

A I was going to.

Q "Yes" or "no"? A No.

Q You didn't go anywhere? A No.

MR. EDER: That is all.

RE DIRECT EXAMINATION BY MR. FELDMAN:

Q Why didn't you go? A For various reasons. I was explained by the lawyer it wouldn't do me a bit of good, they would pay no attention, and my brother tells me, whatever he says they have been lying, and just turned around the other way, ^I shouldn't bother; this case will not be tried here anyways.

Q Now, you said before, with reference to seeing Schilder, you said you saw him in the courts; is that what you said yesterday? A I saw wh~~o~~?

Q That boy, Schilder? A I don't know his name, but in the Court I saw him, yes, sir.

Q By saying "court", you meant what, what court?

A The Magistrate's, this court, all the Courts.

Q And by the word "Courts", you mean the Magistrate's as well as this Court? A Yes, sir.

Q Was it the same boy that you saw on the day when you delivered the goods? A This very boy.

Q Are you sure of that? A There was someone else with him. He was not alone.

Q But he was one of the men? A One of the men, yes, sir.

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Q Now, you told us on the day of the 2nd of August, -- what time were you called away from your place of business?

A I had a telephone call around five o'clock; I must have left there between five and six, anyways.

Q You also said that your mother in law was dying?

A Yes, sir.

Q You were quite excited? A I had to leave the place.

Q Isn't it a fact you took the keys along with you?

A I don't remember if I did. Sometimes I leave them on the desk when I expect my brother to come back.

Q Did you have the keys with you? A I don't remember now whether I did, or not.

Q Do you know of your own knowledge whether the place was locked after your brother was arrested? A Whether it was locked?

Q Whether the place was locked after your brother was taken away by the police? A I do not.

Q You are sure your brother was away on that day?

A Yes, sir.

Q What makes you so sure of it? A Because we have so arranged on the night before, that he is to go to Newburgh, and a certain lot of goods he was about to buy.

Q And you knew that he left direct from his home for Newburgh? A That was the understanding, to go right early in the morning.

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Q Had no time to bother yourself about the goods, is that right? You paid no attention to it at the time it was delivered?

MR. EDER: I object to that. We have had all of that, your Honor.

MR. FELDMAN: No, we did not.

Q Did you count the packages? A No, sir.

Q As far as the packages were concerned, how many packages -- did you count the packages? A No, sir.

Q You know it was left for Silbert? A Yes, sir.

BY THE COURT:

Q Did I understand you to say yesterday you were busy about some other things when these packages were brought in?

A Yes, sir.

Q And that after they had been brought in you made some efforts to find the people that brought them in? A On account of them being strewed on the floor, I wanted him to lay them on the side and make a passage.

Q And that you made some effort to get them, but they were gone? A Yes, to get them back to fix them up.

Q What did you do with reference to accomplishing that?

A I left it that way, I left it on the floor, didn't touch it any more.

Q What did you do with reference to getting the men to do this work that you didn't like, filling your floor up with

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these goods? A I couldn't get the people in that moment, in a short notice.

Q You made some effort to? A I expected the same men to do it for me, but I didn't know they were gone; I couldn't so quick get somebody else.

Q You have been in business for a long time?

A Yes, sir.

Q And did you let these young men come in there and not give any attention to what they were dumping on your floor?

A I did so.

Q You did? A Yes, sir.

Q Didn't look at what they were putting down and covering up that floor with? A Well, I told them to put it aside, it is supposed to be just temporarily.

Q Didn't see to whom the parcels were directed? Do you go out to the jury as saying that, with an experience of over twenty years in business here in this town? Out with it?

A For the tenant up stairs, they were supposed to take them out the next minute. Why should I bother with it?

Q You were doing that out of the kindness of your heart, to accommodate your friend? A Yes, sir.

Q In other words, for a tenant in the building?

A I done it with this tenant, and for other tenants as well.

Q And when you saw there were too much scattered all over, you were trying to get the men? A Yes, they should puch it aside, at least.

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Q You have no employees in your place except yourself and your brother? A That is all.

BY THE COURT:

Q And these parcels were brought in at different times, weren't they, by two or three men coming in with parcels, taking them from the elevator? A Yes, sir.

Q And that was going on before you, and was there anybody else there? A The other tenants, the sub-tenants, were there.

Q They were there? A Yes, sir.

BY MR. FELDMAN:

Q Somebody else was with you when that was brought in?

A Yes, sir.

Q Mr. Lang, old man Lang, was there? A Yes, sir.

Q Was anybody else there? A Mr. Dreifach was there and his bookkeeper was there.

Q At the time the goods were brought in? A Yes, sir.

Q Is Mr. Lang here? A Yes, sir; he is supposed to be outside.

BY MR. EDER:

Q Who is the firm? A Goldberg and Lang.

Q Did you have a sign, "Goldberg & Lang"? A No, sir.

Q Wasn't there a sign on your partition, "Goldberg & Lang"? A No, sir, not Goldberg & Lang.

Q What business is Lang in? A Cotton goods business.

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Q The same business you were in? A Yes, sir.

Q Did he have merchandise there that day? A Yes, sir.

Q Where did he keep it? A He had a certain place assigned to him that he paid me rent for.

Q He had a certain place assigned to him? A Yes, sir, where he kept his stock, separate from mine.

Q You had no shelves there? A No, sir.

Q You had a great deal of room there? A Yes, sir.

Q The place was practically empty, wasn't it, so far as goods were concerned? A The place is never empty.

Q You had a loft 100 by 25? A Yes, sir.

Q How much space did the goods take up that you had there on August 6th? A My goods and Lang's, you mean?

Q Yes. A Well, they took up quite some space.

Q But you had a great deal of empty space there, didn't you? A Yes, sir.

Q You had no other place to keep goods, did you?

A Yes, sir.

Q You had another place that you kept goods? A Yes, sir.

Q Where? A Spring--Greene, corner Spring.

Q What number Greene? A The corner building.

Q I am asking you the number? A Let me think of the number. It is the southwest corner.

Q What number was it, I am asking you? A I don't recall the number.

Q How ~~xxxx~~ long were you there? A I was there three

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months. I used it as storage.

Q You used it as storage? A Yes, sir.

Q When did you rent it? A Either in the month of June or July.

Q What year? A The same year.

Q What year was that? A 1897, I believe, isn't it?

Q 1917? A 1917, yes, sir.

Q And you rented it only for storage purposes?

A Yes, sir.

Q How much rent did you pay? A I paid fifty dollars.

Q How much rent did you pay for the loft that you had over at Broome Street? A Nine hundred dollars.

Q A year? A Yes, sir.

Q Why didn't you use the space that you rented to sub-tenants instead of using another loft? A That time I bought a big lot of imitation leather scraps from Newburgh, New York, and it came to about 50 or 60 bales. They were heavy.

Q When did you receive them? A In the month of June.

Q And how many months did you take the loft for?

A Just until I will be ready, temporary, from month to month.

Q No special time? A No, sir.

Q From month to month? A Yes, sir.

Q And you kept all the leathre goods there?

A Scrap, imitation leather, not leather.

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Q You didn't have any room in your own loft, for it?

A Not for this lot.

Q Not for this lot? A No, sir.

Q Was there any distinction between this lot, any reason that you should keep it over there and not in your own loft?

A Yes, sir.

Q What was the reason? A They were big, heavy bales; we couldn't bring them up stairs; and that was in a store.

MR. EDER: That is all.

BY MR. FELDMAN:

Q And for that purpose you rented that place? A Yes.

Q Only a couple of months? A About three months.

Q Have you got it yet? A No, sir, and that was around the same time I moved back to the same building.

MR. FELDMAN: That is all.

BY MR. EDER:

Q When did you move back? A ^{Around} August sometime.

Q Before, or after, the delivery of this goods?

A During the time I began to move.

Q What do you mean by "during the time"? A I remember it was around that time; I had a few bales of the same goods in there.

Q What do you mean by "during that time?" Do you mean on that same day you moved? A No, let me explain to you.

Q No, answer my question. Do you mean to say you

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moved from your place there in Greenestreet to your place in Broome Street the same day you delivered that goods?

A The day before.

Q The day before? A Yes, sir.

Q Did you have a key to that place on Greene Street?

A No, sir.

Q Who had the key? A The one we rented the loft of.

Q Didn't you have a whole loft? A Where?

Q In Greene Street? A That was a store.

Q Did you have a whole store? A No, sir, just a part of it.

Q And you didn't have ^{the} a key to it? A I don't think I had the key to it. It wasn't necessary--

Q You didn't have the key to it? A I am not quite sure whether I had a duplicate, ~~key~~ or not.

Q Did you ever give the key to anybody, if you did have it? A Which key?

Q To that store on Greene Street? A I did not.

MR. EDER: That is all.

BY MR. FELDMAN:

Q A man named Bernstein had it? A S. Bernstein, yes,

Q He was the owner of it? A He was the owner; he occupied the store.

Q He sub-let it to you? A Yes, part of it.

MR. FELDMAN: That is all.

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M O R R I S L A N G, called as a witness on behalf of the defendant, being first duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 753 Gates Avenue, Brooklyn.

Q How old are you, Mr. Lang? A 68.

Q Sixty-eight? A Yes, sir.

Q How long are you in this country? A 40 years.

Q I can't hear you? A 40 years.

Q Forty years? A Yes, sir.

Q You are the father of a family? A Yes, sir.

Q How many children have you got? A Seven.

Q And the Lang who is charged with this defendant on the same indictment with having received stolen goods is now in France, is he? A Yes, sir.

Q In the service? A Yes, sir.

Q And what business are you in? A Cotton goods business.

Q Cotton goods business? What do you mean by that, cotton goods business? What do you do? Do you buy goods?

A I buy goods.

Q And sell them again? A Yes, sir.

Q And where do you keep your place of business?

A 482 Broome Street.

Q 482 Broome Street? A Yes, sir.

Q You keep your place together with Goldberg Brothers?

A Yes, sir.

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Q On what floor are you? A The second floor.

Q On the same floor with him? A Yes, sir.

Q In other words, you have there a space? A A space.

A A space.

Q And you pay your rent to whom? A To Mr. Goldberg.

Q And for how long a time were you occupying that space, how many months or years? Are you still there? A I am still there, yes, sir.

Q You are still there with him? A Yes, sir.

Q How long are you with him now? A I am with him over three years.

Q Do you remember the time when the goods came in?

A Yes, sir.

Q Two years ago, about? A Yes, sir.

Q On the 6th day of August, 1917? A Yes, sir.

Q You remember that day? A Yes, sir.

Q Now, tell us who was in the place when the goods came?

THE COURT: What goods? What goods are you talking about?

MR. FELDMAN: I am referring to the goods here, these bundles, about 30 or 40 bundles.

THE COURT: Are they in evidence?

MR. FELDMAN: They are in evidence, these two.

THE COURT: Then, refer to them by the exhibit numbers.

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MR. FELDMAN: Yes, people's exhibit No. 1.

Q Do you remember that when they came in? A Yes,

Q What time was that? A I am not so sure of the time, but I think it was between 3 and 4 o'clock.

Q Who was in the place? A Mr. Goldberg.

Q Who? A Mr. Goldberg.

Q Mr. Goldberg? A Yes, sir.

Q When you say Goldberg, to whom do you refer? To the man who is sitting here (indicating defendant)?

A No, sir. His brother.

Q His brother? A Yes, sir.

Q Samuel Goldberg, stand up. Do you mean this man, (indicating Samuel Goldberg)? A Yes, sir.

Q Are you sure of that? A Sure of it.

Q You say it was between 3 and 4? A Yes, sir.

Q What happened? Tell us exactly what happened?

A There comes in two men, and he says Mr. Goldberg "Will you please let me-- there are a few pieces of goods, the man up-stairs is not home to leave them there for about an hour or half an hour", I don't know.

Q What happened after that was said? A Mr. Goldberg said to him, "I have no place; you see it is all full of goods"; and he said, it wouldn't last there only for maybe half an hour, or an hour.

Q And then what happened after he said that? A He brought over the goods.

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Q They brought over the goods? A Yes, sir.

Q When you say they brought over the goods, what do you mean? They brought it into the loft? A Yes, sir.

THE COURT: Now, just appeal to his memory and his conscience, and don't lead him, Counsellor.

MR. FELIMAN: Yes, sir.

Q How many men came in? A Two men.

Q And how many bundles were brought in? A I don't know.

Q Was anybody counting the bundles? A I don't know.

Q Was Goldberg counting then? A I don't know.

Q Were you counting them? A I have no interest in them; I have no need to count them.

BY THE COURT:

Q Who went near the bundles which were there?

A Nobody.

Q Did Goldberg go near and look at the bundles?

A No, sir.

Q He did not? A No, sir.

Q What did he do? A He was sitting in his chair, Mr. Goldberg, in his office.

Q He sat in his chair? And where were you?

A I was in the office, too, at the same time.

Q Were you sitting in the chair, too? A No, sir.

Q On another chair? A I stayed there, I stayed there all the time.

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BY MR. FELDMAN:

Q Now, Mr. Lang, so when they brought -- can you recognize the man who brought it in, or one of the men?

A Maybe if I could see the man I could recognize him. I am not sure.

Q Did you see one of the men up until now here in court? A Yes, it is a young man I saw.

Q You did see? A Yes, sir.

BY THE COURT:

Q How many men were there? A Two men.

Q Sure about that? A Sure.

Q Do you know a person they call Nick? A I do not.

Q That is not a familiar name to you, is it?

A I don't know, sir.

Q You don't know whether it is or not? A No, sir.

BY MR. FELDMAN:

Q You never saw those men before in your life, did you?

A Never.

Q And you didn't see them since? A No, sir; I see them since here, in the court.

Q Take a good look at this young man and see whether he is one of the men? A That is the young man that was in the place.

Q That was the boy who brought them in? A Yes, sir.

Q Why are you so sure about that? What makes you sure?

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You think that he is now the man? A What makes me sure?
Because I seen him when he brought the goods.

Q How many bundles did he bring? A I couldn't
tell you how many bundles, because I have no interst in them.
They were goods which don't belong to me.

Q Was anything said when they brought in the goods?
A No, sir.

Q Beyond what you told them? A No, sir, I didn't
heard anything.

Q Where did they put the goods? A They lay them in
the office, and in the loft, on the other side.

Q During the time they spread all the goods all over
the place, was anything said?

THE COURT: He didn't say that, Counsellor.

MR. FELDMAN: Well, he said "In the office".

THE COURT: Well, no, you are not doing justice to
his testimony.

MR. FELDMAN: I don't intend to lead the man or do
any suggesting. In all fairness I am trying to try this
case.

Q- You say they put it where? On the floor?

A On the floor.

Q Where else? A And some on the cases, and all places,
because when I went home I saw the goods lay on the cases and
in the loft.

Q Was anything said at that time? Did you say anything,

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or Goldberg say anything, or the men say anything? What was said? A He didn't say nothing. He said, only --- I didn't heard what he said, because I didn't interfere. I have nothing to do with it.

Q Did Goldberg interfere with it? A No, sir.

Q Did Goldberg go near the goods? A No, sir.

Q Did he count the goods? A What? No.

Q Did he examine the goods? A No.

Q And how long did-- for how long a time did that process of putting the goods in, how many minutes passed? A It passed about 10 or 15 minutes, maybe longer.

Q Then what happened after that? A After that, I don't know nothing.

Q How long did you stay in that place after that?
A Until half-- five o'clock, a quarter after five.

Q You are there every day A? A I am there every day.

Q What kind of place is it? You keep cotton goods there? What does Goldberg keep there? A Rain coats and some other goods.

Q And who else is there taking space there, or renting space there? A A man who makes pillows.

Q And he has also a space in the loft? A Yes, sir.

Q What is his name? A I forget his name.

Q You don't know his name? A I know him; I just forget it.

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Q Suppose I suggest to you the name? Dreifach?

A Yes, sir.

Q Now, do you do any cutting there? A Yes, sir.

Q Did you do any cutting? A Yes, sir.

Q Who does that? A Mr. Dreifach cuts his goods in there too.

Q He does that? A Yes, sir.

Q Do Goldberg Brothers? A Mr. Goldberg cuts his goods too.

Q No, do they cut there? A Cut which goods?

Q Do they do any cutting?

MR. EDER: We have had it twice.

Q Is there any cutting going on, preparing things, and so forth? A Yes, sir.

Q By whom? A BY Mr. Goldberg.

Q What does he cut? A Rubber coats.

Q Over coats? A Rubber coats.

Q Did you see him cut the coats? A No, sir.

BY THE COURT:

Q When did you see him cutting any rubber coats there?

A He cuts rubber coats mostly every --

Q About this time? Did you see him cutting either over-coats or rubber coats every day? A No, not every day.

Q But that is what he was doing, was it, cutting up rubber ~~goods~~ goods for rubber coats? A Yes, sir, that was his business?

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Q And that is what you saw him doing? A Yes, sir.

BY MR. FELDMAN:

Q And did you see him take any goods that was delivered to cut? Did he cut anything?

MR. EDER: I object to that. There is no evidence that he did that, at that time.

MR. FELDMAN: I will withdraw it.

THE COURT: You may answer it.

Q Did you see him cut any of those goods? A No, sir.

Q Now, you say you left the place at five o'clock, is that right, on that day? A Maybe a quarter after five. Half past five, sure.

Q When you left the place, was Samuel Goldberg there?

A Yes, sir.

Q You are sure of that? A I don't know, because I know that his mother-in-law was sick, and his wife telephoned him that he has to come home; I am not sure if he was there, or not.

Q Did you see this man, Elias Goldberg, during that day there? A No, sir, he was not home the same day, I am sure he was not home.

Q What time in the morning did you go to the place on the 6th, what time did you arrive there in the morning?

A In the morning?

Q Yes. A About nine o'clock.

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Q And you stayed there until, you say, five o'clock?

A Yes, sir.

Q And all during that time you did not see this defendant there? A No, sir.

Q And who else was there? You say Samuel Goldberg?

A Yes, sir.

Q You are sure of that? A Yes, sir, sure of it. There was working people inside.

Q For whom were they working? A For Mr. Dreifach.

Q Then you say you left at five o'clock? A Yes, sir. whether

Q When you left, at five o'clock, you left Goldberg in the place you don't remember? A No, sir.

Q Did you lock the place? A No, I never locked the place.

Q You have no keys to the place? A No, sir.

Q And that is all you know about the case?

A That is all what I know about the case, yes, sir.

MR. FELDMAN: Your witness.

CROSS EXAMINATION BY MR. EDER:

Q You said, Mr. Lang, that Mr. Goldberg was not home that day? A No, sir.

Q Who told you that? A Because I know it. My son went with him to Newburgh.

Q Your son went with him to Newburgh? A Yes, sir.

Q What business was your son in? A My son was together with him.

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Q In what business was your son? A Cotton goods business.

Q Do you know what he went to Newburgh for with Mr. Goldberg? A Yes, sir.

Q For what? A To buy some goods.

Q What kind of goods? A Cotton goods.

Q Cotton goods? A Yes, sir.

Q Not leather? A Leather goods, too.

Q You were not in the leather goods business, were you?
A That is imitation leather.

Q Were you in that business? A I buy this goods to sell.

Q Are you an employee of Mr. Goldberg? A No, sir.

Q Have you got a card with you? A Yes, sir.

Q Let me see it, please? A (Witness hands card to Mr. Eder)

Q L. Lang, Jobber in cotton goods, 482 Broome Street?
A Yes, sir.

Q And what was your son? A The same business.

Q A partner of yours? A He worked with me together.

Q He worked with you? A Yes, sir.

Q And when did you find that your son went to Newburgh with Mr. Goldberg? A I don't know. When I came there my son wasn't any more there, because I said "Sam, you have to go today to Newburgh to see Mr. Fatt; maybe he has got something".

Q When did you tell him that? A Yes, sir.

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Q When did you tell him that? A In the morning.

Q That same morning? A That same morning.

Q On the 6th? A Yes, sir.

Q Was Goldberg there that morning? A The same morning?

No, I didn't see Mr. Goldberg there.

Q Did you know he was going with this Goldberg?

A Yes, sir.

Q Did you see when your son left the place?

A Because Mr. Goldberg knew Mr. Fatt has those goods to sell.

Q Where does your son live? A With me together.

Q He is not married? A No, sir.

Q And did you tell him that in Broome Street, in the place of business? A No, I told him this in my house.

Q In your house? A Yes, sir.

Q And then you went to the place of business? A Yes, sir.

Q Is that right? A Yes, sir.

Q That is a large loft, isn't it? A It is a large loft.

Q Did you have any cotton goods there that day?

A Yes, sir.

Q How much worth of cotton goods did you have there that day? A For a few thousand dollars.

Q What kind of cotton goods did you have there?

A All kind of goods.

Q Where did you buy that goods? A Where I buy them?

Q Yes, where did you buy that goods that you had there

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that day? A I can show you bills..

Q I am asking you? A I can't tell you that day.
I buy every day.

Q Do you buy goods in regular places, or do you buy
jobs only? A Jobs.

Q Do you ever buy any regular goods? A No, sir.

Q You don't buy any? A All jobs.

Q What business was Goldberg in? A Goldberg is in
all kind of business.

Q What do you mean by "All kinds of business"? Tell
the jury just what you mean? A He will will buy any goods he
can buy.

Q He will buy any goods that is brought in to him?
A What?

Q He will buy any goods that is brought in to him, is
that what you mean? A The time when--

Q You were about to say "He will buy any goods"?
A Yes, sir.

Q Now, what do you mean, he will buy any goods?
A He will buy clothing.

Q And woolens? A Maybe he will buy wollens, too.

Q He will buy anything any one gbrings to him, is
that right? A Anything any one brings in? I have no
business with him, what kind of goods--

Q Howlong have you been in business with him up until
August, 1917? How long weee you in that place? A In that

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place?

Q Yes. A I am in that business, in that place, since he keeps that place.

Q Since he keeps that place? A Yes, sir.

Q During that time, you observed the business that he was in, didn't you? A Yes, sir.

Q What business, will you tell this jury, he was in? A He was in-- he cut rubber coats.

Q He cut rubber coats? A Yes, sir.

Q Who did? A Mr. Goldberg.

Q Which Goldberg? A Both of them.

Q What else? A And he buys jobs, clothing, and everything.

Q And he buys jobs, clothing and everything? What else? What other goods did he buy while you were there? A He buys rubber goods,, too.

Q He buys rubber goods, too? A Yes, sir.

Q And what else did he buy while you were there?

A He will buy cotton goods, too.

Q He will buy cotton goods, too? A Yes, sir.

Q What did he do with the cotton goods he bought?

A He sold it.

Q Where did he buy it from? A I never asked him where he buy them. That aint my business.

Q He never asked you where you bought, either?

A No, evern if he asked me I wouldn't tell him.

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Q How much space did you occupy in that loft?

A Space?

Q Yes. A Bigger like this place.

Q Which place? Beginning where? A By the jury.

Q The beginning of the jury box? A To here (indicating)

Q To the wall, you occupied that portion? A Yes, sir.

Q Did you have any shelves? A I never have shelves.

Q Where did you keep your goods? A My goods? In cases, and in piles.

Q You didn't have any goods open, did you, so they could be observed by the eye? A Yes, sometimes I might take them out from the case and lay them on the case.

Q Do you have customers come up there in your place?

A Yes, sir.

Q Do you know whether Mr. Goldberg, on the 6th of August, had any goods there? A Yes, sir.

Q What kind of goods did he have there? A I don't know; I can't remember since the time what kind of goods he had.

Q You knew your son was arrested that day, don't you?

A Yes, sir.

Q That is an important event in your life, isn't it? It is of some importance to you, wasn't it? A Yes, sir.

Q And you remember that? That is impressed on your memory, that day? A I can remember only what had happened; I can't remember from two years.

Q So, you can't remember that? A Positively not.

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Q And you can't tell us what kind of goods, if any, Goldberg had there that day? A No, sir, I can't.

Q Now, do you know whether Goldberg, the defendant, was in the place of business every day? A Yes, sir.

Q Every day? A Every day.

Q And Sam Goldberg, his brother, was there in business every day? A Yes, sir.

Q They were there together? A Together.

Q Did you see customers come up there to see them?

A Yes, sir.

Q Did you ever hear them talk to customers? A Yes, sir.

Q They let you hear that? A Yes, sir.

Q They were not afraid of that, were they? A When the customers come herhears.

Q And you were not afraid of that, that he would steal your customers, or you steal his customers, were you?

A I have nothing to do with stealing.

MR. FELDMAN: Objected to, stealing customers.

THE WITNESS: I am over forty years in the business, and I can guarantee nobody can say a word against me.

Q Neither do I. A Positively not.

Q Now, Mr. Lang, that night, when you -- that afternoon when you saw these two men come up with the goods, it was goods that you people didn't deal with, you didn't deal with it? A I didn't deal with it.

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Q You spoke over this case a great many times with Mr. Goldberg before you came into court? A I didn't talk nothing about this case. I was talking with him, that he got in this trouble for nothing.

Q You spoke it over a great many times before you came to court? A In the Court?

Q On the outside here, didn't you talk over about the case in the hall here, in the lobby? A Yes, I talked.

Q And you saw this boy Schilder in the hall, didn't you? A Yes, I seen him in the hall.

Q And didn't Goldberg, the defendant in this case, point him out and say "that is the man that brought me the goods", didn't he say that to you? A Positively not.

Q Who pointed him out to you? A I recognized him myself.

Q No one pointed him out to you? A No, sir.

Q Your eyesight is pretty good, isn't it? Your eyesight is fair, good? Is your eyesight good? Your eyesight? A My eyes is good.

Q How long a time did you see him the day he brought the goods there, how long a time? How long, five minutes, ten minutes, fifteen minutes? A I can't remember the time, because-- can you remember two years time-- if I stay here, can you say in the next two years what time I stayed here?

Q I can say, yes? A Positively not.

Q Can you tell us about how long you saw these two men

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in that place, can you tell us? A I can't tell you this.

Q Can you tell us how long it took them to bring in the goods that day? A What?

Q Can you tell us how long it took them to bring in the goods that day? A Can I tell you that? I don't know how long it takes. Maybe it takes ten minutes, maybe it takes him over half an hour; I can't tell.

Q Did you look at the man a good deal? A I looked when he brought the goods. He didn't brought them at once.

Q You saw them more than once? A Yes, sir.

Q You didn't see that boy until you saw him here in court, is that right, from that time, isn't that right?

A That is right.

Q From August 6th, 1917, until you saw this boy out in the hall there-- A Yes, sir.

Q You saw him in the hall, didn't you? A Yes, sir.

Q How many times did you see him in the hall?

A I saw him in the hall about four or five times, maybe more.

Q Four or five times within the last few days?

A Yes, sir, -- no, I saw him there before, too.

Q Where? A In the Court.

Q What Court? A In this same Court.

Q In this building? A In this building.

Q You saw him whenever the case was on the calendar?

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A Yes, sir.

Q And no one pointed him out to you, is that right?

A No, sir.

Q And yet you could remember that that was the same boy who brought the goods up in August, 1917, is that right?

A Yes, sir.

Q Did he have short pants then, or long pants?

A This I can't tell you, if he got short pants, or long pants.

Q You can't tell us that? A No.

Q Will you describe the other man who came up with him?

A I can't describe him.

Q Was he a tall man, or a short man? A I can't describe him you.

Q Was he a stout man, or a thin man? A I don't know; I can't describe you.

Q Please tell us the first thing you heard when these two men came in, the conversation? A These two men comes up and says, "Mr. Goldberg--" I told you before, and I can't tell you any more.

Q I am asking you to tell this jury what you heard?

A That is what I heard.

Q Tell us? A The two mens comes up and asks Mr. Goldberg "Will you please let us leave here a few pieces--"

Q Did he say "Mr. Goldberg"? A No, he didn't say

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"Mr. Goldberg". What is the name?

Q Silbert? A Mr. Silbert. He said "We have some goods for Mr. Silbert. Will you please let us lay here a few pieces of goods?" And Mr. Goldberg tells him "there is no room; we are all full".

Q Mr. Goldberg said there was no room for them?

A Yes, sir.

Q "You see we have got it full"? A Yes, sir.

Q What did those two men say? A They said they wouldn't stay here long, maybe only half an hour, until he comes home.

Q Is that all he said? A That is all he said.

Q Did Mr. Goldberg ask him how they came to him?

A I don't know.

Q You were there, you heard everything? A I have no-- I didn't hear no conversation between those two any more, because I didn't interfere; that is all what I heard.

Q After Mr.-- after these two men said it wouldn't stay there more than half an hour, he said "all right", didn't he? A Yes, sir.

Q And they went down? A Yes, sir.

Q And they brought up the goods? A Yes, sir.

Q Now, up to that time, did you hear Goldberg say to them, "Why do you pick my place out?"; did you hear him say that? A No, sir.

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Q You didn't hear that? A No.

Q Did the men tell him how they came to go into his place? A Will you please tell me this again?

Q Did the two men who asked him "will you please let us put these goods here for Mr. Silbert?", did they tell him how they came to pick out his place? A I don't know.

Q You didn't hear that? A No.

Q There was another loft above yours? A Yes, sir.

Q And above that was Silbert's? A Yes, sir.

Q "Why don't you take it to the man above me?"

A I didn't hear that.

Q You didn't hear that? A Because I didn't interfere with it.

Q There was a lady there, wasn't there? A Where?

Q In your place at that time? A Yes, sir.

Q Who was the lady? A The bookkeeper.

Q Whose bookkeeper? A For Mr.---

Q Dreifach? A Mr. Dreifach.

Q Did they have an office? A Yes, sir.

Q Did you have a separate office? A I keep in the same office, Mr. Goldberg and Dreifach.

Q What office? The goods was carried up and brought in there, is that right? A Yes, sir.

Q And they put some of the goods into the office. Was there a door of the office? A There was a door where the elevator comes.

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Q There is a door that the elevator opens to, it opens into the loft? A Yes, sir.

Q Then you have a partitioned off place, called an office? A No, it comes right in the office, and when he opened the elevator he comes right in the office.

Q And is there a door leading from the office into the loft? A Is another--

Q Some goods was left in the office, is that right?

A Yes, sir.

Q Some goods was placed on cases? A Yes, sir.

Q Some goods were placed on the floor? A Yes, sir.

Q Who directed as to where to place the goods, did you hear? Did you hear Mr. Goldberg say "put some here"?

A No, sir. Mr. Goldberg said nothing.

Q He was sitting down there in the office, is that right? A Mr. Goldberg was sitting in the office.

Q In the office? A Yes, sir.

Q The door leads from the elevator into the office?

A Yes, sir.

Q And when the men walked out he was sitting there near the door, wasn't he? A (No answer)

BY THE COURT:

Q Were you doing anything? Mr. Lang, were you doing anything when you were sitting down there? Were you doing anything? Did you have anything to do? A Yes, sir.

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Q What were you doing? A I have all the time there work.

Q Did you have anything to do while this taking in of the goods was going on? A Yes, sir.

Q What were you doing? A I put together my goods, because I have to bundle them up and lay them together.

Q Making some calculation, were you? Were you writing out something? A No.

Q What was Goldberg doing? A Goldberg was writing there something.

Q Was he sitting at a desk, or in a chair? A In a chair.

Q Was there a desk there? A There is a desk.

Q Was anybody there with him? A Nobody there, only me.

Q Only yourself and Goldberg? A Yes, sir.

Q You were the only two that were there? A And this young lady too.

Q But you were attending to your own business, and as you have-- A And he was attending to his business.

Q He was sitting there writing? A Yes, sir.

Q And you were the only two that were there except this young woman? A Yes, sir.

BY MR. EDER:

Q The chair he was sitting on was right near the door that leads into the elevator, wasn't it? A Yes, sir.

Q And you saw the two men as they left the bundles and walked out? A I can't tell you because--

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Q You told his Honor and the jury that he was sitting down on a chair while they were bringing the goods in?

A Yes, sir.

Q He was watching them bringing in the goods?

A MR. FELDMAN: He didn't say that.

Q Was he watching? A I didn't say he was watching.

Q He was sitting there? A Yes, sir.

Q And the boys had to pass him in order to place the goods down? A When the door is open from the elevator he has to put them in some place.

Q Yes, and the boys passed him by in order to put the goods down? A He can't pass him by; Mr. Goldberg sit just the same on his chair, on his desk, and if he took in the goods he don't need to pass him by; he goes right through into the loft.

Q You say the elevator there leads into the office?

A Into the office.

Q That is the freight elevator? A No, that is the passenger elevator.

Q Did they bring the goods up in the passenger elevator?

A Yes, sir.

Q And that leads right into the office? A Yes, sir.

Q And Mr. Goldberg was sitting in the office all the time during the time the goods was brought in there; that is correct; isn't it? A I think he was sitting all the time,

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because I didn't -- I can't recognize from two years until now if he is sitting, or standing.

Q About what time was that? A It was between three and four o'clock, sure.

Q You didn't leave until five o'clock? A Yes, sir.

Q Did you see Mr. Silbert come down during that hour?

A I didn't see him.

Q Did you see the goods being stacked up, put together?

A I have no interest in them, and I don't know nothing about it; I see the goods was there.

Q Did you see whether the goods were taken from the different places and stacked up one on top of the other?

A No, sir.

Q You didn't see that? A I didn't see that.

Q When you left the place there that night, who did you leave there? A I left there Mr. Dreifach and his workman.

Q And do you nail up the cases when you leave them and go away at night? A I never nail them up.

Q You are not afraid of the workmen taking anything out? A Come up today and I will show you my cases are opened.

Q You are not afraid of the workmen of Dreifach taking anything out? A No, sir; if I was afraid I wouldn't keep them there.

Q What time does the place close, do you know? A This I don't know.

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Q Did you ever work there late at night? A I never worked there very late. I was going home all the time at half past five.

Q What time does Goldberg go home? A I don't know; I can't tell you about that.

Q Where do you live? A 753 Gates Avenue.

Q Do you know where Goldberg lives? A Mr. Goldberg lived before in Coney Island, and he lived in Coney Island now.

Q And did he live in Coney Island then? A I think he did live in Coney Island.

Q Were you in Court the next morning? A If I was in Court?

Q After your son was up there, the next morning, were you in Court? A Yes, sir.

Q In the Magistrate's Court? A Yes, sir.

Q Do you remember that there was a hearing in the Magistrate's court? A I don't know, because I came after the hearing.

Q You came after the hearing? A After the hearing.

Q Why? A Because he didn't telephone before. As soon as he telephoned over I went there and took him out.

Q you bailed him out the next day? A Yes, sir.

Q The 7th of August? A Yes, sir.

Q The hearing in the Magistrate's court was not held until the 9th, two days after? A No, not two days after.

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Q Two days after you bailed him out? A There was a hearing in the Magistrate's court, wasn't there?

A There was a hearing in the Magistrate's court.

Q Did you go up and see Silbert after that?

A What I have to do with Silbert?

Q Your son was arrested? A Yes, sir, charged with stealing certain property.

Q Did you go to see Silbert? A No, sir, what I have to go to Silbert?

Q You were interested in the case? A No; how was I interested? I am not interested.

Q Oh, you were not interested in your son's case?

A No, sir.

THE COURT: Now, Mr. Witness, just answer the questions only, and don't discuss the case with counsel.

Q You are not interested in your son's case?

A I am not interested at all.

Q— You don't care whether he is convicted or not, do you? A That is my business.

Q You don't care? A That I will give you an answer later.

THE COURT: No, you must be respectful in your answers. Counsel is entitled to have a respectful answer.

Q Do you care whether your son is convicted of this crime, or not?

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MR. FELDMAN: That is objected to, if your Honor
pleases.

THE COURT: The objection is overruled.

MR. FELDMAN: I take an exception.

Q Do you? A Please give me that again?

Q Do you care whether your son is convicted of this
crime or not? A Sure, I don't like my son should be convicted
for nothing.

Q When he was arrested and you went to the Magistrate's
court, you knew at that time that the goods which he was charged
as having received feloniously was goods belonging to Silbert,
didn't you? A That is what the driver said.

Q Did you go up to Silbert to ask him that? A I didn't
went up to him.

MR. EDER: That is all.

RE DIRECT EXAMINATION BY MR. FELDMAN:

Q Why didn't you go up to find out whether your son
had anything to do with it, or not? Why didn't you go to
Silbert? A I didn't go up because what I need to go up
to Mr. Silbert?

Q But whatever you told us, that was the truth, is that
right? A Yes, sir.

MR. EDER: Oh, I object to that.

THE COURT: Let it stand.

Q Were you ever convicted of any crime, -- you?

A Never, I was never.

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Q Never in Court? A I was in Court.

Q And I understand you, as well as your son and Goldberg are cotton merchants. They buy everything they can get, is that right?

MR. EDER: I object. That was not his testimony.

MR. FELDMAN: You brought it out-- buy rubber goods and cotton goods and woolen goods.

THE COURT: You object to it, do you?

MR. EDER: I do.

THE COURT: Objection sustained.

MR. FELDMAN: Exception. That is all.

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M A X R O S E N B E R G, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 520 Quincy Street, Brooklyn.

Q What business are you in? A Cotton piecegoods.

Q For how long a time have you been in that business?

A About 12 years, I guess.

Q For yourself? A Yes, sir.

Q Do you know the defendant at the bar? A I do.

Q Elias Goldberg? A Yes, sir.

Q For how long a time have you known him? A About 10 years.

Q Ten years? A Yes, sir.

Q Do you know other people who know him? A I sure do.

Q Do you know what his reputation is for honesty and veracity in the community? A As far as I know, I have known him to be such.

Q Has it been good, or bad? A Good.

MR. FELDMAN: That is all.

CROSS-EXAMINATION BY MR. EDER:

Q Do you know Mr. Lang? A Yes, sir, I do.

Q Which Lang do you know? A I know both Langs, father and son.

Q Do they buy any goods from you? A Yes, sir, and Mr. Goldberg has bought goods from me.

BY THE COURT:

Q This prisoner, is he a neighbor of yours in Brooklyn?

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A No, sir.

by MR. EDER:

Q He has bought goods from you? A Yes, sir, he is on my books.

Q How long ago? A Oh, 8 or 9 years.

Q What business is he in? A He was in the rain coat business at one time and about 8 years ago I sold him goods for the rain coat business.

Q You sold him goods for the rain coat business? A Yes.

Q Is that the only goods you have sold him? A Cotton piecegoods is all I ever sold him.

Q Do you use cotton goods for rain coats? A Yes, sir, for linings.

Q And it was for that purpose you sold it to him? A Yes.

Q Only for the purpose of manufacturing it into rain coats?
A Yes, sir.

Q You didn't sell him cotton goods for jobbing? A Yes, sir, he owes me \$500.00 today.

Q In August, 1917, was the cotton goods you sold him for linings for the purpose of making into rain coats? A I would have to look in my books. I don't know what he done with it. I know he was in the manufacturing business until a certain period.

Q Until what period? A I couldn't tell you. Then I heard he went into the jobbing business of cotton goods.

Q How long ago? A About a year ago or so.

Q A year or so ago? A I may be wrong. It may be two

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years. I would have to look at my books.

BY THE COURT:

Q Where do you do business? A I am in 44 Walker street.

Q How long have you been there? A At 44 Walker Street?

Q Yes. A I am there now the third year. Previous to that I was at 458 Broadway.

Q Are you in Partnership with anyone? A In partnership with anyone?

Q Yes. A No, sir; in business for myself.

Q Do you do an extensive business? A I think it would be possibly to the attorney's benefit to look up my reputation.

Q Well, perhaps you can indicate without any embarrassment, some of your customers? A Some of my customers?

Q Yes, if you don't object to it. A Give you some of my customers?

Q Yes, some of the names of your customers. A Oh, that is the idea?

Q That was the question I put to you. A Yes, sir.

Q Do you understand me? A Yes, sir.

Q Answer it. A Yes, sir, certainly.

BY MR. EDER:

Q Who are they? A People I bought from, or sold to?

Q Either way. A I guess it would be more to your advantage --

THE COURT: No, answer it both ways.

THE WITNESS: T. A. Shaw, Worth Street, I don't know

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the number, I can look that up. Willington, Sears. J. Richmond & Company, 324 Canal Street .

THE COURT: Take the addresses of these, Mr. District Attorney.

THE WITNESS: Willington and Sears are on Worth street also. E. Bernstein, 54 Howard Street. past River National Bank. The Atlantic National Bank. Does that suffice, or do you want more?

Q Let me ask you, sir. You said you knew other people that know this defendant? A Yes, sir.

Q Who do you know? A I will mention them to you, if you will give me a moment's time to think. There is a gentleman outside I know for about ten years.

BY THE COURT:

Q Do you need some time to think? A I beg your pardon?

Q Do you need some time to think. A I didn't come here prepared to -

Q Do you, or not? A In what respect? Think of what? Think of people that know him? No, I can't think offhand. Everybody in the neighborhood knows him.

BY MR. EDER:

Q Did you ask them if they knew him? A I know they knew him.

Q How do you know they know him? A Because I meet the men every day on the street.

Q You meet these men? A Yes, sir.

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Q Have you ever discussed his reputation with anybody?

A No, I can't say I have discussed his reputation.

Q And did you ever ask anybody whether they knew him, or not? A At the time I sold him some goods, possibly.

Q Possibly? A Ten years ago, a fellow named Auerbach knew him. The time I sold him the goods I wanted to know something about his reputation, and I inquired.

Q And you went to a man named Auerbach? A Yes, sir.

Q Where is his place of business? A At that time it was on Canal Street.

Q Where is his place of business now? A I couldn't tell you. I think he is dead.

Q You went in and inquired what he knew about this man?

A Yes, sir.

BY THE COURT:

Q When was that? A About ten years ago.

Q Are you telling us here the reputation of this man ten years ago, or his reputation now? A I say I inquired as to the man's reputation before shipping him any goods.

BY MR. FELDMAN:

Q And since that time you are dealing with him? A Yes, sir.

BY MR. EDER:

Q Will you tell us during the year 1917 you sold him any goods? A I couldn't tell you that. I could bring my book here and tell you that.

Q What is the name of his firm? A Goldberg Brothers.

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Q Do you know what it consists of? A Two brothers. I know them both.

Q Do you know the other brother's name? A S & E. Goldberg.

Q Do you know which is S. and which is E? A I think the other one is S. and this gentleman is E.

Q Do you think that, or do you know that? A I am pretty sure I am right. I am trying to give you my version. I am not an interested party here.

Q You just came here to testify to his character? A I just came here to testify to his character. I don't care to go any further.

BY THE COURT:

Q Have you given your name and address? A Yes, sir, 54 Walker Street.

Q Have you taken the names of the people he has done business with?

MR. EDER: Yes, sir.

THE COURT: That is all. Stand down.

FRANK I. LATIMER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 425 West One Hundred and Sixtieth Street.

Q What business are you in? A Auction business, dry goods,

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commission.

Q For how long a time are you in that business? A About 40 years.

Q 40? A Yes, sir.

Q In this city? A Yes, sir.

Q Do you know Elias Goldberg? A I do.

Q For how long a time have you known him? A At least 20 years.

Q Do you know other people who know him? A I do.

Q Do you know what his reputation is for honesty? Is it good, or bad? A Good.

MR. FELDMAN: Your witness.

CROSS-EXAMINATION BY MR. EDER:

Q Did you ever discuss his reputation for honesty? A Sir?

Q Have you ever discussed his reputation for honesty? A No.

Q Then, when counsel asks you whether you know what his reputation for honesty is, you are not giving a true version of it, are you? A I am giving it to you or to him according to what I know.

Q You give your own opinion of it, isn't that so? A Yes.

Q Not as to his reputation. His character? A I suppose so.

Q Well, you know whether that is so or not, don't you?

A Yes, sir.

BY THE COURT:

Q You have done some business with him? A I have. That is what I want to get at.

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Q And that is how you know him? A That is just how I know him.

Q You found him to pay his bills, perhaps? A Yes, sir.

Q And he kept his arrangements with you? A Yes, sir.

Q You don't know anything about him outside of that?

A No, I do not, not outside of business.

BY MR. FELDMAN:

Q You had business transactions with him? A Yes, sir.

THE COURT: That is what he says. You have been in business for a long time?

THE WITNESS: Oh, yes.

- - - - -

E L I A S G O L D B E R G, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 2882 East Third Street, Brooklyn.

Q Now, Mr. Goldberg, just look at that juror, the third juror, keep up your voice, so they can hear every word you have to say. How old a man are you? A 45.

Q Where were you born? A In Russia.

Q How long are you in this country? A Since 1882.

Q How many years is that? A About 37 years.

Q 37? A Yes, sir.

Q Are you married? A Yes, sir.

Q Children? A Yes, sir.

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Q How many? A 7 children.

Q 7 children? A Yes, sir.

Q From the time since 1882 until the present time, were you ever convicted of any crime? A No, sir.

Q What is your business? A Cotton goods, piece goods.

Q With whom are you in business? A With my brother.

Q For how long a time now are you in business with him, for how many years? A Over 20 years.

Q What do you mean by "cotton goods, piece goods," what do you do? A We buy and sell.

Q Where do you buy your goods? Where? From commission houses, jobbers, what line, what do you mean by "cotton"?

A Cotton duck, sheeting and different raincoat cloths.

Q And you sell them over again? A Yes, sell them over again, yes.

Q To whom? A Manufacturers, sometimes to jobbers.

Q Now, where do you keep your place of business? A 482 Broome Street.

Q For how long a time have you been there? A Oh, about 5 years.

Q About 5 years? A Yes, sir.

Q Who keeps the place with you besides yourself in that loft? A Mr. Lang and Mr. Dreifach.

Q When you say they keep with you, what do you mean by that? A Beg pardon?

Q What do you mean, they rent space, or what? A They

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rent space, yes, sir.

Q In other words, the entire loft is divided? A Is divided.

THE COURT: I think I will interrupt you now.

I know counsel in another matter are here and perhaps would like to dispose of that matter. That may be done within a few minutes. We will take a recess now.

(To the jury) Gentlemen, do not discuss the cause, nor form nor express any opinion on it, but keep your minds open and free until the case is sent to you. I will ask you to be in your places at 2 o'clock.

(The Court then accordingly took a recess until 2 o'clock p. m.).

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A F T E R R E C E S S

MR. FELDMAN: With your Honor's permission, I would like to put just another character witness on the stand. He is here, and is a business man, and I would like to let him go.

THE COURT: Yes.

M A X W E L L J A C O B S, called as a witness on behalf of the defendant, being first duly sworn, testified as follows: (The witness states that he resides at 767 Union street, Brooklyn.)

DIRECT EXAMINATION BY MR. FELDMAN:

Q Mr. Jacobs, what is your business? A Jobber of cotton goods.

Q Jobber of cotton goods. How long are you in that business? A Eight years.

Q For yourself? A Yes, sir.

Q And do you know Elias Goldberg? A Yes, sir.

Q Do you know the other brother, Samuel Goldberg? A Yes, sir.

Q How many years have you known them? A Well, I have known Elias Goldberg indirectly about nineteen years.

Q Nineteen? A Yes, sir, but I have done business with him for the past eight years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for honesty? Is it good, or bad? A Well, -

Q Answer my question. Is it good, or bad? A Good.

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MR. FELDMAN: That is all. Your witness.

CROSS-EXAMINATION BY MR. EDER:

Q You hesitated when you said that. Was there any reason for your hesitation? A Well, he didn't give me a chance to answer.

Q He asked you if his reputation was good? A Well, I wanted to explain how I knew it was good.

Q Did you ever discuss his reputation with anybody? A No, any more than when I sell a man goods I go out to get references on him.

Q Originally, when you sell him goods, you go out to get references? A Yes, sir.

Q You have been selling him goods for nine years?
A Eight years.

Q Prior to that, you went out to inquire about his credit; is that correct? A And his reputation.

Q What else do you inquire about as to a man when you go to give him credit? A Well, I find out about of his reputation as I have -

Q During these eight years after you commenced to deal with him, you made no more inquiries? A No.

Q And you base your answer that his reputation is good by reason of the fact that he paid his bills to you during these eight years? A Yes, sir.

MR. EDER: That is all.

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REDIRECT EXAMINATION BY MR. FELDMAN:

Q And deals that you had right along? A Right along.

Q And your opinion is based on your dealings with him for the past eight years? A Yes, sir.

MR. FELDMAN: That is all.

RECROSS-EXAMINATION BY MR. EDER:

Q Do you know whether he ever dealt in woolen goods? A No, sir, I don't know.

Q You don't know? A No.

Q What business was he in eight years ago? A Eight years ago, he was buying^{up} merchandise.

Q What do you mean by "buying up merchandise?" A Well, I knew him to have bought up goods at auction; I used to meet him around sales.

Q You met him at auction places eight years ago? A Yes.

Q Did you sell him any goods eight years ago? A Yes, sir.

Q What kind of goods? A Cotton goods, raincoat goods.

Q He was then in the raincoat business? A Yes, sir.

Q Did you understand him to be in the raincoat business?

A He was in the raincoat business and in the jobbing business.

Q Jobbing of what? A All kinds of piece goods.

Q Woolens? A I don't know whether he bought woolens.

Q Woolens is piece goods? A He bought anything, I suppose, that he could make a dollar on.

Q Will you tell us what business he was in, of your own knowledge? A He was in the raincoat business, and buying up goods

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at auctions.

Q And you base that upon the fact that you met him at the auctions? A Yes, sir.

Q Did you see ever what goods he bought at the auction places? A I never did.

Q All you did was to see him at the auction places? A Yes, sir.

Q You don't know whether he bought any goods or not? A No.

MR. EDER: That is all.

BY THE COURT:

Q Did you ever buy any goods from him? A Yes, sir, I have bought some goods from him, yes.

Q Recently? A Well, I think about six months ago.

Q Well, around two years ago? A No, I never bought anything.

Q Do you know anything about a William Jacobs, who is in the sponging business? A No, sir, I don't know him.

Q You never had any relations with him? A No, sir.

Q Where do you have your business? A 312 Canal street.

Q How long have you been there? A Well, I have been in that location for the last six years.

E L I A S G O L D B E R G, the defendant, resumes the stand.

DIRECT EXAMINATION (continued) BY MR. FELDMAN:

Q Divided into what, how many parts? A Three parts.

Q And you occupied one of the parts? A Yes, sir.

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Q And who occupies the other parts? A Mr. Lang and Mr. Dreifach.

Q What kind of business is Mr. Dreifach in? A Mr. Dreifach manufactures novelties in pillows.

Q And Lang? A Lang, he is a jobber in cotton goods.

Q When you say Lang, you refer to the old gentleman who was here? A The old gentleman, yes, sir.

Q Do you remember the day that you were arrested? A I presume it was on the 6th.

Q What time did you arrive to that place of business on that day? A Between seven and eight o'clock.

Q Were you there during the day until seven? A No, sir.

Q What makes you think or believe that you were there between seven and eight, that you arrived there then? A Because I came back to -

Q A little louder? A I returned after sunset.

Q Returned from where? A The boat, I returned on the Newburgh boat.

Q Newburgh? A Newburgh.

Q What time did you arrive here? A Well, between seven and eight o'clock.

Q What time did you leave Newburgh? A About three o'clock.

Q About three o'clock? A Between three and four.

Q You took the Newburgh boat and came to New York about seven, is that right? A Yes, sir.

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Q What time did you leave the City of New York on that day?

A 8:40.

Q In the morning? A Yes, sir.

Q From where? A From I believe the foot of Franklin Street.

Q Also the boat? A Yes, sir.

Q You went by boat up there? A Yes, sir.

Q You went direct to Newburgh? A Yes, sir.

Q And how long does it take you to get there? A About three hours.

Q In other words, you arrived there about 11:40 or 12:00 o'clock? A About 12:00 o'clock.

Q And you were there until about what time, you say?

A About four o'clock.

Q About four? A Yes, sir.

Q What were you doing there during those four hours?

A I had to see a party by the name of Harry Fatt, on business.

Q Harry Fatt? A Yes, sir.

Q Who is Harry Fatt? A He is a jobber of leather - imitation leather goods and also cotton goods.

Q And he has his place of business where? A In Newburgh, New York.

Q Do you know his address in Newburgh? A On Water Street.

Q Do you know the number? A No, sir.

Q On Water Street, Newburgh? A Yes, sir.

Q New York? A Yes, sir.

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Q And you say you had to transact some business with him?

A Yes, sir.

Q In reference to what? A First of all I had a claim against a certain shipment which I made a few days prior that he charged me up with the freight, which that wasn't the understanding, about \$27, so I took along the draft, or the bill, rather, to correct that, and also at the same time to see whether he has got any more merchandise.

Q Was that bill corrected, or draft, or whatever you refer to? A Yes, sir.

Q Have you got it here? A Yes, sir.

Q Show us it. A (Witness produces paper.)

Q Or read it off.

MR. EDER: Don't read it off.

Q That is in reference to the draft you went there?

A Yes, sir.

Q You say some corrections should be made? A Yes, sir.

Q In reference to some goods that you bought and were shipped to your place? A Yes, sir.

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

MR. EDER: No objection. You can mark it in evidence.

MR. FELDMAN: I also offer it in evidence.

MR. EDER: No objection.

THE COURT: Received.

(The paper was received in evidence and marked Defend-

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ant's Exhibit "A", of this date.)

MR. FELDMAN: (Reading) "To Central Hudson Steamboat Company, order of H. Fatt. Notify Goldberg, south west corner Spring and Greene Streets, New York City, Pier 24, North River, New York City, New York."

THE COURT: Where? What is the address?

MR. FELDMAN: Spring Street, Spring and Greene.

"For transportation, 74 -" what is that, barrels - bbls.

THE WITNESS: 74 bales.

MR. FELDMAN: "Art leather?"

THE WITNESS: Artificial leather.

MR. FELDMAN: "Seconds; days, weight".

THE WITNESS: One day.

MR. FELDMAN: Storage charge, one day. Weight, 15,540,"

I suppose pounds, is it?

THE WITNESS: Pounds.

MR. FELDMAN: The 8th month, or the 8th day - 4-17?

THE COURT: What is the date?

MR. FELDMAN: 8/4/17 - August 4, 1917.

Q Now, when you saw that party that you are referring to, Mr. Fatt, and had your transaction, you were there until about three or four o'clock, when you left Newburgh? A Yes, sir.

Q And you came direct to New York? A Yes, sir.

Q And you arrived here in New York at what time? A Oh, between seven and eight o'clock.

Q And where did you arrive? A I believe I got off at that

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time at 129th Street, and then I took the subway down to the place.

Q You arrived at the pier, at 129th Street, and took the subway down to your place? A Yes.

Q And what time did you get to your place? When you say "your place," what place do you refer to? A To Broome Street, 482 Broome Street.

Q What time did you get there? A About eight o'clock.

Q Eight o'clock? A Yes, sir.

Q When you came there to your place, who was in the place?

A Mr. Dreifach.

Q Mr. Dreifach was there? A Yes, sir.

Q Who else was there, if anybody? A Nobody else was there.

Q Now, when you came in was your brother there? A No, sir.

Q Was Mr. Lang there, the old man? A No, sir.

Q Was young Lang there when you came in? A No, sir.

Q Tell us now, when you came in what did you see, what did you find? A When I came in the place the first thing I observed a lot of woolens. The only one I found in the place was Mr. Dreifach, so I asked him, "What kind of goods is this?"

Q Where is Mr. Dreifach now, if you know? A In the city, in the same building, I believe he is there.

Q What is that? A He is in the same building.

Q He is in the same building? A Yes, sir.

Q Did you see him lately? A Yes, I see him very often.

Q What place does he keep? A He is on the first loft.

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Q How lately did you see him? A We are not very friendly together, on account he did not pay us for a month's rent.

BY THE COURT:

Q What is that? A We are not quite friendly with Mr. Dreifach.

BY MR. FELDMAN:

Q Why? A Because he moved out from our place in the middle of the month and he refused to pay me a share of rent.

Q Do you think we could get him? A I think so.

MR. EDER: I object to that. I withdraw it.

Q Do you think you can get him? A I guess so.

Q Did you try to subpoena him for me? A No, sir, I didn't have a chance to.

Q Now, then, when you came there you found Dreifach in the place? A Yes, sir.

Q You saw the woolens? A Yes, sir.

Q What happened? A I asked Mr. Dreifach what kind of goods this is, he said, "I don't know; I am a busy man;" he was nervous; "when I work I don't see what is doing here."

Q Did you see the goods scattered around? A Yes, sir, I seen the goods scattered around.

Q What did you do then? A The first thing I fixed up the place, because I expected to take in a lot of goods, so I fixed up - we had quite a number of bales of imitation leather on the floor, so I tried to push them aside, I done some work, and thought in the meantime my brother will come down to see me. I

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was surprised, and Mr. Dreifach in the meantime left; he stayed a couple of minutes and left.

Q He left you all alone in the place? A He left me all alone in the place. In the meantime, a few minutes later, Mr. Samuel Lang came in.

Q That is the young man who was arrested with you? A Yes, sir, he came in, and I asked him, I said, "Do you know anything about these woolens?" He said, "No, I don't."

Q Then what took place? A Then we stayed there for a short time; say about an hour or an hour and a half, and I wanted to close up the place, and I had no keys.

Q You had no keys? A I had no keys to close up. So about half past nine, between nine and half past nine, I tried to get my brother on the 'phone.

Q Yes? A That is, I called up the superintendent of the next building, of my brother's residence, and I asked him he should notify Mr. Goldberg, told him that he lives next door, he should notify him that I am still down in the place, waiting for the keys. I held the 'phone for a few minutes, and I got a reply that there is no answer.

Q Then you stayed there in the place? A Then I stayed there in the place.

Q Did you examine the woolens there? A Oh, I seen the woolens there, yes.

Q How long - then what time did the police come in? A Oh, about 11 o'clock, a little after 11.

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Q When they came in, did you have the woolens still under observation? Did you look at them? Did you examine them, or what? A No, sir.

Q You heard the police saying you had a piece of woolen, which represents part of it, on the table, and you cut it; is that right? A No, sir, I never done any cutting whatsoever.

Q He said that he found you with the shears in your hand? A No, sir.

Q Cutting it right through? A No, sir.

Q When the police came in, who was there besides yourself? A Mr. Lang and myself.

Q What time did Lang come in afterward? A It was about 15 minutes later.

Q I understood when you came there only Mr. Dreifach was there, is that right, in the beginning? A Mr. Dreifach.

Q And then you say Lang came in, young Lang? A Yes, sir.

Q And I understand you to say Lang left again; is that right? A No, sir.

Q He did not; he stayed with you? A Lang and I were out in Newburgh on the same boat, but he stopped off and got lunch, so when I was over in the place, about 15 minutes later, Mr. Lang came in.

Q And he stayed with you all the time until the police came in? A Until the police came, because I asked him whether he has got the keys. He says, "No;" and I had no keys to close up the place.

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Q And you were waiting there? A I was waiting there. The police know -

Q Never mind that. When the police came in, what happened?

A The first thing, they said, "Where is the boss?"

Q Who came in? Is this one of them (indicating)? A This is one of them, yes (indicating Officer Gorevan,) and the other one, the stout one, the one that looks like --

THE COURT: Donohue.

Q How many came in? A Two.

Q The officer who was here yesterday? A The two witnesses who were here yesterday.

Q Tell us what took place? A The first thing, Donohue says to me, "Who is the Proprietor of this place?" I said, "Which one do you want?" He says, "It makes no difference. Who is the proprietor?" I said, "There is Mr. Dreifach, is one of them." He came in to Dreifach's place. I said, "What do you want to know about?" He says, "There is some woolens that has been stolen." I said, "Here is woolens; come right in." Then there was another gentleman representing Mr. Jacobs came right in the place and says, "This is the goods."

Q By "the other gentleman" you mean Mr. Schneider? A Yes.

Q The man who took the stand here? A Yes, sir, and also that young boy.

Q He was there? A Yes, sir, he stood there in the corner, and the officer, the first thing he said, "Let's see your bill," Donohue says. I said, "I got no bill; I know nothing about it."

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"You don't, hey?" You bastard, you know all about it; you better tell the truth, or you will get a rap in the jaw," and sure enough he done it.

Q What do you mean by "sure enough, he done it?" A He gave me a blow right in the face.

BY THE COURT:

Q Now, who did that? A Mr. Donohue; and Mr. Lang says that we were out of town, we don't know a thing about it. Mr. Lang is a gentleman with a long nose; so he began to use all kind of language, and took out a coat-hanger and stick him in the neck.

BY MR. FELDMAN:

Q Struck who? A Mr. Lang. He began to yell. He said, "Now, if you don't keep quiet, you will get more. You mind your own business."

Q After the battle was over, what happened? A He said, "I want to see the bill." I said, "I know nothing about it; I was not here." "You don't know?", right in the office, he pulled me in the office and took out a leather file, and looked over every bill. He said, "You Jew bastard, I want you to give me the bill." I said, "I am telling you I have not got the bill." He said, "Well, we will have some fun with you in Headquarters."

Q After that he took you along? A Yes. Oh, pardon me. He says, "Why, we know how much you paid for the goods; you paid three hundred dollars; we will prove it; we got the people right in Headquarters; that is what you people do; you send boys

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out to rob places and receive the goods, eh?" I says, "I know nothing about it." "We will prove it to you, and we will have some fun with you." In the meantime he said, "Do you know this young man?", the helper. I said, "I never seen him in my life."

Q Is that the fact? That was the first time you did see him? A Yes, sir, that was the very first time.

Q Then what happened? A Then he took me and Mr. Lang, he took us down to headquarters.

Q Took you and Lang? A Yes, ^{and} took the goods along, took along the woollens, too.

Q To Police headquarters? A To Police headquarters, yes.

Q What happened then? Go ahead? A At Police Headquarters he asked me again for my name, and I told him, "Elias Goldberg." He says, "Now, you are a Jew bastard. ~~Don't~~ Didn't you tell me your name was Henry Goldberg?" In fact, three or four of the officers came from different directions, and this is the kind of reception I received from them, nothing but, "Jew bastard, Jew bastard, thief, goniff."

Q They called you in Hexbrew? A yes, sir.

BY THE COURT:

Q Do you know that Donohue said that? A I say from different sections.

Q Do you know, or not? A Donohue, at headquarters --

Q Who said it? A This is one of them (indicating Officer Gorevan.)

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Q Is he the one who said it? A He is one of them that said it.

BY MR. FELDMAN:

Q Gorevan? A Yes, sir, that is one' and one of them is not in court.

Q Did you see the tall officer? A I haven't seen him.

Q You didn't see him at all? A No, sir.

Q The man who took the stand yesterday? A No, sir, I did not see him.

Q Go ahead. A When I got such a reception there, I asked one of the officers sitting at the desk near me, I said, "Will you please give me that officer's name?", Donohue, because he is the one that struck me, and I thought that wasn't right for him to strike me, so he says, "Say," he called him by his first name, he said, "Mr. Goldberg wants to know your name." The answer was, he took hold of a glass of ice water from the cooler and threw it right in my face.

Q Who was that? A Donohue, and came in all naked and with a pair of white pants, without a shirt, and dancing around the floor, and this is the justice I received there.

Q What happened beside that? A I wanted to telephone from Headquarters. "There is nothing doing; you can't do that". I says, "My brother ought to know something about it." He says, "We got you, and we got you with the goods, that is enough for us."

Q Now, then, after that, when were you taken to court?

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A Before I was taken to court the next morning, they took me up in a large room, and it looked more like a masquerade room, all had masquerades on, and each one passed a different remark about me, told me to put my hand, put down my hands, and "here is a gentleman that sends out young men, thieves, to break into lofts and bring them the stolen goods," and I am in this country for thirty-seven years, and never knew of any such thing as this.

Q Now, listen, after that you were taken to Police Headquarters? A Yes.

Q And from there down to the Magistrate's Court? A To the Magistrate's Court.

Q You say you at no time knew anything about it? A No, sir.

Q And the first time you saw it was when you came in from Newburgh? A Yes, sir.

Q And, not knowing anything about that, you didn't handle it at all? A No, sir.

Q You didn't do any cutting on it? A No, sir.

Q And you still claim that you don't know anything about it? A I know about it now.

Q You know about it now? A Yes, sir, I do.

Q Tell us, have you got a tenant in that house by the name of Gilbert? A Yes, sir.

Q Do you know anything about him? A Yes, sir.

Q Who is Gilbert? A Mr. Gilbert is a tenant of the same building who manufactures ladies' cloaks and suits, and

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this gentleman occasionally gives out work to different people, to finish it; he isn't steady himself; so in the slack season he goes out and closes up the place and a couple of times before we used to receive goods for him, too. I was away, and later I was informed that my brother received some goods for Mr Silbert, and after that of course I tried to find out what is going on.

Q What became of Silbert? A So I went upstairs many times and found the door locked. Mr. Silbert was never to be seen, but later on I have been informed that he moved out on a Saturday morning, early in the morning, and that was the last time I tried to locate him.

Q And from that time until today you didn't find him?
A No, sir; I tried to find Silbert. There is one in the fur business, but that was not the one.

MR. FELDMAN: Your witness.

CROSS-EXAMINATION BY MR. EDER:

Q What is your business, Mr. Goldberg? A Cotton goods, jobber of cotton goods.

Q Jobber? A Yes, sir.

Q How long have you been a jobber? A Well, about 5 or 6 years; not exactly in cotton goods.

Q Well, you are a merchant, a jobber? A Yes, sir.

Q And you were that in August, 1917, weren't you? A Yes.

Q You have been in business for yourself practically 20 years? A Together with my brother; we are always together.

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Q I mean jointly with your brother, practically 20 years?

A Yes, sir.

Q Always in the capacity of a merchant? A Yes, sir.

Q You remember you were in the Magistrate's Court, were you not? A Yes, sir.

Q Do you remember a clerk asking you certain questions, and you gave him certain answers there, before you went up before the Magistrate? A Yes, sir.

Q Do you remember he asked you what your name was? A Yes.

Q You said, "Elias Goldberg"? A Yes, sir.

Q Do you remember that? A Yes, sir.

Q And he asked you how old you were, and you said, "42 years of age," this is in 1917? A Wasn't that a mistake about the age?

Q Did you say that? A I presume I did.

Q He asked you where you lived, and you said 2735 Ocean Parkway, Brooklyn, for two years; do you remember that? A Yes.

Q And he asked you, "What is your business or profession?" And did you say, "A cutter?" A My profession is a cutter, yes, that is correct.

Q "Business or profession?" A Profession, cutter.

Q Didn't he ask you, "What is your business?" A "What is your profession?" My profession is cutter.

Q And you said at that time you were a cutter, in 1917, is that correct? A I don't believe it is a shame to say I am a cutter. That is my profession.

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Q And when he said to you, "What is your business or profession?", your answer was "a cutter?" A I don't remember him asking that way, my business or profession. He asked me what is my profession.

Q How long have you been a cutter? A For about 8 or 9 years.

Q And that was prior to your going into business, is that correct, before you went into business with your brother? A No, sir; I learned the business through my brother.

Q How long before the day you were arrested were you a cutter, doing cutting business? A Oh, about - I don't know exactly. Six or seven years.

Q And do you mean to say that at the time when they asked you your business you wanted to give the impression to the Magistrate or to the Clerk that you were a cutter and not a merchant, is that true? A It is possible that he would ask me what my business was, and I would tell him, but he asked me, "What is your profession?", and my profession is cutter.

Q Did you ever work for anybody? A I beg pardon?

Q Did you ever work for anybody as a cutter? A No, sir.

Q For nobody? A No, sir, with the exception of one of my brothers.

Q Of whom? A A younger brother.

Q You worked for a younger brother? A Yes, sir.

Q How long ago? A About 5 or 6 years ago.

Q How long a time did you work for him? A Oh, just jobs;

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he used to get it piecework.

Q Most of the time you were in business for yourself?

A Most of the time -

Q In fact, all of the time you have been in this country you were in partnership with your brother and in business for yourself? A Yes, sir.

Q So, even though you did the cutting, you did it for yourself in your capacity as a merchant, is that correct? A Yes.

Q Now, you say that that day you went to Newburgh? A Yes.

Q When did you get in the goods from Newburgh? A A couple of days later.

Q A couple of days later? A About the 8th or 9th.

Q You got in the goods? A Yes, sir.

Q And at that time you hadn't received the goods yet, did you? A No, sir.

Q Did you see the goods? A I have seen the goods before from Newburgh.

Q At Newburgh? A Yes, sir.

Q They were not in your place of business at that time, were they? A No, sir.

Q Did you have another place of business besides the one on Broome Street? A Yes, sir.

Q When did you hire that? A In the month of June. We stayed there about three months, I guess.

Q Did you have any goods there? A Yes, sir.

Q When did you get any goods there? A Well, during the

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month of June and July.

Q Did you get any goods from Newburgh at your place there?

A Yes, sir.

Q Have you got any other drafts? A I guess so.

Q From Newburgh? A I guess so.

Q When did you get that goods? A (Witness produces papers.)

Q You don't call these any notices from steamboats, do you? A No, it is only parts.

Q I am asking you now whether you have any notices from the steamboats other than those you have given us indicating that goods are coming in for you? A No.

Q The one that you handed me is dated November 17, 1917, after that one, isn't it? A I don't know about the dates, but you asked me whether I got any more notes.

Q Did you ever have any goods from Newburgh before August 17, 1917 - August, 1917? A Yes, sure. April, there is one from April (handing paper to Mr. Eder.) December, 1917 (handing paper to Mr. Eder.) July 27th (handing paper to Mr. Eder.) There is one, November, 1917 (handing paper to Mr. Eder.) November 13th (handing paper to Mr. Eder.) November 9th (handing paper to Mr. Eder.) December 4th (handing paper to Mr. Eder.)

Q These are all bills that you have received, or these are all notices that you received merchandise from Newburgh, is that correct? A Yes, sir.

Q I see that you only handed me one July 27, 1917, as hav-

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ing come in during the time that you had that other place in Spring and Broome - in Spring and Greene Streets? A Yes, sir.

Q So, all that you had during that time is 19 bales of scrap leather, is that correct? A Yes.

Q Was that the reason that you rented that new loft over there, that new store, because you got in 19 bales of mohair seconds on July 27, 1917? A Well, we expected to get in a lot of more stuff. Here was another shipment of 74 bales.

Q Where? The one that you say you went up - and was received in August? A Yes, sir.

Q So, you rented the loft in June because you intended to get 74 bales of scrap leather in August, is that correct?

A Oh, no, we rented the place in June because we bought a good many bales of scrap leather; it is very bulky.

Q When did you receive that scrap leather? A Practically within a few days later in June.

Q Have you any indications here that you received any other before August except this one, July 27th, 17 bales?

A Well, if you will allow me, I will send down my brother, and he will get you all the bills.

Q You brought these things along as evidence, didn't you? A Not exactly; I didn't think it was necessary.

Q You had them in your hand all that time? A Practically one of them but altogether. I asked Mr. Feldman, and he says, "You don't need them."

Q That day you say you went up to Newburgh on this bill of

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August 4th? A Yes, sir.

Q And you had not received the goods? A No.

Q And you went up there to complain about the freight charges is that correct, before you received the goods? A Oh, not exactly. This is a minor matter, but I expected to buy more goods from him.

Q Then you received the 74 bales? A Yes, sir.

Q You expected to buy more goods? A Yes, sir.

Q And that was your reason for going up? A Exactly.

Q Who were these goods consigned to? A Consigned to us.

Q Who is, "I. Goldberg?" A I. Goldberg?

Q Yes. A My brother.

Q Which brother? A I. Goldberg is the younger brother.

He is not here.

Q Which brother is that? A He is on 19th Street and Broadway.

Q Will you please look at this and see if that is not consigned to I. Goldberg? A Yes, I. Goldberg was together with us; this was all in one.

Q Didn't your brother say that you and he were in partnership? A Yes, sir, at that time we took a loft, and that was the reason, we only stayed there a couple of months. Well, I. Goldberg was the buyer for us, he bought the goods, and afterwards he said, "I don't want to be in it, I don't like your place to work in, in a basement, I don't want to work here." I said, "Well, you have got nothing to lose, it is all our

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money, you didn't put up any money; all right, we will let you out of it."

Q So it was your brother who was in that business?

A My brother was the assignee, but I. Goldberg was the buyer for us.

Q I. Goldberg was the buyer for you? He went up there to buy it for you? A Yes, sir.

Q What did you go up there for on August 6th? A I went together with him.

Q You went with I. Goldberg? A Yes, sir.

Q Is I. Goldberg here in court? A No, sir, but I can get him. I will get him for you.

Q Did Lang have anything to do with the purchase of this goods? A No, sir, not the imitation leather.

Q What did he go up there with you for? A For cotton goods, for some short ends.

Q So, he was not concerned in any of your purchases?

A Not of this imitation leather, only about short ends, remnants.

Q You say that morning you left - where did you leave from, from your house? A Certainly.

Q Where did you meet Lang? A I met him on the boat.

Q Did you have an appointment with him to meet him on the boat? A Yes, sir.

Q And you went up there at what time? A The boat I think left at 8:40 or something like it, before 9:00 o'clock.

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Q Was that a boat that went direct to Newburgh; or went further, up to Albany? A I believe that boat goes further.

Q It goes to Albany? A Possibly so. It makes a few stops.

Q And you got off and attended to your business? A Yes.

Q Where did you live at that time? A Where I lived at that time?

Q Yes. A In Ocean Parkway.

Q Coney Island? A Yes, sir.

Q And you hadn't seen your family since that morning, is that correct? I mean, you hadn't seen your family after you left in the morning to go up to Newburgh; what time did you see your family after that? A Until the day after I was arrested.

Q When you came home you say you got off at One Hundred and Twenty-ninth Street? A Yes, sir.

Q And Lang got off with you? A Yes, sir.

Q You continued down to your place of business? A Yes.

Q Lang also lived in Brooklyn, didn't he? A Yes, sir, he lives in a different direction, Gates Avenue, I guess.

Q He didn't go with you directly, did he, up to your place? A Up to Broome Street?

Q Yes. A Well, he went down as far as - he went down to Canal Street, to get some lunch.

Q Did you expect your brother down in the place of business that night? A Yes, sir.

Q You expected him there at eight o'clock? A Yes, sir.

Q You were in the habit of staying there, at business?

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A Yes, sir, we are there always until 8:00 or 9:00 o'clock sometimes.

Q You do quite an extensive business there at night, don't you? A I don't know what you call extensive. This is my work to charge up the goods, because we have no employees; we do all the work ourselves; so I fixed up the stock charge of goods, sent out our correspondence.

Q You can't do that during the day, can you? A We do that, but we work principally at night time, because there is no excitement there.

Q About how many hours does it take you to enter each day's business that you do during the day? A Well, I don't say that we have to do that every day.

Q How often do you make shipments from your place?

A Almost daily.

Q How many shipments do you make a day? A It all depends. Sometimes we make one and sometimes ten.

Q Do you ever make more than ten shipments? A It all depends on the nature of the shipments.

xQ Do you ever make in any one day more than ten shipments?

A Oh, yes.

Q Do you ever make twenty-five shipments a day? A Well, sometimes.

Q How long does it take you ordinarily to make the entries at night time of the business you do during the day? A Well, sometimes before we get through with the correspondence it takes

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a couple of hours.

Q Between 5:00 and 7:00 you are usually through, aren't you? A Between 5:00 and 7:00? Between 5:00 and 7:00, you say?

Q Yes. A Well, sometimes I come back to the place as late as 7:00 o'clock, after I get through with the outside business.

Q What business were you in outside of this leather business and cotton goods business? Were you in any other business? A Yes, sir.

Q What other business? A Jobbing.

Q Jobbing what? A Raincoats.

Q Manufacturing raincoats, too? A No, once in a while I would make a few special orders.

Q Any other business you were in? A Yes. Real estate.

Q Any other business? A The clothing business.

Q When were you in the clothing business? A Oh, for a good many years.

Q And when you saw these woolens you knew it was woolens for clothing, didn't you? A Yes, sir.

Q Men's clothing? A I don't know whether for men's. It can be used even for hats.

Q Didn't you know this was overcoatings that you saw?

A It was not - I don't know whether it is for overcoats or whether it is for suits.

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Q How long have you been in the clothing business? A
Quite a few years.

Q And you say you couldn't tell whether the goods which
were in your place that night, which you testified you examined,
are overcoatings? A I haven't taken much interest in
it, whether it is overcoats, or pants goods, or what it is.

Q You came into your place and saw strange goods there?
A That I have seen, woolens, yes.

Q You didn't know whether your brother had bought it?
A No, I did not.

Q And you were curious to see what kind of goods it was?
A It was woolens; maybe it was used for suits; I don't know.

Q You were interested to know at that time what kind of
goods it was, weren't you? A Yes, sir.

Q And in examining it you could see from your experience
that it was overcoatings, or goods for men's clothes? A I haven't
formed any opinion whether it was for overcoats; I knew it
was heavy goods, woolens, heavy goods.

Q Now, you knew that young Lang was not ^{at} ~~in~~ business
that morning, didn't you, or that day? A Sure.

Q The night before you were in your place of business,
weren't you? A Yes, sir.

Q Now, when young Lang came up, do you remember that?
A Yes, sir.

Q You testified to this jury that you asked him "Do you
know where this goods comes from?" You knew that he was not at

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the place? A Exactly.

Q How did you come to ask him that? A I thought possibly he knew, maybe he bought it, or his father bought it, or he had some knowledge of it.

Q Maybe he bought it, or maybe his father bought it?

A Maybe he knew his father bought it.

Q You knew he was with you? A I didn't think it was such a serious crime to ask him, "Do you know what kind of goods it is? Do you know anything about it?".

Q Weren't you about to say that, "I asked my partner," and you withdrew it? A Possibly your partner, but not mine.

Q Possibly my partner? A It was never my partner.

MR. FELDMAN: That is objected to.

Q Well, you asked him that, even though you knew he was with you all day, that is correct, isn't it? A Yes. Well, I took it all back. I made a mistake in asking him that.

Q What do you mean by that? A I mean what I said.

Q What do you mean by that statement? A Because I didn't think it was such a serious question to ask a man, "Do you know anything about the woolens."

Q Well, you knew that he was with you al day? A Yes, I knew.

Q And you knew, if you are telling the truth just now, that he couldn't have been in the place when these goods came in?

A Exactly; that is true.

Q Then, how did you come to ask him if he knows ~~where~~ ^{where} this

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goods came from? A I asked him, "Do you know anything about the goods?".

Q You asked Mr. Dreifach if he knew anything about the goods? A Yes, sir.

Q What did he say? A "I know nothing about it. I am a busy man. When I work I don't know anything about it."

Q You didn't ask him anything else? A That is what I asked him. I asked him how long ago my brother left. He said, "He left only an hour ago or two; I don't know." I asked him, "Is he coming back?".

Q You had another attorney in this case, didn't you?

A Yes, sir, I had more than one, because -- allow me to explain.

Q No, just answer my questions.

THE COURT: No, just answer questions only.

Q You asked that this case be put over, and you made an affidavit, didn't you? A Yes, I did.

Q And at the time you made the affidavit and swore to it it was true, wasn't it? A Yes, sir.

Q And in your affidavit you stated where you were on the 6th day of August, 1917, didn't you? A Where I was? I don't remember about it.

Q Is this your signature (handing paper to witness)?

A This is my signature, yes, sir.

Q And do you remember swearing to it? A Yes, I remember swearing, yes.

Q You read it before you signed and swore to it? A I don't

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think I read it, because the lawyer told me to sign in blank form, and I depended on him.

Q He told you to sign in blank form? A Yes, sir.

Q Are you in the habit of signing papers without looking at them, and swearing to them? A No, but the lawyer says it is necessary to prepare the answer at once.

Q Do you remember a Notary Public being there - Mr. Herman? A Yes, sir; he is in the office.

Q And he asked you to swear to it? A Yes, sir.

Q Do you remember saying this in the affidavit -

MR. FELDMAN: If your Honor please, it seems to me it is no more than proper that the entire affidavit be read.

MR. EDER: No objection. I offer it in evidence, if counsel wants it.

THE COURT: Received.

BY MR. FELDMAN:

Q Is that your signature to it? A Yes, sir.

(Paper received in evidence and marked People's Exhibit No. 3, of this date.)

BY MR. EDER:

Q Let me ask you this: You say when you got through with the boat you got off at 129th Street, Lang got off with you, you went immediately to your place of business in Broome Street, and Lang came up there a little time afterwards, and then you stayed there because you had no keys? A Yes, sir.

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Q And that was how your day was taken up; is that correct?

MR. FELDMAN: Is my friend testifying, or is he summing up?

THE COURT: No, he is asking a question that is based upon some evidence from the lips of this man here.

Q That was your occupation on that day, on the 6th day of August? A My occupation?

Q That was how your day was taken up? A Yes, sir.

Q Going to Newburgh, returning at 8:30, getting off at 129th Street, and then directly going to your place in Broome Street, remaining there until Lang came up, and then you remained there and continued to remain there until the police officers came; that is correct? A Until - I wanted to close up the place.

Q And you didn't have the keys, and you continued to remain there until the police officers came? A Yes, sir.

Q Do you remember saying this in your affidavit, when you asked for an adjournment because Mr. Lang was in the army --
A Well, it was the attorney's fault, it was not my fault. Mr. Jacobs, Mr. Jacobs, my attorney, sent a letter to the District Attorney's office, insisting -

THE COURT: Strike this out, and the jury will disregard it. Mr. Witness, I have told you to just hearken unto the question, and if you understand it, answer the question. If you do not, make it known to me.

THE WITNESS: Yes, sir.

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Q Do you remember saying this: "On the said 6th day of August, 1917, the above-named defendant, Samuel Lang, was engaged with me in the removal of a large quantity of merchandise from premises located at No. 81 Greene Street, in the Borough of Manhattan, City of New York, which my brother and I then used as a place for storing merchandise for which we had no room at our Broome Street address?" A That was the day before.

Q That was the day before? A Yes, sir, it was the day before.

Q You were endeavoring at that time to indicate that you could not have received the goods because you were busy with Lang at 81 Greene Street? A No, sir.

Q Now, let us see. Do you remember saying this, right before that: "I was not present in said loft at the time of the delivery of said cloth therein and was absolutely ignorant of anything concerning said cloth until I returned to the said loft, a part of which my brother and I occupied in our business as jobbers, and found the same upon the floor thereof," and then you continue with the last paragraph that I read to you? A (No answer.)

Q Did you say at any one place in this affidavit that you were in Newburgh that day? Read the affidavit, if you will?

A I told the lawyer in detail where I was, the day before he asked me, but never mentioned about the Newburgh - where I was on the 7th, he never asked me about it, and I signed it in

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blank form.

Q You signed it in blank form? A Yes, sir.

Q You couldn't have signed this before it was drawn, could you? Could you? A Excuse me. What I meant was that I signed the paper - I was reading it - in fact I wanted to sign it in blank form, and he said, "You wait a few minutes -"

Q What can you sign in blank form? A The copy, whatever you call it, the cover, I expected I would be handed over the cover, and I wanted to sign it, and he said, No, that wouldn't do.

Q That wouldn't do? A No.

Q And you didn't read a thing in this? A No, I did not, sir.

Q And do you know where your lawyer got the facts that you were engaged at 81 Greene Street on the 6th day of August, 1917? A Where he got the facts?

Q Yes. A I don't know about the case exactly.

Q So far as this case was concerned, no one was interested in what you did the day before, were they? A The lawyer was simply - he drew up the papers, in order to get an adjournment, which was contrary to my rules. He said, "He must have Lang," and I said, "I don't see why this case should be hanging for so long; why can't we dispose of it?".

Q I am asking you now, was there anyone interested in this case, so far as you were concerned, so far as your lawyer was concerned, so far as the Court or anybody was concerned, as to

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what happened the day before the goods were bought? Was anybody interested in that? A Well, he asked me, in an offhand way, where I was the day before, about the goods, and how I got the goods over the day when I moved.

Q The day you moved? A Yes, sir.

Q Did you in your affidavit say anything about Newburgh - being in Newburgh that day?

THE COURT: Well, the affidavit speaks for itself.

It is in evidence, and it has been signed by him and before a notary public, and you have it. You may read it if you desire to at any time.

Q Now, Mr. Goldberg, you never had any difficulty or trouble with Mr. Schilder before, with this young boy? Have you? A No, sir.

Q I mean, you never had any trouble with him? A No, sir, never seen him.

Q You never saw him, in fact? A No, sir.

Q And you never had any trouble with Mr. Schneider, representing Mr. Jacobs' firm, did you? A No, sir.

Q Or with the police officers, in fact, until that night, had you? A No, sir.

Q And when the police officers came up there Lang was up there with you? A Yes, sir.

Q What was Lang doing there during those hours of waiting?
A Mr. Lang?

Q Yes. A He was waiting together with me to close up

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the place. We had no keys.

BY THE COURT:

Q What did you go there for? What brought you there?

A To go down to the place?

Q Yes. A To meet Mr. S. Goldberg, my brother.

Q Who? A To meet my brother there.

BY MR. EDER:

Q Where did your brother live? A In 97th Street.

Q When you came down from 129th Street, if you wanted to meet your brother, why didn't you go to his house? A My brother don't leave the place until 8:00 or 9:00 o'clock; he is always down town.

Q Did you use the telephone to find out whether he was there when you were up town? A When I was uptown? Yes, sir, I called up.

Q Who did you call up? A I called up my place, and I found Mr. Dreifach was there.

Q And you knew your brother was not there? A My brother was not there.

Q You knew that? A Yes, sir.

Q And if you wanted to see your brother at that time, why didn't you stop off at 97th Street? A Because I asked him, "Do you expect my brother in?" He said, "I don't know; he may".

Q Did you ask Dreifach how long your brother was away?
A yes, sir.

Q How long, did he say? A Oh, not over the 'phone, I didn't

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ask him how long.

Q Well, what was Lang doing there? You say he was staying there with you seeing that the place should be closed up? A Yes, sir.

Q You never had a key for the place? A No, sir, I never had a key.

Q Wat? A No, sir.

Q And young Lang never had a key? A No, sir, never had a key.

Q Did you ever open the place of business? A No, sir.

Q Who opened the place of business? A My brother.

Q Always? A Most of the times Mr. Dreifach opened up, because we come in later, we come in some times half past eight.

Q And who closed the business most of the time? A My brother.

Q Was your brother the last one there every day? A Yes.

Q And you say at about 11:00 o'clock these officers came up, you say two of the officers only, is that right? A Yes, sir.

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

Q You were without your coat? It was a warm night, wasn't it? A Yes, sir.

Q You had your coat off? A Yes, sir.

Q You had your vest off, didn't you? A Yes, sir.

Q In fact, you had your overshirt off, didn't you? You were in your undershirt? A No, sir.

Q Isn't that so? A No, sir.

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Q Mr. Lang was without his coat and vest? A He was without his coat and vest, yes, sir.

Q What were you doing those four hours that you were waiting there until the police officers came? A Fixing the partition, moving the desks, and also the heavy bales of goods, the imitation leather, we tried to get it out of the way.

Q You were fixing the partition, moving the desks, to make room for the bales? A No, sir.

Q For what purpose? A For the 74 bales of goods which I expected to get in.

Q And you didn't expect to take the 74 bales to Greene and Wooster Street, did you? A Not at that time, no.

Q You didn't expect to take them over there? A No, no more, but part of it.

Q And you didn't touch this goods any more, did you?
A No, sir.

Q And you were not cutting them when the police came in?
A No, sir.

Q There was no scissors there, was there? A There is more than one scissors there. Dreifach's scissors was there, may be several.

Q There were none of your scissors there? A No, sir.
BY THE COURT:

Q What were you putting your time in at? What were you doing there for all this time? A All this time? It was very hot, your Honor, and I was sitting for about an hour, I

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couldn't move myself, for an hour or so, it was very hot.

Q ~~You~~ knew that you didn't have a key, and you knew that Lang didn't have a key, and you hadn't been able to get your brother, but you were going to stay there until your brother returned? A I expected my brother would call up, because I notified the janitor to send my brother down with the key.

Q This other man had a key? A No, sir, he did not have a key.

Q This Dreifach, he had a key? A Yes, sir.

Q But when he went out why didn't you go out? A I didn't notice the time he left; he ran out, and I didn't notice it at the time; I thought possibly that my brother is coming any minute, anyhow.

BY MR. EDER:

Q When the police officers came in, what was the first thing that was said? A "Where is the proprietor of this place?", came into Dreifach's place. I said, "Which proprietor do you want?".

Q What do you mean, he came into Dreifach's place? A The door leaving the stairs begins Dreifach.

Q Are there any partitions there? A Yes, sir.

Q There are partitions there? A Yes, sir.

Q Were these goods in Dreifach's place? A Dreifach's place, some, yes.

Q And some in your place? A Some in my place.

Q And some in the office? A Some in the office, yes.

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Q And he says, "Where is the proprietor," and you said, "which one?", and what did they say? A "Anyone."

Q What did you say? A I said, "Any one? I am one of them."

Q You said you were a proprietor? A Yes, sir.

Q Then what was said? A He said, "Now, where have you got the goods?" I says, "What goods?" He says, "Woolens." I says, "Woolens?" I says, "Here you are," so he sent over a young man representing Mr. Jacobs, and he looked over it and says, "That is the goods."

Q And what did you say? A I says, "I don't know nothing about it."

Q Yes? A "I was out the whole day, and I don't know a thing about it."

Q And then what happened? A What happened? They began to insult me, and gave me a blow in my face, and says, "I know about it; you have paid three hundred dollars, and we will prove it to you;" he said, "We have got the proof," he said, --

Q Did he ask you for a bill? A Yes, sir.

Q And what did you say? A I said, "I know nothing about the goods."

Q Didn't he ask you why you were cutting the goods at that time? A No, sir, he never asked me about cutting it.

Q Do you remember these tickets? Did you put on those tickets on that goods (handing tickets to witness)? A No, sir.

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Q Aren't those your numbers? A No, sir.

Q Do you know who wrote them? A No, sir.

Q You don't know who wrote anyone of them? A No, sir.

THE COURT: What is the name on the other side of those tickets? Is there some mark put upon them, or is that as they were found?

MR. EDER: As they were found.

THE COURT: Just as they were found?

MR. EDER: Yes, sir.

Q You say you don't know who put those on? A No, sir.

Q Do you remember when the officer asked how those tickets came on, you said you were lotting them off? A I beg your pardon, I never said a word about it; I told him I knew nothing about it.

THE COURT: How many of those checks are there?

MR. EDER: 10, your Honor.

THE COURT: Let me see them, please, Mr. Eder.

(Mr. Eder hands cards to court.)

THE COURT: Perhaps it might be well to take samples of the handwriting of those, half a dozen samples of handwriting. Let him have a piece of paper and write those numbers, and so forth.

Q Will you please take a pencil here and try to write these numbers. Write Capital, "L-o-t, 500"? A (Witness writes)

Q Capital, "Lot, 510"? A (Witness writes.)

Q Write, "Yds.?" A (Witness writes.)

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Q "No. 28"? A (Witness writes.)

Q Write, "34," and then, "yds," after it. ?

A (Witness writes.)

Q Now, write capital "Lot, 510, yds, 28?" A (Witness writes.)

THE COURT: Write those three or four times, fast.

(Witness writes.)

Q Write, "28, 510, 28, 82, yds, yds. " A (Witness writes.)

THE COURT: How many samples have you there?

MR. EDER: On the paper, you mean?

THE COURT: Yes.

MR. EDER: About five of each. This "Holmes," was on the original, and on the back of each was written the numbers.

THE COURT: Show them to the jury.

MR. EDER: I offer in evidence the sample and the tags, if your Honor pleases.

(Same received in evidence and marked People's Ex. No. 4, of this date.)

THE COURT: Have you seen these samples, Mr. Feldman?

MR. FELDMAN: Yes, sir.

Q Now, Mr. Goldberg, after these officers had come up and you told them you knew nothing about the goods, they took you into your private office and there they asked you for a bill of sale again? A Yes, sir.

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Q Is that right? A Yes, sir.

Q Wasn't it there that you first admitted that you were the proprietor, in your office? A No, sir, I admitted it right away.

Q You admitted it right away? A Yes, sir.

Q And did you suggest anything ^{about} ~~xx~~ Dreifach? Did you mention the name of Dreifach to them at all? A Yes, sir.

Q You did? A Yes, sir.

Q Was there a sign in your place upon one of the partitions "Goldberg & Lang?" A No, sir.

Q Wasn't there such a sign? A No, sir, I never had such a sign.

Q Then they took the goods away, is that right? A Yes.

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

Q You did not? A No, sir.

Q Didn't you think it advisable to get your brother before you permitted them to take the goods away? A I says, "I don't know a thing about it; if this man says that this is his goods I suppose you know what you got to do; I don't know a thing about it; I don't know - "

Q Didn't it occur to you that your brother might have bought them? A Why, certainly.

Q Why didn't you say, "Let us get my brother down?" A I did.

Q Why didn't you tell this jury something about that. You

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never said anything about it, did you? A I believe I did.

Q What did you say? A Oh, no, I says, "I don't know a thing about it. My brother was the one in the place. He ought to know something about it," yes.

Q Did you know that your brother knew something about it? A I don't know.

Q Didn't it occur to you that maybe old man Lang knew something about it? A No, sir.

Q Why didn't you say you think maybe old man Lang knows something about it? A I only told them that I don't know.

Q Isn't it a fact you said to them finally, "I bought the goods;" didn't you say that? A I beg your pardon. "I don't know a thing about it."

Q Did you say anything to them about being in Newburgh that day? A Yes, sir.

Q Who did you say that to? A To one of the officers, Donohue, I guess.

Q Did you say that because you looked around and find Donohue isn't in court? A No, I wanted to see whether he is here.

Q You wanted to see whether he is here, and because he is not here you say you told it to Donohue, isn't that it? A This is the one that had the conversation with me.

Q And then you say they punched you? A That was the one.

Q Why did he punch you? What did he say when he punched you? A He asked me for a bill of lading - for a bill; and I

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says, "I don't know anything about it." He says, "Yes, you do," he says,

Q He expected you to show a bill, is that it? A Yes, sir.

Q And because you didn't show it he punched you? A I says, "I don't know a thing about a bill; I wasn't here, and I never bought it." He said, "You don't, hey," and punched me and called me all kinds of names.

Q Did he punch Lang, too? A He struck him with a coat-hanger.

Q And then you went to Headquarters, you say? A Yes, sir.

Q And some one shouted names at you? A Yes, sir.

Q They came from all over? A Yes, sir.

Q All the detectives? A About half a dozen of them.

Q Other than those that brought you in there? A Yes, sir.

Q And then in the morning you were taken to a sort of masked place? A Yes, sir.

Q That is known as the line-up, where they take all criminals in the morning to see if the detectives know them?

A I don't know that; I don't know a thing about that; that is the first time in my life, and that is one too much.

MR. FELDMAN: I object to that. How does he know that?

Q You were not punched there, were you? A No, sir.

Q Did you complain to anybody that you were punched, did you complain to the gentleman in charge of the Detective Bureau, the lieutenant, did you complain to him that you were punched and assaulted and called "Jew bastard?" A That is exactly

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what I intended to do.

Q Did you do it? A I didn't know the name; I didn't know Donohue there.

Q Didn't they bring you into the station house, or into Headquarters? A I didn't know to whom to complain at all.

Q Do you remember when you were brought to Headquarters, you were brought before a lieutenant and arraigned? Do you remember you were brought before a lieutenant at the desk there? A Yes, sir.

Q And he asked you for your name, didn't he? A Yes, sir, that officer asked me for the name, and wrote it down (indicating Officer Gorevan.)

Q Wasn't there a lieutenant at the desk, writing, when they brought you in? A Several were writing at the desk.

Q Did you complain to anyone there that you were assaulted and called a jew bastard? A They all seen it in the room.

Q They all saw you assaulted? A yes, sir, they all saw me.

Q In the presence of all? A Yes, sir, in the presence of all.

Q And then you were bailed out the next morning? A Yes.

Q And then you spoke to your brother, didn't you? A Yes.

Q After you spoke to your brother you discovered that this goods was left for Silbert, didn't you? A Yes, sir.

Q Did you then go to the Detective Bureau or to any place and ask for the arrest of Silbert? A No, sir.

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Q You did not? A No.

Q Did you go to any detective or any place of authority in the City of New York and complain and say that that goods belonged to Silbert, and you wanted him apprehended, or arrested? A I ---

Q Did you do it? A No, I did not.

MR. EDER: That is all.

REDIRECT EXAMINATION BY MR. FELDMAN:

Q Why didn't you do it? A Because they insulted me; whatever I told them they made a fool out of me.

BY THE COURT:

Q In the Magistrate's Court, you went up before the Magistrate, didn't you? A Beg pardon?

Q You went before the Magistrate? A Yes, sir.

Q Did you tell him about this outrage that had been inflicted upon you? A No, sir.

Q Why didn't you? A The examination was not held that day.

Q Why didn't you say something about it? Why didn't you protest, as a citizen, if you had been assaulted, without any grievance, to the Magistrate who was there on the case?

A Well, I was advised --

Q Now, do you mean to say that Officer Donohue struck you in the face in the presence of all these people that were there, a representative of Mr. Jacobs, and this other person?

A Yes, sir.

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Q Mr. Gorevan? A Yes, sir.

Q Cassetti? A Yes, sir.

Q Do you mean to say that he did that? A Yes, sir. I beg your pardon. He did not strike me at that time? He insulted me. The blow he gave me was in my place, 482 Broome Street, but there he threw cold water on me, he came out naked and took a cup of water ---

Q No, but at the place where you say he drew back and hit you in the face with his fist? A Yes, sir, with his fist.

Q In the presence of this representative of Mr. Jacobs, who was there, and this young boy? A Yes, sir.

Q And the other policemen that were there? A Yes, sir.

Q Why didn't you tell somebody about it? Why didn't you tell the Magistrate about that when you had an opportunity?

A Well, I thought of the case, I thought the only time I can explain myself is when the case will come up.

Q Why did you make an affidavit during the case and set out in that affidavit that on this day you and Lang were busy getting out of this other place here in New York, why did you say that? A The lawyer --

Q If you were up in Newburgh during that time, many miles away from the city? What was the reason of giving that statement and making that affidavit for the purpose of its being used in court? A I told the lawyer - he was a young man - and I told him all about it, from Newburgh, and what I have

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done in moving from one place to another the day before, and I am surprised that he didn't put it down that I was in Newburgh.

Q You are a business man, in business for a long time, and you gave him the information upon which was based that affidavit? A I gave him the information.

Q You say in your affidavit that you have sworn to -
A I am surprised that he didn't put it in, because I told him I was in Newark.

Q And do you mean to go out to the jury and say that you didn't either read it or have it read to you, "yes," or "no?"
A No, sir.

BY MR. FELDMAN:

Q Didn't you say anything to the lawyer about Newburgh?
A Yes, I told him I was in Newburgh.

Q And before you signed the affidavit didn't he read the paper to you? A No, he didn't read it.

Q And you didn't read the paper before you signed it?
A No, sir.

Q And, believing that your lawyer put in what you told him, you signed the paper? A Yes, sir; I am surprised -

Q Who is that lawyer? A (No answer.)

THE COURT: Will you read that to the jury, Mr. Eder, unless you want to ask some further questions?

MR. EDER: I just want to ask one further question.

BY MR. EDER:

Q Mr. Goldberg, you say that was not read to you? A No.

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Q Will you please look at this initial? Is this yours,
"E. G." (handing People's Ex. No. 3, to witness)? A Yes.

Q And do you see that this was written in the hand-
writing, afterwards, "Annexed hereto and made part hereof
is a statement signed by said Lang shortly after his arrest,"
and signed, "D. H. and E. G." over it? Didn't he read
that to you, and didn't you initial this, which was added later
on? A He simply told me to initial that, because he wrote
it in afterwards.

Q He wrote it in after it was all ready? A No, he put
it in there, or wrote something; in fact, I don't know what
he wrote in there, either.

Q You don't know what he wrote in there, either? A No.

MR. EDER: May I read this affidavit to the jury?

THE COURT: Yes.

MR. EDER: "Court of General sessions in and for the
City and County of New York. People of the State of
New York against Samuel Lang and Elias Goldberg, defendants.
State of New York, City of New York County of New York, SS:
ELIAS GOLDBERG, being duly sworn, deposes and says:
I am one of the defendants in the above entitled action.

I respectfully ask that this action be marked
'off' or transferred to the Call Calendar, for the follow-
ing reasons.

The defendant, Samuel Lang, and I were jointly in-
dicted on two counts, first, for the crime of larceny in

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the first degree; second, for the crime of criminally receiving stolen property in the first degree. Both counts in said indictment arose out of the discovery in a loft situate in the building known as No. 482 Broome Street, in the Borough of Manhattan, City of New York, of a certain quantity of cloth alleged in the indictment to be of the value of \$6,000. The said quantity of cloth was so discovered on the 6th day of August, 1917, upon which day the same is alleged to have been stolen from one William Jacobs, and by the person guilty of such theft delivered at said premises.

I was not present in said loft at the time of the delivery of said cloth therein, and was absolutely ignorant of anything concerning said cloth until I returned to the said loft, a part of which my brother and I occupied in our business as jobbers, and found the same upon the floor thereof.

On said 6th day of August, 1917, the above named defendant, Samuel Lang, was engaged with me in the removal of a large quantity of merchandise from premises located at No. 81 Greene Street, in the Borough of Manhattan, City of New York, which my brother and I then used as a place for storing merchandise for which we had no room at our Broome Street address.

I am informed, and verily believe, that the said Samuel Lang is now a soldier in the service of the United

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States Army, and a member of the Service Detachment, 79th Division, Quartermaster's Corps of the American Expeditionary Forces in France. The source of my information and the grounds for my belief are statements made to me by Morris Lang, the father of said Samuel Lang, and letters received from said Samuel Lang mailed from France to his father and brother-in-law, One Irving Rathaus, the original envelopes of which are now in my possession and are hereto annexed and made a part hereof. I also refer to and make part of this affidavit the certificate of the Local Exemption Board through which the said Samuel Lang was inducted into the service of the United States Army, certifying that the said Samuel Lang is at present in France, which said certificate is now in the possession of the District Attorney .

I have not seen said Samuel Lang since the month of April, 1918, and am therefore unable to state at present whether the said Lang will testify upon the trial or whether he will insist upon his right to abstain from testifying. However, when I last saw him and spoke to him concerning the merits of this action, he stated to me that it was his intention to take the stand and testify, both in his own and in my behalf. Said Lang, who was with me during most of the day on August 6th, 1917, would testify in corroboration of my testimony.

I have fully and fairly stated the facts of this case

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to my counsel, Emil Weitzner, Esq., and my said counsel advised me, after such statement, that I cannot safely proceed to trial without seriously jeopardizing my interest, in the absence of the said Samuel Lang? Sworn to before me, this 28th day of October, 1918 Elias Goldberg. David Herman, Notary Public."

And then, in handwriting, "Annexed hereto and made part hereof is a statement signed by said Lang shortly after his arrest," and the initials of this defendant, "E. G., D. H." indicating David Herman, Notary Public, indicating that this was written after this was signed and signed by him.

Q Let me ask you one question. You say you were protesting that your attorney should not ask for the adjournments, that you were always ready and willing to go to trial, is that right? Didn't you say that to this jury? A Yes, sir.

Q It was against your request that these adjournments were asked for? A Not this attorney. By an attorney, Mr. Jacobs, who sent a letter to the District Attorney, that I was willing to go on with the case; I guess you will find it among the papers.

Q You say you protested at all times about the adjournments? A Not by this lawyer, but my first attorney; you will find a letter there.

Q You say you protested at the other attorney asking for adjournments? A Yes, sir.

Q But you did not protest at this attorney asking for ad-

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journments, is that right? A Yes, sir.

Q That is what you want us to understand? A Yes, sir.

MR. EDER: That is all.

BY MR. FELDMAN:

Q Let me understand, Mr. Goldberg. The affidavit that was just read by the District Attorney before the jury, did you know the contents of it? A No, sir.

Q You relied upon your lawyer? A Yes, sir.

Q Mr. Emil Weitzner? A Yes, sir.

Q Where does he keep? A 51 Chambers Street.

Q 51 Chambers Street? A Yes, sir.

Q Did you speak to him about it, about going away? or having a place and removing the place, or anything like that, did you speak to him about it? A Yes, sir, I told him.

Q When did you do that removing, when was that done? A That was the day before.

Q The day before? A Yes, sir.

Q Then, that didn't happen on the 6th, but it happened on the 5th? A On the 5th.

Q On the 5th you removed with Lang to Broome Street?
A Yes, sir.

Q And on the 6th you went to Newburgh? A Yes, sir.

Q And you claim now that if it is the 6th there is some mistake? A Yes, sir.

MR. EDER: I object to that and ask that it be stricken out.

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THE COURT: Objection sustained.

BY THE COURT:

Q Did you tell him anything about the Newburgh episode, that you were going to Newburgh? Did you? A Yes, sir.

BY MR. FELDMAN:

Q You told him that you went on the 6th to Newburgh? A I told him I was on the 6th in Newburgh.

Q When was that, before you signed it, or afterwards?

A That was the same time.

Q And this removal part you say was the day previous to that? A The day previous.

Q You told us of the arrest, when he struck you, Donohue and called you all the different names, as you say, - you know you received a blow, is that right? A Yes, sir.

Q No doubt about that? A No, no.

Q What is that? A I will never forget that.

Q And you did not make a complaint about it? A No, sir.

Q Why? Why didn't you make a complaint about it?

A Because I expected the case is not tried; when it will come up to trial I am willing to tell the treatment I received by the police.

Q And you state now - A This very man, this officer says - he called all - "Were you ever arrested before?" I said, "No." He said, "You are a darned liar; we got your picture in the Rogues' Gallery."

Q They have got your picture in the Rogues' Gallery? Have

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they? A As far as I know, I was never in any trouble in my life.

Q Did you write these numbers on the pieces of paper that you just copied by the dictation of the Assistant District Attorney? Is that your handwriting (handing witness tickets, People's Ex. No. 4)? A No, sir.

THE COURT: Hasn't he given some testimony upon that subject?

Q Is there anything else you want to say now before you leave the stand in reference to this case, or have you told us all you know about the case? Is there anything else you want to say now to his Honor or to the jury about the case? A Well, I expected --

THE COURT: No, we won't take it spontaneously, but in answer to a question. If there is anything that has not been covered, you will address his attention to it.

Q You say that Dreifach - since when did he leave your premises? A I believe over a year.

Q Over a year? A Yes, sir.

Q He keeps a place for himself now? A Yes, sir.

Q In the same building? A Yes, sir.

Q What is his first name? A I think it is Morris, M. B. Dreifach.

Q And you say he had a girl there, a bookkeeper? A Yes.

Q Was she there at the time when you arrived ⁱⁿ ~~mm~~ that place?

A No.

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Q She was not there? A No, sir.

MR. FELDMAN: That is all.

MR. EDER: No further questions.

THE COURT: Is there something else?

MR. FELDMAN: That is all I have; your Honor, at the present time. No, I have another character witness.

- - - - -

S A M U E L D e L O R E N Z O, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FELDMAN:

Q Where do you live? A 73 Withers Street, Brooklyn.

Q You say you live where? A 73 Withers Street, Brooklyn.

Q And what is your business? A Cotton goods, and cotton mattings.

Q And how long a time are you in business, how many years?

A Well, about ten or twelve years.

Q Ten or twelve years? A Yes, sir.

Q Do you know the defendant, Goldberg? A Yes, sir.

Q Do you know his brother? A Yes, sir.

Q How many years have you known them? A About four or five years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what their reputation is for honesty? A Yes.

Q And veracity? A Yes, sir.

Q Is it good, or bad? A Good.

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MR. FELDMAN: Your witness.

CROSS-EXAMINATION BY MR. EDER:

Q Did you ever discuss their reputation with anybody?

A Yes, sir.

Q With whom? A Why, I discussed it with other people.

Q Mention some of their names? A I discussed it with -
I am so nervous now I can't think of the names.

Q You answered that very readily when counsel asked you whether you discussed the defendant's reputation with other people, you answered that very readily, you said, "Yes."

A Certainly.

Q Please tell us some of the names whom you discussed it with? A With Mr. G-a-r-b-l-i-c-k.

Q How do you spell the name? A G-a-r-b-l-i-c-k.

Q What is the first name? A A. Garblick.

Q Do you know what "A." stands for? A No, I know it is
A. Darblick & Sons. Mr. Garblick I call him.

Q Where is their place of business? A On Canal Street.

Q What number? A I don't know the number exactly; 394 -

Q When did you discuss this man's character with him?

A For the past years.

Q How did you come to discuss this man's character?

A Because we are in the same line of business.

Q Who is? A Mr. Darblick is also.

Q In the same line of business as the defendant is?

A Yes, sir, in cotton goods.

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Q How came it that you discussed his character? A Well, because we sell to them also.

Q And did you suspect this defendant of anything? A No.

Q How was it you came to discuss it? A How was it? "Well, how do you find Mr. Goldberg?" How do you find such people, they are good people as far as I know him, and they said they were good people as far as they knew.

Q And that is the discussion you had about his character, is that correct? A Yes, sir.

Q And upon that you based his reputation? A Yes, sir.

Q No other fact? A No, sir. Never heard anything wrong about him before.

MR. EDER: That is all.

MR. FELDMAN: That is all, your Honor, except a couple of witnesses I will try to get by tomorrow, if possible. It is late. I think your Honor wouldn't let me go to the jury tonight.

THE COURT: You would like to call some other witnesses?

MR. FELDMAN: I want to get one or two more, ~~but~~ whom I think are very important. If I can get Dreifach I want him.

THE COURT: (To the jury) Gentlemen, do not discuss the cause, nor form nor express any opinion on it, but keep your minds open and free until the case is submitted to you. I will ask you to be in your places tomorrow morning at half past ten.

(Recess until Friday, June 13, 1919, at 10:30 a.m.)

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THE PEOPLE, Etc., vs. ELIAS GOLDBERG.

New York, Friday, June 13th, 1919.

TRIAL CONTINUED

MAX DREYFACH, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FELDMAN.

Q Where do you live ? A 131 West 110th Street.

Q Mr. Dreyfach, how old a man are you ? A 58.

Q Living here with your family ? A Yes, sir.

Q What is your business ? A Manufacturing pillow cases.

Q Pillow cases ? A Yes, sir.

Q Where do you keep your place of business ? A 482 Broome Street, New York.

Q How long, for how many years, have you been there ?
A Well, in this building I believe about three and one half years.

Q Are you with Goldberg Brothers, in the same loft ?
A Yes, sir, the first year I moved in half a loft.

Q The first year you moved in, you had half a loft ?
A Half a loft, yes, sir.

Q How much have you got now ? A Well, the first floor; I moved down to the first floor.

Q And how long were you with them ? A Oh, I be-

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lieve a year.

Q What time did you move out ? A Oh, this I don't remember.

Q You don't remember what time you moved out ? A No.

Q Do you remember the 6th day of August, 1917 ?

A The date I don't remember.

Q Suppose I try to refresh your memory. Were you in the place where certain goods, bundles, similiar, like those bundles, were brought in (indicating People's Ex. No. 1) ?

A Well, I can't state this here, because goods used to come in and out all the time.

Q You had nothing to do with their business at all ?

A Absolutely not.

BY THE COURT.

Q Do you know anything about this case ? A No, sir, your Honor, I don't know anything about it. All I know is the date when -

Q You know that this man was arrested ? A Oh, yes, the detective told me.

Q That was a couple of years ago ? A Well, I don't remember the date; about a couple of years.

Q But you don't know anything about the case ?

A No, sir.

Q Or about the circumstances ? A No, sir.

Q Or the bringing in of the goods ? A No, sir, I

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don't know anything about it.

THE COURT: What do you think now?

MR. FELDMAN: That is all.

CROSS EXAMINATION BY MR. EDER.

Q Mr. Dreyfach, do you know old man Lang? A Yes, sir.

Q Now, picturing the time of the arrest of the defendant, did you ever see old man Lang in those premises during that time? A No, sir.

MR. EDER: That is all.

RE-DIRECT EXAMINATION BY MR. FELDMAN.

Q You don't remember? A I don't remember. That is what I say.

Q That is a different proposition. You say "No, sir". Either you remember it, or you don't remember?

A I don't remember.

Q Do you remember if he was on that day there?

A I don't remember that; that is what I meant to say.

Q That is what you meant to say? A Yes, sir.

Q You didn't mean to say you can't say positively he wasn't there? A No, sir.

Q In other words, the entire transaction you don't remember? A All I know is what the detective told me; that is the whole story.

Q Do you remember which of the brothers were there on that day? A No, sir.

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Q You can't remember that ? A Absolutely not.

MR. FELDMAN: That is all.

THE DEFENDANT RESTS

REBUTTAL TESTIMONY

EMANUEL SCHILDER, being recalled on behalf

of The People, in Rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. EDER.

Q Mr. Schilder, you saw old man Lang on the stand here ? You were in the Court room ? - A Yes, sir.

Q Did you see him there the day that you delivered the goods ? A No, sir.

Q Did you ever see him in your life until you saw him here on the stand ? A No, sir.

MR. EDER: That is all.

CROSS EXAMINATION BY MR. FELDMAN.

Q Now, Mr. Feldman, it is two years since? Do you know how many years passed since that time ? A Yes, sir, about two years.

Q Do you remember everything that you saw on that day ? Do you remember seeing anybody there on that floor ?

A I saw Mr. Goldberg, the defendant, Mr. Lang and the book-keeper, and there was some other man, a younger man than Mr. Lang looks.

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Q But you didn't look around the entire place, did you?

A No, sir.

Q It was a big loft?

A Yes, sir.

Q You were busy carrying in those bundles?

A Yes, sir.

Q You didn't pay any attention to every one there?

A In carrying the bundles in, I looked around.

Q But you can't be so sure and positive, in a hurry bringing it up, that you saw everybody in the place?

A (No answer).

MR. FELDMAN: That is all.

M A X D R E Y F A C H, being recalled, testified as follows:
BY MR. EDER.

Q Mr. Dreyfach, what time did you appear in the place on the morning of this man's arrest?

A Well, I believe it was after seven, between seven and eight.

Q And you say you saw the detectives there?

A Yes, sir.

Q Do you remember seeing this detective there (indicating Officer Cassetti)?

A Yes, sir.

MR. EDER: The People rest, your Honor.

MR. FELDMAN: The defense rests, your Honor.

TESTIMONY CLOSED

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MR. FELDMAN: At the close of The People's case, as well as the defendant's, I renew my motion at this time, if your Honor please, and ask your Honor to advise the jury to acquit.

THE COURT: In so far as your motion may have application to the first count in the indictment, I will grant it. However, I will reserve a portion of it for the purpose of making the second count complete and explicable, I mean as to the date and the venue, but in all other respects your motion will be denied.

MR. FELDMAN: Will your Honor hear my motion on the second ground? No scienter has been proven, and no larceny has been committed, and there can be no scienter or knowledge of receiving stolen goods or a knowledge that they were stolen.

THE COURT: I will let you impress that upon the jury. Perhaps you can persuade the jury to your view. Go ahead. It is not for me. It is a question of fact.

MR. FELDMAN: In other words, your Honor does not express any opinion as to the guilt or innocence of the defendant?

THE COURT: Oh, no, that is not my province to do so. It is for the jury to say whether these essential matters have been proven which go to make up the crime.

MR. FELDMAN: To which your Honor will grant me

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exceptions to the denial of all my motions?

THE COURT: Oh, yes.

(Mr. Feldman then summed up the case to the jury on behalf of the Defendant.)

(Mr. Eder then summed up the case to the jury on behalf of The People.)

THE COURT'S CHARGE

MALONE, J.:

Gentlemen of the jury, I have every confidence that you are possessed of sufficient intelligence and capacity to grasp the evidence in this case and come to a right conclusion upon it.

The legal principles involved here are few; they are plain and simple. I shall be able, I think, to explain them to you briefly. I am aided very much by the elaborate discussion of the counsel in the case, who have analyzed the material testimony which has been adduced here. I seldom do more than to marshal the proof. However, in this case, I feel that I need not do that.

A great deal has been said to you about the responsibility and the impressiveness of your duty. Well, gentlemen, of course I feel that you are thoroughly impressed with all of that. If you were not, the

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splendid discourse upon the subject, ranging from theology to ethics, must have impressed itself upon you.

I know that you are going to consider this case fully and determine it upon the evidence, that you are not going to be influenced by arguments that are not addressed to your intelligence and to your consciences, that you are going to discharge your full duty to both parties here, and it is not going to be a unilateral matter with you. You are going to give The People of the State of New York the same interest and the same attention, the same good judgment, that you give to one of the citizens of the community, the prisoner at the bar. You are going to make your verdict, I know, like a mosaic matching all around.

You are not going to be influenced by any sympathy or foreign considerations of the case. While such matters are worthy ones for our consideration as citizens, they do not belong in the jury box; they do not belong in those places where justice is to be administered impartially, fearlessly and fully. For that reason, there will not be in the verdict here, I am satisfied from the attention that you have given to the counsel, anything that partakes of sympathy, and there will not be any shrinking from the obligations of duty or sentimental fear that the consequences of your determination is

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going to bring pain and suffering to someone. You are not going to convict a citizen because of your zeal for the public interests, but you are standing here right between both sides, weighing the whole case and the witnesses in the impartial scales of justice, so that when your verdict is rendered you may return to your homes conscious that you have discharged fully your responsibilities.

The charge laid against Elias Goldberg, so far as it now exists, is that on the 6th day of August, in the year 1917, he committed the crime of criminally receiving stolen property in the first degree; that on that day, by his acts, conduct and knowledge, he left himself open to the prosecution and to the penalties of the Statute.

The Statute is, and I read it to you and ask your careful attention to it: "A person who buys or receives "any stolen property, or any property which has been "wrongfully appropriated in such a manner as to constitute larceny, knowing the same to have been stolen or "so dealt with, is guilty of criminally receiving stolen "property".

If the property that has been stolen exceeds in its value fifty dollars, then the crime becomes criminally receiving stolen property in the first degree.

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If you have given attention to the language of the law makers, you will observe that there are involved here three facts which must concur in order to constitute the crime which is charged here against Elias Goldberg.

First, the property must have been stolen by someone. Second, it must have been bought, received, concealed or withheld by a certain person. Third, such person must have known that the property was stolen.

These three factors must concur. They are essential matters, and essential matters must be proven beyond reasonable doubt. If there should be any failure of proof, then the charge would not be sustained, and the defendant would be entitled to an acquittal.

Now, you have heard a great deal about reasonable doubt. It applies to the whole case and to the essential ingredients of the case. I want to say to you gentlemen that it is a hard phrase to attempt to explain, I think, certainly beyond the language itself. I don't know why it requires explanation. I always charge my juries that a reasonable doubt is a doubt which reasonable men feel that it is reasonable for them to act upon. I find that that definition covers the matter as fully as I am able to cover it.

That is what the law says, that a person's guilt must be established up to that standard. If it has

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been accomplished, then a verdict of guilty should be rendered. You will observe it does not mean and it does not say any possible doubt, but it is a reasonable doubt, a doubt which comes out of the case, reasonably and properly, and into the mind of an honest, sincere man who is anxious to perform his duty with reference to the matter which is involved.

There is hardly anything that is not susceptible of some possible doubt. That is not the reasonable doubt that the law means. It is a rule of common sense and roundabout sense that the law insists upon and expects to be realized in the performance of such duties.

If a man's guilt has been established beyond a reasonable doubt, it would be unreasonable to acquit him; the duty of the jury would be to convict him and turn him over to the law for the consequences of his crime.

Now, while this law does not expressly so provide, yet by necessary implication the property must have been taken feloniously by someone, as otherwise the possession by officers of the law, engaged in the detection of crime, as well as other innocent possession, might come within the Statute, if literally construed.

A person who is charged with this crime must know when he either bought it or received it that it was stolen. He need not know the day that it was stolen,

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nor the person who stole it. He must have notice which would put him properly upon his guard that the goods were turned over to him by a person who had them not as an honest man, not by mistake, not by accident, but as a thief would have them. It will be sufficient if you think that all the surrounding circumstances accompanying the transaction about which evidence has been taken before you were such as to make this defendant believe that the property had been stolen, if it was stolen. Of course, that is a matter for you to say.

Under our law, it is not necessary to convict the thief before proceeding to try the receiver, but the charge plainly contemplates the existence of a thief. The two crimes, to-wit, larceny and criminally receiving stolen property, are separate, distinct and independent of each other. They require different kinds of proof. Take these factors and apply the evidence that you have listened to. Was this property stolen property that was in the control and custody and limited ownership of William Jacobs, property in value, as set out in the indictment, of six thousand dollars ?

You have had evidence upon that subject, and you are in a position to determine from that evidence whether that property was stolen.

If you find that it was stolen, then you will take

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up the other matter. Did the property exceed in its value fifty dollars? The only evidence I recall upon the subject, gentlemen, is that of a gentleman who appeared here and testified that the property was reasonably worth more than two thousand dollars.

If both of these elements are established, then you will take up the other important matter: Did the defendant, Elias Goldberg, receive that property? If he did receive it, did he receive it under such circumstances as to appreciate that he was receiving and taking in stolen goods?

There is great conflict upon that subject. The defendant denies that he is guilty of this offense, and on the witness stand he denies that he received the property, claiming that at the time the property was put down in his place of business he was many miles away, that he had taken a trip to Newburgh on that day, and did not return until that evening; that then he discovered and found these goods on the floor of his loft. If that is so, or if you have a reasonable doubt upon that subject, you will acquit the defendant.

Learned counsel for The People of the State takes the view that the evidence clearly shows that the defendant did actually receive the property, that he took it from the possession of the driver and two others, one

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called Nick, who seems from the testimony to have had an important connection with the case, and a young boy who has testified here and who acted in the capacity of a helper to the driver.

It is contended by The People of the State that the defendant and Lang received the property, and that at an unusual hour of the night were cutting it up, when, through the activity of members of our Police Department and the young man who acted as a helper, the accomplishment of their purpose was nipped in the bud.

You may ask yourselves the question whether or not the other Goldberg was present on the receipt of these parcels of goods. He has gone upon the witness stand and admitted that he was, but that he did not look into the matter much, because they were put down there for the purpose of being turned over to a neighbor who was in the same building and who happened to be out at the time when the goods were delivered; that he did not receive the property in the sense that he received it permanently. You may ask yourselves the question whether he was not there when the goods were originally brought to the loft.

Upon that subject you will have in mind the testimony of the boy, who says that he did not go to the loft until the last parcel was being delivered, and that

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between the time when Diamond, the driver, and Nick went into the place he saw Samuel Goldberg walk out on the street; he positively identified him.

You may ask yourselves the question whether or not arrangements were made between the parties when the first goods were delivered.

Now, the evidence of the defendant is that he went away that morning and went to Newburgh. That is what is called in the law an alibi, and I am going to say a word to you upon that subject.

It is a defense which, if satisfactorily proven, is proof of the most satisfactory character. The proof should cover the whole of the time of the transaction in question, so as to render it impossible that the person who has been charged could have committed the act that he is charged with. It is not enough to render his guilt probable merely.

This defense, as I say, if satisfactorily established, is the most perfect defense that a person can interpose. However, it is one that is frequently resorted to falsely and concocted, and sometimes in the minds of men it is received with distrust, but though it may labor sometimes under such prejudice, and ought to be examined with care and caution; yet if it appears to the jury to be founded in truth it is the best negative evidence that

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can be offered, and in many cases it is the only evidence which an innocent person can proffer.

An unsuccessful attempt to establish the alibi is always a circumstance of weight against the person who interposes it. The credit to be given to the defense is greatly strengthened if it is set up at the moment when the charge is made and consistently maintained throughout the subsequent proceedings.

On the other hand, it is a material circumstance to lessen the weight of a defense of this kind if it be not resorted to until some time after the charge has been made, or if, having been once resorted to, a different and inconsistent defense is afterwards set up.

You have heard the evidence of the defendant upon that subject, and the counsel has argued upon it and has urged upon you that it meets fully the requirements of the jury.

Learned counsel for The People of the State argues that it is an afterthought, that the matter has shifted, that previously, on an application in Court, the defendant swore to being at another place than Newburgh on this day in question.

You may ask yourselves the question whether or not it was a possible matter to have more evidence upon the subject, and whether it was possible to have somebody

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from Newburgh who could testify upon the subject of the presence of the defendant on that day or in connection with the matters about which he has given his testimony.

Most of the evidence here, gentlemen, upon which the prosecution rests is evidence of a circumstantial character, and for that reason I feel that I ought to say a word to you upon the subject in order that you may appreciate and weigh it properly in discussing the case and rendering your verdict.

The distinction between direct evidence and circumstantial evidence is this: Direct evidence is when a person is called who testifies to the precise fact which is the subject of the issue. Whatever may be the kind or force of the evidence, this is the fact to be proven, but suppose that no one can testify directly to the issue, is it unsusceptible of proof? It would be a reproach to the law if that were so. It is not, assuredly, because experience shows that circumstantial evidence may be offered; that is, a body of facts may be proved, of such a conclusive ~~convincing~~ character as to warrant a firm belief of a fact, just as strong and just as certain as that on which discreet and prudent men are accustomed to act in relation to their own important business.

It would be calamitous to the best interests of

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society if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, many criminal acts committed in the community, destructive of its peace, subversive of its order, would go wholly undetected and unpunished. The necessity, therefore, is obvious and absolute that we must resort in certain cases to circumstantial evidence.

Crimes are generally secret. People about to embark upon them bide their time and seek, so far as they are able, the security of darkness. The laws of nature and the relations of things to each other are so linked and combined together that the law says a medium of proof which leads to inferences and conclusions like circumstantial evidence is just as strong and sometimes stronger than those arising from direct testimony.

Each kind of proof, speaking of direct evidence and circumstantial evidence, has its advantages and its disadvantages. The advantage of positive evidence is that you have the direct testimony of a witness to the fact to be proved who, if he tells the truth, saw the thing done, and the only question is whether he is entitled to your belief. The disadvantage is that the witness may be a corrupt man, may be a liar, and the case may not afford the means of detecting his baseness and

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falseness; but in circumstantial evidence you arrive at it by a series of other facts which by experience we have found are so associated with the fact in question, as in the relation of cause and effect, that they lead to satisfactory and certain conclusions.

The advantages are that, as the evidence comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and falsehood and perjury are more likely to be detected and fail of their purpose.

The disadvantages are that a jury has not only to weigh the evidence of facts, but to draw conclusions from them, in doing which they may be led, by prejudice and partiality, or by the want of close deliberation and sobriety of judgment, to make hasty and wrong deductions, a source of error not frequent in the consideration of direct evidence.

From this view, it is manifest that great care and caution should be exercised by the jury in drawing inferences from proved facts. They must be fair and natural inferences; not strained or artificial conclusions. The inference to be drawn from all the facts must be a reasonable and natural one and to a moral certainty. It is not sufficient that it is probable only. It must be reasonably and morally certain.

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Now, gentlemen, I think I have taken up these matters that are essential for your consideration. I did not think that it would take me so long to cover them, but it became necessary, on account of the character of the proof and the character of the defense, to say something upon these subjects.

I am not going to say anything to you upon the subject of the evidence. The witnesses you have seen and heard. You are the judges of them, and upon your responsibility rests the verdict. You will weigh and consider all of the proof, that which is introduced by The People of the State and by the defendant at the bar, including the evidence that has been submitted on the subject of the defendant's reputation.

I will say on that subject just one word: that that kind of evidence is always permissible and germane to the issue, and the law is it may be sufficient to create a reasonable doubt where without it there would be no reasonable doubt of guilt.

However, you, of course, need not be told that a person may not be exculpated by the fact that he has had a good character heretofore. If he has committed a crime, he is liable to prosecution, and when the case is submitted to the jury, if the offense be established, he should be convicted, despite his previous reputation.

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It is, however, evidence that is to be considered by the jury in connection with all the evidence in the case.

Do justice to both sides here. Get right straight to these three or four inquiries that I have put to you gentlemen, and harken to the advice that I have given to you upon the subject of these legal matters that are involved, and then use that good sense that has come through your experience in life and your different fields of activity, and render a verdict which will be an expression of the truth with reference to the charge.

Is there a doubt of the guilt of the defendant at the bar, reasonably entertained by you? If there is, not guilty.

If there is no reasonable doubt of his guilt, and if the property is proven to be worth more than fifty dollars, you will find him guilty of criminally receiving stolen property in the first degree.

Is there something you would like to have me say to the jury, Counsel?

MR. FELDMAN: No, sir, except I ask your Honor to say to the jury, as to motions made by counsel to your Honor in reference to advising the jury to acquit, that your Honor, in denying them, does not mean to indicate any opinion on the part of your Honor as to the defendant's guilt or innocence.

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THE COURT: Of course, gentlemen, I can't sit here without having perhaps an opinion, but the law says I must not express an opinion, and I try not to encroach upon your functions; it is not my business to do so; and the denial of the motions were matters of law, and not to be put into the case, because my duty is to conduct the trial, advise you as to what the law of the case is, and that, I hope, you will accord to me, and if you do that I shall be satisfied; I shall not encroach upon your function, which is greater than the Court's, in determining all the facts for yourselves; but you will have that in mind, of course. That is the extent of my ruling so far as you are concerned. The responsibility of the facts and the verdict rest entirely upon your shoulders. You should not be influenced nor should I suggest anything to you upon that subject. I have confidence that there would be no necessity, even if I had the right to do so.

MR. FELDMAN: I ask your Honor to charge the jury that upon the whole case if they come to the conclusion that there is a reasonable doubt, that they are in duty bound to acquit.

THE COURT: Well, if I haven't said that, I have been talking here for a long time in vain. That is the duty, of course. The case must be made out by

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The People beyond a reasonable doubt, and if it has not been, not guilty. If it has been done up to the standards required by the law, then your verdict will be guilty.

MR. FELDMAN: I ask your Honor to charge in the language of the request, that good reputation of itself may create a reasonable doubt where otherwise no doubt would exist.

THE COURT: I have already said that, but if you like your terminology better, I will charge it in your language.

MR. FELDMAN: No, just for the sake of the record.

THE COURT: Yes, I do it for the sake of the record and for the sake of the jury and your client as well. I so charge.

MR. FELDMAN: That is all. No further requests.

THE COURT: Take the case, gentlemen.

(The jury then retired, at 1:34 P. M.)

(The jury return at 1:37 P. M.)

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: Yes, sir.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty, or not guilty?

THE FOREMAN OF THE JURY: Guilty.

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THE CLERK OF THE COURT: Of ?

THE FOREMAN OF THE JURY: Criminally receiving
stolen property in the first degree.

THE CLERK OF THE COURT: Harken unto your verdict
as it stands recorded! You say you find the defend-
ant, Elias Goldberg, guilty of criminally receiving
stolen property, knowing the same to have been stolen,
in the first degree, and so say you all.

(The defendant is duly sworn and his pedigree taken.)

MR. FELDMAN: Will your Honor remand him and
allow me until the day of sentence to submit my affi-
davits ?

THE COURT: Yes. When would you like this matter
disposed of ?

MR. FELDMAN: As early as your Honor says.

THE COURT: Any day that will suit you.

MR. FELDMAN: Will your Honor make it Tuesday ?

THE COURT: Yes, Tuesday.

(Defendant remanded until Tuesday, June 17th,
1919, for sentence.)

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THE PEOPLE, ETC., -AGAINST- ELIAS GOLDBERG

New York, Tuesday, June 17, 1919.

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

MORRIS EDER, ESQ., Assistant District Attorney,

For the People.

A REPRESENTATIVE OF MR. FELDMAN,

For the Defendant.

MR. FELDMAN'S REPRESENTATIVE: If your Honor please,
I understand Mr. Feldman was here yesterday asking for a
little more time to submit -

THE COURT: Some letters to me in the interest of
the defendant. When shall I dispose of the matter? When
do you desire me to dispose of the matter?

MR. FELDMAN'S REPRESENTATIVE: Friday of this week.

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THE PEOPLE, ETC., -AGAINST- ELIAS GOLDBERG.

New York, Friday, June 20, 1919.

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

MORRIS EDER, ESQ., Assistant District Attorney,

For the People.

SAMUEL FELDMAN, ESQ., and

ALEXANDER KAMINSKY, ESQ.,

For the Defendant.

MR. FELDMAN: If your Honor pleases, before I make my motion, I shall ask your Honor at this time to adjourn the case for one week, next Friday, as I am getting some witnesses from Newburgh, and the codefendant in this action came back from France, and I might have him also before your Honor, and, as I already stated to your Honor, it will take us some days; we had only a few days to prepare all the affidavits necessary.

THE COURT: You must be ready, Mr. Feldman, a week from today, absolutely, because I must dispose of the case.

MR. FELDMAN: Yes, your Honor, I will be ready.

THE COURT: On that day I shall dispose of this case.

MR. FELDMAN: Yes, your Honor.

MR. KAMINSKY: Will your Honor hear the witnesses from Newburgh?

THE COURT: I won't hear any witnesses. I expect counsel to do his duty.

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THE PEOPLE, ETC., -AGAINST- ELIAS GOLDBERG.

New York, Friday, June 27, 1919.

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

MORRIS EDER, ESQ., Assistant District Attorney,

For the People.

SAMUEL FELDMAN, ESQ., and

ALEXANDER KAMINSKY, ESQ.,

For the Defendant.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE

HON. JAMES T. MALONE, J.

THE CLERK OF THE COURT: Elias Goldberg, what have you now to say why judgment should not be pronounced against you according to law?

MR. KAMINSKY: May it please your Honor, your Honor well knows that this case has been tried by Mr. Feldman, for whom I believe your Honor and I have the utmost respect. I have been called into this case subsequent to the judgment of the jury, and I address myself to your Honor not upon the technical ground of newly discovered evidence, because, strictly speaking, and in its legal terminology, this evidence is not, strictly speaking, newly discovered, but it is my desire, sir, to address you rather relying upon that inherent power that your Honor always exercises in performing absolute justice to each and every defendant standing before the Bar prior and subsequent to sentence.

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It appears, sir that the alibi as presented by the defendant on the witness stand consisted of a statement to the effect that during the day in question, to-wit, on August the 6th, 1917, the defendant was in the City of Newburgh. There was an affidavit in which the defendant claims the dates were mixed.

What I wish to tell your Honor is, as far as my investigation is concerned, and I also wish to call to your Honor's attention that I have the two witnesses, two gentlemen in business, from the City of Newburgh, right here, and they fix the date of August the 6th as the date when this defendant was in Newburgh, for the following reasons:

On August 4th a gentleman by the name of Harry Fatt, a dealer in artificial leather, sent a certain shipment of \$4,000. to the defendant herein; that he shipped it with a draft; that then Goldberg went to Newburgh, asking Mr. Fatt to withdraw the draft and accept in substitution a promissory note.

This Mr. Fatt refused, and on August 8th, sir, on Wednesday, the draft was made and the goods were removed. Now, sir, there could be only three days interposing between the actual removal of the goods, as proven by the draft, and August 4th, when the bookkeeper testified the bill was sent to Mr. Goldberg.

August 5th was on a Sunday, and Mr. Fatt assures me, and he is here in court, that he has done no business on

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that Sunday. To my mind, that leaves the matter to Monday and to Tuesday.

Mr. Fatt's recollection is that on the 6th of August, namely, on Monday, this request was made to him in person by Mr. Goldberg.

Now, sir, I wanted to make it very much more certain that it was on Monday, and not on Tuesday. We have a gentleman here named Mr. Faber, a gentleman who sought to purchase a business from Mr. Fatt in the City of Newburgh, and the actual facts will show that he purchased that business on or about the 15th of August. He tells me, and he is here to assure your Honor, that on a Monday, in the very early part of August, prior to the purchase of the business on the 15th, he was in Newburgh, and that it was there and then that he met Mr. Goldberg.

It could not have been Monday, the 13th, for the reason that there was no occasion for Mr. Goldberg to ask that a draft be drawn, as he did meet the draft on the 8th. So it is almost certain and positive in my own mind that it must have been on the Monday in August in between the time when the bill for the goods actually went to Mr. Goldberg, to-wit, August 4th, and the time when the draft was actually paid, August the 8th.

Now, if your Honor pleases, I do hope, and I do believe, that if these facts were presented to the Court and these

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facts were presented to the jury, in accordance with the splendid testimony as to the blameless character of this defendant, that surely at least a reasonable doubt would have been created in the jury's mind, and that, as your Honor well ruled on many occasions, is the property of and belongs to the defendant.

Now, sir, I know that this County spends a great deal of money in the pursuit of these criminal trials, and I wish to point out to your Honor that if a new trial is ordered this in itself will not be - it will not be incumbent upon the State to spend more money.

It appears that there is a codefendant in this case, a codefendant who at that time could not be tried, for the reason that he was in France, serving his country. I understand that he is back. The codefendant will be tried. May I not hope that if your Honor grants this motion that the attorney for the codefendant will consent to try the case at the same time?

And now, sir, I close, and I beseech your Honor to listen to the words of the two witnesses whom we brought from Newburgh, so that by word of mouth I hope they may convince your Honor that this defendant is entitled under the law to another trial.

THE COURT: I will hear you, Mr. District Attorney.

MR. EDER: If your Honor please, at the outset, let me state that the District Attorney has received no papers,

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and is not prepared to state what these two witnesses will or will not testify to, but I want to state to your Honor that the evidence clearly shows that on the 6th day of August, the day alleged - the day that this crime is alleged to have been committed, that this defendant was in the City, County and State of New York, as is evidenced by his own affidavit submitted to this Court for purposes of adjourning this case.

If this defendant had told his lawyer a different state of facts than those which were submitted in this affidavit, they would have had the lawyer here, if your Honor please, who made that affidavit, and would say that on that day the defendant told him that he was in Newburgh and not in the City of New York.

That lawyer certainly did not inquire as to where this defendant was on any other day but the day that this crime was committed; it was immaterial for this Court; it was immaterial for that lawyer; it was immaterial for this defendant where he was on the 5th day of August, 1918; but it was very material as to where he was on the 6th day of August, 1918, and when that lawyer in an affidavit fully sets forth the time, the place and the things that this defendant did on the 6th day of August I don't think that he can go behind that affidavit now, after he is convicted, and come and produce other witnesses whom he might have had here on the day of the trial.

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This case was on the calendar a great number of times; they came here and answered ready; and I don't think that we ought to be called upon to reverse a verdict of the jury after they heard all the facts clearly on the trial.

Another fact I want to bring to your Honor's attention is this: Counsel just now stated that Goldberg went up to Albany, or to Newburgh, for the purpose of finding out whether the vendor of that property will accept a promissory note instead of a draft, or pay for cash.

If your Honor will recall the testimony of the defendant on the stand, he said that he went up there to Newburgh for the purpose of bargaining about the freight charges, and that was his only motive in going up there, although he had not received the goods yet; he went up there to bargain about the freight charges, so your Honor can see that the testimony that they are trying to bring to your Honor's attention now is as reliable as that which was given at the time of the trial, and which the jury disbelieved.

MR. KAMINSKY: To answer the learned District Attorney's argument about the freight charges, that was absolutely possible, because that four thousand dollars represented by the draft represented but half of the shipment that Mr. Fatt had made.

As far as the technicalities are concerned, I will concede the statement of the learned District Attorney, but I am not addressing myself to technicalities, sir. I

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am addressing myself to the conscience of the Court, and I am fully convinced that your Honor, in that great wisdom and mercy that you exercise, will not permit a single thing to escape from the defendant's - that is, in the defendant's possession before he is sentenced. I simply address myself to the conscience of the Court.

MR. EDER: May I say another word, if your Honor please?

THE COURT: Yes.

MR. EDER: As I recall the testimony, this defendant testified that his brother was up there with him also. I now want to bring to your Honor's attention the fact that they don't come here with the brother's affidavit. They may do so now, when I remind them that he so testified, but right now before your Honor there has no affidavit been submitted saying that he was up there with him.

MR. KAMINSKY: I have the brother here in court, sir.

THE COURT: He testified in the case?

MR. KAMINSKY: I beg your Honor's pardon?

THE COURT: The brother testified in the case.

MR. EDER: Another brother whom they claimed was in Newburgh with him that day.

MR. KAMINSKY: Which would be the stronger, the testimony of a brother, the life, flesh and blood of the man before the sentence, or the testimony of two disinterested merchants in Newburgh?

MR. EDER: Surely they would have submitted that in

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addition to the affidavit.

THE COURT: Gentlemen, I never been averse to receiving motions for a new trial in this court, nor to the labor attending them, feeling that the reputation of the Court and the well being of the community depend upon the correct administration of the public justice, but, at the same time, I feel equally earnestly that to set aside a verdict which has been fairly rendered on convincing testimony without ^{legal} sufficient/cause would justly expose the Court to the charge of want of firmness. I am very sorry, counsel, but I regard it as necessary to deny your motion; and, Elias Goldberg, for the crime of criminally receiving stolen property, of which you have been found guilty by a jury, the judgment of the law is that you be committed to the Penitentiary

Amos G. Russell,

Official Stenographer.

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