

Q Did he say he bought some old rags and burlap, wasn't that what he testified to? A I think he did, in the police court.

Q You, yourself, do not know what he did buy? A No, sir; I don't know what he bought.

Q Nor what Clackett sold him? A It is only information that I got.

RE-DIRECT EXAMINATION BY MR. KRESEL:

Q Lest there be any misunderstanding, you say that the defendant told you that he had bought white goods, when you were taking him to the Tombs? A From the police court to the Tombs.

Q Was that after his examination, or before his examination? A After his examination.

Q Now, that was the same day? A Yes, sir; the same day.

BY MR. MITNICK:

Q You are positive that he told you, going over to the Tombs, after testifying in the police court, that he bought burlap and that he bought white goods? A Yes, sir; that is what he said, yes, sir.

Q Now, how did he come to tell you, on the way over to the Tombs, after his examination in the police court, that he bought white goods? A Well, that I don't know, why he came to tell me; he told me.

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Q You want this jury to believe that without any effort on your part, during my absence, after an examination, when you were taking him across the bridge, that he simply came and told you that he bought white goods? A He told me he bought white goods and sold them on the street off his wagon.

BY MR. KRESEL:

Q He told you that after he was held for the Grand Jury?

A Yes, sir; after he was held for trial.

BY MR. MITNICK:

Q Who was present at that time? A The defendant and myself.

Q And yourself only? A Yes, sir.

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

DIRECT EXAMINATION BY MR. KRESEL:

Q Mr. Boyd, where do you live? A 239 West 60th Street.

Q You must speak a little louder? A 239 West 60th Street.

Q Where were you last employed? A Last employed? I was employed by Mr. Campbell, the milk place, 87th Street.

Q Were you ever employed at 37 White Street? A yes, sir.

Q When did you leave the employ at 37 White Street?

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A I left there about, I think it was about the latter part of November.

Q The latter part of November? A Yes, sir; about the first of December, along there.

Q About the first of December, 1904? A Yes, sir.

Q What was your occupation in that building? A Elevator runner.

Q How long had you been employed there? A Well, I had been employed there I guess about three months.

Q Three months? A Yes, sir; about three months.

Q Do you know William Clackett? A Yes, sir.

Q Was he employed in the same building? A In the same building, yes, sir.

Q Do you know this defendant? A Yes, sir; I have seen him.

Q How soon after you began working in the building did you see him, about? A Well, I should say about a week or so after I got to working there.

Q Where did you see him then? A Well, he came in my elevator.

Q Where did you take him to? A To the top floor.

Q What was the top floor? A Well, it was a vacant loft where Mr. McGiffin kept his goods.

Q A stock room there? A Yes, sir; a stock room.

Q When he went up, did he have anything with him?

A He had a bag.

Q Was there anything in the bag? A Not when he went up, no, sir.

Q When he came down was there anything in the bag?

A Something in the bag, what it was I don't know.

Q How often did you take him up in the elevator in that way? A Well, about a week and a half.

Q For about a week and a half? A Yes, sir.

Q How often? A Well, about every other day or so.

Q About every other day? A Yes, sir.

Q Did he have something in the bag every time he came down?

MR. MITNICK: Objected to. That is suggestive.

THE COURT: He may answer the question.

Exception.

A Yes, sir.

Q Did he? A Yes, sir.

Q Every time he went up, did he have the bag with him?

A Yes, sir.

Q Every time that he went up, was the bag empty?

A Yes, sir.

Q You don't know what he had in the bag? A No, sir.

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

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Q About these goods? A No, sir.

Objected to. Objection overruled. Exception.

CROSS-EXAMINATION BY MR. MITNICK:

Q You are also convicted of crime, ain't you? A Yes, sir;
in one way.

Q You are convicted, ain't you, for stealing, isn't
that correct? A No, sir; it is not.

Q Well, what were you convicted of, being honest?
A Well, I am no thief.

Q No? A No, sir.

Q But you are convicted just the same; did you plead
guilty? A I took a plea.

Q You were honest, and yet you pleaded guilty?

MR. KRESEL: You don't need to answer that ques-
tion. It is argumentative.

THE COURT: I sustain the objection.

Q All you know, Boyd, is that you saw this man go up
and come down? A Yes, sir.

Q You have never seen him get anything or leave anything
in the place, did you, is that correct? A I seen him coming
downstairs.

Q Will you answer me promptly? A I seen him coming
downstairs with something on his arm, or in his bag; I could
not say what it was.

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Q You don't know what it was? A No, sir.

Q Now, try to be fair about this; didn't you see Clackett sell him burlap? A No, sir.

Q At any time? A Burlap down on the second loft.

Q You did see him sell him burlap? A Yes, sir.

Q And old rags? A On the second loft, yes, sir.

Q Why don't you say so and save all this time? A Yes, sir.

Q That is all you ever saw Clackett sell him, isn't that the fact? A That is all, sir.

Q Now, is it not true that every time that you did see this defendant come there was at that time that this Clackett was giving him old burlap and these white rags, old rags that cover up goods, isn't that true? A Not all the time, no, sir.

Q Every time you did see any transaction, you saw these goods? A Not all the time, sir.

Q But it was old burlap and rags, isn't that true?
A When on the second loft; yes, sir.

BY MR. KRESEL:

Q How many times did you see him sell burlap on the second loft? A Well, I seen him get burlap about once.

Q Once? A Yes, sir.

Q The other times you took him up to the top floor?

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A Yes, sir; the top loft.

Q Whatever he had in the bag when he came down from the top loft, you don't know? A No, sir; I don't know.

BY MR. MITNICK:

Q Have you ever been on the top loft, Boyd? A Have I?

Q Yes. A Yes, sir; I have.

Q Have you ever been up there? A Yes, sir; my work is up there.

Q Now, haven't you time and again seen old burlap lying there off the elevator shaft, with red paint on it, red painted burlap? A No, sir.

Q And rags? A No, sir; on the rags, but not the burlap.

Q On the rags? A Yes, sir.

Q White rags, wasn't it? A yes, sir; white rags.

Q Now, can you describe -- see whether I understand this -- these white rags is a kind of stiff white covering, isn't it? A Yes, sir.

Q That is used in dry goods houses and trimming houses for covering cloth, is that correct? A I guess so.

Q You have seen that very often? A These rags you are speaking about; you are right about that.

Q They are pieces about that long and that wide (illustrating), generally? A Yes, sir.

Q It is used for folding in white goods and linens and

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farmer's satin and any kind of goods of any description used in those trimming houses? A Yes, sir.

Q Now, that looks like linen, doesn't it, and is stiff, isn't it? A Yes, sir.

Q And has the appearance, when taken in the hand, of being linen, hasn't it, you have handled that stuff, have you? A Yes, sir.

Q Now, to a person who is not familiar with the nature of goods, would he not accept that for linen goods?

MR. KRESSEL: Objected to.

Q Anyone who doesn't know the nature of goods, if this were sold to him or given to him, would he not accept it for linen? A Yes, sir; I suppose he would.

Q It looks like linen, doesn't it? A Yes, sir; it looks like it.

Q And it is just as stiff as new linen would be? A Yes, sir.

Q These white goods? A Yes, sir.

Q You don't know whether it was those kind of goods that were sold to the defendant, you don't know that, do you? A No, sir; I don't know.

BY MR. KRESSEL:

Q Where did you ever see this thing that looks like linen that the counsel has described to you? A Well, this

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was white goods, kind of like burlap, you know, used for wrapping.

Q Where did you see that? A Well, we had some down in the second loft, that the gentleman left there to give away --

Q Did you ever see any on the top loft? A No, sir.

Q You say that this looks like linen, that you would take it to be linen, just what do you mean by that? A At a distance you would.

Q At a distance? A Yes, sir.

Q Did you ever take it as linen? A No, sir; I never did.

Q You know the difference between burlap and linen?

A Yes, sir.

Q When you saw this burlap, was it packed up in paper?

A This burlap was loose, you know, and it comes in rolls and small pieces, you know.

Q When it is taken off the article which it covers, it is loose then? A yes, sir.

Q Like a rag? A yes, sir; like a rag.

Q Did you ever see it in layers, in pieces? A Yes, sir.

Q In what places? A Not in pieces, no, sir.

Q You saw it after it was taken off packages of goods?

A Yes, sir.

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Q You saw it on the floor? A Yes, sir.

Q As refuse, as waste? A Yes, sir.

BY MR. MITNICK:

Q Boyd, how long have you worked in the drygoods district? A In the drygoods district?

Q Yes? A About thirteen years, to my knowledge.

Q You have worked in a good many dry goods houses, haven't you, where they handle all characters and nature of goods? A I have.

Q Such as linings, farmer's satin, serges and trimmings of that character? A Yes, sir.

Q Isn't it a fact that all this character of goods is folded up, is wrapped up in this sort of cloth which you now call burlap? A Not always.

Q But as a general rule it is? (No answer.)

Q Now, I will ask you this: This covering that I am speaking about, that Mr. Kresel has laid such strong stress upon, is not burlap, is it? A No, sir; it is not burlap.

Q It is a fine woven white goods, isn't it, woven the same as linen, you have seen linen, haven't you? A Yes, sir.

Q And as I have explained to you, it has been folded up time and again, and used as a covering after being removed from the goods? A Well, it wasn't in bales; it was only packed up the same as we would pack up newspapers in packages.

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Q But it was not bundled up as rags? A No, sir.

Q It laid out in this shape, didn't it? A Yes, sir;
the ones we have reference to was on the second floor.

Q It wasn't wrinkled up like that? A No, sir.

Q But folded up like this paperis, isn't it? A Yes,
sir.

Q Covers are of the same character as this paper?

A Yes, sir.

Q Stiff? A Yes, sir.

Q And looks like linen, white goods? A At a distance.

Q To anyone who doesn't know the nature of goods, it
would be accepted as linen, wouldn't it?

Objected to. Objection sustained.

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

DIRECT EXAMINATION BY MR. KRESEL:

Q How old are you? A Seventeen.

Q Speak a little louder? A Seventeen.

Q Where do you live? A 11 Eldridge Street.

Q Where are you working? A 35 and 37 White Street.

Q For whom? A J. E. Dreyfuss.

Q What sort of business are they doing there? A Pants.

Q Manufacturers of pants? A yes, sir.

Q How long have you been working in the building?

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A Over a year.

Q Do you know William Clackett? A Yes, sir.

Q Was he working in that building while you were there?

A Yes, sir.

Q For whom? A James McGiffin.

Q Have you ever been on the top floor in the store-room of Mr. McGiffin? A Yes, sir.

Q Do you know the defendant? A Yes, sir.

Q How many times have you seen him in the building?

A About twice.

Q Where, in the building, did you see him on those two occasions? A On the top floor.

Q Do you remember going there in the month of November? A Yes, sir.

Q 1904? A Yes, sir.

Q About what date was it? A Well, I think it is about the 10th or 12th day of November.

Q Did you go to the top floor? A Yes, sir.

Q Whom did you see there? A I seen William and that man up there.

Q The defendant? A Yes, sir.

Q When you say "William", do you mean William Clackett? A Yes, sir.

Q Why did you go there? A For an iron strap.

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Q You went there to get a strap? A Yes, sir.

Q What did you see occur there? A Well, the first time I seen him up there, he was putting some packages into a bag.

Q You saw the defendant putting some packages into a bag? A Yes, sir.

Q How many packages? A Well, I was not up there long enough to count them.

Objected to. Objection overruled. Exception.

Q Well, there was more than one package, anyway?

A Yes, sir.

Q What sort of packages were they? A Well, about --

Q How were they done up? A Wrapped up in paper.

Q Wrapped up in paper? A Yes, sir.

Q Were they very long? A Oh, about fifteen inches.

Q Fifteen inches long? A Yes, sir.

Q About how wide, would you say? A About ten --

Q Just putting them in the bag? A Yes, sir.

Q Did you hear any conversation between them? A Well, the last time I was up there I heard a conversation between them; they were arguing about the price.

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Q Now, about when was it that you were up there the last time. You say it was about the 10th or 12th of November, was that the first or second time? A The 10th or 12th, that was the first time, and a couple of days later they were arguing about the price.

Q That was about the 14th or 15th of November? A Yes, sir.

Q What took you to the place on that occasion? A Well, I would always go up for an iron strap.

Q What was it that took you up on that occasion, the second occasion? A The same thing, an iron strap.

Q Did you find a strap there? A Well, he would throw them away, and so I would go up and get a few.

Q Who would throw them away? A William Clackett would put them out in the hall.

Q You were well acquainted with Clackett? A Since I worked there; yes, sir.

Q What happened on this second occasion? A The second occasion I seen him they were arguing about the price up there.

Q What was said? A Like "seven dollars", I heard something.

Q Who said that? A That man there.

Q The defendant? A Yes, sir.

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Q He said what? A He said seven dollars.

Q Seven dollars? A Yes, sir.

MR. MITNICK: I ask that all this be stricken out as not connecting the defendant with any transaction, simply hearing someone say "seven dollars".

THE COURT: I do not know how he could connect it more directly with the defendant. He says he heard the defendant say it. I cannot conceive of anything more directly connecting the defendant with a matter than that.

Exception.

Q Did Crackett or the defendant see you on each occasion while they were talking? A Crackett seen me after.

Q But not while they were talking about it? A No, sir.

Q What else did you see the defendant do then? A Well, he had a bag up there.

Q Did you see him put anything in the bag? A The second time; no, sir; there were goods in the bag, but I didn't see him putting it in.

Q He had something in the bag? A Yes, sir.

Q Did you see what it was? A Well, they were put in the bag just like packages, laid in straight.

Q What sort of a bag was it? A A burlap bag.

Q Now, did you see the defendant leave on that occasion, or didn't you wait? A I seen him going down in the

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elevator.

Q Did he go down at the same time you went down, or how was it? A Well, I was downstairs at the time when he came out of the elevator.

Q So you left both Clackett and the defendant there?
A Yes, sir.

Q And went down to your floor? A Yes, sir.

Q What floor is it you are working on? A The floor beneath them, on the fifth.

Q On the fifth? A Yes, sir.

Q That is next to the top floor? A Yes, sir.

Q Now, besides these two occasions that you have mentioned, have you seen the defendant around the place?

A No, sir, I did not see him around the neighborhood; that was the first time I ever seen him.

CROSS-EXAMINATION BY MR. MITNICK:

Q Now, Trotzsky, are you positive that you understood the question put to you by Mr. Kresel? A Yes, sir.

Q You are positive that you answered them in accordance with your understanding? A Yes, sir.

Q Do you remember testifying in the police court downstairs here? (No answer.)

Q Do you understand that question? A Yes, sir.

Q Why don't you answer? A Yes, sir.

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Q Do you remember testifying there? A Yes, sir.

Q Do you remember Mr. McGiffin being there alongside of you and testifying also? A Yes, sir.

Q Do you remember when you were urged by someone to tell all you knew there? A Nobody urged me at all.

Q Do you remember the answers you made to the questions put to you by myself? A I do not; no, sir.

Q Do you remember anything that took place in November last? A Yes, sir.

Q And yet only two or three weeks ago, at the examination downstairs, you don't remember? A Well, I don't remember who it was.

Q The questions I put to you? A I don't remember who it was.

Q Do you remember when you testified downstairs in the police court, that the only time you ever saw this defendant was when he came down in the elevator with a burlap bag? A No, sir; I have said upstairs I seen him.

Q I didn't ask you what you said; I am asking you whether or not it is true -- didn't you so testify?

A No, sir.

Q Do you remember when I asked you how you knew what he had in the bag, that you said, "Because I seen something through white in the bag when he came down in the elevator"? A No, sir.

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Q Now, you remember you are under oath? A Yes, sir.

Q You swear that that is not true? A Yes, sir.

Q Will you now swear that in the police court, downstairs, that you did not testify there that the reason you knew he had some goods in that bag was because you saw the white paper through the bag? A Yes, sir.

MR. KRESEL: He has already answered that question.

MR. MITNICK: There is another question that I put to him.

Q You now swear that you were upstairs and saw him take the goods? A Yes, sir.

Q Did you see the packages opened? A Well, the packages were tied up.

Q Sure about that? A Yes, sir; sure about it.

Q Where were you standing? A I was out in the hall.

Q Is that door open leading into the hall? A There is an elevator shaft there.

Q Is that door open leading from the hall into that loft? A Yes, sir.

Q Positive about it? A It was open at the time.

Q Who opened that door? A Well, the people that were in there, William Clackett and that man there.

Q You know there has been a lot of stealing done in that place? A No, sir; not at all.

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Q You are 'sure you were not one of the trio that has been robbing that place?

MR. KRESSEL: I object to that question.

THE COURT: I sustain the objection to the question, because it is improper. The witness is entitled to the protection of the Court, and there is no ground for the innuendo contained in the question.

Q Whose place is that upstairs, that loft? A Mr. McGiffin's.

Q Whom did you work for? A Dreyfuss.

Q What floor is Mr. McGiffin on? A He keeps the first and the sixth.

Q Mr. Dreyfuss doesn't keep the floor above, does he? A He keeps the floor underneath, the fifth floor.

Q What were you doing in Mr. McGiffin's loft at that time in the day?

THE COURT: He has told you that he went up for an iron strap. We have had that three times. He said that McGiffin threw away some iron straps in the hall, and he used to go in the hall and take them.

MR. MITNICK: I understood him to say that he went inside.

THE WITNESS: No, sir; out in the hall.

Q Did you ever see any money pass between this defendant and Clackett? A No, sir.

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Q Now, where was the elevator man Boyd? A He was on his elevator .

Q Did he see you there? A Yes, sir; he seen me.

Q At that time? A Yes, sir.

Q On the 10th or 12th of November he saw you standing there? A Yes, sir.

Q Did you tell him anything about it? A No, sir.

Q Now, you knew Mr. McGiffin, didn't you? A Yes, sir.

Q Did you tell Mr. McGiffin? A No, sir.

Q Why didn't you? A Well, I thought that he was going to--

Q Why didn't you? A He was going to -- I think he told us he was going to discharge him himself, and there was no use going down to tell him.

Q Notwithstanding the fact that you saw this Clackett delivering goods belonging to Mr. McGiffin to this defendant, and he putting them in a bag, you did not go down and report to Mr. McGiffin that he is being robbed? A No, sir.

Q You never told anybody about that? A No, sir.

Q When did you first tell Mr. McGiffin that you saw anybody get goods in the place? A Well, after I found out that William Clackett was arrested.

Q Did you ask Clackett what he was doing giving these goods to somebody else? A No, sir; that was none of my business.

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Q It was not your business? A No, sir.

Q You didn't tell the elevator man, Boyd, what you had seen? A No, sir; not at all.

MR. KRESEL: He has already answered that.

Q You say that you didn't tell him? A The elevator man seen me there.

Q Clackett didn't see you there? A No, sir.

Q Now, on what date was this that you saw Clackett give these goods to this defendant? A About the 10th of November.

Q Are you sure it was the 10th? A I don't remember the date exactly.

Q How do you know it was the 10th of November? A I think it was about that time.

Q We don't want you to think, we want you to be positive? A About the beginning of the month.

Q Was it the first? A No, sir.

Q That is the beginning of the month, isn't it? A Well, about the beginning of the month.

Q Was it the second? A I don't exactly know the date.

Q Was it the third? A No, sir.

THE COURT: Now you have it that it was about the beginning of the month, and he says he cannot tell you whether it was the first, second or third.

Q Wasn't it the 19th? A No, sir; before that.

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Q Did you see the defendant in the place on the 19th?

A No, sir; I was not up there that day.

Q You saw Clackett every day, didn't you? A Yes, sir.

Q Did you see Clackett there on the 20th? A I think I seen him working.

Q You saw him on the 20th. Did you see him on the 21st?

A No, sir.

Q Sure about that? A Yes, sir; sure.

Q Did you see him on the 22nd? A No, sir.

Q Did you see him on the 23rd? A I think I seen him down in the court then.

Q Sure you saw him on the 23rd of November in court?

A Yes, sir.

Q You cannot be mistaken about that? A I don't know.

Q Now, suppose I tell you that it was on the 23rd of December that you saw him in court; then you would be mistaken, wouldn't you? A Well, I can't exactly tell you the date.

MR. MITNICK: I will not ask this witness any further questions, your Honor.

BY MR. KRESSEL:

Q Do you know when Election Day falls? A In November some day.

Q Do you know what month? A November, I think.

Q Do you know how late in November it is? A The 23rd.

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Q What is that? A The 23rd.

Q What did you say? A About the 23rd.

Q You don't know, then. Now, do you know whether it was before or after Election Day that you first saw the defendant on this top floor of 37 White Street? A I seen him before Election.

Q And the second time? A It must have been before Election also.

Q When you say it must be, why do you say that, what do you mean by that? (No answer.)

Q Do you remember whether it was or not before Election? A Well, I do not exactly remember.

Q When you say that it was about the 10th or 12th of November that you saw him the first time, do you fix that with reference to anything that occurred? A Well, that is the date I figure I seen him up there.

Q Now, you think that Election time falls about the 23rd of November? A Yes, sir.

Q You say that it was before Election that you saw him? A Yes, sir; before Election.

Q Now, suppose it was true that Election Day, this last Election Day, fell on the 8th of November, would it be after or before Election Day that you first saw the defendant? A What is that again?

MR. MITNICK: Objected to.

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Q (Question repeated.) A Well, after then.

BY THE COURT:

Q Now, let me ask a question. Have you any recollection of Election Day of last year? A No, sir.

Q Do you remember anything that happened on that occasion? A No, sir.

Q Now, are you able to say whether the time that you saw this defendant was before or after Election? A Well, I couldn't really say whether it was before or after.

Q But you think it was sometime before the 23rd and after the 8th of the month? A Yes, sir.

Q Now, what gives you that impression? A Because the elevator was broken one day, on the 7th.

Q It was after the breaking of the elevator? A Yes, sir.

THE COURT: Now, I do not believe you can get it any more definitely than that.

MR. MITNICK: We take an exception to the testimony of this boy as to the fixing of the time.

BY MR. MITNICK:

Q Now, if you knew that that elevator was broken on the 7th day of November, when you were asked so many questions as to the time, why didn't you say it was immediately after the breaking of that elevator?

Objected to. Objection sustained. Exception.

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ROBERT H. COPENLAND, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KRESSEL:

Q To what precinct are you attached? A The Eighth Precinct.

Q Were you with Officer Cahill when this defendant was arrested? A Yes, sir.

Q You were? A Yes, sir.

Q Where did you arrest the defendant? A We arrested this defendant at Mr. McGiffin's place, 37 White Street.

Q Who was present at the time, Officer? A Why, Mr. McGiffin was there.

Q Who else? A And one of his clerks.

Q And Officer Cahill? A Officer Cahill; yes, sir.

Q And the defendant? A Yes, sir.

Q And who else? A I don't remember anybody else that was there.

Q Was Clackett there? A Clackett came in a few moments afterwards, after we had arrived there.

Q After you had come there? A Yes, sir.

Q Who came with him? A Counsellor Coleman.

Q Counsellor Coleman? A Yes, sir.

Q Now, do you remember Officer Cahill asking the de-

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defendant whether he knew Clackett? A Yes, sir.

Q What did the defendant say?

MR. MITNICK: I object to this, as leading, if your Honor please.

THE COURT: In what possible respect could such a question lead a witness to the answer. I do not understand your objection.

Exception.

A After Officer Cahill and myself had placed him under arrest in Mr. McGiffin's place, and Clackett came in and Counsellor Coleman, I asked this gentleman here, and also Officer Cahill did, if he knew Clackett; he said that he did not know him; we asked Clackett if this was the man that he had disposed of the goods to, and he said it was; we also sent upstairs for this young boy Trotzsky and asked him if it was the man, and he also identified him as the one. So then we placed him under arrest.

Q Then you placed the defendant under arrest? A Yes, sir.

Q You took him to the station house? A Yes, sir; we took him to the station house.

Q Did you, at any time after that, have any further conversation with the defendant? A Well, no, sir, simply asked him, at different times, whether he did know this Clackett, and he denied it every time; we questioned him as

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to what he had done with the goods, where he had left them, and so forth, and we could get no information out of him.

Q He would not tell you anything? A No, sir.

CROSS-EXAMINATION BY MR. MITNICK:

Q The fact is, he denied ever buying any goods, didn't he? A He denied everything; yes, sir.

Q Now, did he ever state that he knew Clackett at any time? A Not in my presence.

Q Positive about that? A Yes, sir; I am positive of it.

Q Do you remember testifying in the police court downstairs, you yourself? A Yes, sir; I do.

Q Do you remember whether or not you did not testify, before the Magistrate, that the defendant told you that the only thing he ever bought from Clackett was burlap and old rags? A I believe he testified to that in the court.

Q Didn't you testify that this defendant told you that? A I don't remember it, no, sir.

Q When you asked this defendant what he had done with the goods -- you told the Magistrate that the only thing he said, in answer to my question as to what he said to that, was that he never bought anything but burlap and old rags -- you did not testify to that? A No, sir.

Q Will you now swear you did not so testify? A Yes, sir.

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MR. KRESSEL: He has already answered.

Q Did he, at any time, say that he knew Clackett?

A I asked him about three times if he knew Clackett, and he denied it each time.

Q Isn't it a fact that he told you he did not know anyone by that name? A He never told me anything of the kind; no, sir.

Q Now, when did he tell you that he didn't know Clackett; on what occasion. Can you explain that? A In Mr. McGiffin's office the day I placed him under arrest.

Q Immediately after you placed him under arrest? A When William E. Clackett came into the office I asked him, I says, "Do you know this gentleman?" He said no. I asked William E. Clackett if he knew this defendant, and he said yes.

Q Didn't you ask this defendant whether or not he bought any goods from Clackett, didn't you? A I asked him, yes, sir.

Q Did he say to you "No"? A He denied it.

Q "And the only thing I bought was burlap?" A He never mentioned burlap to me, no, sir.

Q And rags? A No, sir.

Q Where is Officer Cahill now? A Right in the court.

Q In the courtroom, is he? A Yes, sir.

Q Was he there with you at the time? A Officer Cahill

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when I --

Q I asked you one simple question? A He was not right there at that moment; I had not been in Mr. McGiffin's office but a few moments when he came in.

Q Now, did you find any property anywhere? A No, sir.

BY MR. KRESEL:

Q By the way, do you know whether the defendant had a place of business? A Well, we investigated that, and we found that he had only, just a short time previous to his arrest, got a license out as a junk man under a man's name, a business man's name on the East Side that had a junk shop, but he had no place, he simply had this wagon.

Q And that he was selling this to this junk man?

A I don't know whether he was selling the thing to this junk man; he was doing business with him, I understand.

BY MR. MITNICK:

Q This place that you refer to is No. 57 Sheriff Street, isn't it? A I believe that is the number.

Q 66 Suffolk Street, isn't that right? A There were two or three places that we visited; Officer Cahill investigated that matter.

Q You said "we", didn't you? A We were both together.

Q This place is an Italian's, isn't it? A Yes, sir.

Q An Italian runs the place? A Yes, sir.

MR. KRESEL: The People rest.

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MR. MITNICK: I move, if your Honor please, for a direction in this case, as the People have utterly failed to make out a case against this defendant; they have no corroborating testimony here leading up to any part of any transaction that is alleged to have taken place between this defendant and the man who stands uncorroborated and whose testimony cannot be taken with any certainty, who is a self-confessed thief, or a man who has been convicted of crime, and upon whose testimony the Prosecution seems to rely in this case.

THE COURT: Well, the thief testified that the property was stolen, did he not?

MR. MITNICK: Yes, sir.

THE COURT: The thief testified that he stole this property, did he not?

MR. MITNICK: The property that is spoken of here; yes, sir.

THE COURT: And the owner of the property testifies that he missed it about that time?

MR. MITNICK: There is no doubt about that.

THE COURT: Then there is corroboration of the fact that property was stolen. Now, the thief testified that he gave it to the defendant, did he not?

MR. MITNICK: Yes, sir; but there is no corrobora-

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tion that he did.

THE COURT: The little boy Trotzsky says that he saw the defendant take it, didn't he?

MR. MITNICK: He saw some packages but he didn't know what it was.

THE COURT: There is corroboration on that point, isn't there?

MR. MITNICK: Only that he saw something, but he could not identify any of the goods.

THE COURT: Then you come to the question of scienter, and the thief, of course, tends to establish that, does he not?

MR. MITNICK: Guilty knowledge, that is.

THE COURT: And the price that he paid. That has been proven.

MR. MITNICK: It is contradicted by the witness himself for the prosecution.

THE COURT: I will deny the motion.

Exception.

MR. KRESEL: Will your Honor permit me to move that the indictment be amended so as to read the 15th instead of the 25th day of November?

MR. MITNICK: If your Honor please, we object upon the ground that it will be a surprise to us. We are here to meet a charge upon a certain specific date, and we

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are taken by surprise.

THE COURT: Motion granted.

Exception.

THE COURT: We will now adjourn the case over until Tuesday.

MR. MITNICK: Under those circumstances, the amendment of the indictment, we move that this case be taken from the jury.

THE COURT: I have already denied that motion.

Exception.

THE COURT: You can have until Tuesday morning to prepare your defence. Gentlemen of the Jury, do not talk about this case or permit anyone to talk with you about it, nor form or express any opinion thereon until the case be finally given you in charge.

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New York, February 14th, 1905.

Trial resumed.

MR. MITNICK: I again renew my motion that the jury be instructed to acquit upon the ground that the People have utterly failed to make out a case against this defendant.

THE COURT: I will deny that motion as I have already done.

Exception.

MR. MITNICK: Also on the ground that there is no testimony corroborating the testimony of a person convicted of crime, the self-confessed thief.

THE COURT: I also deny that motion.

MR. MITNICK: I take an exception. I have left some important papers at home -- papers that I wished to use in this case.

MR. KRESSEL: I have sought to find out from Mr. Mitnick exactly what these papers are which he wanted to introduce because I do not want to take any unfair advantage of this defendant. He tells me that one of the papers was an affidavit of a witness whom he cannot have here. He says that he wanted to introduce that. Of course he knows, as well as I know, that such affidavit

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could not be introduced in evidence. In the second place he said he had a digest of the testimony already taken in this case. I have now given Mr. Mitnick the testimony in the case as it has been written out by the stenographer and therefore he is in as good a position to try the case as he ever will be.

Mr. Mitnick opened the case on behalf of the defendant.

A B R A H A M S E I T Z, the defendant, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MITNICK:

Q Now, Seitz, where do you reside. You understand English, don't you? A A little bit.

Q Where do you live? A 47 Sheriff Street.

Q Speak loud enough so that these twelve gentlemen can hear you. Now, what is your business? A Junk business.

Q How long have you been in it? A One year and six months.

Q One moment. How long have you been in the junk business? A One year and six months.

Q Do you remember the 23rd day of December last when you were arrested? A No, sir; I don't remember.

Q Do you remember when you were arrested? A I know 53

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days I am arrested.

Q Do you understand the question? A 53 days.

Q What do you mean by 53 days? A I am arrested.

Q You were arrested on the 23rd day of November last year, weren't you? A Yes, sir.

Q You were arrested on November 23rd? A Yes, sir.

Q Now, it has been testified to by Clackett that he sold you some linens. Did you ever buy any linens or linen goods from Clackett? A I am buying rag with red paint on with big numbers on the rags I bought.

Q Did you ever buy any linen goods in packages from Clackett? A In packages? No, sir.

Q Did you ever buy any linen towels from Clackett?
A No, sir.

Q Now, when was the first time that you ever came into the premises of Mr. McGiffin and bought rags from Clackett?
A Yes, sir.

Q When was the first time? A About four months more; I don't remember.

Q Four months before you were arrested? A Four months more when I was buying rags and burlap.

Q I don't understand what you mean by "four months more". Do you mean four months before you were arrested?
A Yes, sir.

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Q You were arrested on the 23rd day of November?

A Yes, sir.

Q You said that you bought rags and burlap four months before that? A Yes, sir.

Q Is that right? A Yes, sir; with these 53 days it is four monthsmore.

Q I cannot understand you. Four months back from now? A Yes, sir.

Q From the present time? A Yes, sir.

Q That is the first time that you ever bought any rags from him? A Yes, sir.

Q Now, what did you buy, what was the nature and kind of rags you bought from Clackett, what were they? A I bought the rags.

Q What kind of rags? A White rags and painted with very big numbers on the rags.

Q That was the white covering? A Yes, sir.

Q That was already explained here at the trial? A Yes, sir; I bought them off him.

Q These covers that come over white goods? A Yes, sir.

Q And linens? A Yes, sir.

Q As well as cloth? A Yes, sir.

Q Now, was that stiff or soft goods, was it thick, soft

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goods like this here? A I don't understand you.

Q Do you see this card here? A Yes, sir.

Q Were they similar to that? A (No answer)

MR. MITNICK: I think we had better have an interpreter with this man.

Q Do you see this card here? A Yes, sir.

Q The rags that you bought, were they anything like this card? A No, sir; a little more.

Q Now, was it soft and wrinkled up like a handkerchief or was it stiff like this card? A Yes, sir.

Q Like this? A Yes, sir.

Q It was ~~not~~ folded up, was it not? A Yes, sir.

MR. KRESSEL: Now, Mr. Mitnick, it is evident that the defendant does not understand what you say. I think we had better have an interpreter.

THE WITNESS: Like little bags.

Q Did you ever give Clackett any amount of money, amounting to \$15? A (No, sir.

Q Did you ever pay him \$15? A No, sir; never.

Q Now, Seitz, how many times did you say that you had been there at his place? A Three times.

Q Now, on each occasion, how much rag did you buy from the man Clackett? A For 60 cents.

Q How much money did you give Clackett altogether the

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three times you visited the place? A One time 60 cents, one time, for the burlap, 40 cents, and the third time I bought rags and something to open a box, and I gave him 65 cents; there were three times, 60 cents, 40 cents and 65.

Q Now, he testifies here that he sold you some towels and opened the package and you gave him 65 cents for the towels, is that true? A No, sir.

Q Did Clackett ever open a package, showing you linen towels, and ask you to buy the same? A I don't see it never.

Q Did he ever show you any towels? A No, sir.

Q Did he ever open a package and tell you that there were linen towels in it? A No, sir.

Q Did you ever buy any linen towels from him? A I don't know what this is.

Q Now, who did you sell your rags to? A (No answer)

BY THE COURT:

Q Did you ever buy any linen towels from this boy?

A No, sir; never.

Q You understand the question, do you? A I understand.

BY MR. MITNICK:

Q Who did you sell your rags to? A Well, my rags, when they are too heavy to be carried away on the push cart, then I go in the shop and sell them in the shop.

Q To whom do you sell your rags when you buy them from

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other people, what do you do with them? A I sell them anywhere I have the chance.

Q You take them to regular dealers, don't you, junk dealers? A Yes, sir; I get plenty of shops.

Q Now did you, at any time, buy a package of linen or any white goods wrapped up in a paper from Clackett?

A Never.

Q Or any other person in the premises? A No, sir.

Q Do you understand the question? A No, sir; I don't buy it in a package; I don't buy in packages, never.

Q You are sure that you have never been in the place more than three times? A Never, because I was five weeks home, I was sick.

Q I want to ask you this: How did you first come to go into the place? A I came along with the push-cart and he called me there.

Q Who called you? A This man in the window and the elevator fellow takes me down.

Q What man are you talking about, Clackett?

A No, sir; this elevator man.

Q The colored man? A Yes, sir.

Q On what floor? A I don't remember.

Q What floor? A I can't remember the floor.

Q What floor did he sell you these burlaps on, where

did he take you to to get the burlap; from what floor did he get those burlaps that he sold to you? A I can't remember the floor; I am going with the push-cart and I go about 25 times in the house and if it was the third floor or the second floor I don't remember; I did not see the floor.

Q Have you been in the place a dozen times?

A What place?

Q In that place 37 White Street? A Three times.

Q Is that all? A That is all.

CROSS EXAMINATION BY MR. KRESEL:

Q Mr. Seitz, you don't mean to say that you were arrested on the 23rd of November, do you? A Yes, sir.

Q The 23rd of November? A 53 days, I don't remember.

Q Well, you answered to your counsel that it was the 23rd of November; it was the 28th of December, wasn't it?

A Yes, sir.

Q Now, you say you have been to 37 White Street three times, is that right? A Yes, sir.

Q You bought goods three times? A Yes, sir.

Q Did you buy these goods from Clackett every time?

A No, sir.

Q From Clackett? A No, sir.

Q Well, the rags or whatever you call them? A Yes, sir.

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Q You bought them from Clackett? A Yes, sir.

Q This man that was here? A Yes, sir.

Q Now, the first time you say you paid him 60 cents?

A Yes, sir.

Q That is right? A Yes, sir.

Q Do you remember what day that was? A No, sir; I cannot remember it.

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

Q Do you remember the month? A No, sir.

Q Now, Mr. Seitz, you say you don't remember the date when you first went to this place at 37 White Street?

A Yes, sir.

Q You do remember the date? A No, sir.

Q Do you remember the month? A No, sir.

Q You don't? A No, sir.

Q Do you remember the date when you went there the last time? A The last time; I was there after this -- it was five weeks I got sick and I don't remember this.

Q You don't remember the last time? A No, sir; I cannot remember.

Q Was it in the month of November, 1904? A 1904, yes, sir.

Q Was it in the month of November? A No, sir.

Q What is that? A No, sir; I don't remember.

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

Q Do you remember whether it was after election day that you went there the last time? A After election day?

Q Yes. A May be, I can't tell.

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

Q Now, just what did you buy from Clackett the first time that you went there when you paid him 60 cents?

A Yes, sir.

Q What did you buy? A Rags.

Q Rags? A Yes, sir.

Q You say it was rags? A Yes, sir.

Q What sort of rags? A White rags with red painted numbers.

Q White rags? A Yes, sir; with numbers on them.

Q Were there a great many of these rags? A What is that?

Q Was it a very big lot? A No, sir.

Q Half a bag? A A full bag, yes, sir.

Q A full bag? A Yes, sir; a little bag full.

Q Full? A Yes, sir.

Q How did you buy it, by the pound? A No, sir; I buy it --

Q In bulk? A Yes, sir.

Q How do you sell these rags, by the pound? A Yes, sir.

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Q How much do you get a pound? A Two and a half cents.

Q Two and a half cents a pound? A Yes, sir; these white rags and other rags I get a cent and a half.

Q Now, these were white rags? A Yes, sir.

Q You sell them at two and a half cents a pound?

A Yes, sir.

Q And you paid him 60 cents? A Yes, sir.

Q Can you tell us now how many pounds of rags there were for 60 cents? A I don't remember.

Q Well, give us your best recollection? A I got in the push-cart plenty of rags.

Q I mean this bag of rags that you got from him?

A Yes, sir.

Q How many pounds were in that? A Oh, about forty pounds.

Q Forty pounds of rags? A Yes, sir.

Q You had them in the bag -- about forty pounds of rags? A Yes, sir.

Q You paid him 60 cents for them? A Yes, sir.

Q Now, the second time you paid him 40 cents for the burlap? A That is right.

Q What distinction do you draw between burlap and rags?

A Burlap?

Q What is burlap? A The difference is that the white

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rag are more valuable, dearer, and the burlap is bags, they make bags of it.

Q Now, the second time you say you bought burlap only?

A Yes, sir.

Q No white rags? A No, sir.

Q You paid him 40 cents? A Yes, sir.

Q How many pounds of rags and burlap did you get at that time? A I remember I got in the push-cart the burlap and I mixed them up; I don't remember.

Q You don't remember? A No, sir; because the burlap is not heavy.

Q Not heavy? A No, sir.

Q Now, the third time that you went there you paid him 65 cents? A Yes, sir.

Q What did you get at that time, what was it at that time, burlap or rags? A Burlap.

Q Also burlap? A Yes, sir.

Q How many pounds of burlap did you get for 65 cents? A I gave him 40 cents for the burlap.

Q I am speaking of the third time 65 cents.

A Yes, sir, I got one thing where you take out the nails --

Q What is that? A One thing where you take out the nails from a box.

Q You got an instrument to pull out nails with?

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A Yes, sir.

Q You bought that from him too? A Yes, sir; altogether I gave him 65 cents.

Q You don't remember how much you gave him for the others? A No, sir.

Q Now, do you remember seeing Boyd, this colored man? A Yes, sir; he takes me in the elevator.

Q He took you up there? A Yes, sir.

Q What floor did he take you to? A I don't remember the floor.

Q Was it the top floor or was it the first floor?

A I don't remember the floor.

Q You don't remember the floor? A No, sir; I don't look at the floor; I look at where I buy the rags.

Q Did you see this boy Trotsky that testified here? A No, sir.

Q Did you ever see this boy? A No, sir.

Q Now, altogether how much money did you give Clackett?

A For the three times, 60 cents, 40 cents and 65.

Q That is \$1.65? A Yes, sir.

Q You say that you have been going around every day and that you go to about 25 or 30 houses a day, don't you?

A Every two weeks I go to them people in that street.

Q Do you mean that you go into that place once in two

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weeks? A Every two weeks I am going in the street.

Q Do you mean you only go into it once in two weeks?

A Yes, sir; in this street, but I go in other streets; I cannot go every day in the same street.

Q Now, you do go around every day whatever street it is - you do go around every day? A Yes, sir; always around different streets.

Q How many of these places do you visit a day?

A (No answer)

Q How many houses do you go into during the day?

A I am going from 7 o'clock and I am coming back between 4 and 5 o'clock.

Q From 7 to 4 or 5 o'clock? A Yes, sir.

Q How many houses do you go into it? A As often as I can --

Q 25? A May be 30, may be 20.

Q May be 20 or 30? A Yes, sir; may be 35.

Q Now, how is it that you remember so exactly about this particular occurrence and that you gave him 60 cents once, 40 cents the second time and 65 cents the third time, what is there about these transactions that fixes them in your mind so well? A Because I have no other business to do and so I have a good memory of my own business.

Q Did you buy other rags in other places? A Yes, sir.

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Q You bought ether burlap in other places? A Yes, sir.

Q You bought ether white rags? A Yes, sir, and iron and brass and copper.

Q You bought ether rags in other places? A Yes, sir.

Q Do you keep a book showing how much you pay to each man? A No, sir; because I am selling every day.

Q Do you have any way of telling how much you pay to any person? A No, sir.

Q You have no way excepting your own memory, is that right? A No, sir.

Q You remember now that you paid him 60 cents on one occasion, 40 cents on the second occasion and 65 cents on the third? A Yes, sir.

Q You don't remember what month it was that you bought these rags? A No, sir.

Q You don't remember the date that you bought them on? A No, sir.

Q Now, Mr. Seitz, I want to show you --

MR. MITNICK: I object to anything being shown here unless they show it was part of the proceeds of this larceny.

THE COURT: I will tell the jury to pay no attention to it except when it is offered in evidence.

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BY MR. KRESSEL:

Q I want to show you these pieces and ask you whether that is the sort of burlap that you bought there?

A That is burlap.

Q That is the same as you bought there? A No, sir; sometimes it is not as this is, but in little pieces.

Q Is this the sort of goods? A This is burlap.

Q This is what you call burlap, isn't it? A Yes, sir.

Q Now this is the sort of burlap you bought there?

Objected to. Objection overruled.

Q Is that the sort of burlap you bought there?

A There is such a quality of burlap but not in such big pieces, in small pieces.

Q In smaller pieces? A Yes, sir.

Q Now, just describe to us what you mean by white rags that you bought, what sort of rags were they? A Any sort of rags, white rags.

Q Something like this (showing witness a towel)?

A No, sir.

Q Sure about that? A No, sir.

Q You knew what that is, don't you? A No, sir, these rags were rags, not such kind as that, they had red painted numbers on them.

Q Did you ever get from Clackett a package like this,

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wrapped up in paper? A I don't see the package, never.

Q What is that? A I didn't see this, no, sir.

Q Clackett testified that on the first time you came there you saw one of these packages and you asked him what it was, and he opened it and showed it to you.

MR. MITNICK: I object to that, if your Honor please. Clackett did not say anything of the kind as he did not have any package here to identify.

Objection overruled. Exception.

Q Clackett testified that the first time you came there you saw a package and you asked him what it was, that he opened it and showed you it was towels and that you bought it from him at that time; is that true? A No, sir.

Q Not true? A I did not see it.

Q Did you never get anything from Clackett that was wrapped up in paper? A No, sir.

Q Nothing? A No, sir.

Q All the things that you bought from him were rags?
A Yes, sir; rags and burlap.

Q Not in paper? A No, sir.

Q They were not put together in folds? A No, sir.

Q Just thrown together in a heap? A These rags were on the floor and I put them in the bag.

Q You picked them up and put them in the bag? A Yes, sir;

no paper or nothing.

Q You carried the bag down yourself? A Yes, sir.

Q You carried the bag down to the push-cart? A Yes, sir, I put them in the elevator and the push-cart was standing there at the elevator.

Q Now, every time you came up to the building you went up in the elevator, didn't you? A Yes, sir; in the elevator, I came in the elevator.

Q That is true? A Yes, sir.

Q Every time that you went to the floor where you bought the rags from Clackett you went up in the elevator? A Yes, sir
BY MR. MITNICK:

Q Now, Seitz, were you ever arrested or convicted of any crime? A No, sir; never, no one time.

A D O L P H M. R A D I N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MITNICK:

Q Mr. Radin, you are a Reverend Minister? A Yes, sir.

Q Do you know the defendant Abraham Seitz? A Yes, sir; I saw him in the Tombs as Chaplain when he was arrested.

Q Now, did you investigate the case of Seitz?

A Yes, sir.

Q Did you inquire into the character of this defendant

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in the neighborhood in which he resided?

MR. KRESSEL: I object to that. It would be hearsay evidence.

THE COURT: The trouble with character evidence is that it is necessarily hearsay evidence. He can testify to the reputation of the defendant. I think under the peculiar circumstances of this case I will receive this evidence. It is a little dangerous to permit people who are in prison to have others go out and investigate their reputation and then come in and testify, but in this case I will let it go to the jury for what it is worth and they will have to say what weight it should receive.

Q Have you made any

THE WITNESS: Yes, sir.

Q Have you met any people in the neighborhood where this defendant resides who know him? A Many people.

Q After making this investigation into the character of this defendant do you now know what his reputation for honesty is? A As far as I have investigated --

Q Yes or no? A Yes, sir.

Q What is it, good or bad? A Very good.

Q Did you visit the home of this defendant? A Yes, sir.

MR. KRESSEL: Objected to as immaterial.

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Q Don't say what anybody said to you.

A Yes, sir.

THE COURT: It doesn't make any difference whether he went to his home or not. It is clearly incompetent.

MR. MITNICK: That is all. The defense rests.

TESTIMONY CLOSED.

(The jury failing to agree upon a verdict were discharged from the further consideration of the case.)

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