY MR. MOSS:

Q Did Gatto say the lemons were his? A Yes, sir.

CHARLES ANDREIS, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 783 East 21st street, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A Merchandise broker and agent for foreign concerns.

Q In fruit? A General products.

Q Does that include fruits? A Fruit -- very seldom I deal in fruit.

Q Do you have to do with merchandise that is brought in from other countries? A Yes.

Q And you have to do with the Customs House? A Yes.

Q How long have you been in that business? A About fifteen years.

Q I will ask you with reference to the custom concerning business coming through the Customs House; in accordance with that custom have you made entries with white consular invoices, making the affidavit that you were the agent of the consignee?

A I think so.

Q What? A I think so, I can't remember all the entries I made in the Customs House.

Q But you have done that? A I think so.

Q When you have done that, have you sometimes paid the proceeds to the importer? A I think so.

Q Is that the custom of the business? A You have to make the entry according to the consular invoice.

Q According to the color and the form of the invoice, and is it done that way? A Generally the way to do it.

Q That is done with the object of getting the goods out of the Customs House and paying the duty? A Yes, sir, on account sometimes the shipper can make the consular invoice before he sells the goods, and having a white invoice made out, and in the meantime he sells the goods and ships those documents here, and the buyers here cannot change the invoice, the man who buys the goods, he cannot change the invoice. He has to make it as the agent of the shipper. That is the customary rule.

Q If I understand you correctly, when the goods have had their white invoice made out, and are on the way to America, they may be sold in transit? A Yes, sir.

Q But if they are sold to somebody else in transit and still the white invoice comes in -- A Yes, sir.

Q The custom is to make the declaration according to the color of the invoice --

MR. HAYWARD: I assume that this is an intelligent man and there is no need to lead him.

MR. MOSS: I thought I was simply summarizing.

THE COURT: It is very leading. Now, on that subject, can we agree on the subject -- does either side feel that whatever invoices they were, whether white or blue, that it

has anything to do with the guilt or innocence of the accused. Does either side feel that way?

MR. MOSS: I object to any discussion of questions affecting the guilt or innocence of the accused --

THE COURT: Is it material to the issue?

MR. MOSS: I was going to say that because I want to save time and cut out unnecessary discussions, that I think the answers of the witness thus far serve my purpose, and I will not prosecute that any further.

THE COURT: Then you can proceed.

BY MR. MOSS:

Q Do you know Salvatore Gatto? A Yes, sir.

Q You have had conversations with him, have you? A Lots of them.

Q I want to ask you certain specific questions concerning which I interrogated Mr. Gatto when he was on the stand. First, referring to 600 boxes of Zimbaro lemons, did you ever have a conversation with Mr. Gatto in which he said they were his own?

A Yes, sir.

Objected to as leading.

MR. MOSS: I am obliged by the rules to put the question in just that form, the form in which I put it to the witness Gatto, and it is not subject to the objection as leading.

Q (The question is repeated by the stenographer).

THE COURT: I think, Mr. Moss, it would be better to ask

him if he had a conversation with Gatto, in regard to it, and not ask him or tell him what the conversation is. I know your point.

MR. MOSS: It is not a point. I am following simply the rule of evidence, which I am obliged to do, having laid the foundation by asking Gatto certain questions, and I am obliged to restrict my question to that, in order that the contradiction may be on the precise subject. It is not a contradiction of Gatto unless it is on the precise subject, or in the witness' words or substantially so.

THE COURT: I will sustain the objection and you may take an exception. You may ask him what conversation, if any, he had with him in regard to the Zimbaro lemons.

MR. MOSS: Will that apply to every subject concerning which I interrogated Gatto for the purpose of laying a foundation?

THE COURT: No.

MR. MOSS: Then the exception will stand by itself.

BY MR. MOSS:

Q If you had any conversation with Gatto concerning the 600 boxes of Zimbaro lemons, what did he say to you? A He says to me that he was always in bad luck, that he started that lemon business that he had with Mr. Saitta, and his brother-in-law sent him some fruit which was not good, which arrived here rotten and the market was against it, and that he lost \$700., and he owed that

money to Mr. Saitta.

Q That had reference to the Zimbaro lemons? A I think that was the shipment. While I was not in the lemon business, but, he told me about certain shipments, and he mentioned the name of his brother-in-law Zimbaro.

Q Did he ask you to put in a good word for him with Mr. Saitta so that he would help him and do some good business with him, A He told me several times to speak to Mr. Saitta to help him out -- he came for help to my office and I helped him out often too.

Q Did he say anything else with reference to helping him in business? A Yes, sir, he said Mr. Saitta had opened that credit for the shipper and he was in such bad luck that the first transaction turned out wrong.

Q I ask you if you had a conversation with him on or about June with reference to a cable charge account? A Well --

Q Or did you hear him speaking with reference to Mr. Saitta's cable account? A One day -- I don't know if it was the month of June -- I don't remember the date, but it was in the beginning of the summer that he was in my office and Mr. Saitta came in and there were other people, and Mr. Saitta scolded him for using his name in the Cable Company, and he said to Mr. Saitta that he had to forgive him, that he will make it good some other time.

BY THE COURT:

Q When was that? A The beginning of the summer - I don't

remember the month.

BY MR. MOSS:

Q Did you have any conversation with him or did you hear him speak with reference to any goods that were in transit, coming from abroad, that were coming to America -- you understand me?

A Yes, I understand the question.

Q Was there such a conversation, say yes or no to that?

A I don't remember that. He came often to me to see me.

Q Was there any conversation in which you heard him say anything about having given documents or papers to Saitta? A Yes.

Q What was that? A He said that he had given some documents for some lemons to Mr. Saitta; that he was again doing business and he expected to do a large business through the importation of lemons and other goods, that he would be on his feet again.

Q Did he say anything in that conversation, or about that time, with reference to Saitta paying himself? A He said he had squared up with Saitta -- that he had squared his account with Saitta, that he had given him some documents for lemons.

Q Do you know whether or not Gatto can read and write in English? A I think he understands English. I spoke to him in Italian, but I think or I suppose he understands English.

Q Have you heard him converse in English? A A few words.

BY THE COURT:

Q How long have you known Gatto? A He went to school with me.

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Q You have known him ever since? A Yes, sir. His name is not Gatto.

Q What is his name? A Gattoruggiero.

Q Is that other part his mother's name? A No, his father was Gattoruggiero, only one word, Gattoruggiero.

Q Spell it? A G-a-t-t-o-r-u-g-g-i-e-r-o -- that was what we called him in school.

Q He testified that the Ruggiero part was his mother's name? A No, I knew his father who was a Customs House broker and it was Gattoruggiero.

BY MR. MOSS:

Q You say that was his father's name, Gattoruggiero?

A Yes, sir, that was what we called him.

Q You say you knew his father -- where did you know him?

A On the other side.

Q In Italy? A Yes.

Q When did you first get acquainted with Gatto? A He went to school with me.

Q Have you known him all your life? A Yes, but I did not see him for about twenty years.

Q How long have you known him on this side? A I met him about four or five years ago.

Q For four or five years you have known him? A Yes, sir, here in this country.

Q Do you know other people who know him? A Yes.

Q Many? A I think so, yes.

Q Do you know what Gatto's reputation is for truth, is it good or bad? A I would not believe him. He told me lots of lies.

Q I do not ask you if you would believe him, but what is his reputation, what do people say about him as to his truth or not truth? A I rather think it is bad.

BY THE COURT:

Q Who did you hear say that? A Everybody speaks of him.

Q Everybody said that? A Yes.

Q You have known him all your life? A Yes.

Q How long have you known the defendant? A The defendant?

Q Yes? A About ten or eleven years or twelve years.

Q Did you ever hear the defendant say that about Gatto, that he could not be believed or he would not believe him? A Yes, sir, he was very mad at the time of the cable bill.

Q Did you ever hear him at that time or before that, speak about Gatto's reputation for truth and veracity? A Mr. Saitta told me at that time that he was very mad about him at that cable business, but afterwards, one day Mr. Saitta called me up I think it was on the telephone and said "You know Gatto made good, he brought me some documents for lemons. I never expected I would have my money back."

Q That is not what I asked you -- I asked you did you ever hear the defendant, that is, Saitta, at any time say that Gatto was not a man to be believed, or that he would not believe Gatto? A No.

Q Or that he ever heard that people would not believe him?

A No.

Q Did you ever, in all the eleven years you knew Saitta, tell him that Gatto was a man that you would not believe, or that people would not believe, or that he had the reputation of not telling the truth? A No, I never had such a conversation.

Q Why didn't you? A It was not my -- he did not ask me about the reputation of Gatto.

Q Are you a client of Saitta's? A Yes, sir.

Q Well now, you knew Gatto was not a man worthy of belief?

A I would not believe him.

Q Would you believe him under oath? A I would not.

Q You would not believe him on oath? A No, I would not.

Q You did not tell Saitta "You are a lawyer"? A I have a reason not to believe him on oath.

Q Did you ever see Gatto in Saitta's office? A Yes, lots of times.

CROSS EXAMINATION BY MR. HAYWARD:

Q Did you ever see Saitta strike Gatto when he was in his office? A He nearly was going to strike him.

Q Did you ever see him strike him? A No.

Q Never saw him actually strike him? A No, never.

Q But you have seen him threaten to strike him? A Yes.

Q What would Gatto do when he threatened to strike him?

A Commence nearly to cry.

Q And then he would do whatever Saitta told him to do? A No, he said that -- he admitted his fault for using his name on the Cable Company, and said that he would make it good, that he expected lots of goods from the other side, and not to worry and he would make it good.

Q Make the Cable account good? A Make good whatever he owed Mr. Saitta.

Q Did Saitta clench his fist when he threatened to strike him? A No, just went to him and said "You are a scoundrel", but of course the room was a little room.

BY THE COURT:

Q He called him a scoundrel? A Yes.

Q When was that? A That was about the month of June.

Q In the month of June he called him a scoundrel? A Yes.

Q You are sure of that? A Yes -- I cannot remember the date exactly -- about.

Q About that? A Yes.

Q You think it was about that time? A Yes, sir, before Mr. Saitta told me that he had made good.

Q That was before Saitta told you that he had made good by turning over the bill of lading for the lemons? A Yes.

Q Did you ever tell Saitta that Gatto's name was not Gatto but that it was Gattoruggiero? A I don't recollect.

Q Why didn't you tell him that, you knew it because you went to school with Gatto? A Yes.

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Q And you knew Gatto's father? A Yes, lots of people from Messina, they know his name is Gattoruggiero.

Q Why didn't you tell Saitta about that? A I was not asked. I do not know if I told him or not. I can't remember if I told him that.

BY MR. HAYWARD:

Q Saitta probably knew it any way, didn't he?

Objected to. Sustained.

Q Do you know whether Saitta knew that Gatto's name was Gattoruggiero? A Well --

Q Did you ever hear him call him that? A No, never.

Q Did he ever refer to the Ruggiero part of it, in your presence? A No, sir.

BY MR. HAYWARD:

Q What is your first name? A Charles.

Q Is the Italian word for Charles Carlo? A Yes.

Q Carlo Andreis, is that what they call you -- called you when you were in school? A Yes.

Q With this man Gatto in Italy? A Yes.

Q That is the name you went by in Italy? A Yes.

Q Carlo Andreis? A Yes.

Q What is your business here now? A Merchandise broker and agent for foreign houses.

Q What was your business when you came over to this country?
A The same.

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Q And who are you in business with now? A Well, E. Andreis, my wife.

BY THE COURT:

Q What is the name of the firm? A Charles Andreis & Company.

BY MR. HAYWARD:

Q And what was your business connection before that? A I was in the -- my name only.

Q Were you ever president of the Italian American Trading Company? A Yes.

Q For how many years? A About three years -- up to 1907.

Q They were located first at 24 & 26 Stone Street? A Yes.

Q Where were they next located? A Coenties Slip.

Q Were they ever at 213 Pearl Street? A 24 Stone Street was the last place -- the first I guess it is 89 Stone Street --

Q Which was the place they had the fire? A In Pearl Street.

THE COURT: That is what he asks you about; were you ever at 213 Pearl Street?

THE WITNESS: Yes, sir -- 213, I guess that is the right number -- I am not sure about the number, but it is Pearl Street.

CASE #1017

1
BY MR. HAYWARD:

Q When did that concern discontinue business? A I left it in 1907.

Q When was the fire? A The fire was about a year and a half or two years before; I can't remember.

Q You don't remember when that was exactly? A No. It was in the spring but I don't remember the year exactly -- about a year and a half before I left.

Q Did you ever work for Kaylor Walker & Company on the other side? A Yes.

Q That was where? A Massena, Italy.

Q As matter of fact, you forged the name of Mr. Kaylor of that firm, didn't you? A Never.

Q And you fled to Egypt? A Never.

Q And from Egypt you fled to this country? A No, never. I left Italy with the right passport and I have it in my possession.

Q How many times have you failed in business? A Never.

Q How many times have any firms you have been connected with failed in business? A Only that in Italy, but I was not a member of the firm. I was only a clerk there, but my brother in law was the owner.

Q Did you have a power of attorney for this firm over in Messina? A Yes, sir.

Q And, as matter of fact, you negotiated a couple of forged bills of lading? A No, never.

CASE #1857

Q. Do you remember the firm of Ascher & Andreis? A Yes, sir.

Q. When did that firm dissolve? A Dissolved by mutual consent, and that was about 1890 or 1900.

Q. That was when you took up this American Trading Company?
BY THE COURT:

Q. 1890 would be twenty-four years ago; do you mean twenty-four years ago? A 1900 I mean.

BY MR. HAYWARD:

Q. You were a pretty close friend of the man they call Lupo, the Wolf, the barrel murderer? A No, I was not a close friend. I just did some business as a broker for him.

Q. He was a customer of yours? A Yes, sir; I sold some goods for his account and he bought some goods through me.

Q. You and Lupo, who is now serving a thirty year sentence in the Atlanta prison for counterfeiting, and Mr. Saitta, were associated together, were you not, socially and personally?

A Never.

MR. MOSS: The witness's answer is in, but while there is considerable latitude allowed on cross examination, I suggest in all fairness and upon the common decencies of practice that question should not be framed in just that way. Too much of an assumption in it. I do not want to stand between Mr. Hayward and this witness but --

THE COURT: Lupo, the Wolf, is a man probably that everybody knows, and the records of the Court show, but the part

I certainly sustain is that he must not join the defendant's name in it. He might ask this man if he knows Lupo, the Wolf, and if he was an associate of Lupo's, but Mr. Hayward, you must eliminate the defendant entirely from your question.

BY THE COURT:

Q Did you know Morelli? A No.

Q You know who Morelli was? A I read it in the papers at the trial.

BY MR. HAYWARD:

Q Are you an Italian? A I am Austrian descent but an Italian citizen before I was a United States citizen.

BY THE COURT:

Q You went to school in Sicily? A Yes, sir; a German school in Sicily.

Q How about Gatto, did he go to the German school in Sicily?
A After the German school I went to an Italian school. The German school and then the Italian High School.

DOROTHY DISTLER, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, 33 Hanson Place, Jamaica).

DIRECT EXAMINATION BY MR. MOSS:

Q Are you a stenographer? A Yes.

Q In Mr. Saitta's office? A Yes.

Q Are you also or were you a Commissioner of Deeds? A Yes.

Q Do you remember Mr. Gatto, Salvatore Gatto? A Yes.

Q Did you typewrite this affidavit which has been marked Exhibit. 49? A Yes.

Q Were you present when that affidavit was drawn and when it was executed? A Yes.

Q Did you have anything to do with the preparation of it?

A Well, it was dictated to me and I transcribed my notes and wrote it out.

Q Who dictated the affidavit? A Mr. Saitta.

Q Who was present when it was dictated? A When I first went into the office there was no one but Mr. Saitta and myself. A few minutes later he called Mr. Gatto in.

Q Was the dictation in the presence of Mr. Gatto? A Yes, sir; it was.

Q Did Mr. Gatto hear the words that Mr. Saitta used when he dictated it to you? A Yes.

Q And after the dictation, how long was it before you transcribed it on the typewriter into typewriting? A I could not just remember. I know when I finished it I immediately took it in to Mr. Saitta's office.

Q Did you go right to work at it? A Yes.

Q Did Gatto remain? A Yes, sir; about a half an hour.

Q Did you take the copy right in to Mr. Saitta? A I took the original only.

CASE #1857

Q And how long after that was it when Mr. Gatto signed it?

A Well, in about fifteen or twenty minutes.

Q Do you know what was done if anything, with the affidavit I mean as it was in typewritten form, before Mr. Gatto signed it?

A I took it into Mr. Saitta's office and when Mr. Saitta came in to ask me to swear Mr. Gatto, he was reading the affidavit and I had to wait until five minutes until he had completed it.

Q If I understand you, when you entered you found him and heard him reading the affidavit? A Yes.

Q But did not hear him reading the whole of the affidavit? A No.

Q The latter part of it? A Yes.

Q The affidavit having been read as you testified, did you see Gatto sign it? A Yes, I did.

Q Did you administer the oath to him? A Yes, sir; I asked him if he swore to it and he said "Yes, I do."

Q Did you see him sign it? A Yes.

Q And you signed it as a notary public or Commissioner of Deeds, I should say? A Yes.

Q That is the paper you have in your hand? A This is the paper.

Q Did Mr. Gatto come to the office after he signed that affidavit? A You mean the same day?

Q No, on different days? A Yes, sir; Mr. Gatto has been at our office many times.

Q I mean since the signing of that affidavit? A Yes.

Q How long after he signed that affidavit did he come in again, what day? A I should judge mostly every day.

CROSS EXAMINATION BY MR. HAYWARD:

Q He came in mostly every day? A Yes.

Q And at such times he would see Mr. Saitta? A Sometimes, and sometimes he would not.

Q He came there for that purpose, however? A Possibly.

Q And when you took this affidavit in, of course you left it? A I left it and returned to my work.

Q Do you speak Italian? A No, just a few words.

Q Just what you have picked up? A Yes.

Q From hearing Mr. Saitta talk Italian to the clients who came in his office? A Yes.

Q And it was his custom to talk in Italian to Mr. Gatto there? A Yes, sir. Mostly always. He does to all his clients.

Q When he was talking to him you did not know what they were saying, when they were talking about business matters, except if they passed the time of day? A I very seldom paid attention.

Q On this occasion you took the affidavit in there and left it and was gone fifteen minutes? A About fifteen or twenty minutes.

Q And then came back? A Yes.

Q You found Mr. Gatto reading the last part of the affidavit?

A I couldn't say if he was reading the last part but he was reading it. He finished soon after I went in.

Q It was about five minutes he put in on the affidavit after you got in there? A About.

BY THE COURT:

Q Are you in the employ now of Mr. Saitta? A Yes, I am.

Q How long have you been in his employ? A About nine years.

Q Did you see anything in the office at any time, about Mr. Saitta striking Gatto? A I did not see Saitta strike him but I heard the noise inside.

BY MR. MOSS:

Q Did you hear any of the words spoken at that time? A At the time of the dictation?

Q No, at the time of the striking that the judge asked you about? A No, it was in Italian and I could not hear it.

Q Were you present at any time when there was any conversation aloud or otherwise, between Mr. Saitta and Gatto, with reference to a cable bill? A Yes, sir; I was present.

Q Will you state any conversation that you heard then? A I heard Mr. Saitta order our clerk to arrest him, get a policeman, for using his name.

Q For using his name? A Yes, sir.

BY THE COURT:

Q When was that? A That was seven or eight months ago, quite some time.

Q Could you identify it a little nearer, was it in the summer or autumn? A I imagine it must have been in the summer.

BY MR. MOSS:

Q Do you remember any occasion when Mr. Gatto went out to get some money to make a check good? A Yes, sir; I do.

Q Tell what you hear said and done with reference to that. A Mr. Gatto was in Mr. Saitta's room and there was some discussion in there in Italian which I did not understand and then I heard this noise and I was told Mr. Saitta had struck Mr. Gatto. Mr. Gatto afterwards himself told me that Saitta had struck him.

Q Did Gatto tell you what it was about? A Yes, sir; he told me he had a check, I believe to collect or cash for Saitta and he did it and kept the money.

Q Gatto told you that? A Yes, sir; he did.

Q Did he tell you that in Italian or in English? A In English.

Q Have you talked with Gatto yourself in English? A Many, many times.

Q Does he understand you? A Yes.

Q Do you know whether Gatto understood the affidavit as it was dictated to you?

Objected to as a conclusion.

Q I mean from anything he said, of course? A No, but he was in the room when it was dictated and Mr. Saitta was asking him questions in Italian during the dictation.

CASE #1057

RE-CROSS EXAMINATION BY MR. HAYWARD:

Q So this affidavit was read in English -- A It was dictated by Mr. Saitta in English, of course, with help from Mr. Gatto and he asked Mr. Gatto many questions during the dictation.

Q And after the affidavit was --

BY MR. MOSS:

Q You say he asked Gatto many questions during the dictation? A Yes.

BY THE COURT:

Q Do you mean that or that he spoke to him many times in Italian? A Of course, not understanding Italian I could not tell.

Q Would you like to still have your statement go that he asked him many questions, or would you rather have it said that he spoke to him several times in Italian and that you did not understand? A Mr. Gatto seemed to answer him. I presume they were questions which he was putting.

BY MR. MOSS:

Q When Gatto seemed to answer him, then was dictation given to you immediately? A Yes, sir.

BY MR. HAYWARD:

Q That conversation between Gatto and Saitta was in Italian? A Yes.

Q And after you brought this affidavit in, in English, then Mr. Saitta held it and translated it in Italian to Mr. Gatto, is that it? A Gatto was reading it himself.

Q Didn't you say Mr. Saitta was telling him in Italian what was in the affidavit? A When he was dictating it.

Q And afterwards when the affidavit came back prepared, he was reading it to him in Italian? A Mr. Gatto was reading it himself.

Q After Gatto had finished reading it, there was more conversation in Italian? A No, he signed it.

Q Of course, you do not pretend to know what Mr. Saitta said to Mr. Gatto when he was talking to him in Italian, either about the facts or the affidavit? A I didn't pay any attention. I don't know.

BY THE SEVENTH JUROR:

Q You saw Gatto looking at the affidavit? A Yes.

Q Was he reading aloud from it or just looking at the paper? A He seemed to be reading.

Q Was he reading aloud? A No.

Q Looking at the paper? A Standing by the window reading.

Q You don't know if he knew what he was reading or not? A No, I presume he did.

BY MR. MOSS:

Q Take the paper and hold it in your hand the way you saw Gatto doing it -- impersonate Gatto. A He had it this way and was holding it that way (indicating) when I went into the room.

BY MR. HAYWARD:

Q He was doing that for five minutes? A Yes.

CASE #1057

Q He had been doing it when you came in? A He was standing there when I came into the room.

Q And kept on for five minutes longer? A Yes.

BY THE COURT:

Q Did you ever hear Gatto's name was not Gatto but Gatto-ruggiero? A No.

Q You never heard that? A No.

(The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2:15).

AFTER RECESS. TRIAL RESUMED.

W H I T M E L L T. T A L I A F E R R O, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence, 258 Broadway, New York City).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A Real estate.

Q Have you charge of the building 258 Broadway? A Yes.

Q How long have you had that buidling? A Twenty-four years.

Q Do you know the defendant, Mr. Saitta? A Yes.

Q How long have you known him? A Fourteen years.

Q Where have you known him? A At that building.

Q As a tenant in that one building fourteen years? A Yes.

Q He had been doing it when you came in? A He was standing there when I came into the room.

Q And kept on for five minutes longer? A Yes.

BY THE COURT:

Q Did you ever hear Gatto's name was not Gatto but Gatto-ruggiero? A No.

Q You never heard that? A No.

(The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2:15).

AFTER RECESS. TRIAL RESUMED.

WHITMELL T. TALIAFERRO, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence, 258 Broadway, New York City).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A Real estate.

Q Have you charge of the building 258 Broadway? A Yes.

Q How long have you had that building? A Twenty-four years.

Q Do you know the defendant, Mr. Saitta? A Yes.

Q How long have you known him? A Fourteen years.

Q Where have you known him? A At that building.

Q As a tenant in that one building fourteen years? A Yes.

Q You have sustained the relation of landlord to him?

A Exactly so.

Q Do you know other persons who knew him in the City of New York? A I know people in the building.

Q Yes or no? A Yes.

Q Do you know what his reputation is for truth and veracity?

A Yes.

Q What is it? A Everything that is nice, as a gentleman should be, for truth and honesty.

CROSS EXAMINATION BY MR. HAYWARD:

Q Do you know people who have been associated with him in business? A I do not know any clients or anything of that kind, no, sir.

Q Do not know any of his clients? A No.

Q Do not know any people he has come in contact with in a business way or professional way? A No.

Q In the trial of cases in court or in the handling of business for his clients? A No.

Q Do not know any of those people? A No.

Q Do not know any of those people? A No.

Q You never have talked with any of those people about what his reputation is in business circles? A No.

BY THE COURT:

you know

Q What/then, is what you have acquired in the relation of landlord and tenant? A Yes, sir; exactly.

CASE #1057

BY MR. MOSS:

Q You knew the other tenants in the building? A Yes.

Q You have known all the tenants in the building? A Yes.

Q During that period? A Yes.

Q From your knowledge of the people that have been associated with him as tenants in that building, during those years, you have testified, have you? A Yes.

GEORGE A. PAKER, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

(Residence, 475 West 158th Street, New York).

Q Are you a lawyer? A Yes, I am.

Q Are you acquainted with the defendant? A Yes.

Q Mr. Santa? A Yes.

Q How long have you known him? A I should say twelve, thirteen or fourteen years. Ultimately I have known him about seven years. During four of those years I had charge of his office.

Q Are you acquainted with other people who know him? A Yes.

Q Do you know his reputation in the community for honesty and truth? A Yes.

Q What is it? A Very excellent.

CROSS EXAMINATION BY MR. HAYWARD:

Q When did you say you had charge of his office?

A I think it was in August, 1907, for nearly four years after that.

Q From August, 1907, for four years after that? A Nearly four years.

Q You were associated with him in business? A Yes.

Q Then you left, whatever association there was, ceased?

A Yes, sir.

Q Have you been associated with him in any way since he has been actively engaged in this lemon business? A He was at that time.

Q He was then? A Yes.

Q Always been in that, since you have known him? A Since I was associated with him, he was at that time, I know that, that is all I know.

Q When have you last talked with anyone about what his reputation was? A That would be a difficult thing to say but matters came up while I had charge of the legal matters of his office, where frequently there was talk about Mr. Saitta among his clients and attorneys on the other side and nobody ever suggested anything to me -- if I may be permitted to go ahead.

BY THE COURT:

Q When did you leave his office, Mr. Baker? A I think it was in March, 1911. I was compelled to go out of business on account of trouble with my eyes, and I resigned from Mr. Saitta's office and went to the country.

BY MR. MOSS:

Q Have you been acquainted with him since that time? A Yes, sir; intimately.

Q Your acquaintance and association has continued since then?

A Yes, sir.

BY THE COURT:

Q Did you know Gatto? A I do not think I ever saw Mr. Gatto until yesterday in court.

G I O V A N N I D O M I N I C I, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

(Residence, 79 West 103rd Street).

Q What is your business? A Fruit importer.

Q How long have you been in that business? A Ever since I landed in America, about 29 years ago.

Q You are in it yet? A Yes.

Q In a large way? A Quite large, yes.

Q You have done a large business in those years? A Yes.

Q Do you know the defendant, Mr. Saitta? A Yes.

Q How long have you known him? A Quite many years.

Q Have you known him intimately? A Well, yes; I have had business transactions with him.

Q Many business transactions? A Yes.

Q Do you know other men in the City of New York that know him? A He is a well known man.

Q You know men who know him? A Well, yes.

Q Do you know what his reputation is for truth and honesty? A Well, his reputation as a lawyer is good, a smart lawyer, in every way and respect.

Q And as to truth and honesty? A Never heard anything to the contrary.

Q Never heard anything against him? A No.

CROSS EXAMINATION BY MR. HAYWARD:

he

Q You say/has reputation of being a smart lawyer? A Yes.

PIETRO SCIORTINO, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, 2441 Seventh Avenue, New York City).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A Fruit importer.

Q Where is your place of business? A 202 and 204 Franklin Street.

Q How long have you been in that business? A About thirty years.

Q Have you done a large business? A Yes.

Q Are you acquainted with Mr. Saitta? A Yes.

Q How long have you known him? A About twenty-five years.

Q Do you know other men in the City of New York that know him? A He is a well known man.

Q You know men who know him? A Well, yes.

Q Do you know what his reputation is for truth and honesty? A Well, his reputation as a lawyer is good, a smart lawyer, in every way and respect.

Q And as to truth and honesty? A Never heard anything to the contrary.

Q Never heard anything against him? A No.

CROSS EXAMINATION BY MR. HAYWARD:

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Q You say/has reputation of being a smart lawyer? A Yes.

PIETRO SCIORTINO, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, 2441 Seventh Avenue, New York City).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A Fruit importer.

Q Where is your place of business? A 202 and 204 Franklin Street.

Q How long have you been in that business? A About thirty years.

Q Have you done a large business? A Yes.

Q Are you acquainted with Mr. Saitta? A Yes.

Q How long have you known him? A About twenty-five years.

Q Have you known him intimately, have you known him well?

A Yes, I done some business with him quite extensively.

Q You know other people who know him? A What do you mean?

Q You are acquainted with other persons who know him, are you? A I know Mr. Saitta very well.

Q You know other people who know him, don't you? A I suppose so, yes.

Q Do you? A Yes.

Q Do you know what his reputation is for truth and veracity?

A Very good.

CROSS EXAMINATION BY MR. HAYWARD:

Q Did you ever talk to any people in the fruit trade about his connection with the fruit trade? A Yes, I know the fruit trade -- I know some of the fruit trade people.

Q You know some of those people in that trade? A Yes.

Q How recently have you talked about this man? A Recently--

THE COURT: About Saitta.

Q How recently have you talked about Saitta? A Recently--
now.

Q When? A Just now, just recently, a little.

Q How did the question come up? A Pretty good.

Q How did you come to talk about him? A Talked about what?

Q Mr. Saitta?

THE COURT: I think we had better use the interpreter.

BY THE COURT:

Q How long have you been in this Country? A Thirty years.

BY MR. HAYWARD:

Q Is there any special reason why you talked about Mr. Saitta? A Because I done some business with him.

Q Who talked to you about him? A Who talked to me about him?

Q About the defendant, Mr. Saitta? A I done business with him.

(The witness now answers through the official interpreter, Mr. Villamena).

THE WITNESS: I had business with Mr. Saitta, I did not speak to anybody about his character.

BY MR. HAYWARD:

Q Never talked to anybody about that at all? A No.

MR. HAYWARD: I move that the witness's testimony be stricken out.

BY MR. MOSS:

Q You know other people in the fruit business that have had business with Mr. Saitta, don't you? A As far as I know, yes.

THE COURT: You had better put that through the interpreter.

THE WITNESS: (Through the interpreter) A Yes.

BY MR. MOSS:

Q And have you ever heard anyone say anything against his

BY THE COURT:

Q How long have you been in this Country? A Thirty years.

BY MR. HAYWARD:

Q Is there any special reason why you talked about Mr. Saitta? A Because I done some business with him.

Q Who talked to you about him? A Who talked to me about him?

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BY MR. MOSS:

Q You know other people in the fruit business that have had business with Mr. Saitta, don't you? A As far as I know, yes.

THE COURT: You had better put that through the interpreter.

THE WITNESS: (Through the interpreter) A Yes.

BY MR. MOSS:

Q And have you ever heard anyone say anything against his

honesty or truth? A No.

MR. HAYWARD: I submit that this does not qualify this witness.

MR. MOSS: It is recognized by the Court as the best kind of evidence.

MR. HAYWARD: I object. Not unless he has talked to these people about him.

THE COURT: That is what the rule of evidence says, but these rules of evidence we cannot live up to very strictly

MR. MOSS: I wish to say, if I understand the decisions though -- they go as strongly as this to say that sometimes the very best evidence of a man's character is that the people who know him have not questioned or discussed it.

THE COURT: That is what I think but you remember the rule of evidence says that you have to produce a witness who has discussed his character with others.

MR. MOSS: I disagree with that statement.

THE COURT: Yet that rule of evidence is not logical --

MR. MOSS: I disagree with that statement and I do not consider it to be in line with the decisions which control now

THE COURT: I think you will find the Court of Appeals approves of that but, it makes no difference -- it does not seem to be logical and I would rather have it as this man has put it. How many character witnesses have you, Mr. Moss?

MR. MOSS: Five or six. I could have twenty-five.

THE COURT: Let us cut it down to five. Pick out the five.

S T E V E N C A L A G H A N, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, 570 Seventh Street, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS:

Q What is your profession and occupation? A Lawyer and Judge of the Municipal Court in Brooklyn.

Q Are you acquainted with the defendant, Mr. Saitta? A I am.

Q How long have you known him? A I should say eight or ten years.

Q Known him intimately? A Yes.

Q Other people who know him, do you know? A Yes.

Q Do you know what his reputation is for truth and honesty?

A I do.

Q What is it? A Good.

CROSS EXAMINATION BY MR. HAYWARD:

Q You have lived in Brooklyn during this time? A I live in Brooklyn approximately seventeen years.

Q Have you ever practiced law in New York? A My office was there for I guess thirteen years, yes.

Q In New York City? A 170 Broadway for five years,

27 William Street for three years, 35 Nassau Street for some time.

Q How long has it been since you had a law office in New York City? A Since I went on the bench in January, 1912.

Q Did you ever talk to any people over here in the fruit business about Mr. Saitta's reputation? A I have, yes.

Q Do you remember who it was you talked to? A I do not -- I know the gentleman but do not recall his name at present. He lives in Rutherford, New Jersey, and if Mr. Saitta will inform me of the firm name I can recall it immediately.

Q Was he an associate of Mr. Saitta's, do you know, in any way? A No, not at all.

Q Does Mr. Saitta reside in Brooklyn? A Yes.

Q Near where you reside? A Not very far from me.

Q You are personal friends over there in Brooklyn, I presume? A Well, we are personal friends everywhere. the

Q I mean/acquaintance has been principally over there?

A It has been principally in New York.

Q But you reside close to him there? A Yes.

Q Besides this man whose name you cannot remember, who else did you ever talk to about the defendant's character? A My personal talk with people about Mr. Saitta was necessarily limited to people in the law. I being a lawyer, he being a lawyer, and I engaged in -- partially in the admiralty Bar and Mr. Saitta did some admiralty work and the admiralty practice is not very large in New York City and we became acquainted very intimately.

Q You would not have talked to anybody in connection with any of this man's matters since you have been on the Bench over there? A No.

BY THE COURT:

Q Did you ever have a case in which you were on one side and the defendant Saitta on the other? A Not to the extent of ever going to court with it. We have had matters where we have been associated together and matters where we have been opposed, but never to the extent of going into litigation.

BY MR. MOSS:

Q You mean representing diverse interests? A Yes.

BY THE COURT:

Q Can you recall one of those cases -- can you recall a case where there is ~~any~~ paper on file showing you were on one side of the case and the defendant was on the other? A No, not to the extent, as I say, of ever going to litigation. We represented, in a case at one time, Charles M. Hall and Company and Mr. Saitta represented the defendant, and we adjusted in some manner without a lawsuit.

BY THE COURT:

Q No-law papers served? A Not that I recall, not where we were against each other.

P H I L I P S. S A I T T A, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

(Residence, 8510 Ridge Boulevard, Brooklyn).

DIRECT EXAMINATION BY MR. MOSS.

Q Where do you live -- where you have just given your address? A Yes.

Q You are a lawyer? A Yes.

Q What is your office address? A 258 Broadway, New York.

Q How long have you had your office there? A Between fourteen and fifteen years.

Q How long have you been a practitioner at the Bar of New York? A I think it was either 1897 or 1898 that I was admitted.

Q You were not born in this country? A No, I was born in Alexandria, Egypt.

Q How old are you? A Forty-seven years old.

Q Do you have a home of your own with a family? A Yes.

Q Have you during these years been in the actual practice of the profession of the law? A Yes, sir.

Q And in that practice did you represent and have you represented during the years fruit importers in this city?

A That was my specialty.

Q And have you through your connections, your knowledge of the fruit market, done some fruit business yourself? A Yes.

Q When did you become acquainted first with Salvatore Gatto?

A I think it was about two years ago.

Q Will you please tell the Court and jury just where it was that you became acquainted with him and how it came about?

A He came around the office selling cigars, wanted to sell me some cigars.

Q You had not known him before that? A No, I did not know him at all, and I think I bought a small box of cigars from him. Then he came around a little later on and wanted to sell me some more cigars.

BY THE COURT:

Q Could you tell when the first time was approximately, when he first called? A If I had my ledger probably I could tell, Mr. Moss.

Q Just approximately.

(Book is handed to the witness).

THE WITNESS: It is a little more than two years ago. It was around August or September, 1910, when I first met him.

BY MR. MOSS:

Q Now state what, if any, relations or dealings you had with him. A He afterwards came to me and told me that he had some sickness in his family; that was around the month of September. He says: "I came from Massena, which is the birthplace of your parents" and if I could not assist him. He pleaded, saying he had no money and needed money for medicine, so I gave him ten dollars, loaned him ten dollars. A few days thereafter he came

again and said his children, either one or two, I forget now, were very sick, at the point of death; and asked me if I could not assist him again. I again gave him ten dollars, making twenty dollars. From that time on I did not see Mr. Gatto until a year ago last December. He came in and told me that he was again in trouble, had sickness in his family and I told him, I said: "Well, when you had money you never came back to pay your debts. Now, why do you come to me now; a man who wants to use another man's pocketbook must always return the favor when he gets it." He pleaded with me that he had never been in a position to pay me; that he was doing a small business; that he had three children and a wife and a sick mother in law. I then gave him an order -- I would not give him any money. I gave him an order for some merchandise, some macaroni, cheese, and I think olive oil and tomato paste -- fruit used among Italians principally, on a man by the name of Capuano, who had a place uptown in Harlem. He was very thankful for it. He took the order and went uptown and got the goods and they were charged to my account. A few days later he came down again and asked me to please help him. It was around Christmas. The children did not have any money and unless I could give them some food --

BY THE COURT:

Q Would that be Christmas of 1912? A Yes.

Q That last call was about September 1912, approximately, when he called and said he had three children and a wife and a

sick mother in law and you gave him an order for merchandise?

A No, that was in December, before Christmas -- about two or three weeks before Christmas. Then he came again about two or three weeks after the first call, and I felt sorry for the man, especially having children and being a father myself.

BY MR. MOSS:

Q Do not bother telling us about your feelings, but just stick to the facts. You gave him some more money -- pardon me for interrupting your testimony, but you were saying you felt sorry for him; we will leave your feelings out -- just state what you did. A I gave him some more money, --

BY THE COURT:

Q That was Christmas?

THE WITNESS: (Continuing) Or rather, I gave him another order, not some more money. I gave him an order on Mr. Capuano. After Christmas, I think I gave him still another order. Then one day his wife came down to my place of business, -- I think it was in January, -- and went on her knees before me, telling me that they were starving and did not have any money and her husband had good connections and if I would only help him he could get on his feet.

BY MR. MOSS:

Q Good connections? A Yes -- and thereby he could make a living, but he did not have the money to stop and write to his people and tell them to help him and try and solicit business in some way, and if I would not give him a little money.

I felt sorry for the woman naturally and I gave her three dollars on that day and told her to send her husband to me.

Q Never mind your conversation with the woman.

THE COURT: Do you object?

MR. HAYWARD: No, not at all.

THE COURT: I do not believe in applying rules to a defendant. Let him state his case. Go on.

THE WITNESS: (Continuing) To ask her husband to come down and see me and he came down and I then, from time to time, loaned him the sum of \$193 in addition to what he owed me, which if you will give me --

BY THE COURT:

Q Does that include the two ten dollars and the provisions and the three dollar A No, did not charge anything for the provisions.

Q I mean the two ten dollars you gave him? A No, that is separate from the two ten dollars.

BY MR. MOSS:

Q That made \$213 altogether in money? A \$213 -- he then said to me -- he showed me a cable from his brother in law that if he could open credit, his brother was willing to ship him some lemons. I said "I will not have anything to do with lemons, because it has been a very expensive thing to me." I said "I have lost a great deal of money in lemons in the past few years and I won't use them or have anything to do with them at all." He

says: "It is not you. It is for me and the market is very high; you cannot lose any money. You open the credit for me; give me a chance to get this from my brother in law and when he sees I can open credit, he will go on and ship to me, because he is a man well connected on the other side" and finally he pressed me so much that I opened a letter of credit. I think it was early part of March that I opened through the Irving National Bank a letter of credit for 600 boxes of lemons in favor of Salvatore Zimbaro, who was his brother in law.

THE COURT: That was March, 1913?

THE WITNESS: Yes.

BY MR. MOSS:

Q That was just about a year ago? A Yes. The lemons then came and they came in two lots; instead of coming immediately they were delayed, and the first lot arrived and showed a loss. I told him -- I said: "Now, you see, trying to help you; you are not able to pay me now; the loss will fall upon me." He said: "Well, they will ship more goods; do not worry; you won't lose a cent upon this transaction." The second lot of lemons came and the second loss occurred, -- so much so that there was in the two transactions \$703 loss.

Q Stop right there. You say you opened a credit -- does that mean that in the Irving National Bank to which you refer, you gave your credit for that lemon transaction so that the expenses of the transaction were drawn out of your account?

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A I had no account at that time but I knew Mr. Ward of the Irving National Bank.

Q They were to pay to you and you had to make it good?

A I had to deposit six hundred dollars cash and when the documents arrived, I had to pay the balance, which I did.

Q So you actually paid cash into the Irving National Bank to meet that credit which the bank gave to finance the Zimbaro lemon transaction? A Yes.

Q Who sold those lemons? A They were sold at Brown & Seccomb's.

Q In the regular course of business? A Yes.

Q You say the total loss which you had to pay was something like \$700? A \$703 -- I think I have the exact amount -- the loss was \$703.24, or seventy-two cents.

Q You have kept a record of that in your ledger? A Yes.

Q You have referred to your ledger just now? A This refers to Salvatore Zimbaro, Massena, for account of S. E. Gatto.

Q You have listened to the testimony of Mr. Gatto on this trial, have you not? A Yes.

Q And do you remember that he testified concerning the getting up of a circular letter to be sent to Fruit raisers in Italy, you remember that testimony? A Yes.

Q Do you remember that he testified that you helped him get up that letter and that you corrected the language in it -- was that true? A No.

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Q Did you have any knowledge whatever of any letter which he was getting up and sending over to Italy? A No, none whatever.

Q Do you give him any list of names of people in Italy to whom he might send such a letter? A No, sir; never in my life.

Q Do I understand your testimony correctly to be a denial that you knew anything whatever about the sending out of a letter to Italy? A That is positive, as God is my judge, I never gave him any list or knew that he sent any circulars to anyone in Italy or any place else.

Q The business you did yourself in the lemon trade, was it a large business? A Yes.

Q Over a number of years? A Yes.

Q Did you ever circularize the growers in Italy, in your own business? A No, sir; because it would be a very foolish thing to do. No lemons can be sent or received from the other side unless through relatives -- the lemons are bought spot cash in Italy and as a rule you must open a credit in New York on some London bank or Paris bank, whereby the people draw against bills of lading for the full amount of the shipment, unless it is either a joint account, that means the shipment or the account between the shipper and the importer or some relative that sends it to his son, nephew or brother, as there are many instances in this country.

Q You mean to say there is no such thing as drumming up

trade in Italy? A Positively not.

Q By appealing to the growers? A Positively not.

Q Did you know anything about Gatto sending a lot of telegrams to Italy in your account, while he was doing it -- did you know anything about his doing that? A No, I had ^{not} seen Mr. Gatto from about April 5th for some time, until about the latter part of April. He came in once or twice and then he came in in May some time, and in June the first thing I knew was that a gentleman from the Commercial Cable Company came in and wanted to collect a cable bill amounting to several hundred dollars. I said I had not sent any such cables. It must be a mistake. I asked the gentleman to bring the vouchers and he did so and in these vouchers I found the handwriting of Mr. Gatto, referring to business belonging to ~~Mr.~~ Gatto.

Q Had you known of any such business being done by Mr. Gatto?

A None whatever.

Q Until you saw these telegrams? A None whatever.

Q Did Mr. Gatto have his name on your door? A No, sir.

Q Did he have his name on the directory of the building in the hall? A No.

Q Was his name printed on any stationery that was used in your office? A No.

Q When you received this bill and this demand for this money, did you do anything or say anything to or with Gatto, and if so, state what? A I wrote immediately to Mr. Gatto to

the office.

Q Did you receive something from him? A I received a letter dated the fourth, in reply to a letter of mine.

BY THE COURT:

Q The fourth of June? A The fourth of June, yes.

BY MR. MOSS:

Q Is that the letter which has been put in evidence as Exhibit B? A Yes.

Q The letter in which he said he was very sick? A Where he said he was sick and in need of substance, meaning by that, the true translation in Italian would be that he did not have hardly the money to buy food for his own -- for his illness.

Q And referring to a large number of verdelli lemons that he expected to be coming over? A Yes, sir -- and at the time --

Q I am only identifying the letter -- were you going to say something? A I was going to say the verdelli lemons, at the time he bought the boxes from his brother in law, he also contracted to buy ten thousand boxes of verdellis. When the loss occurred in the six hundred boxes, he wanted me still to open a further letter of credit to bring the ten thousand boxes, which I declined and refused to do, and in the letter of course he refers to it, saying that they are holding himself responsible for damages, but what could he do.

Q They were holding him responsible for damages for not taking the ten thousand boxes of lemons which you had refused to

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finance? A I positively refused to have anything to do with the lemons.

Q My question had reference more to what may have transpired between you and Gatto, when you did see him after he wrote this letter. A After he wrote this letter, he came to the office and I think that same day the representative from the cable company was there or he met him downstairs, I don't know which, and they both came up together in the office and I then there reprimanded Gatto for doing what he had done, and told him that he had no right whatever to use my name or my credit without my authority, and I told the representative of the cable company to have this man arrested in his presence, and I said "You must have him arrested; if he does not pay that bill you have him arrested, and there were other people present in the office.

BY THE COURT:

What month was this? A That was, I think, the 5th, 6th or 7th of June.

THE COURT: Between the 5th and 7th.

MR. MOSS: I can locate the date, I think.

BY MR. MOSS:

Q Prior to your having this conversation with Gatto, had you written two letters to the Commercial Cable Company or the people connected with it? A Yes, sir; I first wrote to the attorney of the Commercial Cable Company who immediately took the matter in charge, when I told the representative of the cable company

that the cables had been sent without my authority and consent and told him --

Q Are these the two letters you refer to -- I hand witness two original letters produced by the representative of the cable company, who is in Court now. A Yes.

Q Those are the letters? A Yes.

MR. MOSS: I offer the letters in evidence.

(Received and marked Defendant's Exhibits C and D in evidence).

BY MR. MOSS:

Q State the conversation that occurred between you and Gatto in your office when the defendant came to you after writing that letter, and when you did speak to him? A When he came in I accused him of what he had done and told him -- asked for an explanation, why he had done so, who had authorized him, and he pleaded with me that he did it in a moment of despair, that he thought he would send these cablegrams for the sake of getting business on the other side. About that time the representative of the Cable Company came in, and I was angry and I told him. I said, "You either get this man to pay you this bill, or have him arrested. He is a fraud. He had no right to use my name, and you must take a proceeding against him", and with that Gatto begged of me not to do anything, that he would pay me, that he expected a great deal of stuff from the other side, and if I would be only patient, he would do what was right by me.

Q These were the cables that had been sent to the fruit growers in Italy. A Yes.

Q What was the next that you heard or saw of Gatto? A In a day or two later I met him in Mr. Andreis' office, and there it appears that he had -- he had told them something different than what the true facts were, and when I went in, somebody passed the remark saying -- I don't know who it was -- and I then became very angry, and I told Gatto in the presence of Andreis and another gentleman there, that he had no right to use my name; that I had not authorized it, and he then admitted saying "Yes, I did

not, and you must forgive me for what I have done; give me an opportunity." He said "I will have merchandise, I expect lemons, and I expect other merchandise, and I will pay you, not only what I owe, but will pay you for this cable bill. At that time I really threatened to strike him, but owing to Mr. Andreis and other people who stepped in our way, I did not -- because, I was very very angry about it.

Q What was the next that you had to do with him? A Then I did not see Gatto for quite some time. One day, very much to my surprise, he came over to my house and said "You always thought I was a crook." "No", I said, "I did not think you were a crook, but I thought you were a man that had done things without any authority and without any right." He said "To show you my honesty now, I have just received some documents through friends of mine, and" he said, "you can sell these and pay yourself. There is plenty more coming, and" he said, "I will pay you in full."

Q You used the word documents, is that a word used in the fruit trade? A Documents from men who bill bills of lading. I said "How did you get them?" He said "Never mind how I got them, but my relatives are going to help me, you take them and pay yourself. I promised you I would pay you, and you take them and pay yourself, but I want you to do me a favor; I want you to advance me a little more money, because I need it for home." I looked at the documents and saw the bill of lading was properly endorsed and so --

Q That is, did it bear the endorsement of Fazio, the same

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as it appears now in evidence? A Yes, sir, and I looked and saw they were all right, and they were all right, they were made over to his order, and I said "Yes, (I will venture a little money, but I said not much, because I have had one experience, I don't want to have another." So he asked me then for a loan of \$40., which I gave him -- I gave him a check for \$40. on July 7th, which check the District Attorney has got.

MR. MOSS: Will the District Attorney let me have the checks which Mr. Saitta gave him.

BY MR. MOSS:

Q In time did the lemons arrive? A No -- the next day he came to my office, or two days after, and he got two other checks -- one of twenty and one of twenty-five.

Q Proceed and tell the transactions in their regular course?
A On the 10th he got another check of \$25.

BY THE COURT:

Q You mean the 10th of what? A July.

Q I thought July 11th you gave him the \$40. check? A July 7. On the 10th again, I think it was, he had brought me another invoice. I don't quite recollect, but I think it was just about that time, and other bills of lading, properly endorsed, and also told me to sell them and place it on the general account with him.

BY MR. MOSS:

Q Was that a bill of lading from Fazio?

THE COURT: The second one.

THE WITNESS: Yes.

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BY MR. MOSS:

Q The same bill of lading in evidence now? A There were two I got.

Q That was endorsed as it is here on this trial? A Yes, sir. He then asked me on the 10th if I would not pay a draft of macaroni which was coming due that day, shipment of macaroni, which he was receiving, and I gave a check I think to his order, or to the order of the banker -- I don't remember -- for \$201.48, which also the District Attorney has got. The following day he came to me and said he had no money to pay the duty on that macaroni, if I would only advance; he said I could collect for the macaroni, or when he collected the macaroni he would give it back to me, and so I gave him another check to the order of Charles Friedenberg for \$94.56.

Q Is Charles Friedenberg a broker he used? A Customs House broker. He made his own entry on that. On the 14th he came to me and he said he had a draft for some more macaroni payable to the Mechanics Bank in Brooklyn for \$104.61, and asked me if I would not take up the documents for him, which I did. After I took up the documents I gave them over to him.

BY THE COURT:

Q How much? A \$104.61. On the 14th I paid for his account to a man named Mendola, \$14.74 for opening samples on the dock.

Q Samples of what? A Lemons.

BY MR. MOSS:

Q Is that the man who was a witness to-day? A Yes, sir, because the Fazio lemons had arrived and had been offered for sale on the 14th or something like that. On the 15th he came to me and asked me to pay some duty to Friedenbergs, on some wine, and knowing there was a quantity of money from the sale, I advanced him \$53.18 by check also. All these are checks. On the 16th he came to me for some cash. I did not have the cash and I telephoned -- it was late in the evening -- I telephoned to Mr. Andreis if he had any cash, and if he did, to give him \$20. I have Mr. Andreis' receipt which Mr. Andreis took there. It is in the envelope, for \$20. -- no, here it is, I put it in this book. (A paper is produced by the witness) For \$20., and then on the 16th he came again for money and I gave him a check for \$50.

BY THE COURT:

Q On the 16th? A Yes.

Q The \$28. from Andreis was on the 16th you said? A Also on the 16th, yes.

Q And on the 16th you gave him a check for how much? A \$50. My dates might vary-sometimes I would not make my entry the very same day, and there may be a variance of one day.

Q How about the stub of your check book, would that show?

A The checks will show.

Q How about the stub of your check book? A Well, the stub of the check book would not show anything, just check drawn.

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BY THE COURT:

Q Would not show anything on it as to what it was given for?

A No.

Q Don't you post from the stub of your check book into your ledger? A He was the only account I had, and I did not take great--

THE COURT: His is not the only account you have in your ledger.

BY MR. MOSS:

Q The only account you had at that time? A Yes.

THE COURT: I thought you said you had an office ledger?

THE WITNESS: This is my private ledger and this is the only account I had with lemons, or doing business with any one at that time.

BY THE COURT:

Q Where did you post from into that ledger? A From the stub, naturally.

Q That is what I want -- could you show us the stub, have you got it here? A Sure.

THE COURT: The stub of the check book.

THE WITNESS: July 7th. --

(Stubs are produced).

THE WITNESS (continuing) July 19th I gave him another \$50.; on July 22nd I gave him \$210.; on July 23rd I gave him \$5. That was cash. On July 24th I paid to Mr. Mendola for his account for opening samples \$10. On July 25th, I

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gave, through Mr. Andreis, \$250. Mr. Andreis paid him at my request, the sum of \$250. On the same day I gave him in cash --

BY MR. MOSS:

Q That \$250. you made good to Andreis? A I paid Mr. Andreis, yes.

BY THE COURT:

Q Could you state as you pass along, so that we won't forget it, why it was Andreis gave him cash instead of yourself? A I think Mr. Andreis owed me the money. I had given Mr. Andreis a check in the morning and so I asked him to go over there. He promised to give me a check for it and I asked him to go there and get it, and he did.

BY MR. MOSS:

Q So what Andreis owed you he paid Gatto? A Yes, sir. I mentioned the five dollars in cash. --

MR. MOSS: Yes.

THE WITNESS: Then on August 2nd he wanted some more money and I had a check of J. Casano for \$15. and cash \$5., and I gave it to him, which made another \$20. On August 7th I gave him \$24.; on August 8th, by cash money, \$6. On August 9th, check \$20.; August 15th I gave him \$12. in cash and on the 18th, \$2. in cash. Then I charged up to his account \$80.96, commission, 2% commission on the sales. On September 25th I paid to the United States Government addi-

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tional duty for his account \$11.99. On October 2nd, I gave him cash by check, \$25. On August 4th I gave him cash.

THE COURT: August 4th?

THE WITNESS: October 4th. I beg your pardon -- \$10. That was about the time I was called in by the District Attorney.

BY THE COURT:

Q When had you received the money from the sale of the first lemons, the yazio lemons? A The first money I got was on the 15th or 14th. I don't know which. I have here August, but it is wrong, it is July, \$1500.

Q \$1500. you received about July the 15th? A Around about that time, yes.

BY MR. MOSS:

Q Have you given a statement of the moneys that you received and what you did with them? A Well, I gave him more money after that.

THE COURT: The moneys you received?

THE WITNESS: I received 1500 and 450.

BY THE COURT:

Q On July 15th approximately, you received \$1500., that was from the auctioneers? A Yes, sir, from the auctioneers I received 1500. and 450.

Q When was that 450.? A I have not any date on that.

Q 450., was it before or after? A After.

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Q That was after the 1500.? A Maybe a week or ten days, or two weeks after. And then \$16.90, \$22.32, \$6.76, and \$43.09. Then there is for merchandise for account of Gatto --

BY THE COURT:

Q This was the first sale, the first Fazio sale? A It includes the two sales.

Q Both the Fazio sales? A Yes.

BY MR. MOSS:

Q Go on? A I received merchandise or cash for merchandise for account of Gatto, for the money I paid, freight, &c., \$28.24.

Q You had advanced the freight and it was paid back to you by Brown & Seccomb? A No, they had nothing to do with it.

Q By whom? A By somebody -- I don't know if it was Mr. Andreis or somebody to whom Gatto sold this macaroni that he received. Then, Gatto, on the 25th, in return for this check of 250., gave me back a check of \$200. and a check of \$50. That made \$250. After October 4th I gave Mr. Gatto again -- then I charged Gatto up with the \$193. that I had loaned him.

BY THE COURT:

Q When did you do that? A That is around in August I charged that up.

BY THE COURT:

Q 1913? A Yes. I brought it forward from another book that I had.

BY MR. MOSS:

Q That is, it was entered into that particular account in

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August, being drawn from another book? A Yes, sir, when I balanced the account I put in these items and also \$703.22. I then gave Mr. Gatto on November 1st, by cash, \$10. I had forgotten to bring forward the \$20. I had previously loaned him, and I brought that over, \$20., and charged it to his account, and then I gave him several different items, \$46. in cash. On December 24th I gave him \$50. by check. I omitted, there was a check on July 26th of \$30., which I overlooked, and in checking over my account I found it, and then I charged it on the last of the page, making the total -- I have it brought out.

BY MR. MOSS:

Q That is the way you balanced the account on your book as I understand you? A Yes, leaving a balance due Mr. Gatto of \$126.07.

BY THE COURT:

Q Where? In December.

Q That is, December 24th the balance due Gatto was how much? A \$126.07. I thought it was more then, because there were these two checks, one July 9th and one on July 26th, amounting to \$55. that I overlooked, and had not charged them and I thought the balance was \$181., when, as matter of fact, it was only \$126.

BY MR. MOSS:

Q Does that explain one of the statements you made when you said there was a balance of something like \$300. in your hands?

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A No, that was before.

Q When you came to apply the checks overlooked, it reduced the balance to the amount you have just given, \$100. and some odd?

A Yes, sir, also the \$50. and \$46.

Q Does that balance of one hundred and some odd dollars, still remain in your hands subject to whatever may be the rights of this transaction? A Yes, sir. When I went to the District Attorney the first time I had something like \$300., and I told Mr. Ellison if they would take some steps to get this money or seize it in some way, because I knew nobody in the transaction except Gatto -- Gatto was the one who gave me the bill of lading and he was the owner to me of the goods, and the money, and if he asked me, I would have to give it to him, or he could have me arrested, and I told him they had better stop it in some way, otherwise Gatto would take it, and I told Mr. Cavalaro the same thing, who came to the office "You had better hurry up and get the money I have in my hands or this man will eat it up."

BY THE COURT:

Q How about Mr. Hess who had the claim of Fazio, didn't he call upon you and demand it? A Mr. Hess was never in my office. I put Mr. Hess out of my office once before --

MR. MOSS: Never mind about that now. I will treat about Mr. Hess when I reach him -- that page you have opened there, there is a statement in the affidavit which is in evidence signed by Mr. Gatto, about an account that had been

shown him, is that the account?

THE WITNESS: This is the very page. On that day I said to him "Mr. Gatto, Mr. Buell wants some proof as to how this matter stands," and I had been to see Mr. Buell then in pursuance to a subpoena.

BY MR. MOSS:

Q That is this gentleman here (indicating)? A Yes.

Q The only question I asked you, is that the page and the account which was opened between you and Gatto at the time he made that affidavit? A Yes, sir.

Q You and he went over that? A Yes, sir, item by item.

Q And have you shown those items to the District Attorney?
A Yes.

Q Furnished [redacted] with a copy of the ? A I furnished the District Attorney up to October 4th, I think.

Q Now, you have testified and you have referred to your account, about a number of checks which you gave to Mr. Gatto; did you really give him those checks and were those checks actually collected out of your account in the bank, or were they simply exchange checks? A Exchange checks.

Q Mr. Gatto has testified that the checks which you gave him were simply checks that he went and cashed and brought the money back to you, is that true or is it not true? A No, he may have cashed one check -- probably -- that I may have sent him out with.

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Q But any of these checks in that account? A No, nothing, those had nothing to do with any exchanges we may have had.

MR. MOSS: If the District Attorney has any checks in his possession which represent exchanges upon these checks which appear on that account, I call upon the District Attorney to produce any such checks. I refer now specially to checks of Gatto, which he identified, and which have been put in evidence here.

BY MR. MOSS:

Q You say there were no exchange checks on any of these items? A None of the items I have mentioned here except \$200. and \$50.

Q And those you have explained? A Yes.

BY THE COURT:

Q The other checks you gave to Gatto, which you now refer to as exchange checks, did you exchange checks with him? A Afterwards, after those checks there were some exchanges of checks.

Q You mean after December 24th? A No, there were some before, but none of these checks I have mentioned were exchange checks. These were checks on account.

Q Approximately how many exchange checks did you give him, if you remember so we may get it? A Quite a few.

MR. MOSS: We can show that very accurately. There are in evidence a lot of checks which Gatto recognized as being his checks, and there are in evidence a

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lot of checks that the District Attorney put in evidence signed by Mr. Saitta. Those are in evidence, and by comparison of those two sets of checks you can see the exchanges. Now we have the dates in that account book there, and by referring to the dates of those checks, the District Attorney can see at once whether he has any exchanges on those dates and that was the meaning of my request that he produce any, if he has any.

MR. HAYWARD: There are the checks (handing papers to Mr. Moss).

MR. MOSS: You have had possession of them, and I have not had an opportunity to examine them.

THE COURT: Suppose you call upon him to produce them to-morrow, because you cannot do it in a moment.

MR. MOSS: No surely, but if the District Attorney says any one of those checks appearing in that ledger was merely an exchange check, I ask him with the material that has been in his hands, to produce the documents. That can be done to-morrow.

MR. HAYWARD: Any material in our hands is now and has been at Mr. Moss' disposal, the same as at mine.

MR. MOSS: I know when I requested them and could not get them.

THE COURT: You can have them now.

MR. MOSS: When you say they were at my disposal, I

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made special request for them and they were denied me in the preparation of this case.

THE COURT: Why not take them now?

MR. MOSS: I will take them, but I am simply answering Mr. Hayward's statement.

THE COURT: Did Gatto testify these were exchanges or did he testify these were cashed and the money taken back to the defendant in cash?

MR. MOSS: He did not specify, but I understood his testimony to be that some of them at least were cashed and taken back. He did not pretend to give any statement or to separate the checks.

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THE COURT: He said he did not know what checks they were only that he cashed them and took the cash back.

MR. MOSS: He left it indefinitely and this witness is giving definite testimony that these checks in that account were business checks that were not exchange checks and were not cashed nor the money brought back to him.

BY MR. MOSS:

Q Now, Mr. Saitta, in connection with the bills of lading which have been referred to and are in evidence, there were presented and now are in evidence certain consular invoices -- white consular invoices; do you know the custom of the business with reference to these consular invoices? A I do.

Q What is the purpose of the consular invoices, whether they be white or blue, what is its purpose? A It practically is of no purpose except to make the entry at the Customs House.

Q So that duty may be paid and the goods may come out?

A Yes, because if you have a consular invoice and you have not got the bill of lading, you must deposit twice the amount to make an entry at the Customs House, but you don't need to do that if you have not got the consular invoice.

Q If goods are perishable goods, is there necessity of getting them out and getting them into the trade? A In the lemon business, we have as a rule -- we must make the entry on a certain date, because as a rule they are sold at public auction, all importations of lemons -- 99 per cent. I would say are sold --

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or 95 per cent. are sold at public auction; and of course if the steamer arrives today and is going to be sold at auction tomorrow, the entry must be made quick.

Q Must get them right out? A Yes, sir. The importers never look at the consular invoice. All we look at is the bill of lading, because that is the only material paper we care for. The bill of lading is what passes title from the shipper to the consignee, or the person who may have it, and as soon as that bill of lading is endorsed, it becomes a negotiable instrument and whoever has that bill of lading, if properly endorsed, is the owner of that merchandise, regardless of what the consular invoice may say; and it has been in many instances, in my life and I guess in the experience of every fruit importer where a white consular invoice has been made by the shipper, and before the steamer leaves the port where the fruit is loaded, the fruit is sold to somebody else, and those same papers are sent here and the man, although he has bought and paid for those goods, must make the entry as agent of the shipper and not as the owner; otherwise the entry could not be made.

Q Goods could not come out? A The goods could not come out. Must be made according to the papers.

Q You heard Mr. Gatto testify about the opening of a bank account in his own name? A Yes.

Q If you had anything whatever to do with the opening of that account or gave Mr. Gatto any advice concerning it, please

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1 tell the jury just what it was that you did. A I simply -- he
told me that he ought to have a bank account.

Q He told you? A Now that he was starting to do business
and wanted to know if I could recommend him to any bank. I said:
"I don't know any bank where you could go and open a bank account.
I said: "I don't know what balance you can keep", and he said,
"How about the Mechanics' Bank in Brooklyn?".. I said "That is
your own business, I don't know". Then I heard that he opened
a bank account in the Corn Exchange Bank.

Q Did you have anything to do with the opening of that
account? A Nothing whatever.

Q Did you recommend him to the Corn Exchange Bank? A No.

Q Did you give any reference or any signature over there in
the Corn Exchange Bank? A No.

Q For him? A

Q You do not know how he came to open it at all? A No, sir;
I do not.

Q Did you instruct him about making a stamp to stamp his
checks with, so that the name would appear on each of his checks?
A Positively not. It would be a foolish thing for me to do, for
he would not have needed a stamp. I would have advised him to do
something that would be foolish upon its face.

Q There has been produced in evidence a check for \$2000
which was drawn to the order of Fazio, signed by Gatto, and which
he testified the body of the check was in your handwriting; do

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you remember anything about that? A Yes.

Q State to the jury what the facts were concerning that \$2000 check as far as you had any relation to it. A - He came to me and told me he received a cable from Fazio -- in fact, showed it to me, that there was some other important shipments on the way.

Q From Fazio? A - From Fazio, asking him to remit. I said: "You cannot remit now the whole amount; you can only remit part of it." He said: "Well, I don't want to remit part. I want to show that I am a man of some means." I said: "That is your own lookout, what you want to show to Fazio." He said: "Suppose I send him a check for \$2000." I said: "I do not want to know what you want to do. It is your own affairs." He said: "Then I will send him a check for \$2000. By that time", he said, "you will collect the balance of the money plus some importations which I have" -- he had then some macaroni and some conserve, -- "plus some other fruit on the way, and I will have plenty of money to meet that check." I said: "Do what you like and do not ask me. It is your business and not mine." He then asked me if I would not write the check for him. I said "I have no objection." He said: "Write it in nice plain hand," and I wrote the check for him.

Q That was a check for \$2000? A Yes, sir.

Drawn to the order of Fazio?

THE COURT: What was the date of that check?

MR. MOSS: It is July 23rd, subject to correction.

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THE COURT: It was July 15th that the witness had received \$1500 from the auctioneers.

MR. MOSS: Yes.

BY MR. MOSS:

Q Now, when next did you have any conversation with Fazio -- I mean with Gatto, after the writing of that \$2000 check? A I used to see him quite often. He used to tell me that he --

Q Do you recall any conversation -- the first conversation after that that referred to the Fazio business in any way? A No, not until he told me that his mail had been stopped and he said that he had large contracts with Fazio and Fazio had broken his agreement with him.

BY THE COURT:

When did he tell you that? A That was in August some time.

Did you know before that? A No, sir.

BY MR. MOSS:

Q You mean to say your first information that the Fazio shipment had been stopped was communicated to you by Gatto? A By Gatto, yes.

Q Go on and state the conversation. A Then Gatto says: "Well, what am I going to do here. I have sent him more money than he is entitled to. Further", he said "I expect to do about 20,000 boxes of business with him" -- he had agreed, he said, he had 20,000 boxes of lemons he was going to ship, and by that he

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would lose about five thousand dollars commission and asked me to advise him what to do. I told him, of course, I said: "If you don't owe that much money, you better stop payment on the check."

BY THE COURT:

Q That he would lose five thousand dollars commission? A Yes.

BY MR. MOSS:

Q That is, assuming that he had a contract with Fazio? A Yes.

Q Assuming that he told the truth? A That was what he told me.

Q He told you that he would have had a commission of about five thousand dollars? A Yes, because 20,000 boxes at that time would have brought about \$100,000 and five per cent. commission, that was what he charged, would be just \$5,000.

Q To continue the conversation. A I told him, I advised him to stop payment on the check and get into communication with Fazio and find out the reason why he stopped and hold him for damages if such was the case, and he asked me to write him a slip, just how he should do that.

Q A form of stop order? A And I did, and I gave it to him.

BY THE COURT:

Q What was the date of the stop order? A I don't remember, sir; in August, some time.

BY MR. MOSS:

Q I neglected to ask you about the figures on your account

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there with Gatto -- can you state how many checks or payments, if it is of cash, apart from your own, is represented in that account with Gatto; that is, taking the checks you gave him and the cash you gave him and the amounts you paid Friedenburg and such people at his request. How much do they amount to? A Over nine hundred dollars. I have not got the figures --

Q I have a little memorandum which you gave me and which may refresh your recollection. Can you state just how much you say you gave to Gatto? A \$915.82.

THE COURT: For what?

THE WITNESS: Actual cash I gave Gatto on account of Fazio's Lemons.

BY MR. COSS:

Q How much did you credit him for his past indebtedness to you? A \$916.22 and \$80.96 for commission.

Q How was the balance of your receipts accounted for?

A That leaves a balance of \$126.07. I received \$2039.07 from Brown & Seccomb. I paid Gatto actual cash \$915.82 less the commission which Gatto agreed to pay me, because you know freight and duty had to be paid and the thing had to be financed -- you could not do it -- at that time the auction companies did not care for any more customers. So that was one of the reasons.

Q The amount paid for freight and duty is extra to this?

A Extra to these items, because Brown & Seccomb paid it for me. That left \$1042.25 less -- I deducted what Gatto actually owed

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without any interest, \$916. 22 and left a balance of \$126.07.

BY MR. MOSS:

Q That is the balance which you say you now have in your hands? A Yes, sir, and I don't know to whom to give it.

Q Subject to order? A Of whoever claims it.

Q Whoever owns it? A I am ready and willing to give it to anybody to whom it may belong, and have been.

BY THE COURT:

Q In your ledger, whose handwriting is that ledger in that you hold in your hand? A Mine.

Q When were the entries made in that ledger? A At the time represented.

Q At the very time? A Yes.

BY MR. MOSS:

Q I think you said in your direct examination it might have been made within a day or two? A Within a day or two.

THE COURT: Practically.

THE WITNESS: Practically at that time except the last ones, and those I made later.

MR. MOSS: I will offer that ledger account in evidence.

MR. HAYWARD: No objection.

Received and marked Defendant's Exhibit A, it having been previously marked Defendant's Exhibit A for Identification at page 134.

THE COURT: Would you mind letting me see the stub of

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the check book which calls for these checks -- do you keep your check account in single check books like that?

THE WITNESS: I did after I stopped doing business.

There is the first one \$40. (indicating).

BY MR. MOSS:

Q Now, Mr. Saitta, the checks that you gave to the District Attorney, were those checks that related -- I will change the form of the question -- the checks signed by yourself which you gave to the District Attorney, were they the checks that related to the items in the ledger? A Only those checks.

Q Those are the checks that have been in his possession and that he handed to me a few minutes ago? A Yes.

Q I show you a bundle of checks which you gave to me and I think you said to me these were checks that you had given to Gatto? A I think there is one or two that relate to his account. These three checks here are money ~~xxx~~ ^{given} actually to , Mr. Gatto, one is February 7th, 1913, on account of the 193, and February 14 is on account of 193, and the December 24th is the last check I gave him, which goes on account of that ledger.

(The three checks referred to by the witness are marked for identification Defendant's Exhibits E, F and G.)

BY MR. MOSS:

Q What check is that you have in your hand? A December 16th, 1913, is the check I gave to Mr. Call for \$127.50, which was money Gatto kept for a previous check for a similar amount which

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I had given him, and, after Gatto came to the office and after some altercation and trouble -- really I struck him at that time-- he, together with my son, went over to Brooklyn, and I am told he pawned something and brought back \$120. of this money.

BY THE COURT:

Q What date was that that he pawned something? A Must have been the 18th or 19th.

Q Of what? A Of December or a day or two after that.

(The paper is marked Defendant's Exhibit H for Identification).

BY THE COURT:

Q Didn't you owe him money at that time? A Yes, but he agreed with me not to touch the balance of the Fazio money until he settled with Fazio.

Q That was about the 19th of December? A Yes.

Q On the 24th of December you gave him a check on that Fazio money? A No, not on the Fazio money. I gave it to him to cash, and he kept the money.

BY MR. MOSS:

Q He was to cash the check and bring you the money? A Yes.

Q And he put it in his pocket? A Yes, sir, and these other checks are checks in exchange.

(A bundle of checks which are now marked 'Checks given to Gatto in exchange' are marked Defendant's Exhibit J for Identification).

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BY MR. MOSS:

Q Those are checks running from August 28th, 1913, to December 8th, 1913, exchange checks? A Yes.

BY THE COURT:

Q About how many are there approximately?

MR. MOSS: I should say approximately twenty-five.

BY THE COURT:

Q Those were checks you exchanged, your own checks, on the Chatham Bank, which you exchanged with him for his checks on the Corn Exchange Bank? A He would either give me his check or somebody else's check or cash, and I would give him that in place of it.

Q Was his check on the Corn Exchange Bank good in Brooklyn?
A He used to tell me it was good.

BY MR. MOSS:

Q You collected them? A They were always paid.

Q You collected them? A Yes, sir, always paid.

Q Were there any exchange checks between you and Gatto --
I think I have already covered that --

THE COURT: Does it appear in evidence what the net amounts on the Fazio transactions were -- the gross sale less expenses, what would that be?

THE WITNESS: This is the amount I got from Brown & Seccomb.

Q 2,039.07 -- that was net from them? A Net from them.

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Q \$2,039.07? A Out of that I had to take off my commission and Gatto was to take off his commission, but the commission to be paid out of the gross sale -- the gross sale was over \$4,000., so that Gatto's commission was over \$200., and so the net amount to Fazio would have been, I should judge, around 1700.

BY MR. MOSS:

Q I refer you now to the arrest of Gatto on the charge that he had not complied with the Name Law, and registering of a business name -- had you been in attendance upon the District Attorney before Gatto was arrested? A Yes, sir, several times.

Q And had talked with representatives of the District Attorney's office before Gatto was arrested? A Mr. Ellison and Mr. Buell.

Q After Gatto was arrested did you appear for him? A My office did first off. I was not there and Mr. Levy appeared for me in the Police Court, and he was held in \$500. bail.

Q That I think was on the 25th of January, 1914 -- I think we concede or we will agree to that.

THE COURT: That was on the charge of not filing a certificate that entitled him to do business in the county?

THE WITNESS: Yes.

BY MR. MOSS:

Q Do you remember the incident on the day that he appeared in court and pleaded guilty, his being taken upstairs on a sub-

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poena? A Before he left the court room or in fact before he left the railing before the Magistrate, Mr. Buell served him with a subpoena to appear before the Grand Jury or --

Q Did Mr. Gatto see you after that on various days? A He saw me every day until the 16th.

Q Did he say anything to you? A He told me he had been subpoenaed every day to appear before the Grand Jury, but he had not been taken before the Grand Jury but he had been put through a star chamber proceeding -- that was what he told me -- in the District Attorney's office, and they wanted him to implicate somebody else in the Fazio deal, and unless he did that they would give him a year in the Penitentiary on the charge of not filing the certificate, besides making a charge in the Fazio matter.

Q You are stating what he told you? A Yes.

BY THE COURT:

Q Who said that? A Mr. Gatto told me that. He also told me the first day he was arrested he was presented with an affidavit and asked to sign it, and if he did not sign it, they would make trouble for him.

BY THE COURT:

Q Did he say who told him that in the District Attorney's office? A No, sir.

Q But somebody in the District Attorney's office -- he did not say who? A No, sir, he did not say who.

MR. MOSS: The witness is only stating what Gatto said to him.

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THE COURT: I understand.

THE WITNESS: He said Mr. Nicchia and Bonano were present all the time he was before the District Attorney, and for over a week or for over ten days, he was subpoenaed every day to appear before the Grand Jury and never taken to the Grand Jury, until I think it was the 16th I heard -- either the 15th or 16th, the last time I heard of him, and on the morning of the 18th he telephoned to my house and he said "Mr. Saitta, it is not necessary for you to appear before the Court of Special Sessions where the sentence was postponed." He said "The District Attorney is going to put that off." Regardless of that fact I appeared at the Court of Special Sessions and the case was not called, although it was on the calendar, then I had it called and somebody -- I don't know whether it was Mr. Buell or somebody else -- no, Mr. Embree was there -- he had it called and said to put it to one side, and with that I tried to explain -- I said to Mr. Embree, Mr. Embree, what does this mean, and he said "Never mind, never mind." I said "Mr. Embree, it appears to me that you are trying to make trouble in this case, because you are listening to two crooks."

BY THE COURT:

Q Referring to whom? A I referred to Mr. Nicchia as one, and to Mr. Hess as the other -- I mean Mr. Nicchia and Mr. Luigi Bonano, and I said, "My office is open to your investigation, you can send any one to my office, and my books and my clerks and

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everybody is at your service to satisfy you that this is only and simply a business transaction, and anything you want of me it is at your service. He put me off and said "Never mind, never mind." I said "I want to prefer a charge against Mr. Bonano here--"
BY MR. MOSS:

Q We won't go in to other persons not connected with this transaction, either as parties or witnesses.

BY THE COURT:

Q Nicchia and Bonano were the ones who had the Fazio \$2,000. check. A Yes, sir.

Q For collection. A Yes, sir.

THE COURT: I would like him to explain something that occurs to me, and might to others. In August 1913 the defendant had, according to this statement which I have been making, at least \$700. in cash, the proceeds of that Fazio sale of lemons, after charging every debt which he says Gatto then owed him. That would leave at least \$700. due from the defendant on those lemons.

THE WITNESS: No, sir, you must have made an error.

THE COURT: In August -- let me have that little red slip (indicating).

THE COURT: There was paid on the lemons \$2,039. and then the charges up against Gatto were \$915.; that left 1123. and then the deduction of commissions, &c., left 1042., but I thought, when I said at least \$700. due --

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MR. MOSS: You have forgotten the freight and duty which does not appear.

THE COURT: That is the reason I made it at least \$700.

THE WITNESS: No, that is not correct either.

THE COURT: In August.

THE WITNESS: Towards the latter part of August I did not have more than about \$350., and then I could not liquidate because I had to wait for the return of the Customs House. We have to pay \$500. additional -- any way 150 or 200 -- I won't say 500 -- and we never liquidate our accounts until the Customs House has liquidated, and as matter of fact the Customs papers were not liquidated until after I was indicted.

THE COURT: That was a trifle, \$11. and something.

THE WITNESS: It might have been more, and in some cases a great deal more.

BY THE COURT:

Q When was the original duty paid, it was paid before you got the goods, A Yes.

Q And afterwards the government charged you \$11.99 more -- that was paid December 25th? A Yes, but the last liquidation was October, and instead of paying an additional duty I got a refund of \$2. and some odd cents. Sometimes it is big and sometimes small, it depends upon the size of the boxes -- some people send large boxes and the duty is paid by weight and some send small

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boxes. In this instance it happened to be small boxes.

BY THE COURT:

Q Let us put it this way, as it afterwards turned out, in August, you owed somebody on these lemons, even charging up against Gatto everything that you claim Gatto owed you, you owed somebody at least \$700. on those lemons? A Not in August.

Q That is assuming that everything was paid to the government? A No, I can tell you to the dollar.

Q Tell me approximately? If I look at my ledger I can tell. After deducting my error of \$55. which I overlooked previously at the end of August or the 18th of August, I would have owed \$279.06, and then that was the time about that Mr. Cavalaro came in and told him I had a few hundred dollars in my hands and told him he had better take some proceeding to stop it in my hands so I could pay it to whom it belonged, because if Gatto came to me he could compel me to give it to him.

BY THE COURT:

Q I have this memorandum, which I think is correct, because I got it from your writings, but correct me if I have not. You testified "I gave him in all in cash on the Fazio lemons \$915.82-- meaning Gatto -- I gave him in all on the Fazio lemons in cash \$915.82."

THE WITNESS: That is right.

THE COURT: "I deducted what Gatto owed me of \$916.32 and I charged commission \$80.?"

THE WITNESS: Yes, sir.

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BY THE COURT:

Q What I was getting at, if you owed in cash admittedly \$915. why didn't you pay it promptly, why did you give it in dribblets such as ten dollars here and fifty dollars there and forty dollars at another time -- why not hand him over the whole business? A That was the way he asked me for it. I gave it to him as he asked.

Q You testified then that he did not ask you about Fazio at all or sending a check to Fazio? A No, he told me he had plenty of goods to take care of Fazio.

Q When you struck him on December 19th and he had to go out and pawn his watch and ring, and bring you back \$120., you owed him at least \$126.07 then, didn't you, on the Fazio lemons?

A Yes, sir, but he promised not to touch that, because that was to be given to Fazio -- he had to liquidate with Fazio before I gave it to him on account of the District Attorney having called me.

BY MR. MOSS:

Q Was that after the District Attorney had called you? A Yes. I would not give him up any more money and he did not ask it.

BY MR. MOSS:

Q Was it after the District Attorney had called this matter up that you struck Gatto. A Yes.

Q That very time when he might have been a witness against you? A Yes. That was in December that happened. I was before the

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District Attorney in September and twice in December.

BY THE COURT:

Q Weren't you before the District Attorney - September 24th, January 27th and February 11th -- that was the time those dictated statements are dated? A I know I had been before the District Attorney, whether I had been there twice or once --

THE COURT: September 24th is one statement.

MR. MOSS: That is before December.

THE COURT: And January 27th and February 11th.

THE WITNESS: Yes.

THE COURT: He said twice in December -- I thought he might want to correct it.

MR. MOSS: Probably he had in mind January.

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BY MR. MOSS:

Q You have testified to one letter which you said Gatto showed you from Fazio. A Telegram. I never saw one of Fazio's letters.

Q You never saw any letter from Fazio? A No, never.

Q This one telegram, as I remember it, was something that said other goods were on the way? A Important shipments on the way.

Q I speak of that because Gatto testified that he showed you practically all of Fazio's letters -- I understand you to say that is true? A Effectively I never saw one of Fazio's letters.

BY THE COURT:

Q You saw the cable of Fazio? A Yes, he showed me the cable from Fazio.

BY MR. MOSS:

Q The one you have mentioned? A Yes.

BY THE COURT:

Q Do you know what that cable said? A "I have important shipments on the way", something to that effect.

BY MR. MOSS:

Q Then Mr. Gatto testified, that he limited the amount that you could use to repay his indebtedness, to the commission which he would be receiving. Was there any such conversation as that between you and Gatto? A No, nothing of the kind. He came and gave me the document and he said: "Here, you thought I was a

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crook"— those were his words, or, a thief -- the word in Italian. He said: "I want to show you I am an honest man". He said: "Here are these documents. Now you can pay yourself. I expect to do a large business and I can do that for you for what you have done for me."

Q You say no word of commission was spoken? A No, not a word. He said: "Pay yourself whatever is due you, and give me the balance as I want."

Q I refer you to the testimony of Mr. Hegeman, who at first said, at page 71, that when you came to him you said you had some fruit from Fazio, and then in cross examination he said that you might have said you had some of Fazio's fruit -- did you use the word "Fazio" with Mr. Hegeman? A I don't remember. I would not make any such statement because there would be no necessity for it.

Q Were there marks on the boxes which showed they were Fazio's goods? A Yes, sir; certainly; the boxes are marked Fazio and the papers signed are Fazio's papers, I suppose, but I would not mention Fazio's name and had no occasion for it.

Q Referring back to Gatto's testimony, Gatto said with reference to the circulars which were sent to Italy, that you provided the stamps for mailing those circulars; is that true?

A Never in my life, to my knowledge, did I give him any stamps or authorize my office to give him any stamps.

BY THE COURT:

Q Do you know where he got them, the stamps? A No, sir.

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MR. MOSS: The letters were mailed in Brooklyn, he testified, and the cables were sent from Brooklyn.

MR. HAYWARD: Who testified to that?

MR. MOSS: It was the cables I have in mind.

BY MR. MOSS:

Q Then he referred to some conversations in which he asked you to send money to Fazio and you put him off by saying the auction sales did not pay until thirty days after the sale; was there any such conversation? A Nothing of the kind.

Q Did he ever ask you to send money to Fazio? A No. He asked me to get some money from Brown & Seccomb so I could give a little more money to him and I told him when I got it -- I told him also at that time "I have already given you about six or seven hundred dollars and between that and what you owe me will eat up the shipment and I cannot give you any more until I know what the sales will realize".

Q He also testified that you made up or helped him to make up telegrams; did you do that? A No, never.

Q Whether to Fazio or anybody else? A No, sir; never.

Q He testified he talked to you about Fazio all the time, every day; did you have conversations with him about Fazio any more than you have already testified to? A Fazio's name was not mentioned to me until there was the time about the check that he wanted me to make out the check.

Q You have already spoken of all that occurred between you

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and him as to Fazio? A Yes, sir; that was all.

Q He said also you excused or rather put off the settlement the of/matters by saying "There is time". Did you ever use any such expression? A No; in fact, in the presence of Cavalaro I urged him to settle the Fazio matter.

BY THE COURT:

Q When was that that you urged him to settle? A In August.

Q How could he, if you had the money? A I told Cavalaro I was willing to give that money and also told Cavalaro he had better take some proceedings to stop the money I had in my hands, otherwise I would have to give it to Gatto, and Cavalaro was Mr. Fazio's agent.

BY MR. MOSS:

Q He testified that you specifically gave him a check for \$210, with which he was to open the account in the Corn Exchange Bank; is that true? A I gave him a check for \$210.

Q Did you attach any such condition or direction or confer with him about using that for an initial deposit? A No.

BY THE COURT:

Q Could you state what that check was, what it was given for? A He asked me for \$210 and I gave it to him.

Q Was this before or after the Fazio order had arrived, the bill of lading? A That was on the 22nd.

Q Of July? A Of July. The first lot had been sold. The second lot had not been sold yet, I don't think.

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Q Who did you say the agent of Fazio was in New York?

A Cavalaro.

BY MR. MOSS:

Q Mr. Gatto testified that you told him to say that a number of boxes had been sold to Calandra privately and to some other person whose name you did not mention, that it must be shown that there were lemons sold to two private persons. Were there such conversations? A No truth whatever in it. Never had any such conversation. Mr. Gatto said this to me, that the next shipment he was going to send to Boston, meaning the third shipment that was going to come from Fazio, and asked me what I thought of the Boston market, and I said sometimes the Boston market was better than the other and he could do as he pleased with it.

Q He says that you told him to say in the District Attorney's office nothing, substantially, saying "In time I will tell you what you have to say". Was there any such conversation?

A Positively not.

Q Did you tell him in words or substance that he must recall what he had to say by what you had arranged for him to say?

A Positively not; there was no object whatever to do any such thing.

Q Did you give him a typewritten copy of the statement which he made and tell him it was for the purpose of learning it so that he could repeat it, or anything to that effect? A No, positively not. After he signed that affidavit, he came back and he said:

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"Mr. Saitta, will you give me a copy of that".

Q He came back and asked you for it? A I said certainly, and he went into the front office and got the copy.

Q Was the copy you gave him one of the manifold copies made through the manifold process on the typewriter? A Made at the same time.

Q All struck off at the same time? A Yes.

Q He testified that you caused deposits to be made in his account, was that true? A Never, that I know of.

THE COURT: Gatto said that the defendant, Saitta, had made deposits, had caused deposits to be made in Gatto's account in Brooklyn. Is that it?

MR. MOSS: So I understood him to testify.

THE COURT: So as to meet those checks, wasn't that what he said; so as to meet the exchange checks.

BY MR. MOSS:

Q Did you in any way take charge of or manage that account of Gatto's, in Brooklyn? A No, never. I do not believe I ever saw even his bank book.

Q He testified with reference to this affidavit that you said: "This is for your own good, you will sign it and then you will be safe and secure in everything." Is there any truth in that? A Absolutely not. I showed him the account first and we went over the account and then with his assistance, we figured out the different items, the numbers; and I dictated it in his

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presence and Miss Distler wrote the affidavit and brought it back in the office and he said "Let me read it" and I handed it over to him and he read it, and I think he read it twice over. He said "Correct" and he signed it and he swore to it in my presence.

Q He said you told him to destroy or to bring over and have destroyed the checks and check book on his Brooklyn bank account.
A Never told him any such thing.

Referring again to that affidavit, how did you come to make out that affidavit for Gatto to sign? A Mr. Buell asked me if I could only show him some statement, just how things stood, and I called Mr. Gatto and I told him -- I said: "The District Attorney wants to find out just how things are. Have you any objection to making an affidavit just how the things stand."

Q You did not say Mr. Buell told you to get an affidavit from Gatto? A He told me to get a statement -- well, not particularly from Gatto.

Q Did he refer to Gatto's name? A I won't say. I don't think he did.

Q Was it because the District Attorney asked you for a statement? A Yes.

Q That you thought a statement from Gatto ought to be used?
A Yes, sir; certainly.

Q You got it for the purpose of giving it to the District Attorney, did you not? A I did.

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Q And you gave it to the District Attorney? A Yes, sir; I gave it to him.

Q And it was produced in Court by the District Attorney?

A Yes, sir.

BY THE COURT:

Q That affidavit that Gatto signed, you brought over to the District Attorney, did you? A Yes, sir.

BY MR. MOSS:

Q There was a check introduced, I think that was spoken of as the Dinglestedt check, a check for \$250, and Mr. Gatto said: "Mr. Salita had this check written already when I got there and he made me sign the check"-- did you make him do that? A I never saw that check until I saw it in Court here, before.

Q That is, Gatto's check to Dinglestedt? A Yes, sir; I never saw it.

Q Do you know anything at all about that check? A No, that was a matter between Andreia and Gatto.

Q A matter that you had no connection with? A No, nothing and to do with me at all and connection with it.

Q I refer you to the testimony of Mr. Hess. Mr. Hess came here and testified in your presence and he said that you told him in these words "Mr. Gatto owed me a lot of money and I took the goods". Did you ever say that to Mr. Hess? A Nothing of the kind.

Q Did you ever say that to anybody? A No. Mr. Hess was

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never in my office about this matter. Mr. Nicchia called me on the phone.

Q Never mind, just answer the question. "Mr. Gatto owed me a lot of money and I took the goods"-- you say you did not say that? A Nothing of the kind.

Q Either at your office or elsewhere? A No, never at any time did I have any such conversation with Mr. Hess.

(The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, March 27th, 1914, at 11:00 o'clock).

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New York, N. Y., March 27th, 1914.

Trial Resumed.

G U I S E P P E C A V A L L A R O, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, East Rockaway, Long Island).

MR. MOSS: If your Honor please, by consent of the District Attorney, I call two witnesses out of order.

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business? A I am an importer, fruit and produce.

Q Do you import persons and/or goods and fruits from Italy?

A Yes.

Q How long have you been in that business? A Oh, about twenty-two or twenty-three years.

Q Are you have ~~you~~ a large business? A Very large, yes.

Q Are you familiar with the trade custom concerning the bringing in of goods and paying customs and the way it is done?

A Thoroughly.

Q According to the custom, in the transactions as you have known them, does the fact that an indorsed bill of lading is accompanied by a white consular invoice, signify that the goods are consigned necessarily?

Objected to as a conclusion.

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MR. MOSS: I ask this witness for his knowledge of the customs.

MR. HAYWARD: You are asking for his conclusion, a legal conclusion.

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

BY MR. MOSS:

Q According to the custom of the business, do you at time receive goods accompanied by a white consular invoice, where the goods are not consigned but are delivered? A Yes.

Q Sold? A Yes, sir; it does happen that way.

Q And if goods that have been consigned, accompanied by a white consular invoice, are sold in transit, do you still get the white consular invoice? A That is the only one on the way.

Q And in order to get the goods out of the customs house, you have to fill out the white consular invoice? A Yes.

Q According to the customs of the business, when the bill of lading is endorsed deliver, do you take the goods as owner?

Objected to for the same reason.

Q Do you take and dispose of the goods as owner? A Yes.

Q According to your experience in dealing with fruits from Italy, are orders for fruit solicited by people in New York from fruit growers in Italy? A Yes.

Q Solicited from fruit growers in Italy by circular? A No, they have agents here as a rule.

Q Agents here? A Yes, sir; their agents.

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Q People who are called importers? A Importers or actual agents, and then they see the importers or trade in general or try to place goods, sell goods.

THE COURT: Are you proving by this witness that no Italian fruit grower or fruit merchant shipped ^{goods} to America unless he has an agent in America?

MR. MESS: I have not attempted to prove that. I am proving what is the form of doing business, the usual form or manner.

BY MR. MESS:

Q Were you at the office of Mr. Saitta at some time in August, at a time when Mr. Saitta was there and there was some discussion about money due to Mr. Fazio, were you there? A Yes.

Q Did you take part in that discussion? A Yes.

Q State what was said by you and by the persons who were there; you, Batto and Saitta? A Well, I was directed by Mr. Ferdinand Batto, who was in my office at that time -- he had a desk there -- to go and see Mr. Saitta about this Fazio matter and ask --

BY THE COURT:

Q About the Fazio matter? A Yes, sir. I asked why I should go there. He told me that the proceeds in this transaction was paid to Mr. Saitta. So I went there.

Q You had better say the Fazio transaction. A The Fazio transaction. When I went to Mr. Saitta, the moment I spoke

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over the Fazio matter, he called in S. Gatto, who either was in the other office or just came in -- I don't know, because I was not facing the door -- and when I asked that Fazio should not lose this money, that it was not right, Mr. Saitta said: "It is nothing appertaining to me, it is up to Gatto. That is his matter."

Q When was this, about what time? A About August, 1913; somewhere around there; I don't recollect exactly.

Q Who did you represent when you called?

MR. MOSS: He has just stated that he was sent there by Ferdinand Gatto who had a desk in this witness's office.

THE COURT: I thought this may have been the witness that Mr. Saitta said yesterday represented Fazio and was Fazio's agent in New York.

THE COURT:

Q Are you the man who was Fazio's agent in New York? A No.

MR. MOSS: The witness has made it clear that he had an office in which Ferdinand Gatto had a desk, and Ferdinand Gatto told this witness that he was handling the Fazio matter.

THE WITNESS: Yes.

MR. MOSS: And asked this witness to go to Mr. Saitta.

THE WITNESS: Yes, being an old man he could not go.

MR. MOSS: Of course, Mr. Saitta considered this witness to be the representative of Fazio.

THE COURT: This was the man that Mr. Saitta referred to on the stand yesterday?

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MR. MOSS: Yes.

BY MR. MOSS:

Q You have told us that Saitta pointed you to Gatto and said it was his matter? A Yes, sir.

Q Go on from there, what happened then? A Then I turned around to Mr. Gatto, Salvatore Gatto, and anything that was said there, it was corroborated by him, and I found that he was rather mad at Fazio for stopping the shipments on the way, and that he was going to sue him.

Q Gatto? A That was Gatto, that he had a very good case against Fazio.

BY THE COURT:

Q Who told you that? A St. Gatto. My idea was to try and get some money anyway from Fazio, and I asked Mr. Saitta how the matter stood, what the statement was, or what money was due to Fazio or Gatto, and Mr. Saitta told me up to date might be about six hundred, five or six hundred dollars, something like that, and I can show you in the book. I said: "Never mind, I don't want to see the book, because at the same time Fazio -- or Gatto, corroborated him --"

BY MR. MOSS:

Q How did he corroborate him? A I said: "Is that so?" "Yes, yes." We were speaking in Italian, so he understood everything.

Q What else did you say to Gatto? A To try to make a

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better offer than that and then I would communicate to Mr. Fazio himself, because I know Mr. Fazio personally.

Q You said this to Gatto? A Yes, sir; I said that in the office and it seems he could not do any better.

Q Who could not? A Gatto could not.

BY THE COURT:

Q Any better than what? A He could not do any better than the balance which was left in Mr. Saitta's hands.

Q That was between five and six hundred dollars? A At the time, yes, sir.

Q He told you that? A Mr. Saitta from the book there that he had. Then it was suggested to me by Gatto that I should get some goods and buy them myself, some tomato sauce, or something, I don't remember -- and I said no, I want the cash.

BY MR. ROSS:

Q What did Gatto say? A That Gatto had.

Q He wanted you to take? A Yes, sir; for me to buy, to increase the six hundred dollars to make it more, so I could make a better offer to Fazio. I said: "No, I won't have anything to do -- I don't want to buy any goods, I want cash and a good offer." They could not do any better and then I went back to the office and I wrote to Fazio himself.

Q Did you accept Gatto's suggestion of five or six hundred dollars? A I did not accept, no, sir; but I said I will lay the matter before Fazio in Italy and if he accepts, why then you can

better offer than that and then I would communicate to Mr. Fazio himself, because I knew Mr. Fazio personally.

Q You said this to Gatto? A Yes, sir; I said that in the office and it seems he could not do any better.

Q Who could not? A Gatto could not.

BY THE COURT:

Q Any better than what? A He could not do any better than the balance which was left in Mr. Saitta's hands.

Q That was between five and six hundred dollars? A At the time, yes, sir.

Q Who told you that? A Mr. Saitta from the back there that he had. Then it was suggested to me by Gatto that I should get some goods and buy them myself, some tomato sauce, or something, I don't remember -- and I said no, I want the cash.

BY MR. MOSS:

Q Was that good Gatto had? A That Gatto had.

Q He wanted you to take? A Yes, sir; for me to buy, to increase the six hundred dollars to make it more, so I could make a better offer to Fazio. I said: "No, I won't have anything to do -- I don't want to buy any goods, I want cash and a good offer." They could not do any better and then I went back to the office and I wrote to Fazio himself.

Q Did you accept Gatto's suggestion of five or six hundred dollars? A I did not accept, no, sir; but I said I will lay the matter before Fazio Italy and if he accepts, why then you can

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better offer than that and then I would communicate to Mr. Fazio himself, because I knew Mr. Fazio personally.

Q You said this to Gatto? A Yes, sir; I said that in the office and it seems he could not do any better.

Q Who could not? A Gatto could not.

BY THE COURT:

Q Any better than what? A He could not do any better than the balance which was left in Mr. Saitta's hands.

Q That was between five and six hundred dollars? A At the time, yes, sir.

Q Who told you that? A Mr. Saitta from the book there that he had. Then it was suggested to me by Gatto that I should get some goods and buy them myself, some tomato sauce, or something, I don't remember -- and I said no, I want the cash.

BY MR. MOSS:

Q Was that goods Gatto had? A That Gatto had.

Q He wanted you to take? A Yes, sir; for me to buy, to increase the six hundred dollars to make it more, so I could make a better offer to Fazio. I said: "No, I won't have anything to do -- I don't want to buy any goods, I want cash and a good offer." They could not do any better and then I went back to the office and I wrote to Fazio himself.

Q Did you accept Gatto's suggestion of five or six hundred dollars? A I did not accept, no, sir; but I said I will lay the matter before Fazio in Italy and if he accepts, why then you can

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give it to me. I am ready to take the money.

Q Did Mr. Saitta say anything about that time? A Mr. Saitta said that he only wanted what belonged to him.

Q Did he say anything as to your getting the money that was in his hands, did he speak to you about that? A He told me to take legal steps, because the money would dwindle day by day.

Q To take legal steps to get what he had? A Yes. And I told him I could not do it right away, unless I wrote to Mr. Fazio, at Catania, which I did -- I did write to Mr. Fazio.

Q Did you take any other steps at all? A No.

Q If I understand you, your conversation was with Gatto --

MR. HAYWARD: I object. This man seems to be an intelligent man and why should Mr. Moss put words in his mouth?

MR. MOSS: I am trying to see if I understand what he has testified to.

MR. HAYWARD: It is not allowed for counsel to sum up what a witness had said.

MR. MOSS: We will have no discussion about it. I shall not press the question. You may cross examine.

CROSS EXAMINATION BY MR. HAYWARD:

Q Who first spoke about the six hundred dollars?

THE COURT: Five to six hundred dollars.

BY MR. HAYWARD:

Q The five or six hundred dollars? A Mr. Saitta.

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Q And whatever Mr. Saitta would say, Gatto would nod his head, is not that so? A He corroborated everything he said.

Q He did it by nodding his head part of the time? A By nodding and saying "Yes, sir; yes, sir."

Q He would say, "Yes, sir; yes, sir"? A Yes, sir.

Q That is right? A Yes.

Q And do you remember Mr. Saitta saying to you that Mr. Gatto is an honest fellow? A Yes.

Q He did say that? A In this way: That he owed him money and he was surprised to see him bring in this bill of lading in payment.

Q But he said he was an honest fellow, didn't he use those words, he is a honest fellow? A That he was surprised that he acted so honestly.

Q You didn't hear him say that, was it? A He said, he was surprised that he acted so honestly.

Q But didn't he say to you that "He is an honest fellow"? A He did use that, yes.

Q He used the words "He is an honest fellow" to you? A In the conversation, yes.

Q About Gatto? A About Gatto, yes.

Q You used the words "Gatto was a stupid fellow, didn't you, at that same conversation?"

THE COURT: All right.

MR. HAYAFF: That is all I have to say, a stupid fellow.

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Q And whatever Mr. Saitta would say, Gatto would nod his head, is not that so? A He corroborated everything he said.

Q He did it by nodding his head part of the time? A By nodding and saying "Yes, sir; yes, sir."

Q He would say, "Yes, sir; yes, sir"? A Yes, sir.

Q That is right? A Yes.

Q And do you remember Mr. Saitta saying to you that Mr. Gatto is an honest fellow? A Yes.

Q He did say that? A In this way: That he owed him money and he was surprised to see him bring in this bill of lading in payment.

Q But he said he was an honest fellow, didn't he use those words, he is an honest man? A That he was surprised that he acted so honestly.

Q You don't know -- A That, was what he said, he was surprised that he acted so honestly.

Q But didn't he use the words "He is an honest fellow"?

A He did use that, yes.

Q He used the words "He is an honest fellow" to you? A In the conversation, yes.

Q About Gatto? A About Gatto, yes.

Q You used the words to Gatto that he was a stupid fellow, didn't you, at that same conversation?

THE COURT: Who was?

MR. HAYWARD: That Gatto was a stupid fellow.

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THE WITNESS: As a matter of fact he is no stupid.

BY MR. HAYWARD:

Q Didn't you tell him at the time he was a stupid fellow?

A I might have said some remark for acting the way he did.

Q Answer my question, did you or did you not say that Gatto was a stupid fellow? A At the time when the conversation there--

Q Right there at the time? A I might have said it. I don't recollect it.

Q Do you remember telling Mr. Buell that you told him that?

A Might be, if it is in the statement then I said it.

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Q Did not Mr. Saitta offer to show you a book that he had there? A Yes.

Q And didn't you say to him "Never mind the book"? A Never mind the book, I said.

Q And it was Saitta that mentioned the five or six hundred dollars? A Yes.

Q In fact, Saitta did most of the talking, didn't he? A Well, all of us did the talking.

Q But Saitta told about \$600., and Saitta said "This man", indicating Gatto, "is an honest fellow" -- Saitta did all that talking? A Practically.

Q And you were demanding this money when you went there from Saitta, were you not? A I was, yes.

Q You said to him, did you not, to Saitta, the defendant, "You have no right to keep Fazio's money to pay a debt due to you by Salvatore Gatto? A I might have said it.

Q Do you say you did or did not say it? A If it is in the statement, I said it.

Q It is in the statement? A Then I said it.

Q Your recollection, when you gave this statement, was at least as clear as it is this morning? A I presume so.

BY THE COURT: What date was that, that he made that statement?

MR. HAYWARD: March 24th, 1914.

BY MR. HAYWARD:

Q Didn't you say in that statement these words, "You have

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no right to keep Fazio's money to pay a debt due to you by Salvatore Gatto" -- didn't you tell us those words were used by you to Saitta in the office that day? A I think I did. I was taking Fazio's part.

Q You said "this money is due to Fazio", among other things?

A It is due, certainly. He shipped the goods.

Q Didn't he say to you at the same time "I do not know Fazio in the matter at all, I acted as a banker"? A For Gatto he acted as a banker, for Gatto.

Q That was what he said? A In other words, he explained the transaction was Gatto's, and he acted as a banker in the matter.

Q That he acted as the banker? A Yes.

Q He said he did not know Fazio in the matter? A Yes, he said so.

Q Didn't you tell him at the same time when he said that Gatto, Salvatore Gatto, for whom he was acting as a banker, was an honest fellow, didn't you say to Mr. Saitta "I did not know that Salvatore Gatto, that he was so important now, because I know the other Gatto, Ferdinand Gatto, was the important importer" Didn't you say that to him, that you did not know Salvatore Gatto was such an important man? A I might have said it.

Q Do you say you did or did not? A I couldn't recollect.

Q If it is in the statement? A Then it is true.

Q How much did Saitta tell you that he intended to keep out

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of the proceeds of these lemons, do you remember, for himself, as coming from Gatto? A He was not specific about it. He simply told me what the balance was at the time.

Q Didn't you say he expected to keep \$1200. out? A I don't recollect. I don't think so. Mr. Saitta just told me -- I remember \$600. -- as the balance at the time.

Q Didn't he first say \$1400. and then didn't he say \$1200. he intended to keep out, the amount he intended to keep out?

A I presume that should be about, because --

Q You knew it was about \$2,000.? A From the old man Gatto I knew at the time he got about \$2,000. from the auctioneer.

Q And if he said he still had \$600. he must have meant that he would keep out at least about \$1200. or \$1400.? A In justice, I must also say that Mr. Saitta said then the Customs House liquidations were not forward yet, that is, they are not finished, and there might be an additional duty of a couple of hundred dollars, which was true. I have had the same experience myself of an additional duty after paying the duty.

Q I will ask you if this question was not put to you in our office: "When you told him, Saitta, he must have known that it was Fazio's consignment, and that the money was due to Fazio, he still insisted that he intended to keep this money", and didn't you answer "Yes, that he only knew in the matter was Gatto, he intended to keep \$1400. and deliver the balance to him or anybody else" - was not that question asked you and is not that the an-

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swer you made? A Practically it is so.

Q Is not that true as matter of fact? A He told me that he would turn the proceeds, that is, the balance --

Q Is not this true, what I have asked you? A That he only knew Gatto in the matter?

Q That was true? A Yes.

Q You had told him he must have known it was Fazio's consignment, haven't you? A I did.

Q You told him that? A I think so.

Q That he must have known the money was due to Fazio? A I think I did.

Q He still said he would keep \$1400.? A I suppose he did, yes.

Q Didn't you make this answer when we were talking to you here in this office, "You did not tell them", referring to Gatto and Saitta -- "you did not tell them you did not believe them, did you", and didn't you answer "No, I simply felt it when he talked to me he kept -- referring to Saitta -- he kept guard that everything he was making was in the interest of Gatto, and Gatto nodded at everything he said and when I said "No, if you will make me a better offer in cash I will ask Gatto to accept" both of them -- you used these words -- "both of them had it down pat"? A I don't recollect that.

Q Didn't you say that in this office, as I have read it to you, referring to what Saitta and Gatto said, "Both of them had it down pat"? A I do not use that expression. That is not my expression.

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Q Did you not say that? A I don't think so -- I think I am sure I did not.

Q And if the reporter, the stenographer, who took down your statement -- I am not trying to question you at all -- but simply want to make it clear to you -- if the reporter or the stenographer who took down your statement the day you were here, reads from his notes and says that you answered, describing what these two men said, Saitta and Gatto, that you answered "both of them had it down pat", then you deny that still? A I don't recollect ever using that expression.

Q I do not care if you recollect it or not -- now do you say you did not say it. A If I do not recollect I cannot say that I did or did not.

Q In regard to this statement I have been reading here, you gave this statement here voluntarily, didn't you, you were asked to give a statement in regard to this matter? A I was subpoenaed by the District Attorney.

Q And when you came up here you were asked if you would give a statement about what happened, were you not? A Yes.

Q You did give a statement? A Yes.

Q And nobody used any star chamber proceedings on you? A No.

Q Or bored you in any way or threatened you? A No.

Q You were perfectly willing to give us this statement? A Yes.

Q When you gave it you gave it according to your best recollection of what happened in Mr. Saitta's office, did you not? A Yes.

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BY MR. MOSS:

Q After you had given the statement, did the District Attorney say anything to you as to whether he wanted you or not?

A He told me that he did not want me. I said to the District Attorney I was under subpoena from the other party.

Q When you said to Mr. Saitta "You have no right to pay yourself out of Fazio's money", what, if anything, did he answer you? A That he only wanted what belonged to him, and nothing else.

Q Was there anything said in that conversation about the bill of lading and the endorsement on the bill of lading, by Fazio? A Oh yes, it was properly endorsed.

Q That was said? A Yes, sir, sure, sure.

BY THE COURT:

Q Did he make any reply to that, when you said "You have no right to pay yourself out of Fazio's money what you claim Gatto owes you" -- was that the substance of it "You have no right to pay what you claim Gatto owes you out of Fazio's money" --

THE WITNESS: I was acting as sort of lawyer for Fazio.

MR. MOSS: You mean agent?

THE WITNESS: Representing him, I used all the arguments I could to see if I could --

BY MR. MOSS:

Q You wanted to get the money? A Yes.

THE COURT: What we want to know, when you said to

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Saitta, "You have no right to hold out of Fazio's money what you claim Gatto owes you, that there is due about \$900."

THE WITNESS: \$600.

THE COURT: No, Saitta had already kept out \$912, which he claimed that Gatto owed him, didn't he?

THE WITNESS: Must have been more than that.

BY THE COURT:

Q I think he testified yesterday it was about \$900.? A I do not know the exact figures.

Q Then, what did he say to that, about his holding out nine hundred odd dollars -- \$915.82? A He did not stipulate the exact amount, but he said to me that Gatto owed him money for previous transactions.

Q He testified yesterday that Gatto owed him \$916.22 --did he say anything about that? A How much Gatto owed him?

THE COURT: No, what reply did he make, if anything, to your statement?

THE WITNESS: That ~~he~~ only had about \$600. belonging to the balance, and that anybody showing authority, could have them. He also said that was not even final, because the liquidations of the Customs House were not forward yet.

BY THE COURT:

Q Didn't you tell him then that Fazio had sent those lemons on consignment? A Yes, I did say that.

Q That was while he told you that he had between five and

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six hundred dollars in his possession? A Yes, sir.

Q You told him that Fazio had sent these lemons on consignment? A Yes.

Q Did you tell him that Fazio had not sold the lemons outright to Gatto, but sent them on consignment? A I did say that, yes.

Q You deal in these? A Yes.

Q You recognize the difference between buying a thing outright and receiving them on consignment? A Yes, sir.

Q Mr. Hayward has asked you in regard to that? A Yes, sir.

Q Now see if I recall your testimony, and if I do not, just correct me, and anybody correct me -- when a man from Italy or anywhere else, sends lemons or any other product on consignment, he sends them to be sold upon commission at a brokerage? A Yes, sir.

MR. MOSS: I object to the question because there is no evidence in the case upon which to base it. The bill of lading is in evidence, not as a consignment, but as an absolute transfer.

THE COURT: Has not Gatto testified that that is the fact?

MR. MOSS: There is the bill of lading and -

THE COURT: Also a letter of Fazio's which Gatto says he exhibited to the defendant in which he says these things were sent on consignment, and as an actual fact Saitta says he charged a brokerage of \$80. -- \$80 commission -- if you

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object to it I withdraw it.

MR. MOSS: Yes, I do.

THE COURT: Then I withdraw the question.

BY MR. MOSS:

Q At what point was it that Mr. Saitta called your attention to the endorsement that had been made by Mr. Fazio on the bills of lading? A Well, the day I asked for the money, the day I went to his office.

Q What did he say to you about the endorsements? A That the bills of lading were properly endorsed by Fazio.

Q When the bill of lading is endorsed delivered, according to the custom of the trade, is that treated as an absolute transfer of the property, A Sure, certainly.

Q So that if these bills were endorsed "delivered", according to the custom of the trade, they would be treated as an absolute transfer of the lemons? A Certainly.

Q And if it was endorsed "delivered to Gatto", it would be treated as an absolute sale of the lemons to Gatto, would it?

A Might be taken that way also.

Q That is, if it was endorsed "delivered to Gatto"? A Then they belong to Gatto.

THE COURT: You are telling us what the law is -- this witness is telling us what the law is.

MR. MOSS: I will show you the law on that very word.

BY THE COURT:

Q Suppose Fazio or any other shipper of lemons in Italy

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wantd to ship lemons over here to Gatto or anybody else on consignment -- you understand? A Yes.

Q How would he do it, except just as Fazio has done in this case, how would he alter or change it in any respect?

MR. MOSS: You mean what word he would use ?

THE COURT: Or what form would he use -- listen to me, suppose Fazio over in Italy wanted to send these goods on consignment to S. E. Gatto & Company, how would he use any other form except the exact form that he did use -- you explain that to the jury.

A They can use the form to put in the body of the bills of lading consigned to order, and then you have to endorse it on the back.

Q Would he not convey the title to the person to whom he endorsed it?

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BY THE COURT:

Q There is no other way of getting the lemons over here, by bill of lading or otherwise, unless it is endorsed? A If, in the body of the bill of lading is consigned to order, then it is necessary to endorse it in the back by the shipper, otherwise you cannot use it.

Q Can you explain to us any instance where a man could ship on consignment to this country without endorsement? A Yes.

Q Tell us. A Instead of putting the usual "consign to order" in the body of the bills of lading, simply can say "consigned to such a name" and then he don't have to endorse it.

Q Suppose Fazio had said: "Send to S. E. Gatto & Company directly" -- do you understand? A Yes.

Q Can you spell out that, that that would be a consignment, a consignment simply? A Yes, sir; that would ^{be} a consignment.

Q Does that convey correct title to the property, by sending it direct to the consignee, S. E. Gatto & Company, does that convey to him the legal title? A Yes.

Q Now, can you explain to this jury how there is any difference between that and the method that Fazio adopted? A Well, that is as far as the consular invoice is concerned.

Q You are here as an expert and I ask you this question: Is it not a custom, where the shipper in Italy wants to retain title in himself -- now follow me -- wants to retain title in himself and not convey the title to S. E. Gatto & Company, to make

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the bill of lading to his own order, that is, Fazio's order -- you understand? A Yes.

Q And then endorse it over to S. M. Gatto & Company, in order than any time between the time the lemons leave Italy and the time they arrive in America, he could stop the order because the lemons are still in his name? A He cannot do that by the bill of lading, because either consignment or purchased goods, the bill of lading has to go through the same way.

BY MR. MOSS:

Q Is there a difference between the word "consignment" and the word "deliver"? A Yes.

Q That is, if it was endorsed "consigned" it would be a consignment? A Yes, sir.

Q And if it is "deliver" it means actually sold? A Yes.

Q If it is endorsed "deliver", it is actually sold; is that right? A Yes.

BY THE COURT:

Q Have you ever heard the legal expression "stoppage in transitue"? A I simply saw this matter was a stoppage in transitue, the third shipment.

Q Isn't that what Fazio did to place himself in a position where if he found anything the matter, fraud or otherwise, that he could exercise this method of stoppage in transit, that is, stop the goods in transit before they actually reached their destination -- do you see what I mean? A Yes; he could do that.

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Q And has not he adopted that very method --

MR. MOSS: He did not finish.

BY MR. MOSS:

Q They can do it when? A Stop the goods on the way.

Q That is, when they are consigned? A When they are consigned.

Q But not when they are delivered? A No.

MR. MOSS: That is the point.

THE COURT: I asked him did not Fazio adopt the very method known to the trade to secure himself against any fraud, so that he might stop these goods in transitue between Italy and America.

MR. MOSS: Bearing in mind that they are endorsed "deliver" -- could he stop them?

THE WITNESS: He could not stop them.

BY THE COURT:

Q Fazio sent a third consignment? A Yes.

Q Did he not stop those in transit when he discovered there was something the matter with the check that was paid him on the first consignment -- you are his agent and we ask you.

MR. MOSS: The testimony is that he stopped the mail and got hold of the bill of lading.

THE COURT: Quite right.

MR. MOSS: He got the letter.

THE WITNESS: Personally I don't know how he could stop it

BY MR. MOSS:

Q Didn't he stop it? A He did through the postmaster. There was a third shipment.

MR. MOSS: That is just where the question of law came, as to whether he had the right to do that or not, that is just why Gatto's claim was that he had not any right to do it and that is just the reason why Gatto stopped his two thousand dollar check.

THE COURT: He had already stopped the check.

MR. MOSS: No, the testimony is that the check for two thousand dollars was stopped when he found his mail had been taken. On this point I would like to hand you the decision of the court as to the meaning of the word "deliver". I refer to the case of the City Bank against the Rome-water-town & Ogdensburg Railroad, in 44 N. Y., page 135.

THE COURT: (Examining the book) There was an innocent third party in this particular case --

MR. MOSS: I am not citing it on that point but on the construction of the word "deliver", what it means.

THE COURT: I guess that nobody doubts that.

MR. MOSS: If we do not doubt it then I --

THE COURT: The case you cite is where the bill of lading was turned over to a bank and that bank advanced money on it and of course the person who received it was vested with legal title.

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MR. MOSS: Suppose this man received it innocently from Gatto and advanced money on it as he did.

THE COURT: Then do you know what the jury will do? If this jury find that to be the case they will walk out and come right back with a verdict of not guilty.

MR. MOSS: Of course they will and I expect them to also.

THE COURT: The question in this case -- that is one of the questions in this case.

MR. MOSS: I except to the introduction of that element at this time.

THE COURT: I thought you introduced that yourself.

MR. MOSS: I except to the remark that in that case there was an innocent third party, from which it might be inferred that there was not an innocent third party here. I except to the introduction of a discussion which bears directly or indirectly on the guilt or innocence of this defendant.

THE COURT: Mr. Moss handed up to me Volume 44 N. Y., page 135, and called my attention to the case of the City Bank against the Rome Watertown & Ogdesburg Railroad. I did so and distinguished that case and called his attention to what I considered the point in that case.

MR. MOSS: That is just the thing I objected to, the distinguishing of the thing, in the way it was done.

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THE COURT: Do you mean to say that there was any particular emphasis by the Court on any particular word?

MR. MOSS: I do not care to discuss it any further.

THE COURT: I do not think that you should say that I emphasized any particular word.

MR. MOSS: I do not think you did. I do not mean to say that you did intentionally emphasize any particular word but it is the substance of it I am excepting to.

BY MR. HAYWARD:

Q You said I got someone to tell you that we did not want you, didn't you, in response to a question put to you by Mr. Moss -- did not want you as a witness? A No, I said Mr. Buell did not want me any more. I asked him to be excused. He told me that he did not need me any more that day and then I told Mr. Buell I am under subpoena of the defendant in the matter, and I even wanted to know from Mr. Buell if by appealing to him I could go away altogether and he said: "No, no; that is different altogether; you have to appear" and he suggested "You go downstairs and ask Mr. Moss", which I did, and Mr. Moss wanted me to stay for identification that day, which I did.

Q Mr. Buell and I, you told us you were very busy and we have tried to keep you from attending this Court any more than you had to? A Yes.

Q But we have always told you and you have always promised to come on a telephone call when we wanted you? A Yes.

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Q And it was always understood that you were under the subpoena here anyway, by one side or the other? A Yes, sir; that was by the other side, yes; certainly.

PHILIP S. SAITTA, now resumes the stand:

DIRECT EXAMINATION (Continued) BY MR. NOSS:

Q You recall, Mr. Saitta, the occasion when you were, together with this last witness, Mr. Cavallaro and Mr. Gatto, in your office? A Yes.

Q When Mr. Cavallaro said to you that you had no right to pay yourself out of Fazio's money, did you answer him? A Yes.

Q What did you say? A I told him that the bills of lading were brought to me and they were properly indorsed and on the face of it it was the property of Gatto and that Gatto could have thrown them away or pledged them or borrowed money on them or sold them or done anything he wanted to and I said -- I even made the further remark, I said: If Gatto had gone to a bank or to the auction and sold these goods and from that money he paid me, it would have been the same thing, because on the face of it the bill of lading belonged to him and nobody else, and I could not recognize Fazio or any other person, and anybody that knows anything about bills of lading or commercial matters of that kind, ought to know that fact.

CROSS EXAMINATION BY MR. HAYWARD:

Q How long have you been in the United States? A Since 1878.

Q Where did you come from when you came here? A From Italy.

Q What part? A Messina.

THE COURT: Thirty-six years in America.

BY MR. HAYWARD:

Q Thirty-six years -- what was your first business when you came over here? A I went to school.

Q Went to school in this country? A Yes.

Q What schools did you go to? A Public shools.

Q In this City, City of New York? A Yes.

Q Well, after you finished your schooling, what was your first business venture? A I was in Phelps & Brothers Company, steamship agents.

Q About when was that? A Five or six years after I came to this country.

Q What was the first time you ever appeared in a business firm in New York? A I think 1885.

Q What was the firm? A Saitta & Purpera.

Q What was the business? A Fruit..

Q Purpera was your brother in law? A No, no relation.

Q Where was your first business conducted, of the firm of Saitta & Purpera? A Barclay Street.

Q Where next? A We had a place on Washington Street.

Q Did you ever have a place downstairs on Greenwich Street?

A On Greenwich?

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Q Yes, 262 Greenwich Street. A No, sir.

Q Never had a place there? A No.

Q Just had the two places that you remember, on Barclay Street, or just one place on Barclay Street, is that right?

A A place on Barclay Street and a place on Washington Street.

Q Which place --

BY THE COURT:

Q Was the one on Washington corner of Greenwich? A No.

Q It cannot be. A No, it was between Murray and Warren.

BY MR. HAYWARD:

Q Now, which place did you have a fire? A We did not have any --

MR. MOSS: I object to the question in that form as an assumption.

THE COURT: Ask him did he have a fire.

BY MR. HAYWARD:

Q Did you have a fire or the firm have a fire at either of those places? A There was a fire upstairs.

Q Was your place damaged? A Yes, sir; we had no insurance on one and on the other we were insured about a quarter.

Q When did that firm go out of business? A I think the fire put us out of business.

THE COURT: When was that?

BY MR. HAYWARD:

Q About when? A Pretty hard to tell, so many years ago.

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BY THE COURT:

Q Approximately? A ~~It was~~ right after the fire. The fire was Mr. McAlpine's building upstairs, a cigar place, there was a paint shop next door and a cigar store upstairs. It was in the summer time.

BY MR. HAYWARD:

Q What was your next business venture? A I bought the place opposite that.

Q Was that Fratelli & Saitta? A No.

Q Were you ever a member of the firm of Fratelli & Saitta, importers? A No.

BY THE COURT:

Q Did you ever hear of that firm? A No, sir; not that I know of. On the other side there was a firm by the name of -- on the other side I think there is a firm of Fratelli Saitta, which means Saitta Brothers.

BY MR. MOSS:

Q By the other side you mean on the other side of the ocean?
A Yes.

BY MR. HAYWARD:

Q Was there not a firm of that name with which you were connected, importers of fruit, 12 Old Slip? A No.

Q Never heard of them? A No.

THE COURT: You have not got the name right?

MR. HAYWARD: It is Fratelli Saitta or Saitta Fratelli --

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that means Saitta Brothers?

THE WITNESS: Yes.

BY THE COURT:

Q You never heard of that firm at 10 or 12 Old Slip? A No.

BY MR. HAYWARD:

Q When you bought out the people across the street, how long did you stay in that business? A About a year or so.

Q What was the name of that firm -- what name were you operating under there? A My own name.

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Q Philip S. Saitta. A Yes.

Q That was not the firm of Saitta & Purpera? A No, sir.

Q You were about a year in that business? A Yes.

Q Then what did you enter -- what was your next business venture? A After that I think I worked a little for the Encyclopedia Britannica people.

Q For how long? A Some few months or so.

BY THE COURT:

Q In what capacity? A Salesman.

BY MR. HAYWARD:

Q What did you do next? A I learned the jewelry trade when I came to this country and I went into the jewelry business. My father put me to the trade, wanted us to learn a trade as well as sending us to school and I went into the jewelry business.

Q Was your father living at this time? A Yes, sir.

Q Was he living in this country at this time? A Yes, sir.

Q As matter of fact, you did become a jewelry jobber, did not you, retail jewelry? A No, not retail, wholesale.

Q Wholesale jewelry jobber? A Yes.

Q Where was your office? A 156 Broadway.

Q 156 Broadway? A Yes.

Q As matter of fact, you converted to your own use about \$7,000. worth of jewelry, for which your father afterwards paid those from whom you had taken it? A Nothing of the kind, I did not do anything of the kind.

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Q How long were you in the jewelry jobbing business, wholesale jewelry jobbing business? A About a year.

Q Then what did you do after leaving the wholesale jewelry jobbing business? A I went back to the fruit business.

Q Where? A I think I went back with my father, if I am correct.

Q And was the place at 1288 Broadway, do you remember?
A 1288?

Q Yes? A It was long after that.

Q You don't remember this place where you went back into the foreign fruit business with your father after you left the wholesale jewelry jobbing business, you cannot tell us where that was -- what was your next business?

THE COURT: Give him time to remember.

MR. HAYWARD: He shook his head, and I think you did not notice.

BY THE COURT:

Q You do not remember where you went back into the fruit business with your father, immediately after you left the jewelry business? A I don't remember where that place was. They moved two or three times, and I don't exactly remember what place it was.

Q You cannot remember either one of those places? A This is some twenty-six or twenty-seven years ago. I think they had a place first on Washington Street and then had one on Greenwich

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Street, and I couldn't tell you which it was, because I happened to be in both places.

BY THE COURT:

Q Was it 262 Greenwich Street? A I couldn't say, your Honor.

Q Was it downstairs at 262 Greenwich Street? A No, they had the whole building when they were on Greenwich Street.

BY MR. HAYWARD:

Q Now, what was the next business you engaged in? A I went to Europe.

Q How long did you stay over there? A Two years.

Q And when you came back did you again engage in business in the United States? A Yes, I have always been in business.

Q In what business did you engage when you came back? A Fruit business.

Q For how long? A Up to the time I started to study law.

Q Were you not engaged in the florists' business at 1298 Broadway in 1888? A I had a fruit store and flowers there.

Q A florist business, was it not; it was not a wholesale fruit business like you had been in before? A Retail.

Q You had been in the foreign fruit business always before?
A Yes.

Q This was a retail florist store? A Yes.

Q That was before you started to study law? A Yes.

Q How long were you in that florist business? A Until I could not renew my lease any more.

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Q I ask you how long it was, if you remember. A It may have been a year or so.

Q During the time you were in that florist business, how many attachments were there against you?

MR. MOSS: I object.

MR. HAYWARD: I withdraw it if the Court thinks it is not a proper question-- perhaps it is not, but I think it is.
BY THE COURT:

Q Well, were you at that time a resident of New York County?

A No, sir.

Q Were you a resident of New York City? A No.

Q Where were you a resident of? A New Jersey.

Q Were you living in New Jersey then? A Yes.

Q What place? A Leonia, New Jersey.

Q What year was that? A By the way, I was living in Ridgefield, New Jersey, and after that I moved to Leonia, that must be about twenty-one or twenty-two years ago.

Q Now, were the attachments against you because you were a non-resident?

MR. MOSS: I object to any inquiry on the matter of the attachments, because it does not come within the limit of cross-examination.

THE COURT: You have put witnesses on the stand to show his good character. Now if those attachments were for the reason that he was a non-resident, they would not be relevant.

MR. HAYWARD: I withdraw the question, if Mr. Moss objects.

MR. MOSS: Your Honor conducted an examination apparently from some document in your hands after the District Attorney withdrew the question.

THE COURT: What is that -- I have no document.

MR. MOSS: From some memorandum or some material.

THE COURT: I am merely making notes, I have not a memorandum or any material whatever.

MR. MOSS: The question of the District Attorney was withdrawn.

MR. HAYWARD: A moment ago, the last thing I did.

MR. MOSS (continuing) Before the inquiry was begun, and the purpose of my objection is --

THE COURT: You said ~~you~~ had some memorandum before me when you did not know anything about it. I was merely making notes and I have no memorandum of this case of any nature or description. I never heard of the alleged attachments but I know what they are issued for, and one is for non-residence, and that is the reason I asked him whether he was a resident.

MR. MOSS: The point is this, the question was withdrawn and if I have to traverse a lot of collateral inquiries about going to Jersey and everywhere else, we are never going to get through with this case.

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BY MR. HAYWARD:

Q You were in this florist business about a year? A Yes.

Q And then what was your next business venture or engagement? A Fruit business.

Q Back to the fruit business, retail or wholesale? A Wholesale.

Q Where? A I think it was 234 Washington Street, New York.

Q Can you tell us what year that would be? A Before I went in the business I represented my brother who had a house in Pittsburgh and I used to procure all the consignments, soliciting fruit for them, to be shipped on consignment from New York to Pittsburgh.

Q Were you interested in that firm? A No, no interest whatever.

Q Just a workman of the firm, A Yes, sir.

Q You were connected with the firm of Saitta & Company which in the fall of 1891 started a fruit business at 241 East 125th street, were you not? A No, sir.

Q Did you know that firm? A Yes.

Q Who composed it? A My brother and somebody else; I don't think it has anything to do with this case.

BY THE COURT:

Q About what time was that? A I am trying to think -- about twenty or twenty-one years ago.

BY MR. HAYWARD:

Q As matter of fact, Mr. Saitta, this particular business

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was conducted under the name of Mr. and Mrs. Peter Saitta? A No.

Q Your brother Peter and his wife Edith when, as matter of fact, you were the owner of the business, is not that true?

A Nothing of the kind.

Q Can you tell us how long this firm of Saitta & Company, whoever composed it, lasted? A I don't know -- around a year, or something like that.

Q Now, is it not a fact that this Pittsburgh firm that you have told us about, that you used to get consignments for, is it not a fact that you were a member of that firm and they had an incendiary fire in Pittsburgh?

MR. MOSS: I object.

MR. HAYWARD: I will change my question.

BY MR. HAYWARD:

Q And that you participated in the incendiarism of that place? A Whoever told you that told you an absolute falsehood. I never had any connection with the firm or anything to do with it in any way, shape or form. I was only a clerk, buying and selling for them. It is scandalous to bring in such stuff. |

Q The name of the firm was Saitta & Fugassi? A Yes, sir, Saitta & Fugassi.

BY THE COURT:

Q Which brother was that, what was his name? A I have only one brother, Peter R.

BY MR. HAYWARD:

Q What was the next business venture you had after the last

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one you told us about, that you participated in, do you remember?

A After that I went in business with my father.

Q In what business? A The same business, fruit business.

Q Do you remember where that office was? A Washington street.

Q How long were you there with your father? A I don't know, quite some time. I was clerk there with him.

Q You went back and was clerk for your father for awhile and you don't know how long? A No.

Q Did you start up as a fruit broker, with an office at 31 Broadway? A I did that when I commenced to study law.

BY THE COURT:

Q When was that? A Over twenty years ago, about twenty years ago.

BY MR. HAYWARD:

Q That would be about 1894? A 1894 is the time when I entered New York Law School. In order to earn a livelihood I used to do a brokerage business, and because I could not have a store-- in my office --

BY THE COURT:

Q Brokerage in foreign fruits? A Yes -- that would only occupy part of my time, as I had to go to Law School in the morning and I had to go to complete my Regent's at night, and I used to work then, and used to get up every morning at 3 o'clock and study until seven, and go to business, and I had a family of three children and attended to business until about eleven and went to

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Law School until one and attended business until late in the afternoon and then went to private school at night, and kept that up for three years.

BY MR. HAYWARD:

Q Were you in New York continuously from 1897 to 1900, or were you in Pittsburgh. A I never was in Pittsburgh, excepting on a visit, as a traveler.

Q When did you open your office at 250 Broadway as a Representative of the Italian Merchants Protective Association? A 250?

Q 258, your present office? A It was only a side branch we had in connection with the law business.

THE COURT: What was the name of the concern?

MR. HAYWARD: The Italian Merchants Protective Association.

THE WITNESS: Must have been fourteen or fifteen years ago.

BY MR. HAYWARD:

Q You were also, at that same place, president of the United Realty Construction Company, builders, were you not? A I was, yes.

Q How long had you been practicing law then? A I was admitted about sixteen or seventeen years ago. I don't remember.

Q Do you remember the year, was it about 1898? A '98, yes, that is right.

THE COURT: 1898.

MR. HAYWARD: Yes.

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BY MR. HAYWARD:

Q You got admitted by this work you have told us about, by working nights &c., and running your business in the daytime?

A Yes.

Q And two years after you were admitted you appeared there as president of the United Realty Construction Company? A Two years later?

Q Yes, in 1900, wasn't it, you became president of the United Realty Construction Company? A I would not say exactly the time; it was probably about that time.

Q Have you been practicing law since then? A Yes.

Q Have you had any partners? A Unfortunately, yes.

Q Who were they? A One was Mr. Goeller, a clerk in my office which I took over as a partner, and one was a man by the name of Mr. Thiele.

Q You say unfortunately? A Yes, sir.

Q Unfortunately for you or for them? A For me.

Q You did some business for Mr. Thiele's mother? A Mother?

Q Yes? A Never had a mother as far as I know.

Q Mother-in-law? A No, sir, she acted as a dummy once in a real estate transaction, that was all.

Q Who negotiated the real estate transaction, you and Mr. Thiele? A Mr. Thiele was an officer in the company, in the Real Estate Company we were interested in, and one time I think her name was used.

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Q You used her as a dummy in the real estate transaction, you and Thiele? A Once we transferred some property to her.

Q You were not using your brother and his wife as dummies in anything, in any of these prior businesses? A No, sir.

Q That was the first time you ever used anybody as a dummy, when you used Mr. Thiele's mother-in-law? A It was only a transaction -- there was a piece of real estate we wanted to transfer to somebody else and put it in her name, and from her name put it in somebody else's.

BY THE COURT:

Q And in the meantime didn't she give a mortgage on it? A I don't remember.

BY MR. HAYWARD:

Q When was the firm of Saitta & Thiele dissolved? A Dissolved when I kicked Mr. Thiele out, after I discovered some discrepancies in the office.

Q Some discrepancies in his accounts? A Yes.

Q Were all the discrepancies discovered in his accounts? A Yes, sir, there were about some eighty or ninety checks drawn by Thiele which were never entered either in the cash book or check book or any other account, and amounted to something like a great many hundred dollars, besides certain items which we found that he had collected and had not turned into the firm.

Q Did you ever have a partnership suit for an accounting, did you or didn't you? A Yes, he started a suit for an account-

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ing and he did not put it on the calendar, and I preferred charges against him at the Bar Association, and the matter had been held suspended until the suit was tried, and, put it on the calendar since myself at my own expense, and the reference has been ordered and he has not done anything since. I intend to push it as soon as I get through with this matter.

Q As soon as this is finished, you intend to push your suit with Mr. Thiele? A Yes.

Q You were president of the Arch Realty & Construction Company? A I have been yet. These are little real estate companies which were formed for the purpose of building, and I have been interested in many building transactions.

Q Building apartment houses? A Yes.

Q Flats? A Yes.

Q Dwellings? A Yes.

Q And you are still president of the Arch Realty & Construction Company? A No.

Q When did you get out of it? A I do not know.

Q I did not hear you? A I do not remember.

Q You cannot remember when you got out of that company? A No.

Q It was only organized in 1906, was it not? A If you want any particulars like that, and I can refresh my recollection, I will be only too glad to furnish them to you.

Q Now, some property handled by or through this Realty Company comes into the name of your son, Philip W. Saitta, doesn't

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11? A No, sir, after the companies were liquidated we purchased all the interests of the stockholders, and my son took some of it.

Q As matter of fact the property that stands in your son's name is your property, is it not? A Some of it was, yes.

Q Some of it is now? A What?

Q Some of the property that now stands in his name is your property? A No, sir, unfortunately we lost it all.

Q But you did have some -- some of the property that was in his name belonged to you at one time, is not that right?

A Might be so.

Q So far as judgments against your son, Philip W. Saitta, were concerned, affecting those particular properties that were yours and that he had in his name, they were in effect judgments against you, were they not?

MR. MOSS: I object as going outside the line of cross-examination.

THE COURT: Well now, I think, Mr. Moss, that you put on the record this, that the defendant Saitta was amply able and responsible, and instead of this action being on the criminal side of the court, it should be on the civil side, and he was perfectly able to respond to damages and pay any demand.

MR. MOSS: Even so, the question does not affect what I said.

THE COURT: If you withdraw it, it would not, but you

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have that right on the record.

MR. MOSS: I say the question does not touch my proposition, and I object to the question.

MR. HAYWARD: I will withdraw it then if Mr. Moss objects
BY MR. HAYWARD:

Q As matter of fact, Mr. Saitta, do you know of a judgment standing against Mr. Philip W. Saitta in favor of John E. Coles for \$893.44, obtained in the City Court in New York, April 8th, 1909?

Objected to upon the same ground.

THE WITNESS: I do, that has been reversed on appeal, and we got judgment against Mr. Coles for costs.

Q When was it reversed? A That I cannot tell. I can give you the records.

MR. HAYWARD: I was going to follow that up by showing as matter of fact --

THE COURT: The defendant answered that question before I could rule upon the objection.

MR. MOSS: The answer is in and my objection is fruitless -- came too late.

THE COURT: He answered so quickly I could not rule upon the objection.

BY MR. HAYWARD:

Q There was a judgment against you, Philip S. Saitta, in favor of the White Company in the City Court, June 29th, 1912? A Yes.

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Q \$4,516.? A Yes, sir, we gave a bond for that, and then afterwards something else happened, and now there is a bond and the case is on appeal in the Court of Appeals.

Q There was a judgment rendered against you in the City Court April 12th, 1913, in favor of Anthony F. Barrow for \$786.57?

A Yes, sir, that has been reversed -- a Surety Company bond was given for it.

Q I am not talking about the judgment for \$1244.94, that was reversed on January 19th, 1914. I talk about two others -- you have not got them confused, have you? A Barrow?

Q No, White, both the White judgments you say have been reversed? A No, one was reversed and then one, there was a reversal against me, and I took it to the Court of Appeals. In other words the White Company judgment and went to the Appellate Division and they got judgment and we have appealed from that and gone to the Court of Appeals.

Q There was a judgment rendered against you in the City Court March 14, 1914, in favor of Henry S. Barthman for \$693.68?

A I expect to pay it. I have not had an opportunity since I have been hounded in this case.

BY THE COURT:

Q Who has been hounding you -- I have allowed you to go on continued bail -- I have continued your bail every day?

A That has nothing to do with the Court. Your Honor does not know the beginning of this matter.

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MR. MOSS: I want to make my thanks to your Honor for the courtesy we have had at your hands.

THE COURT: No, that is all right.

THE WITNESS: And I am very thankful.

THE COURT: I thought he meant that he had been so hounded here.

MR. MOSS: No, it has no reference to justice, and I hope your Honor would not think that the witness means that the Judge is hounding him. The last man in the world that should do that is the Judge.

BY MR. HAYWARD:

Q There was another judgment in January just past, was there not, for \$33.42 in favor of Louis Imersheim, in the Fourth District Court in Brooklyn? A I will pay that.

Q What? A I will pay that.

Q You will pay that? A Yes, certainly.

Q And January 14, 1914, that is last January, in the First District Court, judgment against you for \$45.48 ? A Very small balance due on that judgment and I have made arrangements and am going to pay it. I have been paying so much right along, and there is a very small balance. I don't remember what it is, but it is very small.

Q I think you told us the White Company judgment had been reversed, the one in June 19, 1912 -- did you say that that had been reversed? A There has been so much litigation in the

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White Company matter, that I cannot tell. I know the only judgment they had is now up to the Court of Appeals.

Q Here is a judgment January 19, 1914, in the Supreme Court of this County for \$5,242. -- that could hardly have got to the Court of Appeals yet, could it? A That is the one -- Mr. Levy might refresh my recollection on that, I don't know --

MR. LEVY: That is where --

MR. HAYWARD: Let Mr. Saitta testify.

THE WITNESS: I don't remember, there is only one judgment that the White Company have, and that is on appeal.

THE COURT: What is the date of this judgment?

MR. HAYWARD: The last judgment of the White Company my records show was for \$5,242. January 19th, 1914.

MR. MOSS: It is the same thing, it is the judgment of the Appellate Division.

MR. LEVY: Which we appealed to the Court of Appeals.

MR. MOSS: If you are through with reading those judgments, the Court has called attention to the fact that I made the Court, I think, forgot the whole of my statement which was a statement; that Mr. Saitta would pay any judgment and would give security to pay any claim.

THE WITNESS: I will give a Surety Company bond now, if necessary.

MR. MOSS: That is what I meant.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 o'clock.

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AFTER RECESS. TRIAL RESUMED.

PHILIP S. SAITTA resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. HAYWARD:

Q In addition to specializing in the lemon law business, you have specialized in admiralty, to some extent? A I have done some work.

Q You knew a man in 1908 and 1909 who was the American manager for the Anglo-South American Bank in Wall Street, you are acquainted with Mr. Edwards who was manager of that bank? A Yes.

Q And after you had got acquainted with him, is it not true that you induced him to loan about \$300,000. in money, on consignments and bills of lading from the following concerns, or alleged concerns, which I will now read to you: "Manzello Brothers, 1096 Third Avenue, Brooklyn and 189 & 196 Elizabeth Street, New York City; Ignazio Lupo, otherwise known as Lupo, the Wolf, the barrel murdered, Lupo Saitta, who is now in the Federal Prison Atlanta, for counterfeiting whose address was then given to the Anglo-South American Bank as 211 Mott Street, New York; S. Como & P. DiDato, 124 Mott Street, New York; A. A. Purpura, 1030 Wallabout Market, Brooklyn; A. Collora, 724 Wallabout Market, Brooklyn; C. E. Thurston Company, 97 Warren Street, New York; Anastasi Brothers, 167 West 4th street, New York City; Lupo & Lopresti, 419 to 421 Jefferson Street, New York; A. Piessamant, 593 Flushing Avenue, Brooklyn; Rando Brothers, comprised of

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Giuseppe F. Rando and Frank Rando, 2 & 4 Stone Street, New York City; Pietro Petri & Brother, 233 West Street, New York City; A. Viviano & Sons; Frank Zito, 24 Stone Street, New York; M. Ajello, Selafane Brothers S. Caballo and L. Bonnano, the latter four of whose addresses I do not know, and that when the bank endeavored to collect upon these bills of lading that you had taken to Mr. Edwards in the bank, they found that in some cases the persons named in the bills of lading were missing? A Nothing of the kind.

Q Wait until I finish my question -- in the other cases the persons named in the document repudiated their signatures -- said they had never signed them, and that the documents were, as matter of fact, worthless, and the bank was never really able to realize anything upon them? A Never anything of the kind. I never took any documents to Mr. Edwards of the South-American Bank in Wall Street -- you mean by documents bills of lading I suppose?

Q Bills of lading and consignments of goods? A No, sir.

Q Didn't you procure it to be done? A No.

Q Is it not true that this particular Ignazio Lupo was a friend of yours? A No, sir, no friend of mine whatever.

Q He was not? A No.

Q Did you ever have any business dealings with him? A I believe one time I represented him in a small matter, and there were some goods sold to him. That was all.

Q Just one matter? A In one matter I represented him, there was a little litigation.

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Q One matter was in litigation, A Yes.

Q How many other matters did you represent him in that were not in litigation? A Rando Brothers sold a lot of stuff and took their notes and give the notes over to us in payment for merchandise.

Q Who do you mean by "us"? A My son and myself.

Q I speak about Mr. Lupo, in addition to the time you represented him in litigation, this man I have referred to, Ignazio Lupo, what other times did you represent him when it was not in litigation? A Some business transaction, the sale of goods or the purchase of goods. I don't know which.

THE COURT: Who was that with?

MR. HAYWARD: Ignazio Lupo, Lupo, the Wolf.

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Q Now, I will ask you if during 1904 and 1905, you did not become acquainted with a Mr. Mayer, who was at that time manager of the Foreign Department of the National Park Bank of this City? A I did.

Q And in the spring of 1905, didn't you induce Mr. Mayer to loan you sixty thousand dollars, giving as security a steamship which you called the Arizona, which had originally been the Army Transport Chester, in the Spanish Warer, and didn't you, as security for that loan, deliver a defective title to that bank which purported to be a bona fide title? A No, sir. What I did, if you want to know, I will quickly tell you.

Q Go on. A I saved the bank -- a large fruit importer in this city was in some trouble.

BY THE COURT:

Q Name him. A Brucato Brothers. They hold large amounts of money to the Park National Bank, also to the fruit auction Company. The lemon market at that time was almost at its lowest. These people had something like a hundred or a hundred and fifty thousand boxes in transit. And he employed me to file a petition in bankruptcy because he was at the verge of failure. I saw that the market was going to improve and I induced him to wait and take my advice that I would try and pull him through.

BY MR. HAYWARD:

Q Who is this? A Mr. Brucato, Peter Brucato.

BY THE COURT:

Q First name? A Peter Brucato.

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Q Go on. A I went to see the Fruit Auction Company and told those gentlemen, this man owes you so much money, I think it was \$53,000 -- he has now at the Park National Bank something like \$165,000 worth of documents; I think if he is given an opportunity, the market is going to rise, and my experience in the fruit line, as I consider myself an expert in that line, tells me that the market in two or three weeks will be selling two or three times what it is selling for now. I also told him that if they would push him, that their capital was only \$100,000, that they had a loss, a man by the name of Westerfelt of something like \$57,000 and coupled with this \$53,000, this man Brucato owed, would wipe out their entire capital, and it was better to help him rather than put themselves in a position where they would fail themselves. They agreed with me.

Q Who did? A Mr. -- the president of the concern, of the Fruit Auction Company -- a man by the name of Briggs; and I then withdrew my petition -- or, I did not have the petition filed. I don't really remember -- and went to see the Park National Bank and upon setting forth the facts to the National Park Bank, Mr. Mayer, by him inquiring who I was and who I was not, he put entire amount of \$165,000 worth of invoices in my hands, to sell to the account of the National Park Bank. At that time those documents which represented \$165,000, would not have brought, if sold immediately, more than about one-fifth of this amount. I sold the fruit for the Park National Bank as it arrived, and

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the market, having taken a rise immediately, within one week, my advice turned out to be correct. Lemons which were selling at \$2.25 and \$2.50, inside of four or five weeks, sold as high as six and seven dollars per box. I saved about two thirds of the loss of the fruit Auction Company, and beside I saved the loss to the National Park Bank, all but about ten thousand dollars. Owing to that fact, there was such a friendship arose between Mr. Mayer and myself, that one day he told me that he had a steamer that they held a bill of sale on --

BY THE COURT:

Q Bill of sale of the steamer? A Yes, and in the meantime I was negotiating through a man by the name of Elisse, who wanted to buy that steamer. So Mr. Mayer said there is not a better chance than to try and put this deal through you. And finally it was put through that way. Mr. Mayer loaned to me and Mr. Randall the money, \$60,000, and we were to give them a bill of sale, but it was found afterwards to give them a bill of sale we could not dispose of the steamer on the other side, so he agreed to let the matter rest in my hands completely, provided I would go to Europe and negotiate the sale of that steamer there. I went to Europe, and through some reason or other, while I was in Europe, the bank or Mr. Mayer or somebody, after I had negotiated and made arrangements to charter the steamer, they sent a telegram to the Captain of the Port of Italy, stating that they claimed some title to the boat. As soon as I was notified to that

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effect, I tried to get them to withdraw that -- because it was only a question of telegrams -- and they would not do that. I said: "If you are afraid of me, here is your ship and I will give you a mortgage on the ship", and I did so -- although I could have sold the ship, if I were dishonest and they had nothing to hold upon me except my responsibility, but, I gave them a mortgage, and afterwards I was forced to sell the ship for \$70,000. I left the money there for them to pay themselves, and to this date I have not had a satisfactory settlement.

Q You sold the ship for \$70,000? A \$70,000. I left the money there to pay the National Park Bank.

Q Where did you leave the money? A At the Bank Commerciale.

Q In whose name? A Name of the National park Bank.

Q You deposited -- A I did not deposit. The seller deposited the money there --

Q I thought you were the seller? A I should say the buyer deposited it -- I beg your pardon.

Q Who was he? A Cutulo and Asterita.

Q Where is the Bank Commerciale? A Genoa.

Q What street, do you remember, in Genoa? A Bank Place.

Q Are you sure they deposited \$70,000 there? A Fourteen thousand pounds, yes, that is equal to \$70,000, and I lost twenty thousand I had invested in the ship.

Q I wonder how it is -- do you know whether the Park Bank got their \$60,000-- you only owed them sixty thousand? A I asked

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them for an accounting.

Q You only owed them \$60,000? A Yes.

Q Therefore you were entitled to \$10,000 back? A Yes -- they claim for expenses commissions -- they eat the \$10,000 -- they say -- something besides the ten thousand -- I have been trying to get an accounting from them ever since.

Q They claim there is a balance due them? A No. Never made any claim upon me.

Q Do you know if they got that money deposited in the Bank Commerciale? A I understand they did.

BY MR. HAYWARD:

Q Now, Mr. Saitta, you got \$60,000 from the Bank? A Yes.

Q You gave them, a bill of sale on the ship? A I did not give them anything. They gave me a bill of sale that was not worth the paper it was written on.

Q Is it not a fact that you gave them the bill of sale to secure the \$60,000 you got from the bank? A No, positively not.

Q And was not that a bill of sale purporting to be signed by a man by the name of William Adler? A No, sir. William Adler was their client. William Adler had left a bill of sale with the Park National Bank as security for some loans. When we came to investigate the title of the ship, I found that the title of the ship was not in William Adler, and therefore the bill of sale which they gave us was not worth the paper it was written on. I had to write to Adler and to the bank, at the request of Mr.

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Thorn, vice-president of the National Park Bank then, and the Adler people in New Orleans sent them a proper bill of sale which was given to me and I left the ones they had there with them which was no good.

Q Is not this the fact, you gave them the defective bill of sale from Adler, that Adler was president of the Southern Bank, and was afterwards convicted of fraud under the banking law and sent to prison -- that you gave them the defective bill of sale as security for the \$60,000 and then you took the ship and sailed away with her to Italy, and endeavored to sell the ship, which was not, as matter of fact, your property, and before you succeeded in getting it sold -- Mr. Louis F. Doyle, through the Collector of ^{American} the Port and the Consul over there, stopped the sale? A No, sir; that is not a fact. You are misinformed and you can call the National Park Bank and corroborate my statement, and I think whoever gave you the information does not know what he is talking about.

Q This vessel was under the command of this man Alessi, you are talking about? A Yes.

Q Fred Alessi? A Yes.

Q He was Master of the ship? A Yes, sir.

Q Is not this the fact, that the vessel was taken away to New York and cleared, and departure was made without the knowledge of the National ^{Park} Bank? A No, positively not. Why, they can -- I was about to sail for Europe. I did not go on that steamer but

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sailed two days before the steamer left here, or three days before. When I sailed for Europe, they came on board the ship for me to sign the note -- they wanted another new note -- and they got me to sign a new note, Mr. Mayer did, came and found me on board the ship when I was sailing for Europe.

Q They sent you to sell the ship? A No, not to sell it. We were going to form a new line, as the steamer was a good steamer and could be used for passengers, and it was a fast boat and we were trying to charter her or sell her if we could not charter her for a big price.

Q Can you tell us what possible reason the National Park Bank had for cabling to the American Consul and the Collector of the Port over there? A That was months after I had left New York.

Q Answer me. A I do not know, unless some good friend might have said something that I cannot account for.

Q They knew your address? A They knew my address.

Q They could have communicated with you, A My dear fellow, they recommended me to the Bank Commerciale, gave me an open letter to that effect, that they could trust me with anything, and the letter is on record in their books.

Q They knew where you were and could have communicated with you, could they not? A That I cannot answer.

Q Instead of communicating with you, they stopped the sale to the American Consul and the Collector of the Port? A No, they could not have stopped the sale -- all they did is -- "We

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claim a lien on the steamship Arizona"-- that is the telegram that came there and I went to see the president of the Bank Commerciale.

Q They sent that cablegram just before the vessel was either to be chartered or sold? A No, sir; we were negotiating a charter then.

Q And it was the result of that cablegram that was sent over there that prevented the sale or charter? A Prevented the charter, yes.

Q Before you left New York, is not a fact that you took a bill of sale or a bill of lading for certain provisions signed by this man Alessi, the Master of this ship, which you represented to be of a certain value, and as a matter of fact you knew at the time that the goods represented thereon were rotten provisions and were not worth anything? A Not a word of truth in that.

Q Also is it not a fact that you tried to get this Master of this ship to issue a bill of lading for four thousand tons of coal and he refused to do it, and that afterwards you took a barge alongside of that ship with five hundred tons of coal and promised him that you would bring the other 3500 tons alongside and got him to sign the documents, calling for four thousand tons of coal and then failed to bring the remainder of the coal, and when he complained about it, you threatened if he said anything, you would take away his license, is not that a fact?

A Positively not.

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A Positively not.

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Q And after this ship transaction was over in Italy, didn't you secure a man named Rizzo to sue the National Park Bank for slander of title to the ship, he claiming to be the owner of her, and you procured him to bring this suit, and the suit was tried in Richmond County of this State before a jury, resulting in a judgment for the bank? A We sued for damages and were unsuccessful.

Q Bringing the suit in the name of a man named Rizzo? A It makes no difference. We paid their costs.

BY THE COURT:

Q Who is Rizzo, was he a dummy? A He was friend of mine and I wanted to bring it in Staten Island and have it reached quick, because I had certain witnesses I could only get by acting quick.

Q Did you transfer it to him because he was a resident of that County? A Yes, sir. It came out on the trial.

BY MR. HAYWARD:

Q You were practicing law in this City at the time the firm of A. Musica and Son had their trouble, were you not? A Yes.

Q And that trouble came from this firm of A. Musica and Company filling packing boxes with excelsior and obtaining money on the claim that they were filled with human hair goods, is not that so?

Objected to.

MR. HAYWARD: It is merely preliminary.

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THE COURT: Unless you can connect the defendant with it --

BY MR. HAYWARD:

Q I will ask you if that was not the fact and if you did not afterwards become the attorney for these Musicas?

MR. MOSS: I object to the question. The question is whether the Musicas did certain things and I object to that.

THE COURT: You may ask him if he was counsel for A. Musica and Sons.

MR. MOSS: I do not object to asking if the Musicas were charged with certain things, but I object to the form of the question.

MR. HAYWARD: I withdraw the question. I think you are right. I am not attempting to blame this witness for anything that the Musicas did.

MR. MOSS: Thank you for saying that. That is what my objection went to. ~~Don't~~ You just ask him if they were charged with fraud and if he appeared as counsel?

BY MR. HAYWARD:

Q The Musicas were charged with fraud? A I believe so, yes.

Q And after that they fled to New Orleans? A I guess they fled to New Orleans before they were charged.

Q Well, about that time, immediately before or after? A Yes.

Q And while they were in New Orleans you telegraphed them, saying you had facts in your possession; something that would help

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them out and asked to be employed as their counsel. A I never asked to be employed as their counsel. A telegram came to me employing me.

Q Didn't you send the first telegram to the Musicas? A No, sir; not to my recollection.

Q You do not want to say you did not, do you? A No, I am pretty certain I did not, because I was instrumental toward the authorities to locate Musica. I helped the creditors all I could. First I was not with them.

Q You were first instrumental in helping the authorities locate them and then after the authorities did locate them and while they were in the parish prison in New Orleans, you telegraphed to them, either to young Musica or his father Antonio Musica, suggesting that you were the suitable person to appear ^{of} as their attorney, because/the facts and papers you had in your possession; is not that true? A Positively not.

Q Is it not true that as a result of that you got a telegram from those people in New Orleans, employing you as their counsel and that pursuant to that telegram you went to New Orleans? A No.

Q Didn't you go to New Orleans as counsel? A I did at their request.

Q But it was in response to a telegram they sent you there?
A That was all.

Q After you helped the authorities apprehend them down there?

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A I did my duty. A man by the name of Purpera came to me -- a client of mine -- he said the Musaicass ran away and he had a lot of warehouse receipts and I told him -- he asked me what he should do.

Q That was Albert Purpera? A Yes, sir. I told him not to touch anything. The best thing he could do was to bring everything down to my office and we could turn over to the proper authorities, and in the meantime he was called by the attorney of some bank -- Stern & Rushmore or Rushmore & Stern.

Q Rushmore, Bisbee & Stern? A Yes, sir. I told him to go there and make a full statement and tell them exactly what he had, and I went with him and also told Mr. Purpera to give up a certain telegram which he had received that same day, that gave the whereabouts of the Musicas, and to be honest and candid and frank with the creditors.

Q That was Albert Purpera? A Yes, sir.

Q The man who had been in the employ of the Musicas? A Yes.

Q And had been their bookkeeper or something like that so that he had access to their private papers? A He was their salesman I believe.

Q He was in connection with them and had access to their office and was inside their office frequently? A That I do not know.

Q You knew he was their confidential employee? A No, I did not know he was their confidential employee.

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Q You went down to the New Orleans? A Yes.

Q And there you consulted the Musicas? A I did.

Q They were part of the time in the Parish Prison and part of the time out on certain writs of habeas corpus? A Yes, sir.

Q One of them? A Yes.

Q And they had retained down there a firm by the name of Lazarus, Mitchell & Lazarus? A Yes, sir. They had a half a dozen different lawyers down there.

Q Did not young Mr. Musica tell you the first thing, or very soon after you got to New Orleans about a wallet that he left in his desk?

THE COURT: A pocketbook?

Q A pocketbook. Containing valuable papers, bills of sale, and so forth, covering merchandise, which was of great value to the creditors; didn't he tell you that? A He said something to that effect, and I told him that that very wallet had been turned over or rather the contents of that wallet or those I had received had been turned over to Mr. Stern.

Q You told him they had been turned over to you? A Except what Purpera had left with me, and that I had in my safe, and upon my return I would have to give them up to the creditors.

Q As matter of fact, Purpera brought you this wallet? A Yes.

Q You told him that they ought to be turned over to the authorities? A Yes, sir; to the proper authorities.

Q And then you took out of this wallet certain documents

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6 and papers that were in there and took the rest to Stern, didn't you? A I didn't do anything of the kind. I never saw the wallet. Mr. Purpera brought down a bunch of those papers and I made him put them in an envelope and seal them with his own seal and initials and I don't know if I took a memorandum at the time or afterwards, but I gave Mr. Stern an absolute memorandum of every article there was brought to me by Mr. Purpera, before I went to New Orleans.

BY MR. MOSS:

Q Every article? A Every article, and then Mr. Stern said "Won't you give them to me". I said "I have no authority to give them to you, but", I said, "the Anglo South American Bank has obtained an attachment, and the best thing you can do so I won't be charged with having delivered property that did not belong to me, or the property of somebody else, you better have that attachment levied upon me and I can give a certificate to the Sheriff", and that suggestion was taken up and I was served with the writ and complied with every demand so the things could be lawfully in my possession.

Q You, as matter of fact, had these papers, before you ever went to New Orleans and before you ever were retained by the Musicas? A I think I had them a day or so before I was retained by the Musicas.

Q What business were you doing with these papers before you were retained by the Musicas? A I was representing the interests

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of Purpera, and he had them and did not know what to do with them.

Q You were Purpera's lawyer then? A Yes.

Q And then became the lawyer of the Musicas? A Yes, certainly.

Q You telegraphed them that you had these papers? A I did not do anything of the kind.

Q You waited until you got down there and told them about it? A Yes, sir.

BY THE COURT:

Q Did you examine the papers before you went down to New Orleans? A Yes.

Q You knew what they contained? A Yes.

Q They were brought to you by one of the Musicas' clerks?
A After the Musicas had run away.

Q Brought by his clerk? A Yes.

Q Purpera? A Yes.

Q The District Attorney asked you, if after you got hold of the papers, the Musica papers, if you did not then telegraph Musica and tell him that you had certain important papers of his and advise him to retain you as his counsel? A No, I was retained by Musica practically immediately after I had the talk or interview with Mr. Stern.

Q Had you known the Musicas before they fled? A Yes.

Q You had known them? A Yes.

Q Had you ever acted as their attorney before that? A In

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two or three small transactions.

BY MR. HAYWARD:

Q You were perfectly willing at any time, of course, to turn over those papers to the proper authorities? A I was.

Q Then, how did it become necessary, if that be so, for the United States District Court, in and for the Southern District of New York, to issue to you a peremptory order to show cause why you should not be committed for Contempt of Court for keeping out these papers that you have testified you kept out from this package of papers that Purpera brought to you, which order was signed by Julius N. Mayer, and which I hand you?

A Because you are misinformed of the facts and do not know the points of your case.

THE COURT: We want to be informed.

THE WITNESS: When I returned from New Orleans I delivered every paper that I had to Mr. Prentice, as soon as I knew he had been appointed Receiver for Musica & Sons, because, some steps were taken in the meantime. As soon as I returned I went to the office of Battle, of O'Gorman, Battle and Marshall, and that very afternoon I came from New Orleans Mr. Rice of Whitridge, Butler and Rice was there, and Mr. Rice asked me if I was willing to turn over to the receiver whatever property I had in my possession. I said I have absolutely no objection and I think that very same afternoon Mr. Prentice, who was then the receiver, came to my

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office, and if you want to I will show you his receipt. I handed him every scrap of paper, every note, every warehouse receipt and everything I had belonging to the Musicas.

BY MR. HAYWARD:

Q After you had this order served upon you? A I will explain it: Later on, Mr. Purpera claimed he found one or two other papers in his house, because he did not bring the wallet down. I told him to immediately bring it down. In the meantime, we were expecting to see Mr. Musica leave -- get out on bail. So I went to see Mr. Content of Mr. Butler's office, and I told Mr. Content I had received one more warehouse receipt -- I think a couple of notes -- I think that was all there was -- three or four papers, what should I do with them. I said: "Musica is about to be brought out on bail, do you think it would be an omen of good faith, to wait and let Mr. Musica take this to Mr. Prentice, or shall we give them ourselves". Mr. Content said: "You had better wait a day or two". In the meantime we were served with this order, and immediately upon being served with the order, I went up and said: "Here is the balance we have got, we are perfectly willing to give them, and the matter came up before Referee Olney and Referee Olney stated he did not see -- being we turned everything over, he did not see what there was about this motion.

Q There is a petition there signed and sworn to by Ezra Prentice? A Mr. Prentice told a falsehood in that petition. He

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admitted on the trial that he did. He never made a demand upon me for those goods.

Q He swore you had them and upon his testimony the Court issued this order to show cause why you should not be committed for Contempt of Court. A I challenge you to bring Mr. Prentice right here and make him admit that he said that he did not tell the truth in that matter. Mr. Prentice never made a demand to me for the balance of those things. He made a demand before, in a previous lot. When he came to my office, I delivered them, but, to this lot, I did not have them when he made the first demand.

Q When you got them you did not suppose the first demand applied to these subsequent papers and therefore you did not say anything about it? A I was going to give them up to them. I told Mr. Content -- Mr. Content is a reputable man -- you can subpoena him and find out -- I had them in my possession and was willing to give them to him and furthermore no one could use them. They were to the order of Musica and Son. The people knew where the goods were. They were no good to me. I would not want them.

Q These papers, you say, were in your possession at the time this order was issued by the Court? A Yes, and I gave them up immediately.

Q Naturally, with that kind of an order -- when you were down in New Orleans -- is not this a fact, that you told young Philip Musica that by his making an assignment to you of all of his rights and credit and property, that he could thereby defeat

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the creditors, because you could always exercise an attorney's lien for services to the extent of perhaps fifty per cent. of the value of what he would assign to you, and that then having made your salvage, you would cut it with him? A I said a thing like that?

Q Did you or did you not? A I would have been insane to say a thing like that.

BY THE COURT:

Q The question is: Did you say it. A No, positively not.

Q Did you take an assignment of various pieces of property, such as the Steamship Evelyn, from these Musicas, and their life insurance policies and things like that -- did you take an assignment of the steamer? A I took an assignment of the policy for my fees.

Q Did you take an assignment of their life insurance policies? A Yes, an account of my fees.

Q And various other things they have mentioned here in this affidavit? A No.

Q Fifty thousand dollars of life insurance, the Steamship Evelyn, negotiable warehouse receipts? A No warehouse receipts. I took no property belonging to their creditors.

Q I do not speak about that -- I do not know anything about it myself. Did you take an assignment of these properties from them, never mind who owned them? A I took assignment of the insurance and of the Evelyn and immediately upon my return I turned over the

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assignment back, gave them up.

BY MR. HAYWARD:

Q Back to whom? A To the trustees.

Q Assignment of the Evveline and life insurance? A Eveline, and I told them at the time -- and the life insurance I relinquished because that was payable to the mother and the mother really assigned it to me and I even relinquished that afterwards.

Q As a result of this order served upon you by the United States Court? A No, sir. That was a voluntary act upon my part afterwards.

Q This Eveline, was that the ship they were running away in and that they had stored this various human hair goods, and were running to South America in? A No, sir; nothing of the kind.

Q The Musicas were arrested as they were about to set sail in a ship which they had bought and had stored it with goods they had bought from New York merchants and were fleeing to South America? A No, you have been misinformed. This ship came from South America, from Africa here.

Q When I said South America I did not know where they were fleeing. A They had no merchandise on board or anything.

Q They were about to flee in a ship which they had bought? A No, they were going on some other steamer, as I understood it, they were going south, and the steamer was coming from the east.

BY MR. HAYWARD:

Q Before you went to New Orleans and brought back these

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personal assignments mentioned in these Court proceedings, these Contempt proceedings, is it not a fact there had been a voluntary petition in bankruptcy filed in New York against the Musicas and you knew that when you went there? A That I would not say.

Q And that was the reason you went, was it not, because of that bankruptcy proceeding? A No, I went because they sent for me.

Q They sent for you in connection with these involuntary bankruptcy proceedings? A The Musicas, when I got there, told me they were perfectly solvent, and gave me a list in Musicas own handwriting, which I had here in Court, that he had more assets than liabilities, and that was one of the main things why I took any assignment from him at all. Otherwise, I would not have thought of it.

BY THE COURT:

Q When did you go to New Orleans, was it on March 28th?

A About that.

Q I see this affidavit says you went on March 28th -- the petition in bankruptcy, in this affidavit, it also says was filed March 19th, that would be nine days before you started for New Orleans? A Probably yes.

Q I just want to call your attention to it because I know nothing about it except this affidavit you have handed to me.

BY MR. HAYWARD:

Q So that you must have known this petition in bankruptcy had been filed against this firm? A Probably I did. I think I did.

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Q And nine days after it was filed you went to New Orleans and there you took the assignment that you were compelled to disgorge after you got there, by this proceeding? A Not compelled --

MR. MOSS: I object.

THE COURT: Cut out the word "disgorge".

MR. HAYWARD: Turn over then.

MR. MOSS: He said he was not compelled.

THE COURT: Do you think you had a right as a lawyer, after a petition in bankruptcy had been filed in the United States Court against the Musicas, to try and take the ship Eveline and the life insurance policies and so forth?

THE WITNESS: I took the ship for my fees --

BY THE COURT:

Q Whether you wanted it for the defense's fee, or any purpose whatever? A I only had what interest they may have in the ship -- they had no interest in the ship so far as I understood -- I understood the ship belonged to somebody else but they claimed a little interest in the ship, but when I found out how things were, I relinquished it, and only took it because Musica told me and he gave me a list showing he was solvent, and the reason why they ran away was because they got scared.

BY THE COURT:

Q When he told you he was solvent down there, -- was not the reason he was there because of a warrant from New York

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arresting him for crime, that is, for larceny? A He had gone away before the warrant. That was issued afterwards.

BY THE COURT:

Q Before you left New Orleans, a petition in bankruptcy was filed against them, nine days before you left. Now, as a lawyer, do you think you had a right to receive an assignment, a bill of sale for the Steamer Eveline from them or any other property from them or, was that all to go to the trustee? A I took it subject to any rights the Trustee may have had. Naturally I could not take it any other way.

Q When this trustee says that he repeatedly made demands upon you to turn these things over to him and you refused, he speaks falsely?

MR. MOSS: I object to that.

THE COURT: What is the objection? At any rate it is not true?

MR. MOSS: I object.

BY THE COURT:

Q I will ask you whether or not the trustee made a demand upon you? A He did not. Not after the first --

Q Ezra Prentice? A After I gave him the first lot of papers, never made any personal or written demand or otherwise, until I was served with these papers.

Q Did he send his clerk to make a demand upon you? A No. Nobody from anywhere, and that is a matter of record.

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MR. MOSS: I understood him to say that later Mr. Prentice admitted that he made an error.

THE WITNESS: It is a matter of record. If they get the record from Mr. Olney's office, they can see it -- if they get the good things as well as the bad, they would see what is what.

BY MR. HAYWARD:

Q When you were down in New Orleans, these Musicas, Mr. Musica Senior and Philip Musica, were both there? A Yes.

Q Two of the daughters were there? A Yes.

Q Now, the question of bail, securing bail for these men, came up, did it not, and was discussed in case they should be extradited back to New York? A They referred me to their friends to get bail for them.

Q You said you thought you might be able to do that, get some bail for them and call the attention of Mr. Musica senior to the fact that he held a power of attorney from his wife on real estate situated in Brooklyn, didn't you? And told him that you would like --

THE COURT: Ask him that, just about that first.

THE WITNESS: I did not speak particularly in those words. I said: "Your wife owns property, she can put that up with some friends, or somebody, whereby they can go bail for you when you go back, and then when you are there you can work and get bail for your son."

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BY MR. HAYWARD:

Q The person you suggested as the suitable friend to whom the property of the old lady Musica was to be deeded, was yourself, wasn't it? A Not at that time, no.

Q In New Orleans? A Not at that time -- before I left New Orleans, yes.

Q At any rate, before you left New Orleans, you were the friend that was suggested as being the proper grantee for the deed to the old lady's property? A I wanted -- if they wanted me to procure bail for them -- some security whereby I would be assured, if anything happens, I would not be stuck, and so would you, if you were acting for them.

Q The old man Musica --

THE COURT: On that point, could not the Musica's wife go bail as well as you?

MR. HAYWARD: She was abroad.

THE WITNESS: She was away.

MR. HAYWARD: She was in Italy.

BY MR. HAYWARD:

Q Old man Musica told you he thought it would be a good idea to have it expressly stated in that deed what the purpose of giving it was for? A No, he first gave me a deed absolute and afterwards he got afraid something might be done and I said put it in the deed, and in Mr. Levintrett, it was put in the deed, what it was given for.

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Q That was after you got back to New York? A Yes.

Q But the first deed that was taken, he asked you to make it a deed setting out exactly what it was for and you told him that was not the way for a client to deal with his attorney, that he should trust his attorney implicitly? A No, nothing of the kind.

Q Is it not a fact that the son, Philip Musica, when he found out that his father had, as matter of fact, given you an absolute deed, he came to you and demanded it back, and is it not a fact that you told him that inasmuch as the Burns detective people were around the hotel, and you were afraid they would seize your papers on behalf of the New York creditors, that you had already mailed those papers including that deed to your New York office by registered mail? A Nothing of the kind.

Q It was his father you took the deed from? A Nothing of the kind.

Q Is it not also a fact that you did come back to New York and did take the deed absolute, that the old man had given you, and did record it over here in Brooklyn?

BY THE COURT:

Q Did you take the deed that Musica had given you under the power of attorney he had from his wife for the Brooklyn estate, and try to record it in the register's office in Brooklyn? A I do not know if it was taken there but I think before we did anything we discovered the acknowledgment was not right and we did not

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use it.

BY MR. HAYWARD:

Q Is it not a fact that Philip Musica had, while you were coming here from New Orleans, the young man, telegraphed to Attorneys here for the creditors, and to his own attorneys, and they had gone to the register of deeds in Brooklyn and asked the Register not to record that deed, and to take proceedings to prevent its being recorded?

Objected to.

THE COURT: If he knows.

THE WITNESS: No, sir.

BY MR. HAYWARD:

Q You never heard of that, A. No.

Q Is it not a fact that when it was presented to the Register of Deeds in Brooklyn, that objection was made to the acknowledgment?

Objected to. Objection overruled. Exception.

MR. HAYWARD: If he presented it.

THE WITNESS: Not that I know of. I know Musica, when I told him the acknowledgment was not correct -- they gave me another deed for that one, and that has been put on record and is on record today and was done with the consent of Mr.

Levintritt who acted in concert with me in the Musica matter

BY MR. HAYWARD:

Q That second deed shows what it is for, does it not?

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A In part -- when it did not show in part what it was for -- afterwards Mr. Musica still give me a further paper saying I was to be paid my fees outside of that, as well as the fees for bail, for procuring bail.

Q As matter of fact, you had got the first deed, the absolute deed, and you had refused to turn it back to these people. A I refused to turn it back?

Q Yes. A The deed speaks for itself. Mr. Musica is walking the street today under my bail.

Q The first deed, the absolute deed. A That has been destroyed.

Q Who destroyed it? A I cannot say. I have not got it.

Q You have not got it -- you never gave it back to them?

A No, I beg your pardon, I think the very same deed, the clause was put in there, what it was for.

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Q For your attorney's fees and for the bail? A For things of that kind and it appears --

BY MR. MOSS:

Q The original deed was -- A Modified.

Q There was only one deed? A Yes, sir.

BY THE COURT:

Q How did you make that mistake and say it was destroyed?

A I thought it had been destroyed, but when I came to think of it, it was not destroyed. We used the same deed. We were going to destroy it.

Q You took a deed already signed and executed and wrote in something else? A It was re-executed in the presence of Mr. Musloa in the office of Mr. Leventritt.

BY MR. HAYWARD:

Q Is it not a fact you tried to get put in the second deed that it was to cover legal expenses and your fees and Mr. Leventritt's and other gentlemen would not let the old man put that in, and you took the deed without it and afterwards, after Mr. Leventritt and those other people had gone, you induced the old man to give you a separate piece of writing authorizing that be done to secure you for your fees? A Nothing of the kind.

Q And is it not a fact down here on the street --

THE WITNESS (continuing) In fact, I beg your pardon -- in fact it was limited to an amount so I could not collect any more than was mentioned in that paper and the amount was

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Q For your attorney's fees and for the bail? A For things of that kind and it appears --

BY MR. MOSS:

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BY THE COURT:

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Q And is it not a fact down here on the street --

THE WITNESS (continuing) In fact, I beg your pardon -- in fact it was limited to an amount so I could not collect any more than was mentioned in that paper and the amount was

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fixed at \$15,000., and that was to cover all the expenses.

BY THE COURT:

Q Was there an arrangement it should cover your fee?

A That was my understanding all the time.

Q How could a man with a power of attorney give you a deed of a house he did not own and tell you that you could hold out of it enough money to pay your fee against him? A Well --

Q In other words, didn't he have that in trust, was it not a trust? A He told me he had full power from his wife to do so. That was all I could get. I took the best I could.

MR. MOSS: I think there is a statement that there was a power of attorney.

THE COURT: Certainly, power of attorney but, power of attorney to sell real estate, would that give him any power to sell it for the purpose of paying the fee of an attorney?

MR. MOSS: I object to the question in that form.

THE COURT: I ask him as a lawyer. Objection overruled. Exception.

THE WITNESS: If he had power from her to use it for that purpose certainly he would be vested with that right.

Q The power would have been expressed in that power of attorney which he had? A Not necessarily -- might have had some other document.

Q The power of attorney was on record? A Yes.

Q A public record in Brooklyn? A Yes.

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Q So you could see the exact words and conditions under which she gave him the right to convey her property; was there anything in it to the effect that he could convey or pledge it or use it for the purpose of paying his attorney's fees?

MR. MOSS: I object to the question.

THE COURT: Objection overruled. Exception.

BY THE COURT:

Q Was there anything in that power of attorney to that effect? - A That he could use it for his own purpose?

Q Yes? A No, sir.

Q Or for the purpose of paying his own lawyer? A No.

MR. MOSS: I object upon the ground that if the deed was on record and the power of attorney was on record, there could be nothing done under that power of attorney, beyond the powers in the power of attorney, and be valid.

Objection overruled. Exception.

BY MR. HAYWARD:

Q Is it not a fact that before this deed was given, that Mr. Leventritt at least looked over -- whether he prepared it or not, the present deed, the one that I suppose is on record now, -- that right down here on the street when Mr. Musica, senior Musica had just been admitted to bail and was going away in a taxicab, that you then and there presented him with another absolute deed to the old lady's property over in Brooklyn, which did not contain any clause that the deed was given for security only, and is

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it not a fact that a Mr. Costa, and Michael Corbora were there present with the old man, and that you told him if he did not sign this absolute deed, you would take him right back in and turn him over to the District Attorney and the authorities again, and it was because of that you went down to Mr. Leventritt's office and there a deed -- another deed was made or this clause added to the deed, before the old man signed it -- that is the fact? A No, sir, that is not the fact.

BY THE COURT:

Q Did you represent Musica as attorney when he was arraigned to plead here? A We did -- Together with Mr. Battle and Mr. --

Q When he left this Criminal Courts Building after being arraigned to plead to the alleged charge against him, the indictment against him, the District Attorney asks you did you present him with another deed as he was entering a taxicab? A Not to my way he --

BY THE COURT:

Q The question is did you present him with any sort of a deed there at the taxicab? A No, I asked him to come upstairs and he would not come upstairs. The agreement was --

Q Did you present him there with a deed and ask him to sign it, never mind what was in it? A Yes, sir.

Q Tell us what was in the deed if you want to? A When the Musica's bail was fixed at \$10,000., Musica, Sr., I arranged to go his bail, and I got bail for Mr. Musica upon the explicit

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understanding that Musica as soon as -- he was to sign the deed upstairs to guarantee me against any loss we might have. That was the agreement. Upstairs I overlooked, when the bail was given, to make Musica sign the deed. On the way to the taxicab, as we took him out, I said "We forgot, we had better go to the office and live up to your promise and sign the deed you promised, because I am security for \$10,000: on your bail," and he promised to do it. When we got down to the office he refused to sign any paper or have anything to do --

Q Let us get to the other part of the question, as he was going into the taxicab, you asked him to sign this deed, to come back and sign that deed -- did you say to him "If you don't, I will turn you over to the authorities"? A No, I said to him, "That is not our agreement, you promised to give me security for this bail I have gone for you, and you must do so, or otherwise I will get off the bail."

Q That is, turn him over to the authorities? A Well, something to that effect; I did not want to be responsible.

Q You already had one deed? A No, sir, I had nothing then.

Q You had no deed at all? A The deed I had was no good and he knew it.

MR. MOSS: I think, this is the beginning, as I understand it from his testimony -- this is the beginning of the operation by which the deed was obtained, and that was followed by what occurred in Mr. Leventritt's office.

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BY MR. HAYWARD:

Q But it was after he had taken this deed in New Orleans that the Register over here in Kings County would not record?

A I do not know that the Register would not record it. I do not think it was ever sent over there.

BY THE COURT:

Q Why did you say it was no good? A The acknowledgment was not properly taken.

Q If the acknowledgment is not properly taken, the Register would not take it? A I know, but we discovered that ourselves.

BY THE COURT:

Q Was Mr. Costa present when Musica was going into the cab-- now, I want you, Mr. Stenographer, to read Mr. Hayward's question that the witness answered in part -- the whole question?

(The stenographer reads the following) Is it not a fact that before this deed was given that Mr. Leventritt at least looked over, whether he prepared it or not, the present deed, the one that is, I suppose, on record now -- that right down here on the street when Mr. Musica, Sr. had just been admitted to bail and was going away in a taxicab, that you then and there presented him with another absolute deed to the old lady's property over in Brooklyn, which did not contain any clause that the deed was given for security only, and is it not a fact that a Mr. Costa and Michael Corbora were there present with the old man, and that you told him if he did not sign this absolute deed you would take him

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right back in and turn him over to the District Attorney and the authorities again, and it was because of that you went over to Mr. Leventritt's office and there a deed -- another deed, was made or this clause added to the deed, before the old man signed it? A Some parts are true and some parts now, but as a whole, it is not a fact. Part of it was true and part was not. I did not present the deed just as we got into the taxicab. We talked about it in the taxicab. I asked him to come up to the office and sign it and he would not do it.

Q How about Mr. Costa, was he present? A Yes.

BY THE COURT:

Q And the other man, Corbora, was he present? A He may have been, I would not dispute it.

BY MR. HAYWARD:

Q Is not this the fact, that there was the younger Musica brother named Arthur, and that you took a bill of sale or a warehouse receipt covering five hundred and odd cases of tomato paste, property of these Musicas, and that you had that with you in New Orleans, and you took it over here to the Tombs Prison one day and tried to get young Arthur to sign the firm name to it, giving you an absolute endorsement which would constitute a delivery to you? A Positively not.

Q Is it not a fact --

THE COURT: Suppose you divide that question up -- it would be better if you first asked him about the 500 cases of tomato paste.

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MR. HAYWARD: First, put the question.

THE WITNESS: No, I did not take any such thing.

BY MR. HAYWARD:

Q Did you have such a paper in your possession? A That was one of the papers Purpera brought to me after I returned the first lot of papers to Mr. Prentice and that paper was duly endorsed, and that matter was thrashed out before Referee Olney, where Musica swore that I went to him to have it endorsed, and he refused to endorse it, and very much to their surprise it was found out it was endorsed and it was in their possession.

Q It was endorsed? A It was one of Mr. Musica's lies, the same as the rest.

Q It was endorsed before this -- shown to have been endorsed before this order of the United States Court was issued?

A Certainly. It was endorsed when it got into my possession.

Q Who was it endorsed to? A Endorsed in blank "A. Musica & Sons", their own signature. Why should I ask them to endorse it over again for.

Q Didn't you ask Arthur to endorse it over again? A Why should I?

Q Did you? A No, sir, certainly not. If it was endorsed I could not ask him to endorse it over again. What for?

Q Did you have any talk about it with Arthur in the Tombs?

A I did not -- they wanted me --

Q Who wanted you? A Philip wanted me to use that tomato

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paste, that warehouse receipt, for the purpose of getting bail for him, and I said we could not do anything of the kind. That would have to be given to his creditors.

Q Was that before or after the Court issued this contempt order on you? A Before.

Q You told Philip that you could not use that for his purposes, you had to turn it over to the creditors? A I said it could not be used for any such thing and had to be given to the creditors, and I told him I would not be a party to any such thing.

Q As matter of fact you did turn it over to the creditors after the order was issued citing you for contempt of court for holding out those papers? A I was not holding out those papers.

Q That was what the order was for? A I was not. I do not care what the order said. Anybody can get an order out -- you as a lawyer know that.

MR. MOSS: It was taken out ex parte.

THE WITNESS: Certainly.

BY THE COURT:

Q That order was signed May 17th, 1913? A Yes.

Q According to the testimony as I got it, you have been in possession of these papers two months? A No, sir.

Q How long? A A very few -- probably two weeks, not more than two weeks.

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BY THE COURT:

Q I thought you just said that tomato paste was one of those that was brought to you by Purpera? A Yes, sir; so it was, but Purpera did not give me that until long after I returned from New Orleans, as one of the papers he found that was left in his desk. Purpera gave this explanation. He said when he took that wallet home it fell in some water or a cuspidor, I don't know which, and he took the papers out and put them in his desk, and put the wallet to dry, and in putting the wallet to dry it fell on the stove and curled up, being made of paper, fell on the stove and burned, and when he got these papers from his desk, there was one or two slips left -- a little bit of a -- was left stuck to the side of the desk, and he thought he had them all and he did not. Some time after I returned from New Orleans he discovered these things and brought them to me. -- That was after I had given up everything I had to Mr. Prentice. He immediately -- I spoke to Content, there is an affidavit of Content on file with the papers to that effect -- I told him as soon as I got the papers -- I said: "Mr. Content, I have some more papers that we have to give up to Mr. Prentice," and he said wait a couple of days and see if Musica comes out, and, after we talked the matter over, that it will be an omen of good faith, if we let Musica himself give them to the trustee, and in the meantime this order was served upon me and as soon as it was served I went up and delivered them to Mr. Prentice, although no demand

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was made and I defy anyone to bring Mr. Prentice here and prove otherwise.

BY MR. HAYWARD:

Q Now, you have said that four or five times about bringing people here; as a n attorney at law of twenty years standing, and as a trial lawyer, don't you know it is the law of this State, that neither side in the prosecution of a criminal case or a civil case either, can bring any witness and put them on the stand for impeachment purposes, in a collateral matter, and that if all of the witnesses were available, I could not bring them here and put them on the stand?

MR. MOSS: I object to that question, because it is manifest, and ought to be to Mr. Hayward, that if no objection is made, it can be done.

THE COURT: Does he object -- if he waives that rule of law.

MR. MOSS: That we will take up when it comes.

THE COURT: He must either answer this question or --

MR. MOSS: He is answering every question.

MR. HAYWARD: He has already four times dared the district Attorney to produce witnesses to the contrary.

MR. MOSS: I object to the question. That is all.

Objection overruled. Exception.

BY THE COURT:

Q You must answer, as a lawyer, the question put to you is

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Don't you know that under the rules of evidence the District Attorney cannot produce Mr. Prentice here to disprove your statement. A He can produce the records taken at the trial before Referee Olney.

Q You have asked him to produce Mr. Prentice. A Mr. Prentice or the record would be the same thing.

Q Don't you know he cannot under the rules of evidence? A I know that, but I also know that he can produce the record and the records will speak for themselves.

BY MR. HAYWARD

Q Don't you know that the same rule would apply covering collateral transactions, as it would to the witness?

Same objection, ruling and exception.

A No, I do not think so.

Q Is not this the fact, that you went to the Tombs, while the Musicoas, or Philip Musica, was in there, and with this same warehouse receipt for tomato paste, of the value of about five thousand dollars, and that in the counsel room over here at the Tombs, you produced that receipt, and also some blank paper, which on it the heading of A. Musica & Son and that you asked young Philip Musica --

THE COURT: Stop there and ask him that part of it.

THE WITNESS: I never did a thing that could be complained of or commented upon.

THE COURT: That is not the question. The question is

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did you take that warehouse receipt and a blank paper and go with it to the Tombs? A I never had the warehouse receipt in the Tombs in my life.

BY MR. HAYWARD:

Q And when you got there, didn't you outline to Philip Musica the following plan and try to get him to enter into with you, the plan being as outlined by you, that Purpera, the former superintendent or salesman of Musica & Company, also a client of yours, would sell this merchandise to a man by the name of Scozari, dating it two or three weeks before the failure of Musica & Company or Musica and Son, and give him a receipt on the blank paper that you took with you to the Tombs Prison, over Philip Musica's signature for say all but one or two hundred dollars on account, and that then he, Purpera, was to enter this sale on his books, and go there two or three weeks afterwards and collect two or three hundred dollars and turn it over to the receiver, and if the receiver would make any inquiries, he, Purpera, would say: "Well, this is an old account that does not appear on the books, as you see here is still two hundred dollars unpaid" - and didn't you tell him there is no question but that the receiver would swallow it as a legitimate transaction? A Positively not.

Q Now, when you were working on these bail propositions for the Musica family, Philip Saitta's bail, the bond premium was to be about seven hundred dollars? A Philip who?

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Q I mean Philip Musica's bail bond, the premium for which was to be about \$700, two per cent. on a bond of \$35,000?

A Something like that, yes.

Q And the Musicas told you they did not have any money -- did they or didn't they --

(Question withdrawn).

Q Is it not a fact ~~you knew~~ of \$1284 or approximately that amount that the old lady Musica had in the Seamen's Bank for Savings in this city? A I did not know it. The father told me. I made a demand upon them for fees and expenses that I had had. My office for two months was used from morning to night by those people. I spent eight or nine hundred dollars actual expenses, and had not seen a dollar in the way of money and I told him I could not proceed any further until I had some money and he said the only money he could give me was what was in the Savings Bank, and he drew that money and gave it to me.

Q Did they not want to ~~draw~~ draw from that money just enough to pay this bond premium and didn't you tell them, having to draw it under this power of attorney, they would have to draw it in the form of an assignment, and draw it out all at once, and as matter of fact, by telling them that, didn't you get an assignment of the entire amount in the bank to Mrs. Musica's credit, yourself, and go to the bank and get it out?

Objected to. Overruled. Exception.

A No, sir.

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Q Who did get it out of the bank? A I got it out of the bank after the father gave me the power to get it out.

BY THE COURT:

Q That was what he asked you.

MR. MOSS: No. There was a whole lot of innuendo attached to that question.

MR. HAYWARD: I did not intend to put them in.

BY MR. HAYWARD:

Q Why did you take out the entire amount when it was only gotten to furnish \$700 for the bail bond? A I did not take it for the bail bond. I took it on account of what fees were due me.

BY THE COURT:

Q That was the old lady's money?

Objected to. Overruled. Exception.

A The father had power of attorney and he had the bank book and he had everything; he had power to do as he pleased.

BY MR. HAYWARD:

Q But the account was in Mr. Saitta's name in that bank?

A No, not --

Q I mean the old lady Musica, I mean, Antonio's wife? A That may be.

Q You know it was, don't you? A Certainly.

Q Then why don't you say so -- you took the bank book to the bank and knew it was in her name? A Yes.

Q You say that was taken out and paid over to you by these

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people to secure you for your services and expenses? A On account, yes.

Q And you gave eight hundred dollars of it to the young Miss Musica to go to New Orleans and pawn her jewelry with?

A No, not to pawn her jewelry.

Q To redeem it? A Miss Musica came to me and said they left three or four thousand dollars worth of jewelry in New Orleans and had no money and if I would not please lend them enough money to go there and redeem the goods and bring the things here and pawn them in New York for two or three times the amount, so they could have a little money, and they would return me the money. I gave them a check for \$700 and some odd cents, certified, and they got the money and went to New Orleans and got their jewelry and came here. Whether they pawned or sold it I do not know, but they brought me back seven hundred dollars or whatever it was.

Q Is not this the fact, according to your statement, this girl, it was her mother, whose money you drew out of the Seamen's Bank, wasn't it, - she was the daughter of the old lady whose name the money stood in in that Bank of Savings or Seamen's Bank? A Yes.

Q And you got that out because it was to pay you for services and expenses you incurred? A Don't you get ^{paid} / if you do services as attorney?

Q Answer me. A Certainly.

Q That was your money, \$1284? A It was mine.

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Q And you turned around and loaned this girl eight hundred dollars of that money that you had drawn out of her mother's account? A Whatever it was -- not out of her mother's account -- I made the loan several days afterwards.

Q But it was the money you had got from that account? A No, not at all. It came out of my bank account. Probably that money was there, too.

Q They told you they wanted it for that purpose partially when they went there? A Nothing of the kind.

Q Anyway the girl went down to New Orleans and did redeem the jewelry and came back and pawned it over again? A And gave me back the money.

Q And is not this the fact, she came back and brought you \$750, which you were to use to pay for a bail bond for her brother Philip, and that the bail bond was withdrawn or never issued, and therefore there was no reason for your using this \$750 for that purpose, and that you had got that \$750 and refused to turn it over to this girl? A It is a malicious falsehood, whoever told you such a state of facts.

Q As a matter of fact, Mr. Saitta, you came here to this building with \$750 in cash, didn't you, for the purpose of giving bond for Philip Musica? A IN this building?

Q Yes. A What would I do with \$750 in this building.

Q Didn't you come here and didn't you have the cash in your pocket to pay for this bond premium? A No.

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Q Here or anywhere? A No, never. I had the bond ready for Philip Musica, on my own responsibility I got the bond, and until the District Attorney -- after fixing the bond at \$35,000, I got all his friends to join in it, after weeks and weeks of labor, got the surety company to go on the bond and come here to give the bond, when the District Attorney withdrew the bond from Philip Musica and we could not get it.

Q You had at that time the sum of \$750 to pay the premium on that bond? A No, I did not have to pay ^{for} the premium on it then. I could have paid it any time.

Q I ask you if you did not have the money right then, the \$750? A No.

Q To pay the premium? A No.

Q You had it in your account, didn't you? A It would be charged to my account.

Q You had it in your bank account? A I had the deed as security.

Q If the District Attorney had not withdrawn his offer, if that was what was done, to release young Musica on this \$35,000 bond, you would have paid \$750 for the Premium, wouldn't you?

A I was liable for it, but Mr. Philip Musica promised me as soon as he would get out he would be in a position to not only pay for the bond but pay also something to me, on account of my services. As long as he was in the Tombs, he could not move, but if he was only out, he could go to his friends and patch things up.

Q But if the bond had actually been accepted, you were there to pay to the Bonding Company this \$750 for premium, weren't you? A Certainly I would have been liable upon it, and it would not be the first time in my life I got stuck.

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Q You would have paid it? A I would have had to pay it.

Q That was what the girl gave you the money for? A Positively not.

Q She had not got the money back yet? A Certainly she never gave me the money for that. The father gave me the money, not the girl. The girl had nothing to do with it.

Q Didn't you propose to Philip Musica to go over to Brooklyn and file a voluntary petition in bankruptcy and get a receiver that you could control, friendly to you, appointed? A No.

Q Did you ever make the proposal to him to prepare for a voluntary proceeding in bankruptcy? A He gave me a statement showing he was solvent, perfectly solvent. That was all that was talked about the bankruptcy matter, and I have two statements I think by his own hand, of the assets and liabilities, and if you want them, Mr. Levy can get them out of the pocketbook there, as showing that he had more assets than liabilities.

Q Did you not plan, and did not you propose it to him, to get a voluntary petition in bankruptcy and get a receiver appointed that you could control, and therefore force the creditors into a compromise? A I don't think that there is a receiver you can control. I have never been accustomed to that, unless you were getting Mr. Hess.

Q Mr. Hess, you mean that juror from Part III who was here the other day and testified, A Yes, sir. Get him and he might do it.

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BY THE COURT:

Q That was the man who said he presented to you the \$2,000. check that had been sent to Fazio? A Yes.

BY MR. HAYWARD:

Q When you got down to New Orleans where these Musicas were, you found out that Miss Lucy Grace Musica had had in her possession, when the family were fleeing to Honduras, about \$23,000. in cash, didn't you? A That was what they said. She said it was her money.

Q You found the police down there had taken that money and were holding it for awhile, and then had turned it over to an ancillary receiver in Louisiana, is not that a fact? A Yes.

Q And you found of that \$23,000. there yet remained -- that certain assignments had been given on that money which was in the hands of the police? A Yes.

Q But that they had not assigned \$10,500. of it, and didn't you induce this girl down there to give you an assignment for that \$10,500. of the money that had been sequestered by the police there?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

BY THE COURT:

Q Did you ask and receive from Miss Musica an assignment of ten thousand and odd dollars that had been seized by the police in New Orleans?



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MR. MOSS: I object to that.

MR. HAYWARD: That was not my question. My question was if he did not attempt to get from her an assignment for this sum of \$10,500. and I was going on and ask this question-- I do not know how I can separate it very well --

BY MR. HAYWARD:

Q And didn't you tell her that the paper you took her to sign was necessary for the protection of her brother Philip's interests? A No, sir.

Q And as matter of fact was not the paper that you took to her a statement and affidavit to the effect that that money was her absolute property, and that she was assigning this \$10,500. to you for legal services? A Part of it is true and part of it is not true.

Q Which part is true? A That she made an assignment to me, after she told me that that was her own personal money. This was a million dollar case -- a case probably that involved a year or more of litigation, and I was justified in seeing where my fees were coming from, and asked her, if that was her money, if she would not assign it to me, and when I heard she made the statement it was not her money, I relinquished it and did not want it.

Q When you got her to make this assignment, didn't you tell her it was to protect her brother Philip? A No.

Q You told her it was for your fees? A No. I advised those people to come back to New York and give up their money to the

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receiver and my telegrams will show that.

Q That is, all the money that was not assigned to you? A No, everything, to give everything up, and to throw themselves upon the mercy of the Court. That was the best way, after I investigated and looked into things.

BY THE COURT:

Q What did they have, if you had the ship and the life insurance policies and the property over in Brooklyn, and the remaining \$10,500. in cash, was there anything else?

MR. MOSS: I except to that and call your attention to his very last answer, that he did not keep the \$10,000. You overlooked that, your Honor.

BY MR. HAYWARD:

Q You knew a man by the name of Dirigo? A There is a great many men by the name of Dirigo.

Q This man was a tall blond Italian who lived at the Hotel Gonfarone, did you know that Dirigo? A Yes.

Q You were on very close terms of intimate friendship with him? A No.

Q Is it not a fact that you and Dirigo had a system whereby -- that you would work -- whereby Dirigo would place dummies in business and Dirigo seduced credits for them through your recommendation, and then after those dummies left the jurisdiction, then you and Dirigo would take possession of the merchandise, dividing the merchandise between you or the proceeds? A It is a

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scandalous and malicious lie, whoever told you that. It is simply to try and ruin a man, that is all. It is the work of those men Bonnano and Nicchia, nobody else, who has a hatred against me because I am trying to prosecute them for wrong which they have done. It is infamous to bring any such thing like that against an innocent man, infamous, and the District Attorneys should investigate before they bring these things forth and present them before a jury. I think it is scandalous, to attack a man the way you attack me. You cannot prove a single thing against me. You cannot put your finger -- you might accuse me from now till doomsday, but you cannot find a dishonest act that Philip S. Saitta ever did intentionally, and I hope God will overlook you, or it will be a curse upon your life, when you have not the proper information, to accuse a man the way you are accusing me. Dirigo was a client of mine, the same as hundreds you may have, and I know nothing about their business or affairs, the same as the Musicas -- I know nothing about their matters -- all I had -- I spent considerable in actual expenses in the Musica matter and I got out of it disgusted, throwing everything up and having nothing further to do with them.

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Q As matter of fact, the questions I have asked you about since three-quarters of an hour before we took recess this noon, and on more than 75% of my questions, you have had to answer yes, is not that a fact? A I have not.

MR. MOSS: I object to the question of the District At-

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torney as being improper and not true.

THE COURT: I will sustain the objection.

BY MR. HAYWARD:

Q Did you not admit to several people, among them Philip Musica, that that was your practice with Dirigo, and that you had continued it until Magistrate Appleton threatened you, if you did not stop it, threatened you with criminal prosecution? A Magistrate Appleton?

BY MR. MOSS:

Q Did you admit that? A No.

BY MR. HAYWARD:

Q Did you admit it to Philip Musica and to a number of others? A No, positively not.

Q How many times did you defend ^{this} Dirigo, do you remember?
A A couple of times.

Q Where is he now? A ~~I~~ do not know. I have not seen him for years and years and years -- probably ten years since I have seen him.

Q You do not know if he has taken up his duds and left this glorious country or not, do you?

Objected to.

Q To use the words in your newspaper statement --

THE COURT: Let us change the question.

MR. HAYWARD: I will withdraw the question.

BY MR. HAYWARD: --

Q You knew an Italian bank defaulter who fled to this coun-

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try from Italy, named Gallaicaizzi? A I did not know him.

Q You knew there was such a man over here, you heard of him? A Afterwards when he was here, and I telegraphed to the Italian Government a half a dozen cables, at my expense, and they never paid any attention. I sent word to the Italian Consul, and was not paid any attention, and I minded my own business.

Q He stopped down at the Gonfarone Hotel? A Yes.

Q Who owned it at that time, Dirigo? A That I could not say. He may have had something to do with it.

Q He was partial owner of it -- was he a partial owner of it? A May have been, I do not know. I don't remember although I do not think so.

Q You used to eat there very regularly with Mr. Dirigo at that time? A No.

Q Is it not a fact that you had one of your confederates in Italy dispatch you a telegram to the effect that you were retained by the Minister of Justice to apprehend this Gallaicaizzi?

MR. MOSS: I object.

THE COURT: Strike out the word "confederates."

MR. MOSS: I object upon the ground it is an assumption not based on anything.

THE WITNESS: I am not in your club yet.

MR. MOSS: I suggest that a belligerent attitude ought not to be expressed in the form of the question.

THE COURT: There is no belligerent attitude. I thought

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Mr. Hayward was rather composed. I never thought he had assumed a belligerent attitude, but I would suggest him to eliminate the word "confederates" and you may ask him if he had caused some one in Italy to send him a cablegram to arrest Gallaicaizzi.

MR. MOSS: I used the wrong word when I said belligerent. I meant the word effervescent.

HAYWARD:

Didn't you secure some person in Italy to send you a telegram purporting to come from the Italian Minister of Justice, apprehend this fugitive from justice Gallaicaizzi, and did you take this fictitious cable and go to the Hotel Gonfarone and until Gallaicaizzi came out and then call to him "Gallaicaizzi", and when he turned around inadvertently, answer to your call, if you did not present this bogus cable to him and there threaten to send him back to Italy and turn over to the authorities there?

Objected to. Overruled. Exception.

in the form you have put it, no, sir.

What did you do to him? A He sued -- he went into partnership with a man named Dirigo and for some reason or other dissatisfied and had Dirigo arrest him. He appeared before Magistrate Poole and in the course of the examination I turned around to Dirigo and I said "I think this man is a thief." "What makes you think so?" I said "His actions show to

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me he is a dishonest man, and I think if the matter is investigated you will find that all this money he claims he has, has not been obtained honestly." With that we looked up the newspapers and found out a man by the name of Gallaicaizzi had run away from Italy. In the meantime our case was pending. So, I formulated a plan by which to see if I could trap the man to find out if he was really the absconder mentioned in the newspaper, and we went to the Hotel Gonfarone and he was not there, and waited for him on the street, and as he was going by, there was not any cable or anything -- Mr. Dirigo hollered the word "Gallaicaizzi," and with that he turned around and jumped, and I said "You accuse this man of having robbed you, you are the man Gallaicaizzi who ran away from Italy under such and such circumstances", and he admitted it, and then the matter was adjusted between the two of them. I sent word to the Italian Government that this man Gallaicaizzi was in New York and told them they would have to be quick or he would run away, and they paid no attention, and I couldn't do anything, I had no more proof than what he said, and they patched up their difficulty between them and I never saw the man from that day to this.

Q The matter they had in controversy was because Gallaicaizzi claimed Dirigo had stolen his papers and securities out of the vault in the hotel? A No, positively not. This man Gallaicaizzi had put in \$10,000. to go in business with Dirigo and they were to come to my house. I was in New Jersey, to sign the co-partner-

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ship agreement, on Sunday. Instead of coming to my house, they had some words, and because Dirigo would not give him back the money or something to that effect, he had Dirigo arrested, but before that they hired a store and they were actually going into business. Then in the course of the examination I became suspicious of the man because he acted so queerly.

Q The way it was adjusted, you spoke of it being adjusted between Dirigo who at that time was your client, and Gallaicaizzi?

A He made Dirigo some allowance for the false arrest and things, provided they cancelled their agreement and gave up the store, and Dirigo paying a certain amount of money for giving up the store and whatever expenses he had had, and they settled the matter between themselves.

Q As matter of fact wasn't this the way it was, that Dirigo directed throughout the transactions by you, because of your discovery of who he was, because of this bogus telegram, that Dirigo got all the money this man had except enough to buy him a ticket for South America?

MR. MOSS: I object. The witness has denied that it was a bogus telegram. A proper answer cannot be made to the question.

THE COURT: Change that and eliminate the telegram and ask whatever you wish without that. You want to ask him if the result was not that Dirigo got all the money that this Gallaicaizzi had except sufficient to buy him a ticket to

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South America.

THE WITNESS: No, sir, when he left Dirigo afterwards, after they settled the matter, he owned up to me that he had over \$300,000. with him.

BY MR. HAYWARD:

Q You mean on his person, A On his person.

BY MR. MOSS:

Q That is, Gallaicaizzi? A Yes, sir.

BY MR. HAYWARD:

Q What became of Gallaicaizzi? A I don't know.

Q Never saw him again? A No.

Q Nobody else around here ever saw him? A No.

Q He had been charged with what, Gallaicaizzi? A I don't know.

Q I do not mean in Italy, but here, that you have testified about?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A He had not been charged with anything here. He had charged Dirigo.

BY MR. HAYWARD:

Q With what? A I don't know, misrepresentations or something like that.

Q Had charged him with a felony? A Something of that sort at the time, but he had given Dirigo \$10,000. to go in business.

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Q He charged Dirigo with a felony, you found out that he himself was a fugitive, and the upshot of it was that you compromised by Dirigo taking money from him and he never has been heard of since, is not that true?

Objected to. Overruled. Exception.

A He went to Mexico. What do I know. That was what he told me-- he was going to Mexico.

Q How did Magistrate Poole before whom the proceeding was, come to allow a felony to be compromised and settled, if your statement is true?

Objected to. Sustained.

BY THE COURT:

Q As I understand from what you state, Gallalioaizzi had made a charge of grand larceny against Dirigo for the \$10,000. that he, Dirigo, had received from him, is that about it? A Yes.

Q And had Dirigo arrested and taken before City Magistrate Poole? A Yes, sir. It was shown that Dirigo had bought merchandise and they had gone in business together.

Q Didn't you say a few minutes ago that you spent considerable of your money telegraphing to the Minister of Justice in Italy? A I sent three or four telegrams.

Q Three or four that you had sent there -- now did you send telegrams to Italy without receiving any reply? A Never received any reply. I thought in the name of justice it was only right that the man should be apprehended, and there was no way of

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apprehending him.

Q Whatever caused you to try to discover whether Gallai-
caizzi was a fugitive from justice from Italy? A Because I knew
he was not telling the truth as to what Dirigo had done to him;
that Dirigo acted in good faith. He opened the store and stocked
it with merchandise and this man after he had gone to that extent,
~~had~~ him arrested because somebody must have told him something
wrong about Dirigo and I --

MR. MOSS: I understood the witness to say that there
was some public print about this man. He said after this he
began to look at the old Italian papers.

THE WITNESS: No, after I examined him in court.

BY THE COURT:

Q You looked at him and did not think he was an honest man?

A After we had the examination before Magistrate Poole, from his
answers to the questions I put ~~and~~ his demeanor and everything
else, it gave me to believe that there was something wrong about
the man.

Q You began to look him up? A Yes.

Q In the old Italian papers? A He only had arrived recently.
It is not very often you get a man with a lot of money coming from
the other side and I said there is something wrong here, better
look at the papers, and we looked up the papers and found some man
named Gallaicaizzi had absconded from Italy.

BY MR. MOSS:

Q When you met him in front of the hotel, Dirigo said

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"Gallaicaizzi" and he -- A He jumped and I said "You are Gallai-
caizzi, so and so", and he broke down and admitted it.

BY THE COURT:

Q He went by the name of Gallaicaizzi here? A No, he
went here by the name of Moroglia.

BY MR. HAYWARD:

Q Mr. Saitta, after you found out that he was this embez-
zler, and that he had stolen this money in Italy, and had brought
it to this city, to the extent of \$300,000., he told you I think--

A No.

Q Didn't he say he had about \$300,000.? A That was the
last day I saw him.

Q At any rate you knew he had come here with an unusually
large amount of money, which you surmised he had stolen, because
it was not the custom for men to come from Italy with that much
money, is that right? A Yes, sir, certainly.

Q You confronted him with this and he admitted it? A Yes, he
admitted it.

Q You were a lawyer at that time? A He admitted in a cer-
tain way. He said "Well, he had some trouble in Italy. Did not
tell me exactly what it was, and then I telegraphed to Italy to
send us particulars.

Q Now you were anxious to have justice enforced against
that man, that was the reason you were telegraphing to Italy?
A Certainly.

Q Didn't you know that any man that brought \$10,000. or
\$1000. into the State of New York from any other part of the
world which he had stolen was guilty of a felony under our stat-
ute and you could have come to the District Attorney's office and
had that man arrested in five minutes? A I did not know he had stol-

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1 on it.

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BY THE COURT:

Q Didn't you say you looked up the old newspapers and found that he had, in the files of the Italian papers? A Well, they said he had absconded, but, how could I prove it? He said he had trouble.

MR. MOSS: Does your question infer that because this man had seen something in an Italian newspaper, he might not be subject to false arrest, if he caused his arrest?

THE COURT: No, he said he did not know it, -- that he was a thief and had this money upon him, and -- I do not know anything about it.

THE WITNESS: I was suspicious that he was.

BY THE COURT:

Q You knew Ferdinand Gatto, that there was such a person as Ferdinand Gatto, an importer of Italian fruits? A Yes.

Q You knew it at the time you received the bill of lading from Salvatore Gatto? A I did.

Q You stated in your testimony here that you were a specialist and made a specialty of the fruit trade, didn't you? A Yes.

Q So I presume you knew well Ferdinand Gatto and his being a dealer in citrus fruits? A Yes.

Q Citrus fruits means oranges, lemons and so forth? A He was a dealer -- Ferdinand Gatto, he is more of a buyer than an importer.

Q I think you testified in answer to your attorney, on

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your direct, that Salvatore Gatto was a man quite devoid of means. I have it that you said he had no means at all and I loaned him ten dollars and when he came I would loan him another ten dollars.

A That was in 1910.

THE COURT: I think I took a record of it, that you said just a few weeks before he handed you that bill of lading, I mean the bill of lading from Fazio, that you loaned him small sums?

THE WITNESS: No, \$193 was loaned between February -- from February down. Then there was the importation of 600 boxes of lemons. There was a loss of \$703.

BY THE COURT:

Q Even the Christmas before that, the Christmas before you received the Fazio lemons -- I have a memorandum here -- see if I am correct. You told your attorney that he was hard up, that his wife called and on her bended knees begged you to give her assistance? A That is right.

Q They were pretty hard up? A That is why she came down for me to help them. She said he had connections on the other side and if he could do some business, start some business, he could get all the stuff he wanted.

Q I also have a memorandum here in my notes, where you told your attorney in your direct examination that in August 1913, you told Gatto to settle with Fazio? A That was when Cavallaro was in and I told Cavallaro in the presence of Gatto that I had a

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few hundreds on hand and he had a lot of conserves and a lot of macaroni, had about a thousand dollars worth of merchandise then, and I said you had better settle it.

Q Where did he get a thousand dollars worth of merchandise between Christmas, when you had loaned his wife three dollars, on account of the distress of the family, and that time, do you know? A I don't know, but he brought the documents, he had for documents for some macaroni, which I paid.

Q Let us get the facts, these documents, you mean ^{by} these documents, bills of lading? A Yes.

Q Those had been sent to him on consignment and would be sold on a five per cent brokerage basis? A No, sir; macaroni he bought right out and I paid.

Q Had he paid for it? A I paid the draft for him. That was part of the money, and conserves he said someone sent him, I don't know -- he said he bought it, and there was about 'eight or nine hundred dollars worth and he still had it on hand. He had it on hand it August and notified me he wanted to give it to Cavallaro in settlement of the Fazio matter, and I told him, I said: "Better sell that and let me give what money I have in my hands plus what money you can realize and Mr. Cavallaro will be satisfied with a thousand dollars."

BY THE COURT:

Q In August did you think Gatto had enough money to settle with Fazio? A Yes, because Fazio was willing to settle for a

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thousand dollars owing to the fact that he had broken his contract with him.

Q I have a little memorandum here, that you say that you paid him on July 24th ten dollars, another case five dollars, August 8th, six dollars; August 8th, twenty dollars, August 9th, ten dollars, August 15th, fifteen dollars; to Gatto. You paid him those small sums, and you thought he was able to remit to Fazio the amount of those lemons? A Certainly, he had plenty of merchandise then. He had not sold the macaroni yet, for which I paid. I had given six or seven hundred dollars before that and he had the tomato paste and he had other stuff on the way, he told me. He told me he had olive oil on the way and wine on the way, fifty cases of wine he had already received. He told me he had plenty of lemons on the way.

Q One of these witnesses said two weeks before he handed over to you this bill of lading, he went into the office of a friend of yours -- so a witness testified -- and saw a meerschaum pipe standing by his desk, and he took it out and pawned it for a dollar, this fellow Gatto, did you know that? A I did not, no.

Q Then I think he said he reported that to you that he had--

MR. MOSS: There is no testimony to that effect, your

Honor.

THE COURT: Then strike that out.

BY THE COURT:

Q Did you know on July 23rd that he would not owe Fazio two thousand dollars but would only owe him about eighteen hundred

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dollars; on July 23rd? A No, sir; I did not.

Q The reason I ask you that is that the check for two thousand dollars, the body of it is in your handwriting? A No, sir; no, because I think the second lot of goods was sold after the 24th, if I am not mistaken.

Q The \$2000, the check that went to Fazio came back and payment of which was stopped -- let us see that -- is not the body of that in your handwriting? A Yes.

Q At that time Fazio would not be entitled to two thousand dollars, would he? A I could not tell, because there was one lot of lemons not sold then, and no one could tell what they would bring, but Gatto said he would send two thousand dollars, because in addition to the other lots of lemons to be sold, he had large shipments on the way, several shipments on the way.

Q From your experience of twenty years in the lemons business and citrus fruits, especially with Italian merchants on the other side, at the time that he came to you and you made out this check for two thousand dollars on July 23rd, did it occur to you that when Fazio over in Italy received the check for two thousand dollars, that he would assume of course that it was a valid or a good check and he would be induced thereby to send over a nother shipment of lemons? A The shipment was on the way and Gatto said: "I will sell the conserve and sell the macaroni and with what balance you give me, we will make up the amount, the balance, that he would be entitled to under the sale."

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Q You knew when you made that check for two thousand dollars that Gatto did not have two thousand dollars in bank, didn't you?

A I assumed that.

Q You assumed that he didn't -- how was he going to get two thousand dollars; did that pass through your mind, and if so please tell us what passed through your mind? A I asked him at that time how he was going to pay it and he said he had conserve, for about nine hundred dollars which he was holding out at the time, on account, and he was going to take off the duty, which would be worth a good deal more -- he had olive oil and wine and macaroni -- and he had, I assumed whatever money I had given him, on hand; I had given him about seven or eight hundred dollars. I assumed he had that money.

Q You had given him, I see in July money, like \$14.74, \$53, \$23, \$50, \$50? A No, I gave him more than that.

Q I speak of July. A Your Honor is mentioning the small sums, but there are items of two hundred dollars.

Q \$210, \$10, \$15, \$5, \$6; did you think that that check was going to be met? A I believe so, yes.

Q With your experience in the citrus fruit trade -- you don't think Gatto could tell you anything about the citrus fruit trade that you did not know -- in other words, Gatto was not a man you could get information from in regard to the citrus fruit trade, or anything, any part of it? A He was a pretty well posted man.

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Q He testified he was never in the citrus fruit trade before this particular instance? A His letterhead showed that he was in the fruit business years before.

MR. MOSS: I object to this line of examination.

BY THE COURT:

Q Did you know that Gatto was acting as a commission merchant in this Fazio matter?

Objected to. Overruled. Exception.

A No, sir.

Q Did you know that Gatto was acting as a commission merchant in the Fazio lemon transaction? A No, he told me when he gave me those documents that his people had sent it to him. I did not know where they came from.

Q You did not know Fazio had sent them? A At that time, no, sir.

Q In answer to your counsel's question I wrote down this as your answer, see if I get it right: "I did not know that Gatto acted as a commission merchant, but I assumed that he did."

Did I take it down wrong? A If I made such a statement I would say that --

Q Let us get at it in another way, did you think, when you received that bill of lading, when Gatto handed you that bill of lading, that he had the absolute, not only the legal title, but beneficial interest in those lemons? A Positively so.

Objected to. Overruled. Exception.

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THE WITNESS: I would not have made any further advance, nor would I have taken the bill of lading if I thought for a moment that he had no right to dispose of the property.

BY THE COURT:

Q He had a right to dispose of it, you knew that, as commission merchant? A I mean in the form which he did.

Q A commission merchant who receives a consignment of goods from abroad or anywhere else has a right, and it is his duty --

MR. MOSS: I object as assuming that there was a consignment of goods. The form shows it was not a consignment but absolute delivery.

Objection overruled. Exception.

BY THE COURT:

Q Do you say as a lawyer, that the form that that bill of lading was in for the first lot of lemons from Fazio, that you did not know it was a consignment sent to be sold on commission or brokerage? A Positively I did not know it -- what his agreement or conditions with Fazio were.

Q Did you think Fazio had sent over that first lot of lemons to be conveyed absolutely to Gatto and not to be sold by him on commission?

Objected to. Overruled. Exception.

A I did not know what he was to sell them for. All I knew was that the bill of lading upon its face showed me he was the owner of the property. That was all I had to look for, and as

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he was the owner of the property on the face of the documents and he told me to pay myself, I ~~felt~~ I was justified in doing so.

Q Did you think at that time Gatto was financially worth the amount of those lemons, the value of those lemons?

Objected to. Objection overruled.

A He is a property owner on the other side.

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

A At that time?

Q Yes.

Objected to. Overruled. Exception.

A No, sir.

Q Were there not some small judgments against him at that time? A I did not know it until the man came in court and told us

Q Did you know what his real name was? A No.

Q Do you know where the authorities who had him arrested for failure to file the certificate in the County Clerk's office, got his real name and put ~~it~~ in that paper? A Why, from Mr. Bonano or Nicchia.

Q Do you know where Bonano or Nicchia got that real name and put it into the papers against him? A He has always gone under that name for years, as I understand, S. E. Gatto.

Q Not S. E. Gatto, but that paper wherein he was arrested for failure to file a certificate in the County Clerk's office, giving his monther's name, that is, Ruggiero -- it does not call him S. E. Gatto, but calls him Salvatore Ruggerio Gatto, do you

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know where they got the Ruggiero there? A I do not know.

Q In the affidavit against him? A I never saw the affidavit before.

Q Read it. A No, sir; I don't know where they got it.

Q You did not give it to them? A No, positively not.

Q You have testified that at the present time there is \$126.17 balance on that first Pazio transaction? A On the two transactions.

Q On the two transactions? A Yes.

Q Do you know whether Bonano knew Gatto except in this particular transaction, trying to collect this money? A I don't know.

BY MR. HAYWARD:

Q You never saw that affidavit? A I did not, no, sir.

Q You pleaded the man guilty on that affidavit? A Mr. Levy told me -- I knew the contents more or less -- Mr. Levy attended to the police court and Gatto told me what there was and he told me what the facts were and I advised him to please guilty.

BY THE COURT:

Q The District Attorney asked you if you pleaded your client guilty without reading the paper?

MR. MOSS: His answer was that Mr. Levy had read the papers and appeared in Court.

BY MR. HAYWARD:

Q You told us yesterday, you referred to this ledger to

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find out when you first got acquainted with Salvatore Gatto, and after looking at the book you found out that it was in 1910, is that right -- and where on the book did you find that? A Allow me to show you.

Q I will hand it up to you.

(The witness indicated).

Q Where in here have you the Zimbaro transaction? A Here (indicating).

Q I call your attention to the words on page 137 of your ledger "for account of S. E. Gatto" and I ask you when that was put on that ledger? A On or about that time.

Q On or about what time? A When the account was opened.

Q Well, of course, when you put Salvatore Zimbaro, Messina, on this book, you wrote that on down before you made any entry?

A I put first Salvatore Zimbaro.

Q And afterwards, at some subsequent time you put S. Gatto & Company? A No.

Q Examine it and look at the color of the ink. A It is the same. One is blotted and the other is not blotted.

MR. MOSS: I object to the examination upon this line because it is going into matters that were not gone into on the direct examination. I have not complicated this matter by bringing in the Zimbaro account. There is no issue as to that, as it appears in the ledger.

THE COURT: He says he owed him \$700 on the Zimbaro

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account.

MR. HAYWARD: My recollection is that he testified yesterday, I will say to Mr. Moss, that he referred to his ledger, where he said "for account of Slavatore Gatto" in referring to the Zimbaro account.

MR. MOSS: I think you are mistaken.

MR. HAYWARD: If I am then it is not cross examination on your direct, but I am quite sure that was brought out by you.

BY MR. HAYWARD:

Q In this same book, what was this, your office book, your office ledger or private ledger? A Private ledger. I keep some accounts in.

Q Do you keep any accounts in here that you also keep in your office ledger? A I only keep a docket for office matters. I enter all my charges in the docket.

Q What is the scope of this book? A Other private matters -- sometimes I loan money or do a transaction of that kind and I put it down there.

Q This book is about four years old? A The time you see, some more than that I guess.

Q You told us, at one place, that you always made your entries in this book immediately, I think? A No. I would enter from my check book.

Q Either the court or Mr. Moss: "Q Whose handwriting is

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that ledger, you hold in your hand? A Mine. Q When were the entries made in that ledger? A At the time represented.

Q At the very time? And you answered yes and then Mr. Moss said: "I think you said in your direct examination it might have been made within a day or two," and you answered "within a day or two". And the Court said: "Practically?" And you said "Practically at the time". Then the ledger was offered in evidence and I did not understand Mr. Moss offered only the page.

MR. MOSS: That was all I offered.

BY MR. HAYWARD:

Q You would say these entries were made within a day or two of the time they purport to appear in this book, at the most? A Yes, except those charges I carried forward.

Q From your other account -- now, you just take this ledger, Mr. Saitta, and show this jury just where and how you made the entry of the fifteen hundred dollars that was paid to you by Brown & Seccomb. A Here it is. I told you I made a mistake. It should be July. What have you got? A I have no dates.

Q You have a date there -- it says "Aug." -- What does "Aug." stand for? A August -- I made a mistake. That was entered afterwards, probably.

Q Didn't you just get through saying that you always put it in within a day or two? A As a rule, everything.

Q Do you want to take that back? A No. Might be some items I did not enter right at the time.

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Q The \$1500 item is the biggest item in your book. A On that account, yes.

Q And you say that one item you overlooked and did not enter in your book, is that right? A I wouldn't say that I did not enter it at that time and won't say that I did.

Q You have already said you entered them all within a day or two? A On or about that time.

Q And within a day or two? A Most of them, yes.

Q The next and biggest and most important item in there is \$450? A Yes, sir.

Q Both of those items being paid to you? A Maybe this I did not enter until afterwards.

THE COURT: Just answer the question.

BY MR. HAYWARD:

Q Those two items, the items coming to you, were not put in there at the time the payments were made to you, nor at the time the dates purport to be in that book, were they? A There is no date in that book. They are without date.

Q I call your attention to the word "Aug." and I ask you what that stands for, I mean opposite \$1500? A I think the fifteen hundred dollars was not paid in August, but I think the other one might have been.

Q You made this entry yourself, you know what you mean or meant "Aug." to mean in this book? A Yes.

Q What did you mean it for? A The month of August.

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Q I ask you to tell the jury if the \$150⁰⁰ entry is on the same line with "Aug.", with the word you say means August?

A Yes.

Q As a matter of fact, when was that \$1500 paid to you by Brown & Seccomb? A July.

Q What part of July? A About the middle of July.

Q I direct your attention further back, to an entry made in July, July 16th, cash \$281.24, when that entry was made in your book July 16th upon the date it purports to bear, you had been paid \$1500 before that? A Yes, sir; probably I had.

Q And you had not put ^{it} in in your book? A No.

Q And then here is another one: July 25th? A I probably overlooked entering it and did it as soon as I remembered.

Q You put down another entry in there of \$200? A Yes, sir.

Q And ditto marks under that July 25th, \$50, didn't you?

A Yes, sir.

Q And so on down, so that there are entries in your book of one, two, three, four, five entries in your book of sums ranging from fifty dollars up to \$691, that as matter of fact were entered and were paid after the \$1500 and that were put in your book before you put in the \$1500 in? A It appears by the book that way, but the fact is this: That when I got the memorandum probably from Brown & Seccomb, I then entered these items here, and left them out until I got their memoranda, because I did not know what the duty was until I got the bill from the broker, and

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I would not get the bill from the broker right away, would not get it maybe until after a week or ten days. That accounts for the delay in entering it. When I got the bills from the Customs House Broker, then I entered them.

Q But you had the checks from Brown & Seccomb? A No question about that.

Q For the \$1500 and the \$450 and at least \$1500 -- you waited from the 14th or 15th of July until some time later, when you entered them in your book as having been paid in August, didn't you? A There is no date as to the entries -- I cannot account how that word August is there.

Q In the meantime you made five entries in July after you received the \$1500? A Those entries were all made at the same time.

Q They are all July entries. Now, Mr. Saitta, this book entry that I have drawn your attention to, would you now say that entry was made in August, actually made in the book? A It might be.

Q As a matter of fact, you cannot tell when it was made? A I have no recollection.

Q And it is also true that when you were brought up here and given the privilege of a lawyer to make any explanation you chose to the District Attorney, you knew the serious matter that was involved here? A I did not see anything serious about it.

Q You did not? A No.

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Q You did not think the District Attorney's inquiry was serious? A I did not know what the District Attorney -- the District Attorney probably may have had some reason to call me but I knew my conscience was clear. I done purely a business transaction and did not think there was anything wrong at all. If I did, I would not have done it.

Q You thought the District Attorney was entitled to the truth? A Certainly, but I am sorry I gave the District Attorney any information whatever.

Q Now then, as matter of fact, knowing he was entitled to the truth about this transaction, and knowing that you got this money in July, and knowing that your entry in your book was false when it says you got it in August, you prepared a statement and brought it to the District Attorney in which you swore or said -- it is not under oath -- in which you said that \$1500 was received in August and I hand you your statement. A I probably followed my book and innocently put it down there.

THE COURT: Answer the question.

A I gave you the copy exactly as it appeared in my book. You would not want me to give it any different. I was under investigation and left things exactly as they were. I did not intend to alter them. The thing was honest with me, and I gave you the copy of it, of what I had honestly.

Q But this does not purport to be a copy of your book, it purports to be a statement of facts as they occur. A No, sir;

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I was asked for a copy of my ledger and I got it and gave it to you.

Q Who asked you for a copy of your ledger? A A copy of the account, Mr. Ellison, I believe.

BY THE COURT:

Q Did they know anything about your ledger when they asked you for a statement? A I told them I had an account in my ledger and asked me if I would make a statement. I said certainly I would and I copied it exactly as it appeared -- gave it to my stenographer to copy exactly as it appeared in my ledger and I brought it to them. I could not bring them something different, that would be deceiving the District Attorney.

Q And you wouldn't have done that at all, deceived the District Attorney? A I do not want to do things any differently than what they are.

Q That is the reason you brought this statement as showing how things were? A I made a mistake in my ledger and had it that way.

Q And when you went to copy this statement or had it taken from your ledger, after the thing was inquired into by the District Attorney, that you then knew that the entry in your ledger was a mistake? A I may have called it to the District Attorney's attention at that time. I don't remember. I think I did tell the District Attorney it was paid in July. I think if you get my statement you will find it is so.

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Q This Zimbaro lemon transaction, you tell us you were doing that just out of charity for this man and to get a couple of hundred dollars back that he owed you? A I had no idea I would ever get back the money I gave him at that time.

Q You did not? A But he told me that if he was helped he had sufficient connections on the other side and he was a property owner on the other side and through his sisters and through his brother in law and through other friends, he could do a great deal of business, but in order to do so he would have to get somebody first to make a start for him, and that was just what I did.

BY THE COURT:

Q Did you believe him when he said he was a property owner on the other side? A Yes, sir; he is. He has told me time and time again, he is a property owner on the other side and if Fazio wants, he could pay himself on the other side.

BY MR. HAYWARD:

Q When he proposed this Zimbaro lemon transaction to you, you said "No, no; I will lose by it", didn't you? A I said "I have taken the note but I don't want to see or have anything to do with any more lemons, as lemons have been a dear thing to me, and it was weeks and weeks before he persuaded me, that I finally consented to open that credit.

Q You said you would not have anything to do with lemons, that you had lost a great deal of money in lemons in the past.

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few years and would not have anything to do with them at all, and then he said to you according to your testimony "It is not you, it is for me", and the market is very high and you cannot lose any money"; now, didn't you know that if those lemons went bad that Gatto could not pay you any money, this man who had been starving and whose wife had been on her knees begging you for alms for two years? A As far as going bad at that time of the year, there was little chance. They may go partly bad, because lemons, sometimes, according to the month in which they are shipped, they keep for two or three or four or six months, according to the quality and kind, and I knew there was very little chance of rot, if he could get good stuff and he assured me his brother in law would not deceive him and that he was a man of business and that he would send him right stuff and the market being good here, I consented.

BY THE COURT:

Q Did his brother in law Zimbaro, send him those on commission to sell on commission? A No, sir; he told me to open a letter of credit for a certain amount.

Q For Zimbaro? A Whether they were on commission really or bought by Gatto I still don't know.

Q Did not Zimbaro collect his ^{commission} direct from the credit that you opened in the Irving National Bank for him? A He collected whatever I opened for, for the amount that Gatto told me, whether it was the full purchase price, or whether Gatto owed him any

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balance, I don't know.

Q Did you pay Gatto any money for these Zimbaro lemons?

A No, sir; why would I?

BY THE COURT:

Q Did the money so received for these lemons -- did Zimbaro receive it? A No, I opened a letter of credit to Zimbaro.

Q Did you pay Gatto for the Zimbaro lemons or any part of the money for the Zimbaro lemons? A There was none to be paid at that time, because when the lemons were sold here, they did not bring enough to satisfy the loss which I had made, which I paid to the Irving National Bank ^{within} \$700.

Q Did Gatto get any of the money out of the Irving National Bank? A He could not.

Q Zimbaro, all that was gotten out of the Irving National Bank went to Zimbaro? A Yes.

Q That being so, should you not charge that Zimbaro loss to Zimbaro and not Gatto? A No, sir, because I bought it for Gatto. Gatto requested me to do it.

BY MR. HAYWARD :

Q So that if there had been a profit on those lemons instead of a loss, you were going to give the profit, all of it, to Gatto?

A Probably would deduct what Gatto owed me and give him the balance, certainly; less two per cent.

Q That would be a fair commission? A That is what I always charged.

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Q So you claim now that you had no interest whatever in the lemons except to the extent of the \$200 that Gatto owed you, and two per cent. commission? A That is all, as far as I can remember.

Q How much were those lemons worth a box? A I cannot --

Q The amount was about \$600 that was put up in the bank, five or six hundred dollars? A No, I paid the bank something like thirteen or fourteen hundred dollars.

Q There were six hundred boxes? A Six hundred dollars and deposited with the bank a dollar a box to open the credit and the credit was opened and after the bills of lading and invoices arrived here, we had to pay the bank before they would deliver the documents.

Q What was their net worth, six hundred or seven hundred dollars? A Worth more than that -- I think Gatto paid for them something like \$1300 on the other side.

BY THE COURT:

Q You think Gatto paid that? A I paid it for him -- that was the credit opened for, for that much.

BY MR. HAYWARD:

Q So you took the chance, as a matter of fact of losing what you ultimately did lose, in the hope of collecting the two hundred dollars that this man owed you, is that right? A No, sir; out of pure kindness; that was all.

Q Just to help this man? A Kindness.

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Q You did not have any interest in those lemons except or beyond the point of collecting your money and the commission and kindness? A He wanted me to have an interest -- wanted to go in on ten thousand dollar box deal.

Q Answer the question, did you have any other interest in the lemons except two hundred dollars, two per cent commission and kindness? A I don't know whether he promised to give me some extra compensation or not. I do not know. I did not expect it.

Q If that is true, how does it come that you agreed to give Brown & Seccomb ten cents a box on that Zimbabwe shipment for a prior date -- ten cents a box being almost ten per cent of their net value? A Ten cents a box is less than two per cent, the way they were selling then and I did not care -- that was a standing rule, that Brown & Seccomb would keep ten cents a box, the minute we sold them. I made that good.

Q That took sixty dollars out of it? A Whatever it was, I don't know.

Q That was about ten per cent of the net proceeds? A No, No, sir.

Q And about five per cent of the gross value? A Because they realized so little and I cannot help that -- no one can help that.

and
Q If they were Gatto's lemons, all that you had in it was his debt to you and two per cent, what were you doing taking

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credit from Brown & Seccomb for ten cents a box for? A That was an old matter I had agreed with Brown & Seccomb, every box of fruit I would sell I would leave ten cents a box and they took it out of that lot.

Q You let them take it out? A What difference does it make I had agreed to do it.

Q If they were Gatto's lemons, it was his sixty dollars? A It makes no difference whose they were, as long as they were sold there. I had that on joint account with other stuff.

Q So the rule that you made with Brown & Seccomb applied to everybody's lemons whether they were yours or not? A Where they were joint account or otherwise. They did not know. They did not care to whom the lemons belonged. They only look to the man who brings them there.

Q Did you tell Gatto it has to be subject to ten cents a box? A I did not charge Gatto -- you take my ledger and you will see - I credit Gatto with the sixty dollars and charge it to myself.

(The Court admonishes the Jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until Monday morning next, March 30, 1914, at 9:00 o'clock A. M.)

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New York, March 30th, 1914,

Trial resumed.

MR. MOSS: Before we start proceedings, I wish to express my thanks to your Honor and to the jury, to the District Attorney, the stenographer and clerks and all who have acted together to bring about this early session this morning, which I consider to have been for my personal convenience.

THE COURT: Not so much for your convenience, Mr. Moss, but on account of your necessity.

MR. MOSS: If your Honor please, I noticed in the minutes that the bills of lading are not given in full, but there is the statement that they are the usual bills of lading. I would like to get certain particulars that are on the bill of lading into the record. I think that can be done by consent now.

THE COURT: They are in evidence?

MR. MOSS: Yes. I hold in my hand a bill of lading on the steamer Ivernia, which is Exhibit 9-B, and I wish the record might show that the name of the shipper on the face of the bill of lading is stated to be Guiseppe Fazio; the steamship is known as the Ivernia; the port to which property is to come is New York, and the fruit is described, and then in the blank, showing the name of the person or individual to whom the property is to be delivered, is the word

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"order". As to the other bill of lading which is People's Exhibit 10-B, the name of the shipper is the same as in the first bill of lading. The ship is stated to be the Ultonia; certain boxes of lemons are described, and then in blank, to show the person to whom the goods are to be delivered, is the word "order."

PHILIP S. SAITTA, the defendant, resumes the stand :
CROSS-EXAMINATION continued by MR. HAYWARD:

Q Referring again to the Zimbaro transaction that we were talking about Friday afternoon when we suspended, I hand you two documents which I will ask the reporter to mark Exhibits 58 and 59, and which I will offer in evidence.

MR. MOSS: I object as irrelevant and immaterial.

MR. HAYWARD: I offer them as part of my cross-examination.

THE COURT: It is the Fazio matter?

MR. HAYWARD: No, the Zimbaro matter. I will withdraw my offer until I have asked a few questions.

(The papers referred to are ~~marked~~ for identification People's Exhibits 58 and 59).

BY MR. HAYWARD:

Q I show you People's Exhibit 58 for Identification, they compose the documents in one of the shipments of the Zimbaro lemons, do they not? A Yes.

Q I direct your attention to the invoice dated Messina, the

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8th of March, 1913, invoice of 480 cases lemons, purchased by P. S. Saitta of New York, from letter of credit to be shipped by steamship Barbara and also --

MR. MOSS: The documents are not in evidence and the contents should not be stated.

MR. HAYWARD: Then I will offer them at this time.

Objected to as incompetent, irrelevant and immaterial. Overruled, . Exception.

People's Exhibit 58 for Identification is received in evidence and also People's Exhibit 59 for Identification is received in evidence, and so marked.

BY MR. HAYWARD:

Q And I will ask you to state, Mr. Saitta, if in either of these groups of documents, the import blanks, bills of lading with the papers attached for the two shipments of the Zimbaro lemons, if it is not a fact that you appear therein as the purchaser of these lemons? A I do, that is because we opened the credit and it could not be any other way. I opened the credit in New York payable to the men in Italy, and the man in Italy looks only as to who opens the credit.

Q I direct your attention to the affidavit on the back of each of these import blanks, and I ask you to state if it is not a fact that unlike the affidavits made by you in the Fazio transaction, the affidavits in this case, the form used is declaration of owner in cases where merchandise has been actually pur-

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chased? A Yes, sir. Could not have been entered any other way, because being the consular invoice was a blue one, the entry must be made as it is indicated in the invoice.

Q But in these the lemons were actually purchased? A Purchased by Gatto.

Q They were actually purchased? A Yes.

Q With your money? A Well, we advanced the money.

Q Who advanced it? A I did.

Q Then they were purchased with your money? A Part of the money -- I deposited \$600. with the Irving Bank and my credit.

Q Gatto did not put up any money on these Zimbaro lemons?

A No.

Q It was your money that purchased these lemons? A Exactly.

Q It was a purchase? A Yes, sir, but that money was a loan to Gatto.

Q It was an actual purchase from Zimbaro? A Yes, sir, positively.

Q In that respect it was different from your Fazio transaction, was it not? A Yes.

Q And on the one where the lemons were actually purchased with your money, the Zimbaro transaction, the affidavit used is the declaration of the owner in cases where merchandise has been actually purchased, and in the other one, the Fazio transaction where the goods were not actually purchased, the other affidavit is used, to wit, the one "Declaration of consignee, importer or

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agent where merchandise has not been actually purchased*. That is a fact, A Yes. It could not have been done any other way except as it was done.

Q And throughout these documents concerning the Zimbaro transaction, Mr. Gatto's name is nowhere mentioned? A It could not be, because it did not appear on the papers.

Q - You say to us now that this Zimbaro transaction, that you put up the money, that with that money the Zimbaro lemons were actually purchased, and that you still expect, in the event of a profitable termination of the Zimbaro transaction, to give to Mr. Gatto all the profits except the \$200. that you say he owed you, and that in the event of a loss, you expect to stand the loss unless you can collect it from Gatto? A Yes, sir, certainly.

Q That was the way of that transaction? A Certainly.

Q That was done as you said, out of charity? A No charity about it. I was doing those transactions every day in the week. There was not a day I did not do transactions like that.

Q How often? A I did it to help him.

Q How often did you ever do a transaction in all the years you have been in this business for anybody where you stood all the risk and expected to take none of the profits? A At the least from two hundred to five hundred times I will say.

Q Where the person for whose benefit you say you were acting, was known to you to be insolvent and unable to pay any money and already in your debt? A I did not know Gatto was insolvent. I knew he was poor.

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Q You did not know he was insolvent? A He told me he owned property on the other side, and he does own property on the other side.

Q Did you expect, in the event of a loss here, that Gatto, this man who had been borrowing dribblets of money from you, could pay that loss, in addition to the \$200. he already owed you for borrowed money? A To be absolutely frank, I did not think there would be any loss. That was when I made a mistake. The market was high and if the people had shipped proper fruit, there would not have been any loss, but instead of shipping good fruit, they shipped trash, and in consequence of that, there was a loss.

Q If there had been a profit you would have turned that profit over to Gatto? A There is no question about it.

Q If you thought there was no possible reason why there would be a loss, why did you say to Gatto words to this effect, when he came in "No, that you have had too much bad luck with lemons, and it was a risky thing, and one could never tell how it was coming out", or words to that effect? A I told Gatto I had taken an oath that I would never buy another box of lemons, and that was before God Almighty, I did take an oath I would not buy for my account, another box of lemons. In fact I told him whenever I saw lemons I wanted to turn the corner, because lemons were the cause of my losing pretty near everything I had.

Q Knowing that, you realized it was a gambler's chance people took on lemons? A I would not have done it, only he told me

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that his brother-in-law was so dear to him, that he would not deceive him, and give him the best of everything, and could not possibly be any loss.

Q Was the only reason you spoke as you did about having taken an oath, or having sworn never to buy lemons again, was the only reason for that because you were afraid you would get bad lemons, or was it because you knew the uncertainty of the lemon market and the uncertainty of the lemon transaction, whether the goods were bad or not? A I had lost so much money and had so much bad luck myself, I did not want to go in it any more. In fact, during the time he wanted me to open that credit I had lemons after lemons offered to me, and refused to take them. I need not have gone to Gatto. I could have ordered a hundred thousand boxes of lemons, if I wanted to receive them.

Q I direct your attention to the letter Mr. Moss offered in evidence, directed to the Commercial Cable Company of this city, signed by you, dated June 5, 1913, in which letter ^{you refer} to certain cables, payment for the transmission of which the Cable Company was demanding from you; I hand you the copy of that letter which Mr. Moss has allowed me to use until we can locate the original, and I direct your attention to the statement by you therein that the only one of those cables for which you are in any way responsible is for the telegram or cablegram of May 4, 1913? A I believe--

Q Wait just a minute until I finish my question -- May 3rd, 1913 -- I now hand you that particular one addressed to Peraldo,

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and I ask you if that is the one you refer to in the letter? A No.

Q Which one did you refer to in the letter? A Probably it is there (indicating).

Q I will ask you to find it in the group, the one you say you were responsible for, and the only one? A I will add further I do not know Peraldo at all. Never heard of him before.

Q You never heard of Peraldo? A Never in my life.

Q Perhaps I was mistaken, perhaps that is the one (indicating, showing another telegram)? A This is the one, yes. That is addressed to my brother-in-law in Palermo, asking me for a power of attorney, and I cabled to him it would be forwarded in a few days.

Q That is the only one you refer to your being in any way responsible for? A At that time that was all I saw.

Q I direct your attention to a cablegram to Peraldo at Turino, signed Gatto, April 19, 1913, and direct your attention to the writing on the bottom "Charge P. S. Saitta", and I ask you whose handwriting that is in? A It looks like my handwriting.

BY THE COURT:

Q Don't you know? A It looks very much like it.

Q If you do not know, say so? A No, it looks very much like my handwriting.

Q Is it yours? A I would say yes.

BY MR. HAYWARD:

Q That is a cable addressed to Peraldo?

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THE COURT: What is the charge account there, how much is the charge?

MR. HAYWARD: On this particular one?

THE COURT: Yes, on that particular cablegram -- it is on the cable?

THE WITNESS: Yes.

MR. HAYWARD: I think we will have --

THE WITNESS: I cannot recollect, because this refers to macaroni and I cannot recollect.

MR. HAYWARD: \$2.79 seems to be the charge.

THE WITNESS: He may have given me the money and I had it charged to the account. I cannot tell, but I do not know that man from Adam. It is one of his matters.

BY MR. HAYWARD:

Q You never heard of Peggino? A No.

Q Here you are authorizing in your own handwriting the Cable Company to charge Gatto's telegram to him, to your account?

A That may be.

Q That is right? A Yes, that refers to macaroni, and I never did any macaroni business.

MR. HAYWARD: It is consented that the translation is as read by the defendant.

THE WITNESS (reading) "We expect twenty-five quintos 200" -- this refers to tomato paste -- "We expect quintos twenty-five, 200 grams, 25 -- 500 -- 90 lire, board Genoa"--

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which means f.o.b. Genoa.

MR. MOSS: What is it signed?

THE WITNESS: Gatto. Then there is "Charge P.S. Saitta"

BY MR. HAYWARD:

Q But that is what is in your handwriting, charge P.S. Saitta?

A Yes.

The telegram is marked People's Exhibit No. 60 in evidence.

BY MR. HAYWARD:

Q I now hand you another cablegram dated February 12, 1913, addressed Zimbaro, Messina, signed Gatto, and direct your attention to the words written in lead pencil on the bottom of this cablegram "P. S. Saitta, 258 Broadway", and I ask you to state in whose handwriting that is in, if you know? A Mine.

MR. MOSS: Will you get that translation into the evidence also, please.

MR. HAYWARD: It is conceded that the translation is as follows: "Please make an offer for Verdelli for May shipment."

MR. HAYWARD: The amount charged on this is \$2.95.

BY MR. HAYWARD:

Q So that as matter of fact, when you wrote this letter to the Cable Company repudiating all of these telegrams except the one, and when you told the representative of the Cable Company to arrest Gatto for fraudulently using your name, at that very

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time you had o.k'd. specifically in your own handwriting at least two of these cables, had you not? A That may be, yes -- that had nothing to do with hundreds of dollars that he spent without my consent, and further the reason I wrote them that letter, there was only one, was because I had no way of finding out just what I owed. I o.k'd those and I had forgotten it. It was not a matter of my own. If it had been it would have been in my letter book and I could have traced it.

(Another telegram is now offered in evidence. Received and marked People's Exhibit 61).

BY MR. HAYWARD:

Q These two I have identified and offered, were included in that Cable Company bill, were they not? A Probably -- no doubt must have been.

Q Also the one of May 3rd which you acknowledge in your letter and which you said was the only one? A Yes.

Q Now I hand you these others, if your counsel wants to offer them in evidence, he may do so -- I am simply asking you for the purpose of identifying them -- I hand you these others, this bunch of telegrams or cablegrams, and I ask you to be good enough to run through them and see if they are not cablegrams which were included in the bill that the Cable Company demanded payment from you for, and if that is not the bunch of cablegrams? A There is many more than these.

Q These were included, were they not? A As near as I can tell.

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MR. MOSS: Do you claim those are all that were included in the bill?

MR. HAYWARD: I think these were all included in the bill, and perhaps more.

MR. MOSS: That is what I want to know.

THE WITNESS: There is a great many more.

MR. MOSS: I request you to offer in evidence, if you see fit to do so, any of those cables which you say are signed by Mr. Saitta in his own handwriting.

MR. HAYWARD: I have done so.

MR. MOSS: All of them?

MR. HAYWARD: Two signed with his name, I have.

MR. MOSS: There is another one signed Saitta. I would like you to find out about that -- it says "charge Saitta."

MR. HAYWARD: It says "charged".

MR. MOSS: It is in the handwriting of the telegram -- it is all one hand.

MR. HAYWARD: I should say it was.

MR. MOSS: Why not find out whose handwriting that is.

BY MR. HAYWARD:

Q Do you know whose handwriting that is? A Mr. Gatto's.

MR. MOSS: Will you have it marked for identification.

MR. HAYWARD: Certainly.

(The paper is marked for identification People's Exhibit No. 62).

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BY MR. HAYWARD:

Q Handing you People's Exhibit 51-A, being the letter which you wrote to "Dear Biagio" -- B. Calandra, 184 Reade Street, which has already been offered in evidence, I will ask you if you are familiar with Mr. Calandra's handwriting? A Yes.

Q This letter, the one I refer to, is the one in which you say "Dear Biagio" -- is that the way you pronounce that? A Biagio.

Q "I beg you to deliver to Mr. Gatto all the money that you have and a check for the balance to complete three hundred, with esteem, Philip S. Saitta." Now I hand you checks signed by S. E. Gatto on the Corn Exchange Bank, the branch in Brooklyn, payable to Calandra, B. Calandra, aggregating \$5,798.55, and will ask you to examine at least some of them and state whether or not the B. Calandra who endorsed these checks is the same Calandra to whom you wrote the letter starting "Dear Biagio"?

THE COURT: Is it the B. Calandra on Reade Street?

THE WITNESS: Yes.

BY MR. HAYWARD:

Q There is one (indicating)? A That is stamped -- that is the same person.

Q That is the same person? A This is his corporation. Had nothing to do with him individually.

Q But those are his endorsements, are they not? A I presume so. It is only a stamp. You asked me if I knew his writing.

Q I thought these were endorsed perhaps, some of them, in

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his own handwriting, and they seem to be endorsed by a stamp.

THE COURT: Were those checks given by Saitta to Calandra?

MR. HAYWARD: They were given by Gatto.

BY MR. HAYWARD:

Q The B. Calandra inc., which appears on the back of these checks as an endorsement, was the company that Biagio Calandra had, wasn't it? A I assume so.

Q You know it, don't you? A Yes, I presume so.

Q Don't you know it, don't you know as matter of fact that this stamp "B. Calandra Inc." was the stamp that the same man used to whom you wrote this letter. A Yes, sir -- I would say yes.

MR. HAYWARD: I will say that I have gone over these checks, Mr. Moss. Will you admit the totals are as we have them here?

MR. MOSS: Yes, if you say you are responsible for them.

MR. HAYWARD: We have tallied the checks up, and Mr. Moss concedes the Gatto checks already offered in evidence.

MR. MOSS: The checks by Gatto on the Corn Exchange Bank.

MR. HAYWARD: Yes, on the Corn Exchange Bank in Brooklyn-- that those payable to the defendant Saitta aggregate \$2,749.70 that those payable to B. Calandra aggregate \$5,798.55; that those payable to cash aggregate \$430., and that those drawn to miscellaneous payees aggregate \$535.25, and that

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the total of the Gatto checks is \$9,513.50.

BY MR. HAYWARD:

Q You have told us, I think, that there were some exchange checks between Salvatore Gatto and yourself? A Yes.

Q Can you by looking through these checks, tell which of the checks payable to you, aggregating \$2,749.70, were exchange checks, or whether they were not, as matter of fact, all exchange checks? A I guess those were all exchange checks.

Q Now, what was the purpose of these exchange checks, tell us that? A He used to come down and he wanted cash or he wanted a check. He said he would have to pay this or that or the other, and that is the way those things were exchanged.

Q You would give him the cash for these checks that were payable to you? A No, he often times wanted my check because he could not cash his check, and he would want my check so that he could cash it and use it, and then give me his check for it and I would take it.

Q Would you give him your check for a like amount? A As a rule I would. Sometimes I would give him some cash and part in check.

Q When he wanted cash, if that was the reason he brought you his check, and if that was the reason you gave him your check which you say he could get cashed, why would you give him part cash and part check? A If I had cash and he needed some right away he would say "Can't you let me have some right away", and I

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would give him some cash and part check, but, as a rule you will find Mr. Moss has checks to cover all those amounts.

THE COURT: The \$2,749., did they go through Gatto's account?

MR. HAYWARD: Yes, and are paid and charged to his account in Brooklyn, and that is the account we contend and our witness Gatto says was managed by this defendant.

BY THE COURT:

Q That is the fact, that is \$2,749. of exchange checks that you gave to Gatto, were put through Gatto's account in Brooklyn, Corn Exchange Bank? A No doubt if the amount is correct, for which he has my checks, and independent of the checks I gave him for the payment made on account of the lemons, those checks are separate.

Q What did you do with Gatto's checks, put them through your own account? A Yes.

Q They were not good, I think you have said? A No, sir --he generally would make them good. There was one or two came back.

Q You said he would come to you and say he needed money, he did not have any money in bank or did not have money, and ask you for money and you would give him a check or check and money? A He claimed he was doing business in the city with macaroni and oil, and this and that, and often times say he needed money for duty and one thing and another, and I would give it to him.

Q And he would give you a corresponding check? A Yes.

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Q Did you think that check was good at the time he gave it to you or think it was not good at the time he gave it to you, but that he would cover it? A Sometimes he told me it was good and sometimes he told me he would deliver merchandise and make it good.

Q When it was good, when his own check would be good at his own bank, was there any particular hurry or virtue in his using your check? A Except that the people in New York would take my check and probably would not take his.

BY THE COURT:

Q That would take how long to find out, if his check was good, forty minutes? A I don't know.

Q Where was his bank in Brooklyn? A Often times -- away over in Hamilton Avenue.

Q Where does it say the Corn Exchange Bank is in Brooklyn?

MR. HAYWARD: It is 79 Hamilton Avenue, Brooklyn, South Brooklyn branch. Columbia Heights.

THE COURT: Is that right over the Wall Street ferry?

MR. HAYWARD: Not far from the Wall Street ferry.

MR. MOSS: You have to take the Hamilton ferry -- not the Wall Street ferry at all.

BY MR. HAYWARD:

Q So that Gatto, when he wanted cash, according to your theory, instead of going to his bank where he was known, and writing the check "pay to cash", as some of these are written, in-

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stead of doing that in a majority of cases he would come over here to New York and get you to cash his checks? A I could not very well remember every time that he wanted money.

MR. MOSS: He has not said anything like that.

MR. HAYWARD: I ask about those he brought across the river and had the defendant cash, according to his testimony.

THE COURT: The witness says that sometimes he would ask for his, Saitta's check, because Saitta was known in New York City and he was not.

MR. MOSS: He simply said sometimes he gave him the check exactly and sometimes part check and part cash.

THE COURT: The District Attorney asked him would he come to New York rather than certify his own check over there and come over and get an exchange check from the defendant.

THE WITNESS: He often times would -- he could not draw a check himself and get the cash or get it certified.

BY THE COURT:

Q Those times that he could -- sometimes you say he asked you for your check merely because you were well known in New York and he was not, and he could not use his check? A I suppose he did not want to go over to Brooklyn and get the cash. I can't tell that.

MR. MOSS: The witness says I suppose.

THE COURT: If he did business in New York, I think you

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said he did business in New York -- if he did business in New York, where was his office?

THE WITNESS: I do not know.

BY THE COURT:

Q You don't know that he did not do business in New York?

A I know he did sell things to people. I know he had considerable stuff to enter in the Customs House, and at one time he made me believe he had several thousand dollars worth of stuff he had on hand that he was receiving from the other side; whether that is true or not, I have no way of finding out. He told me he had fifty barrels of oil, several consignments of macaroni, and I know he had several consignments of macaroni, and that he had one hundred cases of tomato paste, and I know of my own knowledge that he had wine and also had oil -- used to make his own entries and all the time running to and fro, but to whom he sold it I do not know, or what he did with it I do not know.

Q Was this before or after the first Fazio transaction he told you these things? A After the Fazio transaction.

MR. MOSS: He had his own broker, Friedenberg.

THE WITNESS: Yes, Mr. Friedenberg was his own broker.

BY MR. HAYWARD:

Q It was before this statement was published in the newspapers that I have put in evidence -- this was just a month ago, People's Exhibit 54, the one that was published in the Fruitman's Guide?

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THE COURT: Your statement.

THE WITNESS: Certainly.

BY MR. HAYWARD:

Q Then if he was doing all this business in New York and was using these checks that you say you were cashing for him, or giving him your check in return, in order that he could transact all this bulk of business in New York, as represented by \$2,749. worth of checks, why in your statement to the newspaper did you say as follows: "I appeared for him and pleaded guilty" (referring to the Special Sessions trial of Gatto downstairs here) --

THE COURT: Not a trial, a charge or information.

BY MR. HAYWARD:

Q Charge and arraignment -- "I appeared for him and pleaded guilty, although I explained to the Court that Mr. Gatto was not doing business in New York, as his place of business was in Brooklyn, as Gatto had never done any business whatever in New York City" -- you told that to the Court downstairs? A What I meant was that he had no office in New York City.

BY THE COURT:

Q Why not say that, if that was what you meant? A I wrote that in a hurry, on the impulse of the moment, and probably did not use the terms to the letter, but that was what I really meant, and as matter of fact Mr. Gatto only had a place of business in Brooklyn. He was doing some business in New York through -- in Brooklyn to New York.

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BY THE COURT:

Q Let me see if I have this right, you said you thought that Gatto was perfectly competent financially to make good to Fazio, when you took those lemons? A There is no question -- he told me --

Q He told you so -- didn't you also state, or am I mistaken, and if so, correct me -- that your object in taking those bills of lading in the Fazio transaction was in order that you could get the \$80. brokerage and apply it to what Gatto owed you, is not that about it? A No, I would like to explain that.

Q What did you expect to get out of the Fazio transaction except the \$80. brokerage? A Nothing.

Q I thought you stated -- if I am wrong, correct me -- that you would turn over everything except the \$80. and the expenses, of course, but your net receipts would be \$80. brokerage on the Fazio transaction? A No, sir.

Q Let us have what that was? A When Gatto came to me he brought me the documents and the first thing I asked, where did you get them? He said "Never mind where I got them, my relatives came to my rescue and I am going to do a big business", he said, "but -- to show you I am not what you thought I was, take these documents, sell them, pay yourself and give me the balance." He said "I will have a few more in a few days and they will continue from time to time, and I expect to get over 20,000 boxes". I then told him, "Well", I said, "did you buy these lemons on joint ac-

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count or what are they?" He said "Never mind, you take them, that is my business. I want to show you I am an honest man, but" he said, "before I do anything you will have to loan me more money." I said "That will depend how much", and on that day I gave him \$40. by check -- Mr. Moss has the check.

MR. MOSS: The District Attorney has it.

THE WITNESS: Or the District Attorney has got the check, and then from the 7th to the 14th, I gave Mr. Gatto \$588. without ever receiving a cent from anybody.

BY THE COURT:

Q What date was that? A From the 7th to the 14th or 15th, rather, I gave him \$588., and the District Attorney has got every one of those checks. Those were paid actually by check -- two checks went to the bank to take up some documents he was receiving, and two checks to the Customs House broker to pay some duty, and some entries he made on his own account, and the rest was cash given to him by checks. The last time I gave him, the last check, was \$50. It was the date, I think I got the check from Brown & Seccomb, and he wanted more money on that day and I said no. I have only received \$1500. to-day from Brown & Seccomb and have already given you five hundred and some odd, and with this other money you want, plus what you owe me, would come to a great deal more than \$1500., and I will only make the amount up to about fifteen hundred, and later on when I get some money I will only be too glad to give it to you. He said "All right." We then de-

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ducted that \$915. that he owed me, plus what I had given him, which made exactly the \$1500. I received from Brown & Seccomb -- in fact he had three or four dollars more than I had received.
BY THE COURT:

Q That does not answer the question at all -- my question to you was, if you did not expect to make out of that Fazio transaction only \$80. brokerage, what did you expect to make -- you have gone and told me -- instead of answering that you have gone and said to us all the receipts you paid to Gatto, and that is not the question? A I expected to make my 2% commission -- always do

Q \$80.? A \$80., and 2% of the gross sale -- the gross sale was \$4,000. and some odd dollars.

Q That would be \$80.? A Yes.

Q If you expected to make any more out of that transaction, what did you expect to make?

MR. MOSS: I think your question is such the witness thought you referred not only to profits but to re-payment of his indebtedness. You speak only of profits.

THE COURT: I did not make myself clear.

BY THE COURT:

Q What profit did you expect to make out of the Fazio transaction, if it was not limited to \$80. or thereabouts, brokerage?

A None whatever except he was to pay me what he owed me.

Q Then he owed you about \$916.? A \$916. or \$915.

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Q I have it \$916.22? A Yes.

Q That is approximately it within a few dollars -- now, if he could not pay you \$916.22 for a long period of time, and he had been owing you something like, on the Zimbaro transeaction, something like \$700. for some six months, hadn't he? A No, a few weeks.

Q For some time any way -- you could not get it from him? A No

Q You could not get a cent from him? A No.

Q How in the world was Fazio to get anything from him, if you could not get anything from him -- you are his own attorney, right here on the spot, and Fazio three thousand miles away -- how did you expect him to pay to Fazio if you, a lawyer, and his attorney and friend, could not get a dollar from him in that period of time?

MR. MOSS: I object to that question, because the witness has already stated that Gatto had told him of more shipments to come; that there was business on the way, and the second shipment did come. I think that the cross-examination -- that the cross-examination of the Court has slipped away from that which Mr. Hayward was pursuing. I think it tends to confuse the matter at this time, and I object to it.

THE COURT: The objection is overruled. Exception.

BY THE COURT:

Q Now if your only object was to get \$80. out of the Fazio

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transaction, and you believed Gatto, that he had this oil to come and other shipments to come, &c., from which he could make good to Fazio, why didn't you let him sell the lemons and get the \$80. commission out of these things to come in the future and pay you your \$916.22?

MR. MOSS: I object upon the ground it already appears, which your Honor seems to have overlooked, that by that time there was nearly \$600. more money that had been paid to Gatto on the strength of this transaction, and upon the face of these negotiable bills of lading.

THE COURT: Yes, but that I think does not alter the point of the question.

BY THE COURT:

Q If you believe that Gatto when you say he said that he had other big shipments coming, oil, &c., and was going to do a good business and his people over in Italy had come to his rescue, if you believed that, if he said it, why didn't you let him, he having had experience according to yourself in shipments and transactions of this kind and having entered many invoices at the Customs House himself, why didn't you let him enter this Fazio transaction, make the \$80. brokerage and why didn't you out of these things that he was to receive, take your \$916.22?

MR. MOSS: I object upon the ground it is outside of the issue and is prejudicial to the defendant.

THE COURT: It goes to the question.

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MR. MOSS: I simply object.

THE COURT: I will state the reason of it. It goes to the question of whether or not this defendant believed Gatto, in case Gatto told him what he says Gatto did tell him, that his relatives had come to his rescue, that he had big shipments coming, and this defendant says that he thought Gatto was in a position where he could make good to Fazio.

MR. MOSS: The point of the objection is that the question directly ignores the situation created according to the bills of lading on their face.

THE COURT: I understood the defense says those bills of lading, while they are in one form, that those bills of lading are merely formal.

MR. MOSS: Not at all.

THE COURT: Then proceed.

BY MR. HAYWARD:

Q What is the Italian word for star? A You mean star in the sky?

Q Yes? A Stella.

Q What is the word for chamber?

THE COURT: Star chamber.

THE WITNESS: Camera.

BY MR. HAYWARD:

Q Stella camera would be the Italian words for star chamber -- did you ever hear that expression used in Italian in your

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whole life, stella camera? A No, not exactly in those words.

Q You always talked to Gatto in Italian? A Yes.

Q What did you mean -- A He often times spoke English to me.

Q You say that he told you that one of the District Attorneys up here had put him through a star chamber proceeding, those were his words, you say, star chamber proceeding? A Yes.

Q Now star chamber is a Yankee expression, is it not?

• Objected to.

A I don't know where he got it.

Q I am wondering, if you meant that Gatto said to you that he had been put through a star chamber proceeding, in Italian or in English? A He used those two words in English.

Q The rest of it was Italian? A Yes, sir. For ten days he told me the same thing, that the District Attorney subpoenaed him from nine or 10 o'clock in the morning, and kept him there until five or six at night, subpoenaed him for the Grand Jury and never took him before the Grand Jury.

Q He did not tell you which one of these District Attorneys up here did that, did he? A Mr. Buell.

Q He said it was Mr. Buell? A Yes, sir. Mr. Buell -- Mr. Emory -- and Mr. Bonnano and Mr. Nicchia, he mentioned all those names.

Q I read to you from your evidence the other day on page 40 of the transcript "Q Did Mr. Gatto say anything to you? A He told me that he had been subpoenaed every day to appear before the

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Grand Jury, but he had not been taken before the Grand Jury but he had been put through a star chamber proceeding. That was what he told me in the District Attorney's office, and they wanted him to implicate somebody else in the Fazio deal, and unless he would do so, they would give him a year in the Penitentiary, &c.", and then Mr. Moss said "You are stating what he told you? A Yes. Q Who said that? A Mr. Gatto told me that. By the Court: Q Did he say who told him that in the District Attorney's office? A No, sir, but somebody in the District Attorney's office. Q He did not say who? A No, sir, he did not say who."

A Since you ask me that question I have refreshed my memory and I remember on two occasions he mentioned Mr. Buell's name.
BY MR. HAYWARD:

Q How have you refreshed your recollection about that, by talking with Gatto? A Simply, by talking with people with whom Gatto talked with, and myself, and refreshed my memory just what he used to tell us.

Q What people have you talked with, to whom Gatto talked, since this testimony was given? A One was Mr. Gamfora and Mr. Andreis and a gentleman by the name of Lauris.

Q Are all those gentlemen in the court room? A Two are here.

Q You had forgotten, when his Honor asked you who Gatto said, of the District Attorney's staff, had put him through this star chamber proceeding, you had forgotten? A I did not remember at the time.

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Q You could not remember, and yet this morning you remember it was Mr. Buell, that he told you had done this? A Yes, sir, and he told me that every time they took down a statement of everything he said, every day that he was there.

Q Now I hand you people's Exhibit No.8, being S. E. Gatto on the Corn Exchange Bank, payable to Guiseppe Fazio, No.5,001, dated July 23rd, for \$2,000., which you have told us is in your handwriting, that you wrote it? A Yes.

Q The face of it all except the signature? A Yes.

Q Now I will ask you why it was that when you were given here in this office an opportunity to make a statement and explain this entire transaction, why, in response to a question "Q Did you know about the \$2,000. check" -- referring to this check, why you said "I heard about it", and why you responded in answer to a question "When?" "Quite some time"? A Well, that is proper. I heard about it. I was not under oath to tell you every little detail. I told you everything that I thought was material and necessary to explain my position. I offered my office at the services of the District Attorney. I offered my books. I offered my checks and I offered my clerks, and I offered them to inquire into the custom and ways of doing business. What more could I do.

Q You thought then that when the District Attorney asked you about this \$2,000. check, that all they were entitled to know about a check that you had written in your own handwriting, was

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that you had heard of it quite some time afterwards, is that right? A Yes, sir, and to be more frank with you, I did not remember at the time that I had written the check.

Q You did not remember at all that you had written the check? A Not at the time, but afterwards I found out I had done it.

Q You found out you had done it, as matter of fact? A Surely I would not have done it if I thought I was doing any wrong.

Q When the District Attorney asked you about it and you said you heard about it, you did not remember anything about having written it yourself? A At that time I did not.

Q But when you came on the witness stand here, you remembered quite a good deal about it, you remembered the very words that were used by both sides to the transaction, did you not, didn't you testify here -- A As near as I could --

Q Didn't you testify here on the stand the other day that you said "He then asked me if I would not write the check for him. I said I had no objection. He said write it in a nice plain hand" -- when you got on the stand here you could remember the very words both of ~~you~~ used in connection with that check, and yet you say, when the District Attorney inquired about it, you did not remember the check. A Many times a man forgets things and then things are brought to him whereby he can remember things.

(Certain cablegrams are now offered and received in evidence by consent and marked Defendant's Exhibits K, L, M, N,

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O, P, Q, R, S, T, U, V, W, X, Y, Z, A-1, A-2, and A-3).

RE-DIRECT EXAMINATION BY MR. MOSS:

Q You have been asked a number of questions on cross-examination about the Musica matter -- I wish to ask you some myself. I have been asking the People to hand me the order which was referred to on Friday, sometimes referred to as a contempt order, but it was simply an order to show cause? A That is all it was.

MR. HAYWARD: Was it not an order to show cause why he should not be committed for contempt?

MR. MOSS: Exactly, but no adjudication. An order to show cause.

BY MR. MOSS:

Q And it was stated that there was attached to this order certain affidavits; were they in that proceeding affidavits signed by the daughters of Musica. A Yes, sir, two daughters signed an affidavit and the father signed an affidavit and Mr. Content signed an affidavit.

Q Have you looked for those affidavits or caused them to be looked for? A They are filed with the referee and should be together with those papers, as part of the same proceedings.

Q Who was associate counsel with you in that matter, the Musica matter generally, A George Gordon Battle, Mr. Content --

Q You refer to the gentleman who is a partner of Senator O'Gorman? A Yes, sir.

Q And the partner of the gentleman, Mr. Marshall, who is

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now United States District Attorney. A United States District Attorney.

Q Well, were there affidavits presented in those proceedings, on your behalf, and signed by the daughters of Mr. Musica and also by Mr. Content? A Yes.

Q Affidavits denying Philip Musica's statement? A Denying his statement and also praising my conduct up to the time that they made the affidavit.

Q Statements have been read to you as purporting to be information given to the District Attorney by Philip Musica; do you say that the position occupied by the sisters of Philip Musica was different from Philip's position? A Yes, sir.

Q And the position occupied by his father was different? A Yes, sir.

Q Did Philip Musica plead guilty? A I understand so -- yes, yes.

Q Do you know where he is now? A He is in the Tombs.

Q Not sentenced yet? A No, sir.

Q How long has he been in the Tombs awaiting sentence?

A Almost a year.

Q You say that Philip Musica whose statements against you were read by the District Attorney to you yesterday, is awaiting sentence in the Tombs?

MR. HAYWARD: May I -- I submit that this witness is a lawyer and an intelligent lawyer, a smart lawyer.

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MR. MOSS: That is a speech. . Please do not do that.

MR. HAYWARD: It would be much fairer to all parties if you would let him testify, instead of putting it in his mouth. You have already asked him one leading question to which he has said yes, and you are now engaged in repeating that same question to again make him say yes.

MR. MOSS: The matter I am addressing the witness about is matter brought out by you on the cross-examination. It is new matter and my attention to it is by way of cross-examination on new matter brought out by you.

MR. HAYWARD: My objection is that it has already been asked and answered and now asked again, and is leading. I would like to hear the question read.

Q (The question is repeated by the stenographer)

THE COURT: It is harmless. I will allow it.

BY MR. MOSS:

Q What is your answer? A Yes.

Q Do you know why the District Attorney has not moved for sentence in the Musica case against Philip Musica -- if you do not, say no. If you do, say yes? A I do not.

Q Antonio Musica, the father, is also a defendant? A Yes.

Q Has Antonio Musica ever been brought to trial? A No, sir; he is out on bail with my bond which I guaranteed, \$10,000. bail.

Q Is Antonio Musica on bail which you procured for him?

A Yes, sir, Surety Company's bail for which I am responsible.

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Q Did you procure the surety bond for Antonio Musica? A Yes.

Q And did you give the Surety Company any obligation to secure the Surety Company for Antonio Musica's appearance? A Yes.

Q What did you give them, A A bond signed by myself.

Q Your personal bond, A And by friends whom I had to indemnify likewise against any loss.

Q You have indemnified people who indemnified the Surety Company, and you have also given your own personal bond to the Surety Company, A Yes.

Q Has the Surety Company required from you any property as security? A No.

Q Do you still hold the title to the piece of land which was transferred to you, which was discussed on Friday? A Yes.

Q You hold that, A Rather I hold a mortgage on that.

Q And that mortgage by its terms makes it applicable to the bail in this case? A Yes, sir.

Q How long has Antonio Musica been out on bail? A He came out two or three, or a few days after he arrived from New Orleans.

Q How long is that, A About a year ago.

Q So Antonio Musica -- am I correct in saying that Antonio Musica has his freedom now and has had it for a year upon the bail which you have secured for him on your own personal obligation from the Surety Company?

A Yes, sir.

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Q The question as put to you amounted to a criticism for the way you had treated the Musicas in your financial relations with them on account of properties which you had received from them, and on account of moneys which you had received from them. I want to ask you now, to clear this matter up, how much money did you ever receive from the Musicas? A All told something like \$1200.

Q Was that the \$1200 which was in the account in the Seaman's Savings Bank? A Yes.

Q Is that the only money you have ever received? A Yes, sir, that is all.

Q How much money have you spent in that case for the Musicas? A Between \$1200 and \$1500.

Q How much premium do you pay upon that bond? A \$200.

Q Do you say you have paid out more money than you have received as counsel fees for the disbursements in that case? A Up to now, yes, and still liable on some more.

Q You are still liable for premiums on that bond? A Yes, sir.

Q You were criticised by the form of the question for having loaned the young lady \$700 out of that \$1200 and taken it back -- you did loan her \$700? A Yes.

Q About \$700? A Yes.

Q She did give it back to you? A Yes.

Q And that is part of the money, is it, that you have spent in the disbursements in the Musica case for that girl's father? A yes, sir.

Q None of it remained in your pocket? A Not a dollar.

Q Have you retained possession or title to any property that you received from the Musicas except this piece of real estate which operates as security for the bond? A No, none whatever.

Q Everything turned over? A Everything turned over to the trustee.

Q Was your first knowledge of the trouble of the Musicas the bringing to you by the man who had been employed by them, of the bills of ladings and papers which you mentioned? A He came to my house one or two nights after Musica had gone away and told me just what had happened, and then I told him he better come down to my office and bring everything that he had with him.

Q Your knowledge came in that way? A That is all.

Q That was your first knowledge of it? A Yes.

Q You caused these papers, did you, to be retained and turned over? A I gave immediately a list to Mr. Stern and told him exactly what they were, and also made Mr. Purbera turn over whatever money he had collected that day, which he had not given me.

Q Did these properties which you obtained from the men who had been a clerk for the Musicas, did they get into the hands of the creditors? A Yes.

Q At the time that you received those securities or documents, and caused them to be turned over to the creditors, did

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you know that the man who had been employed in Musicas had any papers retained in his own possession? A No, sir.

Q Was your first knowledge that he had other papers, what you told Mr. Hayward yesterday, when he came to you and told you the story about how they had stuck in a pigeon hole? A It was a week or two after I had given the first lot of papers to the Receiver that he came with those and gave them to me, and I immediately went over and told Mr. Content of Mr. Battle's office.

Q Was Mr. Content associated with Mr. Battle? A Mr. Battle was associated --

Q And Mr. Battle was associated with you? A Yes, sir. As Mr. Battle was too busy I told Mr. Content and Mr. Content made an affidavit in the order to show cause setting forth these facts that I had told him long before the Receiver had made this order why we should not be punished for contempt.

Q This second bunch of documents, the smaller bunch, I think you said -- A Only three or four papers.

Q Was that ever demanded from you? A No, never.

Q Did you turn those over of your own free will? A Well, I had told Mr. Content, and in the meantime, a week or so or a few days thereafter, we were served with the order and upon being served with the order I gave them to Mr. Content, and Mr. Content himself took them to Mr. Prentice, and explained to him that he had known of these things being in existence.

Q Have you got the telegram which you said you received

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from New Orleans, asking you to go down and appear? A Yes, sir, it is in my papers in the envelope there, in the large bundle, Mr. Levy.

MR. MOSS: Hand him the envelope right up.

(A bundle of papers is handed to the witness.)

Q Please produce the telegram which you say you received from one of the Musica family? A Here it is (produced).

(The paper is offered in evidence.

(Received and marked Defendant's Exhibit A-4.)

Q What is the amount of the bail bond that you secured for Antonio Musica? A \$10,000 we had to give.

Q How much bond did you give to the Surety Company? A \$20,000 -- double the amount -- \$20,000.

Q Referring to the criticisms made by Philip Musica upon the basis of which you were examined yesterday --

MR. HAYWARD: What is that?

MR. MOSS: I simply refer to the form of your questions. You read them to him as being statements of Mr. Philip Musica -- am I right?

MR. HAYWARD: No, you are not right.

THE COURT: Did he not ask him if he stated to Musica thus and so?

MR. MOSS: Reading from a paper.

THE COURT: He held a paper in his hand, but, what difference does it make. proceed with your question.

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BY MR. MOSS:

Q Do you recall any criticisms that have been made upon you, are you aware of any criticisms made upon you by either of the sisters or by the father of Musica? A No.

Q Are you aware of any criticisms made upon you or any communications made to the District Attorney by anybody in the Musica family, except this Philip Musica, who has been awaiting sentence for a year? A That is all.

Q When did you retire from the Musica case? A After this motion.

Q You retired completely and entirely from it? A I told them I would not have anything further to do with it.

THE COURT: State approximately the date -- the motion was in May?

THE WITNESS: I don't recollect.

THE COURT: May 17, was it not?

MR. MOSS: May 17, 1913, is the date of the order to show cause.

THE WITNESS: A week or two after that, a short time after that.

BY MR. MOSS:

Q You say it was nearly a year ago that you retired? A Yes.

Q You have still sustained the bail for Antonio Musica?

A Yes.

MR. MOSS: The telegram says, "New Orleans, Louisiana,

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March 21, 1913, Philip Saitta, Attorney at Law, 258 Broadway: Please act at once for our defense in our troubles to protect our office and real estate. Will forward power of Attorney. Wire advice and communicate with me Parish Prison. A. Musica."

BY MR. MOSS:

Q Who is A. Musica? A That is the elder.

Q That is the father? A Yes, sir, that is the father.

Q The man whose bail you protect now? A Yes.

Q Attention was called yesterday to the fact that in your ledger account showing this lemon transaction, the entry of the receipt of \$1500 was put in August, whereas the check was received in July; have you any explanation for that? A The explanation I gave for that is that I did not enter the money until I got Brown & Secomb's account, and that was in August, and that was the way I happened to put them down all at the same time.

Q The account of the sales came from Brown & Secomb in August? A For the lemons, yes.

Q The Judge, in cross examining you about the items of payment to Gatto, which appear on that ledger account, called your attention to some small items, like \$5.00 and \$10.00, and \$6.00, and so forth; can you state what those items were in general? A Those were actual expenses laid out for the fruit, of Gatto, such as opening samples or cartage for a few samples, and things of that kind that I paid and charged to his account,

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or sometimes, maybe one or two items he paid and asked me for the money and I gave him the money to pay it.

Q So those are little passing expense payments? A Yes.

Q When you gave the District Attorney a statement from your ledger account, did you give him substantially a copy of this ledger? A Exactly.

Q And did you also give him checks which you had given to Gatto that corresponded with the most of those payments to Gatto?

A I gave him all the checks, except one; that one I did not have because the matter went through Mr. Andreis and Mr. Andreis has got that check.

Q How much was that? A \$250, I think.

Q With the exception of the \$250 check which you say Mr. Andreis possessed, did you give the District Attorney checks for these items of payment to or for account of Gatto? A Yes.

Q And those checks are among the 31 checks which the District Attorney has put in evidence? A Yes.

Q Were there any exchange checks whatever connected with these 31 checks? A No, most of the time, or rather the larger part of those checks were given when Gatto had no account.

Q Before he opened his bank account? A Before he opened any bank account, yes.

Q The first check is dated July 7th for \$40.00, do you say that he had no bank account then? A No, none whatever.

Q The second, July 9th, for \$20.00, and the third, July

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10th, \$25.00. A There is another of \$25.00, July 9th, that I overlooked.

Q On the other side? A On the other side.

Q July 10, \$25.00; July 10, \$201.48; July 11, \$94.56; July 14, \$104.61; the same date, \$14.74, and so on throughout July -- I will not take the time to compare these checks check by check with the items in the ledger, but they are all in evidence and can be compared at any time by any juror who desires to do it -- are the items in this account for which there are checks that the District Attorney has put in evidence shown by a little check mark? A Yes, sir, every little check mark means that is a check.

Q Check mark in the ledger? A Yes.

Q At the time you received the check of \$1500 from Brown & Secomb, was there any money remaining in your hands payable to Gatto or anybody else? A No, sir, I had given Gatto really, after deducting what he told me to deduct, a few dollars more than I had received.

Q You had deducted -- A Nine hundred and some odd dollars.

Q That he owed you, and you had given him these checks which I have called your attention to amounting, as you say, to over \$1500.

MR. HAYWARD: I object to counsel leading the witness. He seems to be able to answer questions intelligently. I notice there was the most strenuous objection if I made the

slightest attempt to lead Mr. Gatto.

MR. MOSS: I am practically on cross examination of matter which you brought out on your cross examination, and that is the difference. I am not examining Mr. Saitta now on my direct examination, but on your cross.

THE WITNESS: I had given Mr. Gatto \$588 up to the 15th day of July, and that coupled with what he owed me made a little more than what I received on the 15th from Brown & Secomb -- the 14th or 15th, I don't know which -- from Brown & Secomb. In other words, Gatto then owed me money.

BY MR. MOSS:

Q Reference has been made to the account of sales which was rendered by Brown & Secomb to you in August; what became of that account of sales? A I turned them over to Mr. Gatto when I went over the account with him, and showed him just how things stood.

Q Have you seen that account of sales since you turned it over to Gatto? A No. He has got it.

Q Did you hear Mr. Gatto testify upon his direct examination that he wrote on a typewriter? A I think I did, yes.

Q Do you know whether or not he had a typewriting machine at his home? A He had, I believe, an Underwood typewriter at home.

Q Do you know whether or not he wrote on your typewriting machine in your office at any time? A I would not say about the name Underwood, but something like that, but he had a machine.

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Q Do you know that he was able to write on a machine? A
Very well, I understand.

Q Did you ever see him write on a typewriting machine? A
I don't think so, but I heard that he did write once or twice in
the office.

Q Have you the telegram which you sent to the Musicas in
answer to the one which you have put in evidence? A Yes.

Q Produce it? A I think this is the one (producing
a paper.)

Q No, that is not the one.

THE COURT: The telegram Musica sent to him.

MR. MOSS: No, that he sent to Musica. I will look
them over, and there will be an opportunity to put it in
later.

BY MR. MOSS:

Q You spoke of having secured a judgment on appeal, which
is against you; how was that judgment secured? A We gave a bond.

Q What? A We gave a bond.

Q What bond? A Bond to the parties.

Q What is the security? A We indemnified them against any
loss.

BY THE COURT:

Q He means what was the particular security given? A The
people that went the bond for me pledged their property.

BY MR. MOSS:

Q Was there a Surety Company bond? A I would not be

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certain, either Surety Company, or a good personal bond.

Q That bond is in force? A Yes.

RE-CROSS EXAMINATION.

Q You say that neither of the Musica girls have ever made any complaints about any of these money transactions? A No, sir, not until after I severed my relations with them.

Q Oh, not until after you severed your relations with them, but since that time? A A few days ago one of the Musicas came in and wanted to know about -- young Miss Musica wanted to know about that money. I said what money? I said I don't know you -- that money has nothing to do with you or I or anybody else. It is a matter that is between your father and I.

Q Now, you talked to one of the girls on February 14th, 1914? A Yes, probably sent by your office.

Q Do you remember that this conversation took place, whether sent by our office or not, "By Miss Musica: I would like to have that money from the bail bond about Philip", and you answered, "No, no, I received no money from you". "Yes, you did" -- then by you "Well, I only received an account and it does not pay to talk about these matters over the phone, come to my office, I will be here until one o'clock" -- you did have that kind of a conversation with her? A Not those words, no, sir.

Q You say that some of these cablegrams were written in your office on one of your typewriters? A I don't know. I did not say that.

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Q I thought you said "He wrote in my office".

MR. MOSS: He said he heard so but never saw him.

BY MR. HAYWARD:

Q You did not say anything about that until after we brought your typewriting machine here.

MR. MOSS: He was not asked.

THE WITNESS: I was not asked. If I was I would have made the same remark.

BY MR. HAYWARD:

Q Do you now say that some of these letters that went to Fazio and some of these cables for which the \$200 cable bill was rendered, may have been written in your office on your typewriting machine? A I do not know.

H A R R Y E. W A R D called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q What is your occupation? A Cashier of the Irving National Bank.

Q And have you had to do with bills of lading? A From time to time, yes.

Q Making loans upon them, using them in business transactions? A In certain instances, yes.

Q Are you familiar with the customs appertaining to the use of bills of lading? A As far as they affect our business, yes

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Q That is loaning money upon them and using them as evidences of title? A Yes, sir.

Q When a bill of lading is drawn to order and is endorsed "Deliver", and endorsed by all the persons to whom that bill of lading comes, according to the custom that prevails in the City of New York in financial transactions, is that treated as a negotiable paper? A In the absence of any notice in connection with it, it is so treated.

Q In treating it that way as a negotiable paper, do you pay any attention to the Consular invoice as an indication of title?

A We are not expected to.

Q Do not pay any attention to the consular invoice at all, do you? A We do, in transactions covering a foreign bill of lading, in that it is customary to require the consular invoice to be attached to the bill of lading.

Q But as to whether it is a white paper or a blue paper, you do not pay any attention to that as affecting the title, do you? A No, we do not.

Q You pass upon the bill of lading upon the recitals on its face, and the endorsements and that alone? A Especially with regard to whether it designates whether more than one bill of lading has been issued, and if so we require all the copies made used as collateral.

Q Sometimes there are bills of lading issued in duplicate and triplicate? A Yes, sir.

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Q When that question does not arise, you do not pay any attention to anything except the bill of lading? A That is right.

Q Its face and its endorsements? A Yes.

Q The consular invoice is treated as a method of getting the goods out of the Customs House? A That is the only way it is involved.

CROSS EXAMINATION BY MR. HAYWARD:

Q You are cashier of the Irving National Bank of this city?

A I am.

Q Are you acquainted with the defendant, Philip S. Saitta?

A I am.

Q How long have you known of him? A Of him or known him?

Q Both? A I have known him personally six years.

Q Have you ever talked with persons about Mr. Saitta's general reputation and his reputation for truth and veracity?

A I have.

Q And from conversations with other people do you know what that reputation is?

MR. MOSS: Yes or no to that.

BY MR. HAYWARD:

Q You can say yes or no to that. A Yes.

Q What is it, good or bad? A He has been criticised.

Q Is his reputation, as you have learned it, good or is it bad? A Does that call for a direct answer in this case?

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THE COURT: Yes.

MR. MOSS: If it can be given. If not, he should be allowed to explain.

THE COURT: That is, if you know.

MR. HAYWARD: He said he knew what his reputation was for truth and veracity, and I have asked him what it was, and whether it was good or bad.

THE COURT: Yes, then, if you know, it is your duty to speak just what his reputation is.

THE WITNESS: I have answered the question.

THE COURT: What was it?

THE WITNESS: The previous answer, I thought, covered that.

BY THE COURT:

Q What is that? A I stated that he had been criticised.

MR. HAYWARD: I do not think that is an answer to my question; we speak of a man's reputation for general honesty and reputation for truth and veracity; those things are known of all men -- you know what I mean when I ask you what the defendant's general reputation is.

MR. MOSS: I object.

BY MR. HAYWARD:

Q And you have said that you knew what that reputation was; now, if his reputation is good, say so, and if bad, I think you should say so.

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MR. MOSS: I object. The question is mixed up with a lot of questions and the opinion/about various things, and I object to the question. The witness cannot answer it intelligently.

Objection overruled. Exception.

THE COURT: The witness ought to state definitely, if he has knowledge the witness is a lawyer.

THE WITNESS: He is not a lawyer.

MR. HAYWARD: No, he is cashier of the Irving National Bank.

THE COURT: The defendant states that he is not only a lawyer, but a business man. The witness, if he knows what the reputation of the defendant is in that line of business, he ought to state it, and the question is, do you know it, and you say yes, and then the next question is, what is it, good or bad, and you ought to state.

THE WITNESS: I should say it was bad.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Do you mean to say that all the people you have known that knew Mr. Saitta have criticised him? A No, sir.

Q Has he not been praised? A Not to my knowledge.

Q How large transactions have you had with him? A Transactions under his guarantee in connection with P. W. Saitta, his son, up to about \$60,000.

Q I speak of transactions in which he has brought business

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to your bank? A We have had other transactions in which he was involved, in connection with the Connelly Auction Company, under the guarantee of Mr. Saitta and others.

Q To what extent? A I do not remember the exact extent, Mr. Moss, but I should say probably up to \$100,000.

Q Haven't you had very large transactions amounting to a great deal of money, in which he took some part? A As I have stated.

Q Well, what you have testified to--A I don't remember -- offhand -- because I have not looked up the record. Those transactions were some years ago.

Q Haven't you made large loans to people that were represented by Mr. Saitta?

THE COURT: you mean as counsel?

MR. MOSS: In a business way, whether as his counsel or in connection with ~~just~~ such transactions as these.

THE COURT: I think probably you had better be a little more definite, because he might not understand you-- do you mean as agent?

MR. MOSS: In any way.

THE COURT: Very well, whether as agent for them or counsel for them, or any way.

THE WITNESS: Offhand, I do not remember, but if I had the names, I would be glad to answer it.

BY MR. MOSS:

Q Do you remember when Mr. Saitta was connected with the

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Connelly Fruit Auction Company? A Yes, sir, I have referred to that already.

Q Do you remember when he left the Connelly Fruit Auction Company and went into the other company? A I remember that it was reported that he had severed his connection with the Connelly Auction Company, yes.

Q And was there any bad feeling over that? A I am not in a position to say.

Q Did either of your criticisms come from the fact that he had gone from one company to the other? A I do not remember that they did.

THE DEFENSE RESTS.

HENRY MACKENZIE called as a witness in behalf of the People in rebuttal, being duly sworn and examined, testified as follows:

(Residence, Hotel Gramatin, Westchester.)

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your business? A I am agent of the Anglo South American Bank, Limited.

Q In this city? A In this city.

Q How long have you been connected with that bank? A A little over five years.

Q You have been in business in this city in other connections than with that? A No.

Q That is the only business connection for five years? A Yes

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Q During what part of these five years have you known the defendant, Philip S. Saitta, or known of him? A The whole time.

Q Have you talked with other persons in the banking business or in the legal business, in the City of New York, where he has had an office during that time? A I have.

Q From conversations that you have had with business men in this city, have you learned what Mr. Saitta's general reputation for honesty is, and also have you learned what his reputation is for truth and veracity? A I have.

Q So you do know what that general reputation is? A Yes, Sir, I do.

Q State what it is as to his general honesty and state what it is as to truth and veracity, good or bad? A As to truth and veracity it is absolutely untrustworthy.

Q What is his reputation as to general honesty? A Thoroughly bad.

CROSS EXAMINATION BY MR. MOSS:

Q How many persons have you discussed his truth and honesty with? A About a dozen.

LEO L. LEVENTRITT called as a witness in behalf of the People in rebuttal, being duly sworn and examined, testified as follows:

(Residence, 600 West End Avenue.)

DIRECT EXAMINATION BY MR. HAYWARD:

Q You live in New York city? A I do.

Q And have all of your life? A I have.

Q And what is your occupation? A Attorney.

Q In what firm? A Eahn, Leventritt & Goetz.

Q You are the son of Judge Leventritt of this city? A I am.

Q How long have you been practicing law in New York City?

A About six years.

Q Do you know Philip S. Saitta, the defendant in this action? A Yes.

Q How long have you known him? A About a year.

Q Have you ever talked with other persons in this community, in business circles or in professional circles, regarding Mr. Saitta? A I have.

Q And from conversations you have had with other persons, do you know at this time what his general reputation for honesty is among business men in this community, and also what his reputation is for truth and veracity in this community? A Not so much among business men as among attorneys.

Q As among attorneys at law? A Yes.

Q You do know? A Yes, I do.

Q What is his reputation for general honesty, good or bad?

A I should say it was bad.

Q What is it for truth and veracity? A The same.

Q Good or bad? A The same.

CROSS EXAMINATION BY MR. MOSS:

Q You say your conversations have been among lawyers, what

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lawyers? A Mr. Ezra P. Prentice.

Q That was connected with this Musica matter? A My conversations concerning Mr. Saitta have grown either directly or indirectly out of the Musica case, in every instance.

Q That is a sufficient answer, you were connected with the Musica case? A I am still.

Q Still connected with it? A Yes.

Q Will you tell me why Philip Musica, who pleaded guilty a year ago, has remained in the Tombs ever since without sentence being moved? A I have not the slightest idea.

Q You do not know why the District Attorney does not move against him? A I have not the slightest idea.

Q Have you been affected in your judgment by things which Philip Musica has said? A Not at all.

Q Have they been reported to you? A They have been reported from time to time directly to me, inasmuch as I have been acting as Philip Musica's attorney in certain matters.

Q How long have you been Philip Musica's attorney? A I should say at least from the time Mr. Saitta came into the case, if not before.

R A L P H J. M. B U L L O W A called as a witness in behalf of the People in rebuttal, being duly sworn and examined, testified as follows:

(Residence: 125 East 72nd Street.)

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MR. HAYWARD: I presume I shall be limited to the same number as the defense, and that being so, I will not examine Mr. Bullova.

THE COURT: Yes.

MR. MOSS: You paraded Mr. Bullova, and I understood that you called him.

MR. HAYWARD: I have not paraded him any more than Mr. Moss -- I insist on being heard in this matter -- I have not paraded Mr. Bullova any more than you did when you turned around and waved your hands and said you could bring fifty more.

MR. MOSS: I did not say that. The words I used were twenty-five. Mr. Bullova has been sworn -- when I said paraded -- I take that word back. The word has a sound I did not intend to convey. I mean Mr. Bullova has been sworn and I ask that he testify.

MR. HAYWARD: Very well.

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your business? A Attorney.

Q And how long? A I have been practicing about ten years.

Q Member of a firm? A No, alone.

Q Do you know Mr. Philip S. Saitta, the defendant? A Yes.

Q How long have you known him? A I can distinctly remember since about 1910.

Q Have you talked with other people about Mr. Saitta,

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other lawyers and business men about him? A I have.

Q About what his character was, and about what his reputation for truth and veracity was? A I have.

Q Now, from conversations that you have had in that way with men in this community, do you now know what his general reputation for honesty is, and also what his general reputation for truth and veracity is? A I do.

Q State what it is in each case, good or bad? A As far as his reputation for truth and veracity is concerned, it is absolutely untrustworthy. As far as his honesty is concerned, I have not had so much experience with that, but I should say it was the same.

CROSS EXAMINATION BY MR. MOSS:

Q Are you speaking from personal experience or from reputation? A partly from personal experience and partly from reputation.

Q You were not asked for personal experience but for reputation? A From reputation.

Q Did you make a distinction as a lawyer ought to make, in answering that question, or were you putting your personal experience in? A I have spoken from both and I should say that--

Q Do not answer beyond my question. A I do not mean to.

Q You have ^akindly feeling toward Mr. Saitta? A No, I have not.

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Q You come here with personal feelings against him? A No personal feeling.

Q You have had trouble with him? A I have found him in my--

Q Answer my question? A Yes.

Q You have had trouble with him? A Yes.

Q You have been on opposite sides of litigation with him?

A Yes, I have.

Q You have had personal altercations with him, he with you and you with him? A I would not call it a personal altercation.

Q Did he ever accuse you of any unprofessional conduct?

A He did.

Q You have forgotten about that? A No.

Q You do not hold it against him? A No, I would like to state the circumstances.

Q Wait a minute and you can have something later on -- did he ever accuse you in court of taking his papers? A He did.

Q And you bear no grudge against him for that? A Absolutely not.

Q Did he ever defeat you in litigation? A I do not think any case that we were in was ever tried in court, where there was a verdict in his favor.

Q I did not ask you that -- did he ever defeat you in litigation? A No, there were settlements made in certain cases.

Q Have you not come here to testify as a witness against Saitta with a strong personal feeling against him? A No, I have

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asked the District Attorney several times not to call me.

Q because of that strong personal feeling against him? A Because I did not want to testify.

Q You have been sitting in court a number of days? A Because I was subpoenaed.

Q Nodding your head as the case was tried? A I do not know as I did that. Probably was talking to somebody.

Q Talking to people about the case and expressing your interest and feelings? A I do not know as --

Q You did not express them to me? A I think I did.

Q You have taken great interest in it? A Not beyond the ordinary.

Q You insist that your interest was not in this case because of personal illwill you had against Mr. Saitta and a desire to see him downed in this case? A No, I would not say that. I would like to state the incidents referred to.

Q Go on. I don't care. A I had subpoenaed Mr. Mergandante, his brother-in-law, in a case --

BY THE COURT:

Q Whose brother-in-law? A Mr. Saitta's, several times, and one time in the Municipal Court Mr. Mergendante did not appear and he swore positively that he had not been subpoenaed, and my young man swore that he had and the court adjourned the matter and did not want to pass upon the credibility, and as I was leaving the room my package was similar to his and I took up the two packages together, not knowing they were absolutely the same. That was all there was to it.

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Q You did not have any package at all? A I think I did.

Q Are you sure? A Pretty sure I did.

Q Are you sure you had any package at all that day? A I am not sure, but I think I did.

Q When you saw his package upon the table, it looked so much like packages you generally carried, you just took it? A I picked up the package. I always regret, Mr. Moss, that I did not insist upon the Court opening the package at that time in court, because I am confident the subpcena was in the package.

Q You have some feeling about the matter? A That is my --

Q You could see through the paper? A No, but my experience with Mr. Saitta has taught me that is the way he has practiced law.

Q You have had some experience with him that you do not like? A Yes.

Q You come here as a man testifying from your personal experience, as a reputation witness? A I also talked from what I have known from other people.

Q As a lawyer, do you believe a reputation witness has a right to speak from personal experience? A I do not know, I have not practiced in the Criminal Courts.

Q You have had those same questions in the Civil Courts? A I have not had the pleasure of trying a case where that question comes up.

Q How long have you been trying cases? A About ten years and

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I have not tried such a case.

Q Never in any case has the question of reputation of a witness been at issue? A Never by character witnesses.

Q Do you suppose there was in that bundle of papers that you picked up, anything that you would have been interested in on the other side of the case? A Nothing, except the subpoena.

EDWIN T. RICE, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

(Residence 15 West 67th street).

DIRECT EXAMINATION BY MR. HAYWARD:

Q Where do you live? A 15 West 67th street, New York.

Q What is your business? A Attorney at law.

Q How long have you been practicing law in this community?

A Thirty years.

Q What is your firm? A Whitridge, Butler & Rice.

Q Where are your offices? A 59 Wall Street.

Q Do you know the defendant, Philip S. Saitta? A I do.

Q Have you talked with business men and lawyers about Mr. Saitta, and about his general character for honesty, and have you talked with men about his reputation for truth and veracity? A I have.

Q From such inquiries as you have made, and from such conversations as you have held, do you now know what his reputation

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is in the community for general honesty? A I do.

Q What is it, good or bad? A Bad.

Q Do you know from those conversations what his general reputation is in this community for truth and veracity? A I do.

Q What is it? A Bad.

CROSS EXAMINATION BY MR. MOSS:

Q You were connected with the Musica case also? A I represent the trustee in bankruptcy, yes.

Q You have conducted the proceeding before the referee to punish Mr. Saitta for contempt, did you not, A I did.

Q And the referee was Mr. Olney? A Is Mr. Olney, yes, sitting as Special Master.

Q As far as the contempt proceedings are concerned, that is disposed of? A No, it is not. It is before Mr. Olney for decision.

Q Mr. Olney has intimated his decision? A He has not.

Q Didn't you hear Mr. Olney intimate his decision that there was nothing upon which to punish Mr. Saitta for contempt?

A Within ten days Mr. Olney has stated something quite different to that to me.

Q Did you ever hear him state any other way? A No.

Q You know Mr. Philip Musica is still in the City Prison?

A I do.

Q Do you know why he has been kept there for a year without sentence? A I fancy one reason is to facilitate the administration

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of the bankrupt estate. It is a matter of great convenience to creditors and the trustee to be able to confer with him in the Tombs, or have him produced as a witness in the proceedings, instead of having to look for him elsewhere.

Q You do not imagine that Philip Musica might be influenced in what he said in that proceeding or in any proceeding, by the fact that the District Attorney may at any time move for sentence against him, you do not think so. A No, I do not think so.

Q You do not think Philip Musica would change his testimony or shade it in any way from the fact that he is in the hands of the District Attorney. A I do not think so.

MR. HAYWARD: I do not think that is material. I did not know that Philip Musica had testified in this case.

MR. MOSS: He has, but not on the stand, but through the mouth of the District Attorney.

THE COURT: Philip Musica was arrested in May?

MR. MOSS: In March.

THE COURT: He pleaded guilty before me in Part I about April. I held him in the City Prison. This defendant was not arrested or indicted until January.

MR. MOSS: Well -

THE COURT: That makes ten months thereafter. I was thinking -- I held him in the City Prison from March until the present time, March 1913 -- I was thinking whether it possibly would have been in the District Attorney's mind to

hold him on account of this defendant.

MR. MOSS: I object to your statement, and take an exception to it. That was not in my thoughts at all and I do not see why it should have been in anybody's thoughts, least of all the bench. I move to withdraw a juror.

Motion denied. Exception.

THE COURT: Where is the point in that, so that we might clarify it. Where is the harm done to the defendant by stating the exact facts in the Musica case. You have been cross-examining witnesses in regard to the fact that one Musica is now in the City Prison.

MR. MOSS: I am not conceding that the statements made by the District Attorney, as emanating from Philip Musica, are the exact facts, and if you ask me for my position, I might give it to you just this way: That when the District Attorney, in cross-examining the defendant upon his relations with the Musica case, he does so obviously from statements made to him by Philip Musica, and the fact that Philip Musica is at the mercy of the District Attorney, as to when sentence shall be moved and as to the kind of sentence that will be recommended, would be a very powerful impulse to Philip Musica to give the District Attorney material upon which he could put the defendant in a bad and false position on cross-examination, and materially help the District Attorney to win the case. When I say that I speak of human

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nature as it stands.

THE COURT: Assuming that that is your contention, where is the error in my putting on the record the exact date of the Musica indictment, March 18, 1913?

MR. MOSS: I have fully stated my position.

THE COURT: And the date of the arrest and the date of the indictment of this defendant ten months after.

MR. MOSS: The error is that it is prejudicial, in the way it comes out.

THE COURT: If so, it is a mere incident -- certainly there can be no error by simply placing the exact facts on the record that you have been bringing out on cross-examination -- the exact dates.

MILLARD H. ELLISON, called and affirmed as a witness in behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your occupation or business? A I am on the staff of the District Attorney of New York County.

Q For how long? A Since January 1st, 1910.

Q As one of the lawyers on the staff? A Yes.

Q Were you engaged in such position last September, September, 1913? A Yes, sir, I was in charge of the complaint bureau.

Q Do you remember having at that time an examination in

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which you propounded questions to the defendant here, Philip S. Saitta, and in which answers were made by him. A Yes, I remember such an examination.

Q Such examination has been read here to this jury, and now I will ask you if you ever talked to the defendant at any other time than at the time that examination was taken, September 24th, 1913? A I don't remember the date, but there was only one examination conducted by me. The only time I met the defendant was on that one occasion. I only met the defendant on that one occasion.

Q You never saw him at any other time? A No.

Q I will ask you to state whether at that time or any time the defendant told you, "If they" (meaning the District Attorney's office) "If they would take some steps to get this money or seize it in some way, because I knew nobody in the transaction except Gatto, Gatto was the one who gave me the bill of lading and he was the owner to me of the goods and the money, and if he asked me I would have to give it to him, or he could have me arrested and I told him they had better stop it in some way, otherwise Gatto would take it, and I told Mr. Cavalaro the same thing who came to the office "You had better hurry up and get the money I have in my hands, or this man will eat it up" -- I ask you to state if he ever said that to you? A No such thing was said.

CROSS EXAMINATION BY MR. MOSS:

Q Is it not possible that Mr. Saitta may have said something you have not remembered? A No, sir. I remember the transaction--

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Q You answer the question -- now, in asking you to consider your answer, please take this into consideration, that you, being the representative of the District Attorney, are taking a statement, I assume, from Mr. Saitta, who is a prospective defendant, considering that it is unlikely that a man would make a statement here that you could come forward and contradict at once, if he did not think the statement was true, is it not possible there may have something happened that has not stuck in your memory? A No.

Q Yes or no. A No, not in this case.

J. FRANK ALLARD, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

(Residence 169 Garfield Place, Brooklyn).

DIRECT EXAMINATION BY MR. HAYWARD:

Q What is your business? A In the typewriter business.

Q How long have you been in that business? A 25 years.

Q What concern are you connected with now? A Now with the Underwood Typewriter Company.

Q What has been your experience in the typewriter business?

A At first I was employed in different factories, in the capacity I was an aligner, that is, I set the type faces in the typewriter so that there was perfect alignment, and then in the second hand typewriter business, handling all makes of typewriters.

MR. MOSS: I will concede his qualifications.

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MR. HAYWARD: You will concede he is a typewriter and a typewriting expert?

MR. MOSS: Yes.

MR. HAYWARD: And has testified as an expert in typewriters in many cases?

MR. MOSS: Yes.

MR. HAYWARD: Will you concede that this typewriter here (indicating), came from Mr. Saitta's office?

MR. MOSS: Yes.

BY MR. HAYWARD:

Q I hand you certain cablegrams, being People's Exhibit 60-- look at People's Exhibit 60, the Peraldo telegram, and Exhibit 61, and I ask you when you first saw those Peraldo and Zimbaro exhibits? A On Thursday evening last.

Q What examination did you make of them at that time? A Examined them carefully to see if I could determine whether they were written on the same typewriter or not.

Q What did you find out? A Found that they were.

Q When did you first see the Remington typewriter No. 69,454, model No. 10, conceded to have been in the defendant's office during the last year? A On Friday afternoon about 4:30.

Q Now, did you make copies of any of these Zimbaro and Peraldo cables with this machine? A I did. I made copies of these two.

Q Have you them? A I have.

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Q Did you make copies of any of the others of these cables?

A I did, yes.

Q What was the result of your examination and comparison of the original Zimbaro and Peraldo cables, of which you made copies, with the copies you made on this machine, and what do you say as to these original cables being written on this machine or not? A I found certain damage to certain of the letters, in this Remington typewriter No. 69,454, and in comparing the original cables, Exhibits 61 and 60, I found that this damage to the letters shown in the cables also appeared. I also found by comparing the copies which I made of the cables with the originals, that the same discrepancies occurred, the same discrepancies in alignment, noticeable in the word "Zimbaro", in my copy, and in the Exhibit No. 61, the capital letter "M" prints very light on the right hand side, prints above the line; the capital letter "B" prints very light at the top and to the left of the centre and leans perceptibly to the left, so that it touches the capital "M" in its printing; the capital letter "A" I found was somewhat worn on its face, and makes a heavy impression. In printing it prints to the right of centre and below the line, almost touching the capital letter "R", in the word; the capital letter "O" prints very light at the upper right hand corner. On comparing this word with the word "Zimbaro", in the original, Exhibit 61, also taking the word "Verdelli" I find that the capital letter "E" prints to the right of centre and below the line; the capital letter "D"

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prints to the right of centre, much below the line, and leans perceptibly to the left. These discrepancies or characteristics of these letters, I find occur exactly the same in the original cable and in the copy which I made from this machine. The same also occur in the original of Exhibit No. 60, and in the copy made and from that I determine that both the originals were written on the same machine from which I made the copies.

Q I hand you other cablegrams, Defendant's Exhibit P and Defendant's Exhibit R, Defendant's Exhibit S, Defendant's Exhibit T, Defendant's Exhibit U, V, Z and A-2, and ask you to state whether or not you have made any examination of them with a view to determining whether or not they were made on this same typewriter machine and the same machine that wrote the originals, the first Zimbaro and the first Peraldo cablegrams? A I have examined these exhibits and also made copies of certain ones of them.

Q Can you state whether or not they were made on this typewriter from such examination. A I find that the same defects in the letters and the same discrepancies in the alignment occur in these original cables, also in the copies which I made of them, and I determined that they were all written on the same typewriter.

Q Will you please pick out of that bundle of cablegrams I give you those which you determine were made on the same typewriter and set them before you -- the yellow slips you are now placing with those white papers are the copies that you made on this typewriter? A They are.

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Q Copies with the same words as contained in the originals?

A Yes. These are the ones of which I made the copies (indicating).

Q Now, did you make an examination of People's Exhibit in evidence 54, being the statement of Philip S. Saitta made for the Fruitman's Guide -- did you examine that typewriting? A I did on Thursday evening.

Q Last Thursday evening? A Yes. I wish to amend the last answer. I did not examine this last Thursday evening.

Q When did you examine this? A This is the first time I have seen it just now.

Q How about this one (Exhibit 49), that is the affidavit made in Saitta's office that Gatto signed? A I examined this on Thursday afternoon last.

THE COURT: No. 49 -- that is the affidavit.

BY MR. HAYWARD:

Q Was that or was it not made by the same machine we have here? A I have made an examination to determine whether or not that was made on this particular machine.

THE COURT: No. 49, which you have in your hand?

THE WITNESS: Yes. By referring --

BY MR. HAYWARD:

Q Before you do that I will hand you People's Exhibit 42-A and 43-A, being letters signed S. E. Gatto & Co., written in the month of August and addressed to Guiseppe Nazio, Catania, Italy,

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on S. E. Gatto & Company's stationery, and will ask you to state if you have examined those cables for the purpose of comparison and identification with any of these other papers you have seen here? A Yes, I did on Thursday evening.

BY THE COURT:

Q You mean in comparison with other papers? A Yes, I compared them with this Exhibit No. 49.

MR. HAYWARD: 49, that is the affidavit of Salvatore Gatto -- now, from that comparison, did you notice as to whether or not those three exhibits were all written on the same typewriting machine? A I give it as my opinion that they were all written on the same typewriter.

Q And your opinion is based on the -- A On the different discrepancies and characteristics in the letters, certain damage to certain of the letters; the positions of the letters in the printing, that is, the alignment and the general characteristics of the appearance of the writing.

THE COURT: Why not show them to the jury so that they may follow the witness and they may disagree or agree with him. I do not know.

BY MR. HAYWARD:

Q Have you your glass -- I ask you to step down to the corner of the box and take some of these and point out to the jury so that they may watch you? A These capital letters -- it is not hardly necessary to use a glass -- you notice the top part of

the "B" prints very lightly; capital letter "B" leans to the left and in printing touches the capital letter "M", which prints very light on the right hand side; the capital letter "A" shows a heavy face which I found to be the fact on examining the type in the machine. This letter prints low and to the right, and very nearly touches the "R". Looking at the original and comparing the same words, we find the same discrepancies of alignment appear, the capital "B" touching the letter "M" and the letter "M" printing light to the right. The capital "A" to the right of centre and below the line. The most noticeable letter in this cable and copy is the capital "D" which leans very perceptibly to the left, very much below the line and prints very light at the top. This is seen in the word "Raccomandoti". In the word "Imbarcascei" at the beginning of this particular cable again appears the combination of the capital "M" and "B" and the "A" and "R"; the capital letter "T" prints very heavy at the upper left hand corner, a little lighter at the upper right hand corner, and light at the bottom. This letter prints very much to the left of centre and quite high as compared to the other letters. This is seen in the word "Nostro". Also in the word "Raccomandoti." Also in the word "Imbarcascei." The distance this letter prints to the left in the word "Imbarcascei" is slightly emphasized by the capital "E" which in other words prints to the right of centre and below the line, and this discrepancy is shown in the word "Avvenire" the capital almost touching the letter "n" in the printing. I

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found all these discrepancies of alignment showed in all the cables I examined and made copies of. By comparing the two words Zimbaro with each other, they look exactly the same in the copies and in the originals and all the other words the same way.

Q Now, show the jury why you conclude People's Exhibits 43-A and 42-A were written on the same machine as 49, 49 being the Gatto affidavit which was made in Saitta's office by Miss Distler?

A The small letter "m" appearing in these papers, the lower right hand --

MR. MOSS: Your statement is that you do not claim the Salvatore Gatto affidavit was written on this machine of the defendant?

MR. HAYWARD: I do not. I claim the cablegrams included within the \$200. bill, some six or seven of them, were made upon this machine that came from Mr. Saitta's office. I also claim that two of Mr. Gatto's letters to Fazio in August regarding the fruit transactions, were made not on this machine, but on the same machine in Saitta's office that the Salvatore Gatto affidavit was written on, which he afterwards repudiated the next morning, and which Miss Distler has testified she wrote.

MR. MOSS: Upon some machine not now before the jury.

MR. HAYWARD: No, sir, on the same machine that the Gatto affidavit was written on.

MR. MOSS: You do not claim it was written on that machine (indicating)?

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MR. HAYWARD: No, but on another machine in Mr. Saitta's office.

THE WITNESS (continuing) The small letter "m", the lower right hand portion of the letter shows that instead of the cross or as we call serif of the letter being complete, the left hand portion of the stem is missing; the small letter "a" is slightly damaged at the lower portion. The small letter "y" is slightly damaged at the lower portion of the letter. The position of the small "a" in alignment with the small letter "m", as shown in the word "examine" and in the word "Confermiano" -- this same word appears in the letter of August 8th -- this same combination of letters also appears -- I cannot find another combination of that same, but I find a combination -- yes, in the word "Salutiamo" in the letter of August 15th -- this, with other points of identification which would take considerable time to enumerate, have led me to conclude that the three papers were written on the same typewriter.

CROSS EXAMINATION BY MR. MOSS:

Q The only one of these papers as to which the witness has testified that are connected with Fazio, are these two letters which I now hold in my hand?

MR. HAYWARD: I am not sure of that, but the others are cablegrams which were included in the bill.

MR. MOSS: That was prior to the Fazio transaction.

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MR. HAYWARD: Yes.

MR. MOSS: So the only Fazio papers that have been shown to this witness are the two letters which I hold in my hand.

MR. HAYWARD: Unless some of these cables are.

MR. MOSS: Look at them and please see. I presume you have put them forward as the cables that were in dispute, before the Fazio transaction ever began.

MR. HAYWARD: I think that is right.

MR. MOSS: We will assume that is right.

MR. HAYWARD: All right.

BY MR. MOSS:

Q Now Mr. Witness, I want to know if the Fazio letter, the first one you examined, is the letter which reads as follows:

"Brooklyn, New York, August 8th, 1913. Mr. Guiseppe Fazio, Catania Sicily. We confirm ours of the 23rd July, and we have received your cable of the 31st. 'Ultonia' prefer telegraphic remittance at sight wishing to continue.' To this telegram we did not answer for the reason that the remittance already made you is superior to your credit of the two shipments, that is to say, Steamship Ivernina and Steamship Ultonia. We are sorry we cannot send you the account for the reason that we have not as yet received it from the auctioneers. The amount sent you was more for the reason that you advised us that there were other shipments on their way which until this day we have not received, and we hope that in a few days we will receive your good news with document. The market

keeps low, but we hope it will increase in the following week. Awaiting your command with esteem, we salute you."

THE COURT: What is the date of that?

MR. MOSS: August 8th, and it is Exhibit 42-B.

MR. MOSS: I also read the other one so that we may have in mind exactly what this testimony relates to:

"Brooklyn, New York, 15 August, 1913

Mr. Guiseppe Fazio, Catania, Italy. We confirm ours of the 8th inst and we are very much surprised at your way of acting towards us. You have sent other boxes of lemons consigned to others when in your telegram you demanded of us proceeds which were sent to you being more than what is your credit, and we hoped for other consignments as you with your telegram notified us. In the meantime as the check that we sent is more, we beg you to send it back, and as soon as we receive it, we will send you your just amount with account of sale. Saluting you. S. E. Gatto & Co."

THE COURT: What is the date of that?

MR. MOSS: August 15th, and it is Exhibit 43-A.

MR. HAYWARD: The original is 43-A and the translation is 43-B.

(Mr. Moss read 42-B and 43-B, they being the copies of 42-A and 43-A.)

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BY MR. MOSS:

Q Now, in your examination of typewriting machines, did you examine any typewriting machine which was supposed to have been used by Mr. Gatto at his home in Brooklyn? A No, I did not.

Q Were you informed that Mr. Gatto had used a typewriting machine at his home in Brooklyn? A I was, yes.

Q Did you make any effort to find that machine? A No, I did not.

Q Was it brought to your attention in any way? A The fact that he had a machine was called to my attention, yes.

Q That he wrote with a machine? A That he used the machine at times, yes.

Q Who told you that? A Mr. Hayward or -- that is, he told me Mr. Gatto had told him that he had a machine at home.

Q Did he tell you what make of machine it was? A I believe machine they did -- mentioned the name of the he was supposed to have --

Q What was it? A They said a Monarch.

BY THE COURT:

Q What kind of machine were these things written on? A On a Remington.

BY MR. MOSS:

Q Is there a difference in the general type system, between the Monarch and the Remington? A Yes, sir.

Q What is it? A Difference in the shapes of some of the

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letters.

Q What letter? A The small letter "a" -- the lower right hand portion is slightly different in the Remington than in the Monarch.

Q Anything else? A The small letter "t" is slightly different.

Q How slightly different? A The curve at the bottom of the letter is not quite as wide in the Remington.

Q Is that so in all the machines? A There are some differences in all typewriters I have ever examined -- that is, all different makes of typewriters.

Q I speak of a difference between makes? A In the different makes of typewriters there are some differences in the shapes of the type faces.

Q Are these the only differences between the Monarch and the Remington? A No.

Q "a" and "t"? A No.

Q Are those differences apparent in all Remingtons as compared with all Monarchs? A In all Remingtons and all Monarchs -- I should say I have never seen a Remington machine with exactly the same style of type, that is the same shaped characters in as the Monarch.

Q That is coming down to a fine point? A Your question led to it.

Q But substantially they look alike? A Yes -- not sub-

stantially, no -- they might to the ordinary person, but not to a person who examines them closely.

Q Take that "t" for instance, you have in your mind a certain characteristic of the letter "t" -- would you find that in every Monarch the same way? A No.

Q The letter "a", would you find that the same letter "a" in every Monarch? A As the original shape of the letter, you would, but it might vary according to the damage it sustained in being used.

SALVATORE E. GATTO recalled, testified through the Official Interpreter, Mr. Villamena, as follows:

BY MR. HAYWARD:

Q Did you ever tell the defendant that the District Attorney's office had put you through a star chamber proceeding-- can you translate that?

THE INTERPRETER: Yes.

THE WITNESS: A No, sir.

(The Interpreter put the question to the witness, and the answer was given "No, sir" through the Interpreter.

CROSS EXAMINATION BY MR. MOSS:

Q Did you ever write on a typewriter? A Yes.

Q In your own home? A Yes, in Saitta's, and also in my house.

Q Also in Mr. Saitta's office, did you write on a type-

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writer? A Yes, sir, some letters and telegrams.

Q Did you write telegrams in Mr. Saitta's, on Mr. Saitta's typewriting machine? A Yes.

Q Showing you Exhibits 42-A and 43-A, did you write these two letters on the typewriter in Mr. Saitta's office? A Yes.

Q Why did you date them in Brooklyn? A Because my office, my house, was in Brooklyn.

Q Didn't you mail them in Brooklyn also? A When I would write the letter in New York I would mail them in New York, and when I would write a letter in Brooklyn, I would mail them in Brooklyn.

Q Didn't you mail those two letters in Brooklyn? A I don't remember.

THE PEOPLE REST.

THE DEFENSE RESTS.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:15 P. M.

(The defendant's bail is continued as usual.)

AFTER RECESS. Trial resumed.

MR. MOSS: The defendant renews his motion for the withdrawal of a juror upon the grounds previously stated, and upon these additional grounds: The Court entered into

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the examination and cross examination of witnesses, and into the cross examination of the defendant, and also made statements, which has been excepted to, in such a way as to impress the jury with the personal belief of the court upon the facts and the merits of the case, and in such a way as to affect the balance of the issues which are to be submitted to the jury. Respectfully we claim that this has been done to a marked degree since the last time the court was requested to withdraw a juror, and a potent atmosphere for conviction has been created. In counsel's respectful judgment, the situation concerning the juror, Mr. Winton, has become more acute, on account of these matters, which he urges must have a powerful effect, especially upon that juror's mind.

The Court showed to counsel and then handed to the stenographer the following memorandum in reply to the foregoing "first motion". I do not recall any statement made by the court and certainly, if it was made, it was not made with any intent, nor could I have conveyed to the jury the opinion of the Judge on the case. The juror, Mr. Winton, has not said or done anything in the jury box that could be criticised in the least. No atmosphere has been created except such as may have been created by the evidence and by astute counsel on paper. The first motion is denied.

Exception by the defendant.

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The defendant now renews his motion made at the close of the People's case to direct a verdict of acquittal, (also to dismiss the indictment) and on these additional grounds: As to the first count of the indictment the evidence does not show the commission of the crime charged. A. There is no evidence whatsoever showing that he obtained possession of the property by any criminal means. B. The evidence is at variance with the indictment. C. There is no proof of felonious intent.

Second: As to the second count of the indictment:

A. It appears from the evidence that the property was duly transferred by Fazio to Gatto by ^{an} absolute transfer, and he was empowered to transfer absolutely to Saitta, and he did so -- see the endorsement on the bills of lading. B. There is no evidence that Saitta is in default as to Gatto. C. There is no evidence that Saitta is in default as to Fazio. D. The evidence is at variance with the indictment. E. Fazio divested himself of title to the property. F. There is no sufficient evidence of a demand on the defendant. G. There is no proof of felonious intent.

Third: On the entire case there is a failure to show felonious intent and that the crime charged is not proved.

Motion denied.

Exception by the defendant.

Third Motion.

If the motion be denied, then we move to take away

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from the consideration of the jury the first count of the indictment.

Motion denied, and exception.

Mr. Moss sums up in behalf of the defense.

Mr. Hayward sums up in behalf of the People.

MR. MOSS: If your Honor please, I desire to except to certain statements made by the District Attorney as prejudicial to the defendant. First, I except to the statement of the District Attorney that the defendant admitted that the \$127 which Gatto took was what he was entitled to.

THE COURT: Who was entitled to?

MR. MOSS: Gatto. I prefer to the incident where the defendant sent Gatto out to cash a check and when Gatto put the money in his own pocket, and on cross examination the District Attorney asked the defendant whether Gatto was not entitled to more than that in the account, and the defendant answered that he had promised not to draw upon that, and the matter he sent him to do was cash a particular check and bring the money back. I also except to the remark of the District Attorney which was directed to the defendant's attorney, in substance "Do not blame us for the character of Salvatore Gatto", stating that we had not blamed the District Attorney for the character of any witness, but simply discussed the credibility of witnesses,

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and third, the statement made by the District Attorney of why counsel for the defendant objected to the testimony of the first witness as to the handwriting of Fazio.

THE COURT: What is the point of the last objection?

MR. MOSS: The statement as I got it --

THE COURT: You mean the District Attorney commented on that rule of evidence?

MR. MOSS: No. The District Attorney commented on the intention -- the intent of the defendant's counsel in raising an objection to the testimony of the first witness to the handwriting, on the ground that we desired to keep out any evidence of the handwriting of Fazio, hoping they would not be able to prove it, and therefore had no case.

THE COURT: I will state to the jury that when you did so, under the rules of evidence, you had a right to do so.

MR. MOSS: It went further than that. It was the discussion of the intent with which it was done, and I call attention further to this, that as soon as it was apparent that any witness was competent to testify to the handwriting of Fazio, I took my seat and let him have it.

THE COURT: I will instruct the jury it is no evidence of the defendant's intent at all, and that his counsel may invoke any rule of evidence that he knows of to exclude testimony.

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MR. MOSS: It is further than that -- as soon as I felt they had a competent witness and somebody was not foisting on us letters never written by Fazio, I stopped objecting, and let it come in, and told him to put it in without taking the time to prove it.

THE COURT: Well, that is a matter of argument, is it not?

Now, in regard to the two counts in the indictment, how about the first one. Suppose the case goes to the jury on the second count of the indictment, reserving in the first count all that is referred to in the second.

MR. HAYWARD: Such as to dates, and so forth.

THE COURT: Yes.

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THE COURT'S CHARGE.

SWANN, J.:

Gentlemen of the Jury, the defendant is on trial for the alleged crime of Grand Larceny in the first degree, it being alleged that on the 25th day of September, 1913, the defendant stole \$1,813.76, lawful money of the United States of America, of the value of that sum of money, and the property of Giuseppe Fazio.

This case has taken eight days to try. It is now twenty-five minutes after five P.M. You have had a long day. We entered upon this, the last day of the trial, at half past nine o'clock this morning, so that we might get through with it to-day, and I will review the facts in the case just as briefly as possible.

You have heard Mr. Moss for the defense, for an hour, and you have heard Mr. Hayward, for the prosecution, for an hour, reviewing all the facts in the case as they appeared to each of them respectively. Each counsel is entitled to review the facts in the case as he understands them, as he recalls the evidence in the case, and he is entitled to tell you what he thinks that evidence proves to his satisfaction. That is called argument. Counsel may have a personal opinion in regard to the evidence of a witness, as to whether or not it is credible; he may have a personal opinion as to the guilt or innocence of the defendant, but the personal opinion

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of counsel as to the guilt or as to the innocence of the defendant, is not evidence, and is not to be taken as evidence by the jury. The jury are not to substitute counsel's opinion either one way or the other, on one side or the other, unless it conforms with the jurors' opinions. The jury are the sole judges of the facts in the case, and by that I mean what transpired, this whole transaction, the jurors are to determine for themselves what the facts connected with this transaction were. They are to determine what the witnesses testified to, and what part of the evidence of the various witnesses is credible and worthy of belief, and upon those portions of the evidence which they think worthy of belief, credible and believable, they are to found their verdict.

You will take the law in the case from the Judge. The Judge will not interfere with you in any respect in regard to what the facts were. The Court will not invade your province. Your sole and exclusive province is to determine what the facts in the case were.

The contention of the District Attorney in this case is that some time in June the defendant Saitta and one Gatto, either composed, or one composed and the other corrected a certain proposed circular to be sent out to the trade in Italy -- to persons engaged in what is known as the citrus trade. It seems to be the evidence in this case, beyond

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dispute, that the defendant was well versed in that trade, and that defendant says himself that he was well versed; that he used to be with his brother and father in business, and for many years, probably for twenty years or thereabouts, in this particular line of business, that is, the fruit business, and the defendant says he thoroughly understood it from one end to the other.

Gatto says that these circulars that were sent to Italy were corrected by the defendant, and after being corrected by the defendant, the defendant gave him a list of the persons to whom they should be sent, and in accordance with the agreement between them, he sent out these circulars to Italy.

The contention of the People in this case is that this man Gatto had the same name as Ferdinand Gatto, that is, his given name, and that Ferdinand Gatto was a well known merchant dealing in citrus fruits from Italy, and that he lived in Brooklyn, just where S. E. Gatto lived, the witness in this case, and that he had an office in New York, I believe on Broadway -- or, am I incorrect in that as to Ferdinand Gatto?

MR. MOSS: He had a desk in the office of one of the witnesses, Cavalaro.

THE COURT (continuing) Well, it was on Broadway. Gatto says that with the full knowledge of the defendant, he had a stamp to the effect that S. E. Gatto & Company had an office

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at 258 Broadway, and that number was the number of the defendant, Saitta's office. The defendant says he did not know of any such stamp. That stamp, however, appears on the first bill of lading that came over here from Fazio, and it appears from an inspection of that bill of lading, that the defendant Saitta signed his name under that, very near, within a fraction of an inch of where that number 258 Broadway appears to be stamped upon the back of that bill of lading.

The defendant says that at the time that he signed his name there on the back of that bill of lading, he did not notice that Gatto had given his office address as 258 Broadway. The contention of the District Attorney is that he did know it, and that it was a part of the scheme and agreement or alleged scheme and agreement and plan between the defendant and Gatto. The defendant claims it was not, and that he had nothing to do with it and did not know of its existence there until it was called to his attention. The People claim that Gatto was a mere dummy.

The contention of the People in this case, according to the argument of the District Attorney, and the theory upon which this case seems to have been tried was, in plain English, that Gatto was simply a dummy. The argument of the District Attorney is that Gatto was a hanger-on in Saitta's office, and something in the nature of a man Friday for

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Saitta -- that is the contention of the People in this case-- to do the behest of the defendant, to practically run errands for him and do whatever he was told, for which he received, from time to time, small compensation from the defendant. These are not the words, but that is as I gather it from the argument, and merely to show what the contention of the one and the other is.

On the other hand the defendant Saitta says, through his counsel, in his argument, that the defendant with Gatto was a legitimate merchant; that he thought he had received a legitimate bill of sale. There is no question about the bill of sale in itself being a legitimate bill of sale, but, he thought it was a legitimate transaction, and that when he got the money, the proceeds of it, he decided he would pay himself certain sums of money amounting to about, as he claims, \$916.22 out of the fund. The defendant claims his intent was not only legal but that it was charitable, to some extent, and that no evil intent crossed his mind in regard to it.

The defendant is a lawyer of considerable experience at the bar, and he has placed his character in issue, that is, he has presented evidence here, testimony of witnesses who have testified as to his good character. The People on the other hand, have presented witnesses who have testified, in their opinion, to his bad character, that is, to his reputa-

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tion in the community in which he lives. It is for the jury of course, to determine what the facts are. Of course a man may be of bad character and yet be perfectly innocent of the particular and specific wrongdoing alleged, and at this point I will call your attention to the fact that, never mind what you may think a man's character is, the question is did he commit the offense charged in the indictment, and the offense charged in this indictment is the larceny of \$800. of the money of Fazio. As I say, there is no question but that the bill of lading was a proper and valid bill of lading that came over from Fazio in Italy, in accordance and as per invitation in the form of a circular letter, as I understand. That bill of lading was properly endorsed. There is no question about that. That bill of lading was perfectly legal in form. There is no question about that, and there is no suggestion but what that was a perfectly valid, legal bill of lading, with a perfectly legal and valid endorsement. That was the intent, and that was what it was, and it justified the receipt of the goods and the sale of the goods. But now, the question is, the sale of goods by a factor, by a commission merchant, the moneys themselves, when they are sold, are received by the recipient in a fiduciary capacity, the transfer of the property is perfectly legal in form and perfectly legal in fact, but there was a trust relation there for the purpose of doing a specific act, for

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the purpose of selling the goods and for paying the proper charges from the sale of the goods, and also paying the factor his lawful commission or brokerage, whatever that may be -- in this case approximately \$80. -- and then for the purpose of delivering the proceeds to the person who owned them. Therein, it seems to me, is the very crux of this case. When Saitta received this money, did he have an unlawful intent to misappropriate the money, appropriating the money of Fazio's to his own use, and did he do so by means of a plan or a scheme to have Fazio ship them to a dummy. That is the contention of the District Attorney, as I understand his contention in this case; that the scheme, plan or device was to induce this man in Italy to ship to Saitta's dummy, to his alter ego, to his other self, and to let that man charge up to his dummy whatever obligation or whatever civil obligation there might be in case the dummy did not remit for the goods, and that Saitta, the defendant in this case, should receive the fruits of the transaction, receive all that there was in it, and leave the rind, as it were, to the dummy, and let the old man who shipped the goods, have his cause of action, if he had any, against the dummy. That is the contention of the District Attorney. And, remember gentlemen, I am not permitted under the law, and under the practice and procedure, to indicate to you what I think the facts were, and I will also express to you right here this,

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and I wish you would not fail to remember it all during your deliberation in regard to this case, and while you listen to me in this case, that the jury are the sole judges of what that transaction was, and even if the Judge had an opinion, and he must have an opinion because he has heard all the evidence in the case -- and even if you thought you knew what that opinion was, you would violate your oath if you adopted the Judge's opinion contrary to your own opinion. In other words you are not allowed to substitute what you think the Judge's opinion is for your own opinion, and the Judge is not even permitted to directly state or insinuate to you, what his opinion in regard to the facts in the case, is.

I hope I have made myself perfectly clear on that point, because otherwise I would not deliver a fair and impartial charge to you, and I must be perfectly fair and impartial as between the People on the one side and the defendant on the other. I tell you that you are the sole judges of what that transaction was, and you must tell us what that transaction was, by your verdict.

In the case of Britton vs. Ferrin, 171 N.Y., at page 242, the Court of Appeals says "The relation between a commission merchant or factor for the sale of goods, and his principal, is fiduciary -- that is, a trust relation -- and in the absence of an express agreement or one implied from the course of business or dealings between the parties,

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giving to the former the right to appropriate to his own use the proceeds of sale, they belong to the principal subject only to the lien of the agent for commissions and other advances and charges, and the principal may follow and reclaim them so long as their identity is not lost, subject to the rights of a bona fide purchaser for value. Such agents cannot deal with the property of their principal or with the proceeds thereof, as their own. Where one entrusts his property to another for a particular purpose, it is received in a fiduciary capacity and when turned into money, that is also received in the same capacity; it does not belong to the agent and he can lawfully exercise no power or authority over it, except for the benefit of his principal, and only as authorized by him. If the agent uses it for his own purpose, or fails to pay it over upon reasonable demand, it is a conversion of that which does not belong to him."

The defendant says that he did not know that Gatto was a commission merchant or factor or broker in this case -- if I am not correct, stop me -- that he thought that Gatto had received the legal and equitable title to that property. In other words, that Gatto was the absolute owner of these lemons for his own use and purposes, and that he, Saitta, acted in perfect good faith, not knowing anything to the contrary; that he did not know that the goods had been con-

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signed to be sold on commission only, and that therefore he charged against Gatto \$916. which Gatto owed to him. Of course if that was true, if such was the case, if he really sincerely believed such to be the case, he would have a right to do so but that is a question for you to determine, and you are to determine that in the light of all the surrounding circumstances in this case. Did he believe that Gatto was a man who could get that quantity and value of lemons upon his own credit, and could get an absolute title -- not in the nature of a commission merchant or factor, but as absolute owner? Did he think that from all the surrounding circumstances and from what he knew about Gatto. That is a question for you to determine, and nobody else, and in determining that question, you can let your minds sweep over all the testimony in this case on both sides. You can take the defendant's own testimony as to his opinion of Gatto's ability to do business, and at the same time his statement that Gatto borrowed from him ten dollars here and ten dollars there, and that his wife, the Christmas before, came and on her bended knees, asked him for money to support herself and child, and that he gave her out of his bounty, three dollars. All these matters are to be taken into consideration by you, and you may give them just such weight as in your good judgment, you deem best.

In determining what the intent of the defendant was

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after he received the money, you may determine whether or not there was a plan or a conspiracy to cheat and defraud somebody over in Italy, that is, somebody that would send lemons in accordance with these circulars. You may take into consideration whether there was a scheme, plan or conspiracy to get lemons from the other side and not pay for them, in determining whether or not the defendant, after he received the lemons, and after he received the money, formed an intent to misappropriate the proceeds, and then claim, as the District Attorney says he did, that he had an offset against Gatto, and that he offset Gatto's obligation to him against the receipts, and did that in the honest belief that Gatto owned absolutely the lemons and could do with them as he wished, and not in a fiduciary capacity.

The law on the subject of larceny is laid down in Section 1290 of the Penal Law which reads as follows: "A person who with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person, takes from the possession of the true owner or of any other person, or obtains from such possession by color or aid of fraudulent and false representation or pretense, withholds or appropriates to his own use or that of any person other than that of the true owner any money, personal property, thing in action, evidence of debt or contract or article of

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any value, steals such property and is guilty of larceny.*

Grand larceny in the first degree, of which this defendant stands charged, is the larceny of property of more than \$500. in value. Grand larceny in the second degree is the larceny of property of more than \$50. in value.

Petty larceny is a mere misdemeanor and is the larceny of property under \$50. in value.

Therefore gentlemen your verdict in this case will either be guilty of grand larceny in the first degree, or guilty of grandlarceny in the second degree, or guilty of petty larceny, or not guilty, according first as to whether or not you find the defendant guilty, in which event you would determine whether or not he was guilty of the larceny of more than \$500., in which event it would be grand larceny in the first degree, and if it was less than \$500. and more than \$50., it would be grand larceny in the second degree, and if less than \$50., it would be petty larceny.

In all criminal actions a defendant is presumed to be innocent until the contrary is shown, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. The burden of proof is upon the District Attorney representing the People of the State of New York.

The defendant has handed up to me twenty-four requests to charge, and I shall read them to you, and then give my

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decision upon each in order.

The defendant requests to charge "First, the bills of lading were negotiable instruments." That is correct. I think I covered that in my main charge.

"Second: The endorsements on the bills of lading 'Deliver to S. E. Gatto & Co.' passed the title to the lemons from Fazio to Gatto (S. E. Gatto & Co. being the trade name of S. E. Gatto)." That is, gentlemen, passed the legal title. That is correct, but I will state here that as to any surrounding facts as to whether or not by way of brokerage or by way of commission agent or factor, which is the same as commission agent, or whether by absolute transfer of the equitable and beneficial interest in the lemons is a question for the jury to determine.

MR. MOSS: I except to the addition.

THE COURT: For instance let me put it something like this so that you may understand it thoroughly: If I should give my check for \$250. to my office boy to go and cash at the bank, I give him an absolute title to the check, perfectly legal in form, which justifies the bank in paying the check, but that does not give him a legal title to the money. I have only asked him to go and get that from the bank. I think that is a familiar principle to every one of you, and do not think it needs any further explanation.

MR. MOSS: I except to that as not applicable to the facts in this case.

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THE COURT: It is not, but it is merely to illustrate and to show you how a document may be absolutely legal in form and pass the legal title, and yet it was not intended between the parties and was agreed between the parties that it should be done for a purpose only, that is, for the special purpose named, but, gentlemen, that is always for you to determine, whether or not that is so.

MR. MOSS: I except to the illustration as not applicable to this case.

THE COURT: If it is not, then the jury will eliminate it.

"Third: The bills of lading having been endorsed by Fazio to Gatto, the defendant had a legal right to recognize Gatto as the owner of the lemons." That is not so. It depends entirely upon what the defendant knew from other sources.

MR. MOSS: I except.

THE COURT: I have explained that thoroughly to you gentlemen. It is entirely for you to determine. I will illustrate that also. The defendant testified in this case that Mr. Musica gave him an absolute deed of certain property over in Brooklyn, absolute and perfect in form to convey the title, but also stated on the stand that it was agreed between them it should only be used by him for a certain specific purpose, namely, that he should merely go upon

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Mr. Musica's bail bond, and that after that occurred, then he should convey the property back. That deed was a conveyance absolute in form, a cast iron form of deed, but the agreement between the parties was that it should be used for a specific purpose. I think that illustrates this.

MR. MOSS: I except to that as not applicable.

THE COURT: Of course those were not the facts in this case, and this jury are intelligent, and do not have to be told that.

"Fourth: Gatto being the owner of the lemons" -- I have to refuse this. Gatto says he was not, and it is for the jury to determine whether he was or not. "Gatto being the owner of the lemons and having endorsed and delivered the bills of lading to the defendant, the defendant had a legal right to use the proceeds of the lemons in any way agreed upon by him and Gatto, and committed no larceny of Fazio's property in doing so."

That depends entirely upon whether the jury finds those were Gatto's lemons, or whether or not the lemons were sent to Mr. Gatto merely as a commission agent, as Gatto says they were, to be sold upon brokerage only, and the money to be remitted to Fazio.

MR. MOSS: I take an exception.

THE COURT: "Fifth: By the endorsements and deliveries of the bills of lading, Fazio is estopped as against any

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honest use of the lemons and their proceeds by the defendant. He is not estopped by the endorsement, provided the defendant knew that the endorsement on the bill of lading was merely to facilitate the sale of the lemons and convert them into cash and the transfer of the money back to Fazio.

"Sixth: The endorsements on the bills of lading by Fazio and their delivery to Gatto, amounted in law to absolute transfers of the legal title of the lemons." That is correct, the legal title, but I have explained to you there is a difference between the legal title and equitable title and beneficial interest. A man may have the legal title to anything, but under an agreement that he has no beneficial interest in it. If I should give you a perfectly good promissory note that I have in my safe, and endorse it in blank and say to you "Mr. Jones, will you please go and have this discounted for me," that gives you the legal title to it, but not the beneficial interest in it because I have asked you to go and discount it and bring me back the money.

MR. MOSS: I except to that illustration as not applicable.

THE COURT: This is merely by way of illustration so that you may understand, because these terms are technical-- legal title is a technical term.

MR. MOSS: I except to the illustration as not applicable.

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THE COURT: If not, you will eliminate it entirely, gentlemen of the jury. Do not let the illustration affect you in the determination of this case.

"Seventh: When Gatto endorsed the same bills and delivered them to Saitta, the legal title passed to Saitta, and he had a right to deal with the lemons as owner." That depends entirely upon what facts the jury find.

MR. MOSS: I take an exception.

"Eighth: Under the form of the endorsements on the bills of lading, the defendant had a right to pay the proceeds of the sale to Gatto, and to deduct Gatto's indebtedness to him from the proceeds of sale, so far as Fazio was concerned." Not if he knew that money belonged to Fazio and Gatto only had the goods as a commission merchant and did not have the beneficial interest in the lemons or the money. I have explained that to you already.

"Ninth: There is no evidence tending to show that as between Gatto and Saitta, Gatto made any demand on Saitta or suffered any wrong at Saitta's hands." That is correct. This is not a question here between Gatto and Saitta. This is a question between the People of the State of New York and Saitta, and the charge is that it was misappropriation of Fazio's money, and not Gatto's. The whole theory of the prosecution is that Gatto was merely a custodian.

"Tenth: The defendant cannot be convicted because of

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any failure to account to Gatto." That is correct.

"Eleventh: There is no evidence in the case that the defendant obtained possession of the money mentioned in the indictment by any unlawful means." That is correct. It is not the obtaining of the money by unlawful means, it is the withholding of the money that he is charged with.

"Twelfth: The defendant cannot be convicted unless under the second count of the indictment (the bailee count). Unless demand was made on the defendant by Fazio or his agent for a payment of the moneys, he cannot be convicted under the second count of the indictment. The evidence given by the witness Cavalaro does not show such a demand as would be necessary to sustain the indictment. There is no evidence in the case tending to show that any sufficient demand was made on the defendant for the money by Fazio or his agent." That is a question for the jury to determine and in that regard I will also submit this, that it was held in the case of the People vs. Birnbaum, 114 Appellate Division, 480, that where a lawyer, in that particular case, had stated to his client that he had not received the money, when, as an actual fact he had received it, that no demand was necessary. However I will state right here that the mere fact that this defendant is a lawyer has not anything to do with this case one way or the other. He is not tried as a lawyer or as having received the money as a lawyer.

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"Thirteenth: The defendant cannot be convicted unless the jury is satisfied that he was the bailee of Fazio, and that he retained the money with criminal intent, after an unqualified demand had been made upon him for it." We have here the testimony of a witness and also of a lawyer, I think -- Cavalaro stated that he went there and made a demand, did he not?

MR. MOSS: His statement of the facts did not bear out his contention.

THE COURT: He said he asked for it.

MR. MOSS: He left carrying away a proposition.

THE COURT: He stated, as I recall it, that he was offered \$500. in full settlement of the whole thing, and he said he would submit that, and that he refused to receive \$500. in full settlement.

MR. MOSS: No, he said he would submit it -- it was not \$500., it was more. It was a thousand, with merchandise added to it.

THE COURT: Whatever it was, gentlemen and, in anything I have said I do not mean to give you to understand that my recollection of the testimony is to take the place of yours. It is your recollection of the testimony and what Cavalaro said before you, and not as the Court remembers it. You will take it as you remember it. I thought he said he went there and asked for the money, and that, of course, means a demand.

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You do not have to make a demand by saying "I demand my money". You say "Won't you pay me the money", or any other words to that effect.

"Fourteenth: The defendant cannot be convicted on any theory of the case unless the jury is satisfied that he was actuated by a criminal motive." Of course, that is the idea. That is correct.

"Fifteenth: The defendant cannot be convicted for an error of judgment, for a business mistake or for an infraction of commercial law without a felonious intent." Certainly I do not think there is any charge here to that effect.

"Sixteenth: Even though Fazio might have a right to sue and recover a judgment for money damages against Saitta, that would not of itself show him to be guilty of a crime." No, that would not of itself show any man to be guilty of a crime, merely because he has a money claim against him.

"Seventeenth: The crime of larceny must rest upon the intent with which the act is done. The intent must be felonious; that is to say, an intent without an honest claim of right." That is correct.

"Eighteenth: If the jury believe that the defendant took and kept the property under the honest though mistaken belief that he had a right to do so, it is not larceny." That is right.

"Nineteenth: The charge of stealing property is only

substantiated by establishing the felonious intent. Without it there would be no crime, but at most a non-criminal trespass." That is correct.

"Twentieth: The mere fact that the consular invoice was of a color and form which indicates a shipment to a consignee, does not amount to a contravention of the evidence of title furnished by the bills of lading themselves and their endorsements." The jury will give that such weight as in their good judgment they deem best. There is some evidence here that the consular invoice, of the color of this particular consular invoice and bill of lading were those used where a consignor consigned to a consignee, and that another form was used where there was an absolute sale to the person who received the goods, and ownership, and the District Attorney claims because this defendant was so well informed in the trade, he must have had notice right off that that was a consignment and not an absolute sale to Gatto. That is for the jury to determine, and give those matters just such weight as in their good judgment they think proper.

"Twenty-one: Notwithstanding that the bills of lading were accompanied by white consular invoices, and that the form indicated by the white consular invoice was followed in taking the lemons out of the Customs House, both Gatto and the defendant had a right to rely upon the transfer of title

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evidenced by the bills of lading and the endorsements thereon." That is entirely for the jury. If a man knows facts outside of a record, he cannot shut his eyes to those facts, and just merely look at the record and say "I refuse to see anything else", when he knows to the contrary. It is all for the jury to determine whether he did know to the contrary, or not.

"Twenty-two: Before the jury can find that the defendant is guilty, they must believe beyond reasonable doubt that the defendant had no honest belief that he had a right to use the property as he did." That is correct.

"Twenty-three: If the jury have a reasonable doubt as to the defendant's criminal intent or as to any essential element of the case, they must acquit him." Of course that is correct, and I have already charged that.

"Twenty-four: The jury must not consider the questions put by the District Attorney to the witness Andreis, as to whether he was acquainted with Lupo the Wolf, the barrel murderer. There is no evidence that Lupo was connected with a barrel murder." There is no evidence in this case to that effect, and therefore, gentlemen, you will eliminate that. Your verdict in this case will be either guilty as charged, that means grand larceny in the first degree, or guilty of grand larceny in the second degree, or guilty of petty larceny, which is a mere misdemeanor, or not guilty,

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as in your good judgment you deem the evidence justifies.

MR. MOSS: I ask your Honor to charge that Mr. Saitta had a right to make advances upon those bills of lading, as matter of law, and if he did make advances honestly, he was entitled to hold the property for those advances.

THE COURT: That will depend entirely upon whether or not it was an honest transaction; whether or not it was an honest consignment, or was it a consignment to a dummy? If Gatto was Saitta, that would not apply.

MR. MOSS: I except to the failure or refusal of the Court to charge as to each point not specifically charged. As to No. 13 I except upon that ground and also upon bringing into the discussion of that request the Birnbaum case, as having no application whatever.

THE COURT: Then we will eliminate the Birnbaum case. All I have told you gentlemen upon the Birnbaum case you will eliminate and I withdraw it entirely from your consideration.

MR. MOSS: They have forgotten what that means now by this time.

THE COURT: Then you tell them.

MR. MOSS: No. I except to the reference to the rubber stamp. You stated the evidence with reference to the rubber stamp, and I think you forgot to state in summarizing the evidence, the testimony that Gatto gave where he said that

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the first time he used that rubber stamp the defendant did not say anything, but after that he said "You must not put this rubber stamp on any more."

THE COURT: That is correct.

MR. MOSS: Then I except to that portion of your charge where you stated the theory of the prosecution, and you discussed the question of a factor, and in that discussion said "There was a trust relation there" and then a little further on said "in this particular case approximately \$80. "

THE COURT: Those are facts entirely for the jury to determine, whether there was a trust relation, there, or whether or not it was an absolute sale to Gatto, or even that the defendant thought there was an absolute sale to Gatto. Is not that fair enough?

MR. MOSS: In the same relation I want to except --

THE COURT: Do you object to that part of the charge where I spoke of the bill of lading, the defendant's signature touching or being very near the 258 Broadway?

MR. MOSS: It does appear to be near it. I do not except to that. I object to that portion of your charge which discusses the relation of the defendant to Fazio as a trust relation.

THE COURT: That is a question for the jury.

MR. MOSS: I except to that. Then, a discussion in your charge having reference to Gatto's ability to pay the

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defendant what he owed him and speaking of numerous little sums by way of illustration -- you did not refer to the fact that it appeared in evidence that Gatto brought in on bills of lading other property on other merchandise from Italy in his own name upon which he had to pay commissions to Friedenberg, which approximated more in value than the lemons in this consignment.

THE COURT: That his interest in them was more than that?

MR. MOSS: I think so.

THE COURT: I did not know that, but if the jury do, it is for them to determine.

MR. MOSS: I except to your Honor's discussion in the charge of consular invoices.

THE COURT: Now gentlemen, your verdict will be either guilty as charged or guilty of grand larceny in the second degree, or petty larceny, or not guilty, and just as soon as you arrive at a verdict, come in. You have been here a long time and been very patient, and just as soon as you arrive at a verdict, let us have it.

(The jury retire).

THE COURT: I have continued the defendant's bail throughout the trial. He may remain in court while the jury is deliberating.

8:10 P.M. The jury come into court.

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FBI

THE CLERK: Have you agreed upon a verdict?

THE FOREMAN: No, we have not. We are here to ask instructions as to how to vote.

THE COURT: Let us see if I get your idea. It seems to me that the proper thing would be, but it is all for the jury, you can adopt any method you wish, but it seems to me the logical and reasonable method would be to vote first as to guilt or innocence. If the vote is not guilty, that ends it. If the vote is guilty, then you could have another vote and determine in what degree. That is the way I should do, if I were a member of the jury. I do not know of any better way, and that is the usual way. First take a vote as to the guilt or innocence of the defendant.

THE FOREMAN: Will your Honor please define again the different degrees of guilt.

THE COURT: The charge is Grand Larceny in the first degree. That is the larceny of money or property of more than \$500. in value. If a person is guilty of Grand Larceny and the jury found the amount more than \$500., it would be Grand Larceny in the first degree or as charged -- that is, guilty as charged. If the amount were less than \$500. but more than \$50., it would be Grand Larceny in the second degree. If it was less than \$50., it would be Petty Larceny, that is a misdemeanor, and, if there is no larceny at all, it is not guilty. Have I made that pretty clear?

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THE FOREMAN: Yes.

THE COURT: If you find you cannot agree, we will have to see if we cannot find something for your dinner. At this time of night there is no place anywhere near here where there is anything to eat. I do not want to hasten you in any respect, but do not take any more time than is absolutely necessary, and we will very much appreciate it. I have telephoned all around to see if we could not find some place open, but, downtown since the old Astor House is closed, everything is closed up. Try and see what you can do. I do not want to hurry you unduly. I do not want to be placed in that position.

(The jury retire).

LATER: The jury render a verdict of guilty of Grand Larceny in the second degree.

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