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EXHIBITS

P- 1—Policy subject of suit. Marked on page 18. Printed on page 512
P- 2—Photograph of window. Marked for identification on page 28.
D-2 —Paper handed by counsel for defence to witness Frank J. Lundgren. Marked for identification on page 30.
D- 3, D-4 and D-5—Cards of the Paterson Burglar Alarm and Messenger Company. Marked on page 54. Printed on page 578
D- 6—Statement of Michael Cortese. Marked for identification on pages 65 and 255.
D- 7—Statement of Frank J. Lundgren. Marked for identification on page 66.
P- 3—Proof of loss. Marked on page 77. Printed on page 524
D- 8—Time book of Cramer & King. Marked for identification on page 129.
D- 9—Statement of Michael Cortese. Marked for identification on page 259.
P- 4—Book showing goods in process in greig room. Marked on page 327.
P-4a and P-4B—Pages in Exhibit P-4. Marked on page 330. Printed on page 533
P- 5—Piece of goods. Marked on page 332
P- 6—Customer list of Cramer & King Marked on page 340. Printed on page 534
P- 7—Notices to produce papers. Marked on page 348. Printed on page 537
P- 8, P-9, P-10, P-11, P-12—Sheets showing items relating to property of Piedmont Silk Company. Marked on page 353. Printed on page 539

P-13—Record of goods folded. Marked on page 362. Printed on page 540
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P-56—Entry relative to order. Marked on page 484. Printed on page 577

NOT MARKED IN EVIDENCE

The Court refused to permit the following to be marked in evidence:

Invoices and copies of invoices offered by counsel for plaintiff on page 349.

Invoices offered by counsel for plaintiff on page 366.

Copies of invoices offered by counsel for plaintiff on page 390.

New Jersey Supreme Court

PASSAIC COUNTY

Cramer & King Company, a corporation,
Plaintiff,

vs.

National Surety Company of New York, a corporation,
Defendant.

TRANSCRIPT OF PLEADINGS FOR TRIAL

Freeman & Westerhoff, Esq., Attorneys for Plaintiff.

Michael Dunn, Esq., Attorney for Defendant.

Summons issued January 8th, 1924.

Plaintiff, Cramer & King Comany, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office at Paterson, New Jersey, says that:

1. On April 9, 1923, and long theretofore, plaintiff was, and still is, a corporation engaged in the business of dyeing and finishing silks and satins on its premises at Tenth Avenue and East Thirty-third Street, Paterson, N. J.

2. On that date defendant was and still is a corporation with power to insure risks of loss by burglary.

3. At all times herein stated, plaintiff had in its possession, upon its said premises, for dyeing and finishing and in process of being dyed and finished, or which had been dyed and finished, merchandise usual to its said business, consisting of silks

and satins, belonging to it, or held in trust or on commission by it, for which it was liable to the respective owners thereof for loss by burglary.

4. On said April 9, 1923, in consideration of $550.38, by it to defendant paid, defendant executed to plaintiff a policy of insurance, numbered 5548088, wherein and whereby defendant insured plaintiff from said April 9, 1923, at noon, to April 9, 1924, at noon, against loss or damage by burglary, in the total sum of $50,000.00 of and to all merchandise usual to the said business of plaintiff, in its possession, upon its said premises, either owned by it, or held by it in trust or on commission and for which it shall be liable to the respective owners thereof for loss or damage by burglary in case loss or damage to any such merchandise by burglary shall be occasioned by any person or persons who shall have made felonious entry into the said premises by actual force and violence when the said premises are not open for business, of which force and violence there shall be visible marks upon the said premises at the place of such entry by tools, explosives, electricity or chemicals.

5. On or about July 3, 1923, and while said policy was in force, merchandise usual to the said business of plaintiff, in its possession, upon its said premises, and held by it in trust and for which it was then liable to the respective owners thereof for loss by burglary, and upon which it had bestowed labor in the dyeing thereof, and insured by defendant under and by virtue of its said policy, was lost by burglary occasioned by some person or persons who then made felonious entry into said premises by actual force and violence when said premises were not open for business, of which force and violence there were visible marks upon said premises at the place of such entry by tools.

6. The said loss of plaintiff by said burglary, for which defendant is liable to plaintiff under its said policy, was $11,434.06.

7. On or about August 21, 1923, and within sixty days from the date of the discovery of said loss, plaintiff furnished defendant with due proof of said loss; and has otherwise, and at all times, duly observed and performed all the terms and conditions of said policy on its part to be observed and performed.

8. Defendant has not paid said loss, or any part thereof.

9. Plaintiff demands as damages the sum of $11,434.06, with interest thereon from said August 21, 1923.

Freeman & Westerhoff,
Attorneys for Plaintiff.

Filed January 12, 1924.

The defendant, National Surety Company of New York, a corporation, answering the within complaint says that:

1. As to the allegations in paragraph 1 it has not sufficient knowledge to form a belief and requires the plaintiff to prove the same.

2. It admits the second paragraph.

3. It has not sufficient knowledge to form a belief as to the third paragraph and requires the plaintiff to prove the allegations therein.

4. Defendant admits that it executed to plaintiff a policy of insurance numbered 5548088 in consideration of the premium paid therefor by plaintiff and of the terms and conditions of the said policy, but it denies that the terms and conditions of said policy are accurately and fully set forth in paragraph four of the complaint, and the defendant

denies that it insured the plaintiff excepting upon the terms and conditions more particularly set forth in the policy of insurance, the original of which is in the possession of the plaintiff and the production of which the defendant hereby demands upon the trial, and except as specifically admitted herein, the defendant denies each and every of the other allegations contained in said paragraph.

5. It denies paragraph five.

6. It denies paragraph six.

7. Defendant admits that plaintiff served upon it a statement purporting to be a proof of loss, but denies that the said statement was served in compliance with the terms and conditions of the policy.

8. Defendant admits the eighth paragraph.

The defendant will set up for separate and special defenses:

FIRST DEFENSE

The defendant is not liable under the said policy because the plaintiff failed to fulfill and carry out its warranties to defendant in the following particulars, to wit:

1. Two private watchmen employed exclusively by the assured will be on duty within the premises at all times when the premises are not regularly open for business, while this policy is in force.

2. Two private watchmen described in item 8 will make hourly rounds and will signal an outside central station hourly.

SECOND DEFENSE

Defendant is not liable on the said policy because plaintiff by reason of its breach of warranty as

set out in the first defense changed the conditions and circumstances of the risk without the written consent of the company endorsed upon said policy and thereby rendered void the said policy.

THIRD DEFENSE

The defendant is not liable on the said policy because the Assured failed to fulfill and carry out the following warranties and conditions precedent, to wit:

(1) The Company shall not be liable: For loss or damage, if the Assured, any associate in interest or servant or employee of the Assured, is implicated as principal or accessory in effecting or attempting to effect the burglary.

That the loss, if any, if it occurred, from information furnished by the Assured and from circumstances and evidences surrounding the alleged loss, occurred through the instrumentality of a servant of the Assured or of one or more of his employees or other persons lawfully upon the said premises, and as a result thereof, no recovery can be had upon the said policy of insurance.

(2) The Company shal not be liable:
Unless books and accounts are kept by the Assured and are kept in such manner that the exact amount of the loss can be accurately determined therefrom by the Company;

That the books and accounts kept by the Assured were not so kept that the actual loss could be determined therefrom by the Defendant, and the de-

fendant was unable to accurately determine the amount, if any, of the Assured's loss from the books and accounts which were kept by the Assured, and as a result thereof, no recovery can be had upon the policy of insurance and said policy became void.

(3) The assured in its application for said policy warranted that:

> The business conducted by the Assured in the premises is that of silk dyers . . . . No other buisness is conducted in the premises except as herein stated.

That the plaintiff in its statement filed as an alleged proof of loss stated that the premises were occupied for the following purposes, to wit: silk dyeing, printing and finishing, and as a result of plaintiff's said false statement no recovery can be had upon the said policy of insurance.

FOURTH DEFENSE

That the policy of insurance referred to in the complaint, on which this action is brought, contained, among others, the following warranty and condition precedent:

> This policy shall be void and thereupon cease and determine . . . . . if the Assured attempts in any way to defraud the Company.

That after the alleged loss referred to in the complaint, the assured named in the policy of insurance presented to this defendant its claim and thereafter filed with the defendant papers purporting to be proofs of loss claiming that the assured named in the aforesaid policy of insurance suffered a loss as

set forth in the complaint, of various merchandise of the amount and value of $11,434.06, within the terms of the policy issued by the defendant to the assured named therein, being the same policy of insurance referred to in the complaint in this action, and with intent to deceive and defraud the defendant, falsely and fraudulentlly claimed that merchandise and property belonging to the assured in the amount and value of $11,434.06 had been stolen from the assured, being the same alleged loss referred to in the complaint herein, whereas in truth and in fact, as the assured well knew, insured property of the amount of $11,434.06 or anything like that sum had not been stolen from the assured by reason of the said alleged burglary, but on the contrary as the assured well knew, the loss, if any, to the assured was not more than the sum of $5,000 and said false and fraudulent statements and the presentation of said false and fraudulent claim was knowingly made by the assured with intent to deceive and defraud this defendant and to induce it to pay to the assured a greater sum than that which otherwise would be due, and that by reason thereof, the defendant is not liable in any manner or in any amount to the plaintiff and the policy became and was and still is void.

FIFTH DEFENSE

Defendant is not liable on said policy because the alleged burglary was not "occasioned by any person or persons who shall have made felonious entry into the premises by actual force and violence when the premises are not open for business, of which force and violence there shall be visible marks made upon

the premises at the place of such entry by tools, explosives, electricity or chemicals," as is provided by the terms of said policy.

SIXTH DEFENSE

Defendant is not liable on the said policy because the merchandise alleged to have been stolen did not belong to the assured nor was it held in trust by the assured or on commission or sold as provided by the fifth clause of the special agreements made as one of the conditions precedent by the assured to defendant when obtaining from defendant the said policy of insurance.

Michael Dunn,
Attorney for Defendant.

Filed February 11, 1924.

AS TO FIRST DEFENSE

1. Plaintiff duly observed and performed the undertakings set forth in paragraphs 1 and 2 of "First Defense."

AS TO SECOND DEFENSE

1. Plaintiff denies the breach of warranty charged or assumed in "Second Defense"; and repeats the statement of paragraph 1 of this reply.

AS TO THIRD DEFENSE

1. Plaintiff denies that the loss alleged in the complaint occurred through the instrumentality of

its servant or of one or more of its employees or other persons lawfully upon the said premises.

2. It denies that its books and accounts were not so kept that the said actual loss under said policy could be determined therefrom by defendant; and denies that defendant was unable accurately to determine the amount of said loss from said books and accounts.

3. The terms "silk dyeing, printing and finishing" are embraced and implied in the term "business of silk dyers" and designate steps and parts of a single trade.

AS TO FOURTH DEFENSE

1. Plaintiff denies that the loss payable to it under said policy "was not more than the sum of $5000.00," and says that its said loss by said burglary, for which defendant is liable to it under said policy, was $11,434.06, as stated in its proof of loss duly filed with the defendant.

AS TO FIFTH AND SIXTH DEFENSES

1. The allegations of these defenses are denied.

Freeman & Westerhoff,
Attorneys of Plaintiff.

Filed February 26, 1924.

I, Edward J. Kelleher, Clerk of the Supreme Court of the State of New Jersey do certify that the foregoing is a true transcript of the pleadings in the above-stated cause as the same remain on file in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this nineteenth day of March, A. D., nineteen hundred and twenty-five.

(L. S.) Edward J. Kelleher,
Clerk.

NEW JERSEY SUPREME COURT
PASSAIC CIRCUIT

Cramer & King Company,
Plaintiff,
vs.
National Surety Company,
Defendant.
At Law.

Paterson, N. J., March 19, 1925.

Before: Hon. C. L. Newman, Judge, and a Jury.

Appearances:

For the Plaintiff:
Messrs. Freeman & Westerhoff, and
Addison P. Rosenkranz, Esq.

For the Defendant:
Michael Dunn, Arthur Dunn, and
Leon Prince (of New York Bar).

(A Jury was called and sworn, and counsel for the respective parties opened to the jury.)

FRANK J. LUNDGREN, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Lundgren, your residence is where? A. 545 East 27th Street, Paterson, N. J.

Q. How long have you lived in Paterson? A. Since December, 1900.

Q. Are you connected with Cramer & King Company, the plaintiff? A. I am.

Q. Do you know what Cramer & King Company is, whether a corporation, a partnership, trade name

or what? A. Cramer & King Company, a corporation.

Q. It has existed how long? A. Incorporated 1901.

Q. Are you employed by it? A. I am.

Q. How? A. As secretary.

Q. Have been for how long? A. Since October, 1920. I have been employed since September, 1910, however.

Q. Engaged in what business is Cramer & King, Inc.? A. Cramer & King is in the business of silk dyeing, printing and finishing.

Q. And has been how long? A. Since its inception.

Q. Where is its plant located? A. At the northwest corner of East 33rd Street and Tenth Avenue.

Q. How large a physical plant has it there, roughly, approximately? A. The plant would cover approximately 150 feet, facing East 33rd Street, with a depth of about the same back from 33rd Street.

Q. About 150 feet each way? A. Yes, sir.

Q. Is that area the area covered by the buildings only? A. Not entirely.

Q. Now how many building has the company at that site? A. Somewhat over 20 buildings.

Q. How many? A. Over 20.

Q. Is there any building which is the main building? A. The main building is a building which faces East 33rd Street.

Q. How many stories has your main building? A. There is two stories and basement.

Q. How many employees work in Cramer & King, approximately?

Mr. Prince—You mean on the day in question.

Q. Yes. A. Well, possibly 200.

Q. Now from the 9th of April, 1923, to the 3rd of July of that year, through what hours was this dyehouse in operation? A. Our operations —.

Mr. Prince—I object to that, unless the witness shows some personal knowledge of it.

The Court—Unless he knows, of course.

Q. Well, you say that you are secretary of Cramer & King? A. I do.

Q. What other work, if any, did you do for Cramer & King during the year 1923? A. As that of bookkeeper and general office work.

Q. Your hours of employment in the months of April, May, June and July, 1923, running from what hours to what hours? A. From 8:00 A. M., the quitting time being irregular as the work made it necessary.

Q. Now those were your hours. Now during those four months do you know what hours of the day the mill itself was in operation, that working commenced, and when the last department in the dyehouse quit, at what hours? A. That time was also irregular.

Q. I am speaking generally through those four months, when they open in the morning? A. The actual operations commenced in the morning at six o'clock.

Q. If you know, how many men arrived at the

mill at six o'clock in the morning? A. Usually about four or five or six.

Q. You say the actual operation —?

Mr. Prince—I object to that and move to strike out the testimony. The witness said his time was eight o'clock. He is now attempting to tell us of the time the men arrived before that hour. Surely it must be hearsay.

The Court—The difficulty is, Mr. Prince, that your objection comes too late. You must object to the question promptly, or with reasonable promptness, before it was answered.

Mr. Prince—All right.

Q. At what hours was the mill closed in the afternoon? A. That was closed —.

Mr. Dunn—What day? Any day?

Mr. Rosenkrans—I have been directing all these questions to the period beginning with April and ending with July, 1923.

A. The mill closed at various times, ranging from 5:30 to seven o'clock, depending on the character of work in process.

Q. All right. You say from 5:30 to seven o'clock. Do you mean by 5:30 that that was the earliest hour that the mill shut down, and that when you mention seven o'clock that was the latest hour at which they closed during that period of time? A. I do.

Q. Now if you know, will you say whether or not a watchman or watchmen were employed on the

plaintiff's premises during the time when the mill was not in operation?

Mr. Prince—I object.

The Court—That is a little broad, I think, Mr. Rosenkrans. You may ask him what time and show about the operations, but I think you better show the facts.

Q. Do you know whether or not the plaintiff employed night watchmen? 10

Mr. Prince—I object, may it please the Court. This witness says he was not there all night and does not know.

The Court—He is only asking whether he employed night watchmen.

Mr. Prince—All right.

A. They do. 20

Q. I speak of the period beginning April 1, 1923, and ending July 4, 1923. A. They did.

Q. How many? A. Two.

Q. What were their names? A. Herbert White and Garrett Fenmore.

Q. How long, if you know, prior to July 3, 1923, had Herbert White been in the employ of the plaintiff? A. He was in the employ of Cramer & King prior to my employment with them.

Q. Which began in 1901? A. Which my employment began in 1910. 30

Q. And can you say whether or not he worked continuously from the time of your connection with the plaintiff until the present time? A. Yes.

Q. Is he still employed? A. Yes, sir.

Q. And has been uninterruptedly? A. He has been.

Q. By Cramer & King? A. Yes.

Q. As night watchman? A. Right.

Q. You say that the name of the other night watchman was Garrett Fenmore? A. Yes.

Q. How long had he been employed with the Cramer & King Company prior to July 3, 1923? A. About a year and a half.

Q. How long did he stay with them after July 3, 1923, as a night watchman? A. Until the spring of 1924.

Q. Do you know whether or not Garrett Fenmore is now living? A. Garrett Fenmore is now dead.

Q. When did he die? A. Last fall.

Q. Now, if you know, will you say whether or not Garrett Fenmore in the year 1923, and particularly during the months of April, May, June and July, had duties other than that of night watchman, and if so what they were? A. In addition to his duties as night watchman he was also night fireman.

Q. Will you say, if you know, whether Herbert White during those four months had duties other than that of night watchman at the plaintiff's plant? A. No, he did not.

Q. Now can you say what instructions were given White and Fenmore in regard to their duties as night watchmen in the plaintiff's plant?

Mr. Prince—I object to it as immaterial, irrelevant and incompetent, what his duties were. Besides which, there has been no policy marked in evidence yet.

Mr. Rosenkrans—Councel conceded that much in his opening.

Mr. Prince—That is correct. I think it ought to be marked.

Mr. Rosenkrans—I offer the policy.

Mr. Prince—We will admit the policy is in evidence.

The Court—I think the question is permissible as the basis of further testimony. I will admit it.

Mr. Prince—I respectfully except.

A. To make hourly rounds from six P. M. to six—to be on duty from six P. M. to six A. M.

Q. Do you know of any other instructions which were given them? A. To make hourly rounds.

Q. Anything else? Do you know what, if anything they did in the course of making their rounds.

Mr. Prince—I object. Apparently this witness was not there.

The Court—Unless he was present.

Mr. Rosenkrans—All these questions are prefaced by the statement if you know of your own knowledge.

The Court—If you know of your own knowledge.

Mr. Rosenkrans—I will withdraw it.

Q. Do you whether or not in this silk dyeing plant there is any electric signal system? A. There is.

Q. Will you describe it? A. The time in question we had a system that was installed in the plant under the auspices of the Paterson Burglar Alarm

and Messenger Company of 113 Ellison Street. These boxes were connected with the plant and also with the central station.

Q. Where is the central station? A. 113 Ellison Street.

Q. All right. A. It was the duty —.

Q. Where were the boxes? A. They were distributed throughout the plant.

Q. Throughout the plaintiff's plant? A. Yes.

Q. How many boxes were installed on the night of July 2nd and 3rd, 1923? A. There were 18 boxes.

Q. Do you know how those boxes were operated? A. By a watchman's key, which he inserted in the box and turned.

Q. Now if you know of your own knowledge, what instructions were given those two night watchmen with respect to sounding these signal boxes?

(Objected to as immaterial, irrelevant and incompetent. Question permitted.)

A. They were instructed to turn in the boxes hourly.

Mr. Rosenkrans—I will offer Policy Number 5,548,088 of the National Surety Company, no date on it, but insuring the plaintiff from noon, April 9, 1923, to noon, April 9, 1924, against loss by burglary.

Mr. Prince—No objection.

(Policy marked Exhibit P-1.)

Q. Did you ever hear of Rose Silk Mills? A. I have.

Q. What connection, if any, had they with Cramer & King on July, 1923?

Mr. Prince—I object, that the proper foundation has not been laid to have this witness testify to all of these things.

The Court—If he knows of his own personal knowledge he may testify.

A. I do know.

Q. Of your own personal knowledge? A. From my personal knowledge.

Q. What connection did they have? A. That the Rose Silk Mills were customers of the Cramer & King Company.

Q. Schwartzenbach and Huber, do you know them? A. They were likewise customers of the Cramer & Company.

Q. In July, 1923? A. Yes.

Q. How long had they been customers of Cramer & King? A. The former?

Q. Both of them, both Rose Silk Mills and Schwarzenbach & Huber. A. The Rose Silk Mills had been customers approximately a year prior, whereas the Schwarzenbach & Huber were customers at the time of my connection with Cramer & King Company.

Q. Now on the 2nd and 3rd of July, 1923, did you know Piedmont Silk Company? A. They were likewise customers.

Q. And had been how long? A. A number of months.

Q. Do you know whether these three concerns had goods upon the premises and in the dyehouse of Cramer & King?

Mr. Prince—I object to it upon the ground there has been no proper foundation laid to show this witness had any knowledge.

Mr. Rosenkrans—I am asking him.

The Court—I will permit the question.

Q. On July 2nd, 1923? A. We had orders on hand of the Rose, the Schwarzenbach-Huber, and the Piedmont Silk Company.

Q. You speak of orders. A. Orders and merchandise.

Q. On that day? A. On that date.

Q. Now, Mr. Lundgren, will you say whether or not on the morning of July 3, 1923, anything unusual was astir in the plant of the plaintiff? A. I was informed —.

Mr. Prince—I object to that.

Q. Yes, or no? A. Yes.

Q. What was it? A. There was a loss of merchandise.

Mr. Prince—I object and move to strike out the statement of a conclusion as one of the facts to be proved in this case.

The Court—I think you better show the fact. I will strike it out. You may show the fact.

Mr. Rosenkrans—All right.

Q. Are you familiar with the department in the Cramer & King plant called the finishing roam? A. I am.

Q. Where is it located? Where was it located

in July, 1923? A. It is located in the main building facing East 33rd Street.

Q. What story in that building? A. In the basement on the first floor.

Q. Did you have occasion to visit the finishing room in the basement of the main building on the morning of July 3, 1923? A. I did.

Q. Who did you see there? A. Saw Mr. Omer Cramer.

Q. How is he connected with the plaintiff? A. Mr. Omer Cramer is the treasurer of the Cramer & King Company.

Q. Who else did you see? A. A Mr. Joseph Pelegrini.

Q. And Mr. Joseph Pelegrini was connected in what way, if any, with the plaintiff at that time? A. Well, as supervisor and solicitor.

Q. Solicitor, I suppose has reference to outside work? A. Soliciting work from customers.

Q. And his duties as supervisor in general were what, if you know? A. They were of a technical nature.

Q. And took him in what department or departments of the plaintiff's plant?

Mr. Prince—I object, unless this witness knows. I think we have had a lot of hearsay testimony, your Honor, from this witness.

Q. Do you know?

Mr. Prince—I object, may it please the Court, to just saying "Do you know?" Of course any layman says he knows. He thinks he knows when somebody else tells it to him,

but that is not competent evidence. I submit there has been no proper foundation laid.

The Court—I will permit the question.

A. Practically all departments.

Q. Who else if anyone did you see in the finishing room on that occasion? A. I spoke to Michael Cortese.

Q. Was he an employee of the plaintiff at the time? A. He was employed as boss finisher.

Q. As what? A. Boss finisher.

Q. As boss finisher did he have any connection with the finishing room? Where did he work mostly? A. He was the manager of the finishing room.

Q. What hour did you first visit the finishing room on July 3, 1923? A. About 8:30.

Q. If you recall, at what hour did you arrive at the plaintiff's mill that day? A. Usual time of eight o'clock.

Q. Now did you notice anything unusual in the finishing room at that time, and if so, what was it? A. I did.

Q. What was it? A. It was called to my attention—.

The Court—What did you see?

A. I saw the window on the south side of the rear door was unfastened and that window was standing on the sill.

Q. How large a window was it? A. Window approximately 3 foot by 6 feet.

Q. Six feet high, three feet wide? A. Yes.

Q. You say this window was situated near a door? A. Yes.

Q. And the door leading from where to where? A. From the finishing room, basement to the rear yard.

Q. Yes. Was the surface of the ground outside the door on a level or above the level or below the level of the floor of the finishing room? A. The outside ground is somewhat higher than the floor of the finishing room basement.

Q. Did the window to which you have directed our attention have a sill? A. It did.

Q. Did it have a protection on its exterior?

Mr. Prince—May we have some time fixed?

Mr. Rosenkrans—I am speaking of the morning of July 3, 1923. I will withdraw the question.

Q. Prior to July 3, 1923, how long had you been familiar with the window nearest the door in the finishing room leading from that window to the back of your yard?

(Objected to as calling for a conclusion and the operation of the witness' mind, and there has been no foundation laid to show that he was ever there before that time.)

Q. Had you ever noticed during the years of your employment with Cramer & King the exterior of the window which you have designated? A. Yes.

Q. Now then, do you know whether on July 2, 1923, that window had any protection on its exterior?

(Same objection. Objection sustained.)

Q. Were there panes in the sash?

(Objected to, that witness has not been shown to have been there on July 2.)

Q. Do you know whether on July 2, 1923, there was anything on the outside of this window in question?

(Same objection. Question permitted.)

A. I do.

Q. What was there? A. The windows were covered.

The Court—This window, he asked you.

Q. How covered? A. With hardware cloth—a wire cloth known as hardware cloth, with a half-inch mesh.

Q. Do you know how the screen or cloth, wire cloth, as you called it, was affixed to the window? A. On July 2nd?

Q. Yes. A. Simply that there was molding surrounding this hardware cloth.

Q. On how many sides? A. All sides.

Q. Up and down? A. Yes.

Q. Were there staples or other mechanical devices or means in the window screen?

(Objected to as leading. Objection sustained.)

Q. What else was there besides the molding by which the screen was fastened to the window sash?

A. I had no knowldge of it on July 2nd.

Q. All right. Now did you examine the exterior of this window on July 3rd? A. I did.

Q. Alone or in company with any one? A. In company.

Q. In whose company? A. In company with Mr. Cramer, Michael Cortese, Mr. Pelegrini, and later in the presence of Mr. Gilligan.

Q. Who is Mr. Gilligan, if you know? A. Mr. Gilligan came to our plant as an investigator.

(Answer objected to and asked to be stricken out. Consented to. Stricken out.)

Q. What, if anything, did you observe about the exterior of the window? A. I saw that the screen had been torn.

Q. How torn, Mr. Lundgren? You may have a mental picture of it; if you have, I want you to give it to this Court and jury. A. The covering, that is, the hardware cloth, had been removed from the lower left hand corner of the window, that is, it was pulled away from the frame and bent upward and outward.

Q. In what condition was the screen at the time you saw it and noticed it had been removed or torn away? A. As I saw it it was bent outward and upward and the molding had been removed from the left hand side, that is, looking from the outside.

Q. How far up had the molding been removed? A. I believe the molding covering the entire left side.

Q. That is six feet, I think you said, the height of the window? A. Approximately six feet.

Q. Did you look at that molding? A. Not particularly.

Q. The wire screen which you say was torn from the window sill, how far along the base of the sill had it been removed, approximately? A. Well, approximately two feet.

Q. How far along the side, the upper side? A. About three and a half feet.

The Court—Which side of this window was it as you were looking in the building?

The Witness—On the left hand side looking in from the outside.

Q. Now did you observe anything else about the exterior part of that window sill or frame? A. I saw that there were staples lying on the window sill.

Q. Loose? A. Loose.

Q. Did you notice anything peculiar about those staples?

(Objected to. Objection sustained.)

Q. In what condition were these staples which you saw lying upon the outside of the window sill? A. As far as I could see they had been freshly withdrawn from the wood.

(Answer objected to. Answer stricken out.)

Q. What was it, if anything, that you saw about these staples that lay upon the window sill? A. That the end of the staples, that is, not the pointed

end, the other part of the staples had paint on them, whereas the pointed ends had no paint on them, and there were particles of wood clinging to the points.

Q. Yes; particles of wood. How many staples did you find with particles of wood, lying upon the exterior of the window? A. I saw approximately six staples, but I don't know whether they all had particles of wood.

Q. Will you tell us whether or not you saw any holes in the window sills into which those staples would have fitted?

(Objected to. Question withdrawn.)

Q. Did you look at the sash of the window in those parts from which the wire had been torn loose? A. Not particularly.

Q. Well, do you know whether or not—of your own knowledge, of your own observation, whether or not any holes were in that sash? A. There were.

Q. How big were these holes? What was the diameter of them? A. Approximately the same diameter as the staples.

(Objected to and asked to be stricken out. Motion denied.)

Q. I show you a photograph and ask you whether that correctly depicts any window in the plant of the company as that window was on July 3, 1923?

Mr. Dunn—What time?

Mr. Rosenkrans—In the morning.

A. That is a representation of the window which we have been dicussing.

Q. Is it a correct representation of that window in the situation in which it was on the morning of July 3, 1923? A. As I saw it, yes.

(Photograph marked P-2 for identification.)

Q. Mr. Lundgren, did you look at this window in question from the interior of the finishing room? A. I did.

Q. I mean in the morning on your first occasion? A. On the morning of July 3rd.

Q. On your visiting the finishing room? A. Yes, sir.

Q. What did you see? A. Saw that window standing about half way on the inner sill.

The Court—Speak up louder.

A. The window standing about half way out on the inner sill.

Q. And the sash of the window, did you notice anything? A. I did not examine it closely.

Q. The frame of the window from the interior next to the sash when the sash is in place, did you examine? A. Not closely.

Q. Now let me ask you one further question. You say you are secretary of the plaintiff? A. I am.

Q. And that you are a bookeeper? A. I am.

Q. A general bookkeeper? A. Yes.

Q. What other duties, if any, had you in that plant at this time in question, in July, 1923?

Mr. Dunn—Any time during the month?
Mr. Rosenkrans—No.

Q. During the months of April, May, June and July, 1923, you were a general bookkeeeper? A. Yes.

Q. What do you mean by that phrase, general bookkeeper? A. Taking care of the sales, purchase records, and a number of other records.

Q. Were there other bookkeepers employed during that period by Cramer & King? A. There were.

Q. How many? A. Six or seven.

Q. Is there any relationship between you and them?—I will withdraw it. Did you all work in a common office? A. No; there were two offices.

Q. In what parts of the building? A. In the front main building facing East 33rd Street.

Q. Two offices? A. Yes.

Q. Which one did you work in? A. I worked in the one on the southerly side.

Q. Who, if anyone, had charge of that office? A. I did.

Q. Who, if anyone, had charge of the other bookkeepers in that office? A. I did.

Q. Did you have charge of the other office? A. No, sir.

Q. Who did? A. Mr. Stapfer.

Cross-Examination by Mr. Prince:

Q. Mr. Lundgren, I show you this paper and ask you whether that is your signature? A. It is.

Mr. Prince—I ask that this be marked for identification.

(Paper marked D-2 for identification.)

Q. Now on the night of July 2nd until the morning of July 3, 1923, Mr. White, whom you said was employed as one of these watchmen, had on the premises of Cramer & King a very ferocious and sensitive bulldog; is that correct? A. It is.

Q. What is that? A. It is.

Q. For how long a time did you know that Mr. White had this bulldog on the premises? A. Since its birth.

Q. Well, now, we don't know when that was. When was that, about how many years? A. Possibly a year.

Q. And the words which I have used, a very ferocious and sensitive bulldog, are your words; isn't that correct? A. They are.

Q. Now how old are you? A. 27.

Q. Are you related to Mr. Cramer or Mr. King? A. No, sir.

Q. Have you standing to the family of either of them in any way? A. No, sir.

Q. Now you were in charge of the bookkeeping department; is that correct? A. Correct.

Q. That means all of the bookkeepers, is that right? A. Not necessarily.

Q. Well, does it or does it not? A. It does not.

Q. What was the fact? A. I was in charge of the section of the bookkeeping which related to the financial end.

Q. Well, now, books always relate to the financial end, do they not? A. No, sir.

Q. Now what particular books then were you in charge of? A. That is of the ledger.

Q. Well, now, you mean the general ledger? A. General ledger, the customers' ledger.

Q. Customers' purchase and sales ledgers? A. Yes.

Q. Yes; now what then? A. And the auxiliary books.

Q. You are a bookkeeper; tell me what they were? Purchase journal, sales journal? A. Purchase journal and sales journal.

Q. Cash book? A. Cash book.

Q. Check book? A. Check book.

Q. What else? A. Note book, insurance records.

Q. By note books, you mean where you entered notes either given by the firm or received by the firm? A. Exactly.

Q. Yes. A. Insurance books.

Q. That was the expiration book, was it, a record of all the insurance you carried of various kinds; is that right? A. Yes.

Q. What other books, if any? A. That is about all.

Q. What is that? A. That is about all.

Q. How many men worked under you? A. At what time?

Q. Well, say July, 1923, prior to the 3rd or the 4th?

Mr. Rosenkrans—Well, "persons" would be better. He hasn't said, but counsel suggests how many men. He hasn't said whether they were men or women.

Mr. Prince—Well, add them together. We want to get the number of men, then the

number of women. It is a simple mathematical problem.

The Court—How many bookkeepers, you mean, I suppose.

Mr. Prince—All right, then I will amend the question, your Honor.

Q. How many bookkeepers were there prior to July 3rd? A. None under my direct control.

Q. Well, when you said on direct examination that there was somebody else working in the room there with you, did you not, from April to July—isn't that what you said a few moments ago to counsel? A. Mr. Cramer worked with me.

Q. He didn't work under you? A. Not under.

Q. You worked under him, didn't you? A. Yes.

Q. Well, how many people did you have charge of up to July 3, 1923? A. I worked alone.

Q. You had none, then, isn't that right? A. True.

Q. That is correct? A. Correct.

Q. Now you say you were secretary of this company. Did you own any stock in this company?

(Objected to as immaterial. Question permitted.)

A. I do.

Q. Did you on July 3, 1923? A. I did.

Q. How many shares? A. One share.

Q. One share of stock; is that correct? A. Yes, sir.

Q. What was the par value of that share? A. $100.

Mr. Rosenkrans—You have to speak louder.

A. $100 was the par value of the share of stock.

Q. Now you were asked by counsel for plaintiff on direct examination whether you knew the time that the mill opened its operations in the morning, and you said the actual operations commenced at six A. M.; do you remember that? A. I did.

Q. At what hour in the morning during those months from April and up until July 3, 1923, did the premises of the plaintiff regularly open for business? A. At six o'clock.

Q. What was the business of Cramer & King during those months? A. Silk dyers, printers and finishers.

Q. Did they start to do any of that work at six o'clock in the morning during those months? A. Yes.

Q. What part of it did they start? A. The preparatory bath.

Q. What was that? A. Getting the baths ready.

Mr. Rosenkrans—Tell him fully, please.

Mr. Prince—I object to this interruption, may it please the Court. He is my witness under cross-examination.

The Court—Yes.

Q. I mean who were the people who got the baths ready? A. Regular employees.

Q. Who? Name them. A. John Cessari.

Q. John Cessari; what time did he get there? A. Supposed to be there at six o'clock.

Q. What time did he get there, if you know? A. I don't know.

Q. Were you ever there yourself at six o'clock in the morning? A. Yes.

Q. When; name it? A. I can't name them.

Q. Was it on July 2nd? A. No, sir.

Q. Was it on July 3rd? A. No, sir.

Q. Was it on July 1st? A. No, sir.

Q. When was it? A. I can't name the date.

Q. Did you ever see Cessari there in your life at six o'clock in the morning? A. No, sir.

Q. Did you ever see anybody at the premises at six o'clock in the morning? A. I have.

Q. When was that, what date? A. I can't name a specific date.

Q. Do you know what month it was? A. No.

Q. Was it before or after April 9, 1923? A. Before.

Q. Well, this policy went into effect in April, 1923, isn't that correct? A. I think it did.

Q. Well, now; can you tell me of your own knowledge, not what somebody else told you, or what the instructions were, but something of your own knowledge as to any person being on those premises before eight o'clock in the morning between April, 1923, and July 3, 1923? A. Before eight?

Q. Yes. A. Yes.

Q. Who was it and when was it that you saw anybody there before eight o'clock? A. It is very often I have been in before eight o'clock.

Q. You mean five or ten minutes before eight? A. Sometimes at 7:30.

Q. Give me the date when you were there at 7:30? A. I can't give you any specific date.

Q. Was it before or after April, 1923? A. Both before and after.

Q. Well, by after April, do you mean after April and before July 3, 1923? A. Yes.

Q. Now who was it that you saw there at 7:30? A. There have been times when I have come down to business and seen quite a number of people there; I can't describe them all.

Q. Well, describe any of them. A. The regular employees.

Q. Name any of them; not all of them, but one of them? A. I seen Mr. Bush.

Q. Mister who? A. Mr. Bush.

Q. Mr. Bush; what position did he occupy? A. New York solicitor.

Q. He solicited orders for customers in New York; is that right? A. He solicits orders for us from customers.

Q. He didn't do any work about the mills, did he; he did not prepare any baths or anything of that kind, did he? A. No.

Q. Now the earliest that you have ever been on the premises between April, 1923, and July 3, 1923, was 7:30 o'clock in the morning, isn't that correct? A. I didn't say that.

Q. Well, I am asking you, isn't that correct? A. It is not correct.

Q. Well, were you ever there any earlier than that between those dates, or were you ever there as early as that, either one or the other? A. I believe I have.

Q. Are you sure of it? A. There are many times when I come in early, but I don't make specific mention of it.

Q. I didn't ask you whether there were many

times that you have come in early. I asked you specifically whether there was any time that you were in earlier than 7:30 o'clock in the morning. You understand that, do you not? Half-past seven? A. There has been.

Q. Between April and July, 1923? A. I believe so.

Q. No, no. Are you just guessing or are you positive of it? A. As I said before, I did not make particular mention of it.

Q. Well, I am asking you now to make particular mention of it. A. Yes, I believe I have.

Q. Well now, give us the dates. A. I cannot.

Q. What is it that makes you remember that it was between April and July, 1923, or aren't you sure it was between those months? A. I am not quite sure.

Q. Was there more than one —?

Mr. Rosenkrans—Of course, if your Honor please, I recognize fully the right of counsel to cross-examine this witness upon this point, but I want to say for the purpose of informing him —.

Mr. Prince—I object to being informed and interrupted unless there is objection.

Mr. Rosenkrans—We will produce five or six employees of this plaintiff who arrived there at six o'clock in the morning and show about what they did with themselves. Of course it is his judgment; he can pursue it if he wants to.

The Court—Of course it is of some importance.

Mr. Rosenkrans—Yes; he can use his own judgment.

Q. Was there more than one occasion that you were there before 7:30 o'clock in the morning? A. Between those times?

Q. Yes. A. Yes.

Q. How many? A. Several.

Q. Between April and July? A. I think so.

Q. What were you doing there so early in the morning? A. Doing my work.

Q. What work? A. Bookkeeping.

Q. Were the Cramer & King Silk Mills and was the silk industry so busy between April and July, 1923, that it required you to get down that early in the morning? A. My work did.

Q. Don't you know that between April and July, 1923, the silk industry was very slow? Mr. Lundgren, isn't that the fact? A. Depends upon the viewpoint.

Q. What do you mean, depends upon the viewpoint? A. Might have been slow in certain lines.

Q. Was it slow in your line? A. Not particularly.

Q. Particularly good between those months; is that correct? A. No, it was not particularly good nor particularly bad.

Q. What is that? A. It was neither very good nor very bad.

Q. Nor unusually busy? A. Personally?

Q. No, I mean the silk business, the Cramer & Company silk business. A. No. not unusually busy.

Q. Did you keep a time book? A. No, sir.

Q. Was the time book kept by Cramer & King, if you know? A. Yes, sir.

Q. In that time book was there entered the names of the people and the times that they worked for Cramer & King? A. The names of the people and the number of hours that they worked.

Q. Also the time they commenced to work? A. No, sir.

Q. Was Cramer & King a union shop? A. No, sir.

Q. Did they have any stated number of hours per day that they worked? A. Some of them. You speak of the employees?

Q. Yes, surely, I am talking about the employees. Did they? A. Some of them.

Q. What did they work, piece work or by the day? A. By the hour, by the week.

Q. Piecework or by the hour, so much per hour? A. So much per hour and so much per week.

Q. I show you a paper and ask you whether this is your signature to it? A. It is.

Q. I show you the first two sheets withe the initials F. L. at the bottom, and ask you whether those are your initials put on those two sheets of paper by you? A. They appear to be.

Q. They may appear to be, but don't you know whether they are or not? A. They look like my initials.

Q. Can't you say whether they are yours or not? A. I believe they are.

Q. Well, won't you say whether or not they are yours, not what you believe? Can't you tell me whether those are your initials, put on there by you? A. No, I don't recall initialing those two sheets.

Q. Not whether you recall or not. Don't you know your own intitials when you see them?

Mr. Rosenkrans—He says he believes they are his.

Mr. Prince—Now, please!

The Court—If he knows he may say.

A. I believe they are.

Q. You think they are? A. I do.

Mr. Rosenkrans—Now what is the difference?

Q. Now look at the second sheet of the paper which you signed—. Now I will let you have the original which you say you signed and I will take a copy. Didn't you say on July 11, 1923, in that signed statement: "The hours of operation are from 7:20 A. M. until 12 noon, and 12:30 P. M. to 4:30 P. M."? Look at it, please. A. I did.

(Adjourned to March 20, 1925, at 10 A. M.)

Paterson, N. J., March 20, 1925.

(Trial of the cause resumed at 10 o'clock A. M.)

FRANK LUNDGREN, resumed.

Cross-Examination (continued) by Mr. Prince:

Q. Mr. Lundgren, Cramer & King had another experience and claimed to have a second burglary

loss on November 27, 1923; isn't that correct?

Mr. Rosenkrans—I object to that.

The Court—I cannot see at the present stage where it has any connection. I will sustain the objection to it.

Q. Between April 3rd and the present time have you had any discussion with any persons as to this clause in the policy in regard to visible marks of a forcible entry?

Mr. Rosenkrans—April 3rd, what year?

Q. July 3, 1923? A. Yes.

Q. With whom? A. Among ourselves, and with counsel.

Q. Among yourselves? Whom do you mean? A. The members of the company.

Q. Well, just tell me the names. We don't know the members of your company like you do. Give me the names of the people with whom you had this discussion? A. Mr. Omar Cramer.

Q. Who? A. Mr. Omar Cramer.

Q. Yes. A. Our carpenter, Mr. Clark.

Q. Mr. Clark, you say? You said your carpenter. What was the name; I didn't get it? A. Mr. Clark.

Q. Yes. A. And others whom I cannot recall at the present moment.

Q. Mr. Cortese? A. Yes.

Q. With whom else? A. Another witness of ours.

Q. What? A. Another witness, Mr. O'Mera.

Q. Anybody else? A. That is about all.

Q. Did you have that discussion around November 27, 1923, or was it later than that? A. Later.

Q. When was it? A. About a month ago.

Q. Where was it? A. At our plant.

Q. Did you ever discuss this matter with counsel for the plaintiff? A. I have.

Q. When was that? A. About three weeks ago.

Q. Did you also discuss with counsel for the plaintiff about three weeks ago the various testimony which you gave on direct examination yesterday? A. Yes.

Q. The question of the watching? A. Yes.

Q. Now, Mr. Lundgren, when you wrote to the William J. Burns Agency, New York City, on July 3, 1923, and said that Mr. White had on the premises a very ferocious and sensitive bulldog, how old was that bulldog at that time? A. I don't know the exact age.

Q. You don't know the exact age? A. I don't know his age.

Q. Well, it was a full grown bulldog, wasn't it? A. It was matured as far as I could see.

Q. It was not an old dog, so old it was not capable of doing any watching, though, was it? A. No, it was not an old dog.

Q. It was what you said it was, a very ferocious bulldog? A. Normally it was.

Q. By ferocious bulldog you meant that if it came in contact in the night time with persons whom it did not know, why, it would attack them; that is what you meant, didn't you? A. It would under normal conditions.

Q. And when you said it was a sensitive bulldog

you meant it was sensitive as against strangers; isn't that right? A. This bulldog.

Q. No, don't tell me generally, I want to know what you meant by this specific term. Isn't that what you meant? A. Normally, yes.

Q. You didn't say anything about normally in your letter, did you? A. I don't recall.

Q. Well, I will show you the letter and see whether that refreshes your recollection. A. Yes.

Q. You didn't say anything about normally in your letter, did you? A. No, I did not.

Q. Now this merchandise it is claimed, is it not, was taken from the finishing room; is that correct? A. A basement of the finishing room.

Q. Well, is that a part of the finishing plant, the basement? A. Yes.

Q. Is that correct? A. It is.

Q. What part of the premises is the finishing plant situated in? A. In the main building, facing East 33rd Street.

Q. That is the same building in which you have your office? A. Yes, sir.

Q. Now how many stories was that same building, three? A. Two stories and basement.

Q. Now was the basement below the ground, below the level of the outside ground, or was it on a level with it? A. In front it was below.

Q. How much below? A. Possibly six feet.

Q. And the back, it was on a level with the ground? A. The back, there was a slight difference between the level of the ground and the floor.

Q. You mean the floor? A. The floor was lower.

Q. Was lower. Now were you on the first floor above this room, or the second ffoor above this room,

from which you claim this merchandise was taken? A. The first floor to one side, northerly.

Q. What was the occasion for you going into the finishing room at various times? A. To confer with the various people.

Q. To confer with whom? A. At times with Mr. Cortese.

Q. What position did he occupy with Cramer & King? A. Mr. Cortese was the boss finisher.

Q. You would go down when customers wanted to know why they had not received their merchandise to find out from him what was the delay, or when the merchandise would be finished; is that correct? A. No, sir.

Q. What was the purpose of your discussion with him? A. Particularly in an accident case, compensation cases.

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

Q. Did you have your discussion with him in the finishing room, or would you ask him to come up to your office? A. Both.

Q. That did not occur every day, did it? A. No.

Q. Now that is the only reason that you would go down to the finishing room, would be on some occasions you wanted to discuss with him compenation cases; is that correct? A. Mainly, yes.

Q. Well, was there anything else that was not so main? A. I went down on the morning of July 3rd.

Q. I am talking about before July 3rd A. I cannot recall any particular incident, any particular reason why I spoke to Mr. Cortese.

Q. Now which entrance did you use to get into

your office, coming from the outside of the plant? A. The front door on 33rd Street.

Q. Did that lead directly into the basement or the first floor where the finishing room was? A. No, but to a building immediately adjacent to the finishing room.

Q. You would not go through the building of the finishing room at all until you got up one flight of stairs; is that right? A. No; the finishing room is immediately adjacent to the room where the office is situated.

Q. Did you go through the finishing room at all to go to your office? A. No, sir.

Q. Either going to your office or leaving at night-time; isn't that correct? A. It is correct.

Q. Now there was a gate, was there, in on the 33rd Street side leading into the grounds before you got into the buildings?

Mr. Rosenkrans—As of July 2nd and 3rd, 1923?

Q. Well, was there any change in it for some time before that time, in that gate, in view of counsel's suggestion? A. There is no gate that would be used by myself on the 33rd Street side.

Q. Well, is there a gate that would be used by the employees? A. Not upon leaving and entering the plant for work.

Q. Well, what would they use that gate for? A. That was the gate that was open in the daytime to allow the wagons and trucks which were cleaning the yards to enter and exit.

Q. How far away was that from the 33rd Street

building, this finishing plant? A. It was at the northerly end.

Q. On 33rd Street? A. On 33rd Street.

Q. About how far away from the plant, would you say, offhand; not exactly, approximately so, some idea of it? A. It was attached to the plant on the southern side of the gate.

Q. Well, it is right adjacent to it? A. Exactly.

Q. Is that correct? A. Exactly.

Q. So the employees entered either through the front door or this rear gate that I have been talking about; isn't that correct? A. Not the gate we have been talking about, no, sir.

Q. Let me show you in your statement of July 11, 1923, the words: "The employees enter either through the front door or the rear gate." Didn't you say that? A. I did say that.

Q. Wasn't that the rear gate that you have been talking about? A. No, sir; you have been talking about the gate facing 33rd Street.

Q. Which is this rear gate that you are talking about, and you talked about in your statement? A. It is a gate situated on the Tenth Avenue side.

Q. Tenth Avenue side. How far away is that from 33rd Street? Does it run at right angles to 33rd Street? A. Tenth Avenue does.

Q. How far away was that gate from the finishing plant? A. Approximately 150 feet.

Q. Now when that gate was closed from the inside there was a wooden bar put across on the inside, resting to hasps; is that right, two iron hasps? A. No, sir.

Q. How then? A. It was padlocked.

Q. What is that? A. It was padlocked.

Mr. Rosenkrans—This is of July 2nd and 3rd?

Mr. Prince—Yes, 1923.

Q. Now there was no wooden bar on it at all; is that correct? A. It was a sliding gate with a padlock.

Q. No wooden bar on it at all? A. The gate was composed of bars.

Q. Was there a wooden bar on the inside of it? A. No, sir.

Q. All right; we will come back to that later. Do you remember in your statement of July 7, 1923, you said, "The hours of operation are from 7:20 A. M."—.

Mr. Rosenkrans—July 11th. You said the 7th.

Q. "The hours of operation are from 7:20 A. M. to 12:00 Noon, and 12:30 P. M. to 4:30 P. M." That is what you said, didn't you? A. I did.

Q. Now at the time you made this statement somebody came from the National Surety Company to find out what the facts were; isn't that correct? A. I believe so.

Q. Was that gentleman taken into the office of Cramer & King? A. He was.

Q. And various of the persons who knew about this matter were brought up there and told to tell him fully what they knew about the matter; isn't that correct? A. Correct.

Q. And the persons that were told that included you? A. Right.

Q. Now these statements were typewritten in

the premises of Cramer & King on their letterheads, isn't that correct? A. They were.

Q. And a copy of them was retained by Cramer & King; isn't that correct? A. Correct.

Q. And you saw a copy of your statement which you made on July 11, 1923, before you went upon the witness stand yesterday; isn't that correct? A. I did.

Q. When was that? A. Yesterday morning.

Q. Yesterday morning; where was that? A. At counsel's office.

Q. So that when I asked you yesterday afternoon whether you signed this statement and whether those were your initials on the first and second pages, why did you hesitate about it, as long as you had seen a copy of that statement yesterday morning at counsel's office? A. I knew I signed the last page, but I don't recall initialing the first and second page.

Q. You read copies of the first and second pages yesterday morning, did you not? A. I did, partially.

Q. Partially. Did you read the statement on the first page: "The hours of operation are from 7:20 A. M. to 12 Noon, and 12:30 to 4:30 P. M."? A. I did.

Q. You also said this in your statement of July 11th, did you not: "The time of quitting varies from 4:30 to 6:00 or 6:30 P. M., according to the amount or kind of work to be completed before leaving, that is, certain departments may have one or more men working after the majority have gone for the day"? A. Yes.

Q. Now that is what you meant yesterday on your direct examination when you said the quitting

time varied; is that what you meant? A. I did.

Q. In other words, when the plant was very busy and business was very flourishing in your line, sometimes it was necessary for one or two or three men to stay there to finish a particular job; isn't that right? A. Perhaps more.

Q. Perhaps a few more; is that correct? A. Right.

Q. But the majority of people would leave and the quitting time was 4:30; is that correct? A. The whistle blew at 4:30.

Q. That was quitting time, wasn't it; that is what the whistle blows for? A. For certain people.

Q. Are there any special people to whom that related? A. Many of the employees went home at 4:30.

Q. The majority of them went home; isn't that so? A. Depends on the conditions.

Q. Did you operate any machinery in the mills? A. Did I?

Q. No, no; I mean Cramer & King, of which you are the secretary?

Mr. Rosenkrans—When? I object to that question.

Mr. Prince—July 2nd, and for some months prior thereto; the months selected by counsel for the plaintiff, particularly April, May, June and up to July 3rd?

A. The operation at 4:30?

Q. No, no; up to 4:30. A. Machines were operated, yes.

Q. At 4:30 did the machines quit and stop working? A. Not at all times.

Q. What machines were kept working after 4:30? A. Depending on the line of work that was running.

Q. What? Tell me. That is very general. A. Boil-off machines, dye-jiggers, hydro-extractors.

Q. Yes. A. And the boilers.

Q. Boilers. You mean boilers? A. Steam engines.

Q. The boilers that get up the power? A. To retain the power.

Q. Then the boilers would be—they would let the heat go down after that time until the following morning; is that correct? A. Not after 4:30; after the work was completed for the day.

Q. Yes. On July 2, 1923, was there any operations after 4:30? A. I can't recall.

Q. Well, that was the day before this unusual occurrence. Doesn't that refresh your recollection at all as to the time work quit on that day? A. I have no direct knowledge on the subject.

Q. What do you mean by you have no direct knowledge on the subject? A. I don't know whether they did or not.

Q. What time did you leave on July 2nd? A. Between 4:30 and 5:30.

Q. Can you be more specific than that? A. I don't recall just what time I left; I had no occasion to know.

Q. This was an evening before this unusual occurrence; didn't that impress itself on your mind the next day? A. I didn't think it had any bearing on it.

Q. You only remembered the things that you thought had bearing on the question; is that right? A. Yes.

Q. Now were you down to see Mr. Cortese in the finishing room on July 2nd at any time? A. Not as far as I know.

Q. You wouldn't say you were not? A. As far as I recall I was not.

Q. Your best answer is you were not? That is your best recollection, isn't it? A. I don't recall whether I was or not.

Q. Were you in the finishing room at all on July 2nd? A. I don't recall.

Q. Will you say that you were? A. I don't know.

Q. Were you outside of the finishing room on July 2nd, on the outside of the building? A. I don't think so.

Q. Did you examine this window which you have described from the out or the inside of the finishing room on July 2, 1923? A. I did not.

Q. Well, when before July 2nd did you examine that window either from the out or the inside? A. I have passed through the yard, the rear —.

Q. When? A. I can't say specifically.

Q. Well, about how long before? A. I don't know.

Q. May have been two months as far as your recollection goes; is that correct? A. It may have been.

Q. Well, when you passed through the yard did you specifically walk over to that window and examine it? A. Not necessarily.

Q. Well, Mr. Lundgren, practically did you look at it at all? A. I have seen the window.

Q. Well, I mean did you look at it carefully at all? A. No, sir.

Q. You did like any ordinary person would have

done, you walked through the yard and you remembered there was windows there, and that is all you remember; isn't that so? A. I did.

Q. Now do you keep a payroll book? A. We do.

Q. Have you got it in court? A. We have.

Q. Will you please get it?

(Witness procures the book.)

Q. Now prior to July 3, 1923, and on that day, looking at your payroll book, tell me whether or not Mr. Fenmore was not listed as a night fireman? Look at it, please. A. Prior to July 3rd?

Q. On July 3rd and prior thereto for a month or so? A. G. Fenmore's name is listed here.

Q. As what? As night fireman; isn't that correct? A. It does not state.

Q. I call your attention to your statement of July 11, 1923—please look at it: "Mr. White is classed on our payroll book as night watchman, while Mr. Fenmore is listed as night fireman." Didn't you state that on July 11, 1923? A. He is listed —.

Q. No, didn't you state that? A. I did.

Q. Well, you meant that when you said that, too, did you not? You meant everything you said in this statement, did you not, at the time? A. I did.

Mr. Prince—May I have that photograph, please, marked for identification?

Mr. Rosenkrans—Mr. Westerhoff has it, but he is not here.

Mr. Prince—All right; I will take it up when he comes back.

The Court—What was the date of that statement?

Mr. Prince—July 11, 1923.

Q. When did you first learn that the policy of insurance required that there be two watchmen—you yourself learned that fact? Was it about three weeks ago? A. No, sir; it was prior.

Q. What was that? A. It was prior to that.

Q. How long before that? A. The writing of the policy.

Q. What is that? A. At the time of the writing of the policy.

Q. Then you knew it on July 11, 1923, when you made this signed statement; isn't that correct? A. I did.

Q. And you knew on July 11, 1923, that under the terms of the policy the insurance company had the right to make the investigation which they did and to ask various questions and conduct examinations under oath if they desired; isn't that correct? A. I knew it had according to the terms of the policy.

Q. That is what I said. A. Permission to examine the employees.

Q. Yes. Now you were asked, were you not, to get the time cards —. I withdraw that for a moment. By the way, Mr. Lundgren, isn't it a fact that you yourself typewrote the statement which you signed and which the various other employees signed on July 11, 1923? A. I believe I did.

Q. You believe you did. By that you mean that you did? A. I think so.

Q. Well, what is your best recollection on that? A. That I did.

Q. Do you also know that the insurance company insisted upon having these alarm boxes, these watchmen's boxes, inside of the building? A. I knew that the insurance company required us to send to a signal station.

Q. You know that you got a 45 per cent reduction in the premium as the result of these boxes? A. I don't recall the percentage.

Q. But there was a reduction as a result? A. There was a reduction.

Q. A material reduction; correct? A. I don't recall the percentage.

Q. Now you stated yesterday you attended to the insurance. Wasn't it important as one of your duties as secretary of this company to save as much as you possibly could for Cramer & King? A. Yes.

Q. Didn't you make it your business to find out what reduction they were getting on the premium? A. It was.

Q. Doesn't that refresh your recollection that it was a 45 per cent reduction? A. No, sir.

Q. You have no idea what it was? A. I know there was a reduction; how much I cannot say.

Q. Now the insurance company asked you to get from the Paterson Burglar Alarm & Messenger Company, which was the company where the time clocks were punched and registered, a list of the boxes and the numbers and the time they were punched during the night of July 2nd until the morning of July 3rd; isn't that correct? A. They did.

Q. And you got these cards from that company and they were sent to Cramer & King and by you forwarded to this defendant insurance company; isn't that correct? A. Yes.

Q. You said in your statement of July 11, 1923,

did you not—look at it, please—"According to the Paterson Burglar Alarm & Messenger Company's cards showing returns of July 2nd to July 3rd, reveals the last turn at 5:02 A. M. at Box No. 332 and in room containing Box No. 124 at 4:59 A. M. It has always been the practice to make the last rounds at 5:00 A. M." Is that correct? A. It is.

Q. That is what the cards show, do they not? A. I believe they do.

Q. Well, look at them, so we are sure of it.

10

The Court—Which box was that at 5:02?

Mr. Prince—332, at 5:02 A. M. Box 124 at 4:59 A. M. It has always been the practice to make the last round at 5:00 A. M.

A. True.

Mr. Prince—I offer these in evidence.

Mr. Rosenkrans—It is premature for you

20 to offer anything in evidence, but there is no objection.

Mr. Prince—Have you any objection?

Mr. Rosenkrans—No. One moment.

Mr. Prince—They may be duplicates.

Mr. Rosenkrans—They seem to be triplicates.

Mr. Prince—They may be, but there is no difference. They were all furnished you.

Mr. Rosenkrans—All right.

30 (Cards marked Exhibits D-3, 4 and 5.)

Q. Did you also say in your statement of July 11, 1923: "Occasionally the foreman of the various de-

partments arrive at about 7:00 A. M. to prepare work by 7:20 A. M."? A. I did.

Q. Did you also say in your statement of July 11, 1923: "Gabriel Both arrives at the plant at 6:00 A. M., relieving Fenmore. At arrival he does not make any rounds, but attends to the steam raising and boiler room, the place being unoccupied with these exceptions from 6:00 A. M. to 7:20 A. M." I do not want you to try your memory too much. Look at the statement.

Mr. Rosenkrans—It does not say that, that statement, and you can see it does not say so.

The Court—He is asking the witness.

Mr. Prince—If I have incorrectly read it of course I will be glad to correct it. I will read it again as it is written and as I read it before: "Gabriel Both arrives at the plant at 6:00 A. M., relieving Fenmore. At his arrival he does not make any rounds but attends the steam raising and the boiler room. The place being unoccupied with these exceptions from 6:00 A. M. to 7:20 A. M."

Mr. Rosenkrans—That does not finish the sentence.

Mr. Prince—It does finish the sentence, sir. What have I omitted?

Mr. Rosenkrans—On July 3rd.

Mr. Prince—No, sir. That relates to the next line. "I arrived at the plant at 8:00 A. M. on July 3rd." Doesn't it?

Mr. Rosenkrans—It does not here on my copy.

Mr. Prince—You should not charge me with misreading things.

The Court—Proceed.

Q. Mr. Witness, this "On July 3rd," which statement you typewrote, does that relate to the next line or to the paragraph I read? A. I believe that relates to the lower line.

Q. To the next line; is that correct? A. Yes.

Q. I correctly read that paragraph as you gave it on July 11, 1923; is that correct? A. Yes.

Q. You did say that in your statement on July 11, 1923, did you not? A. I did.

Q. Now on July 3rd, after you received word from Cortese about this unusual happening, you reread the policy, isn't that correct, the policy of insurance of this company? A. I did.

Q. You also said in that statement signed on July 11, 1923, "Examination of the door and windows in the lower finishing department did not reveal any signs of being forced." Did you not say that? A. I did.

Q. Did you say a word in this statement of finding staples from that mesh screen lying on the window sill? A. I did.

Q. Show it to me. A. "But the wire mesh protecting one of the windows had been freshly pulled from its fastenings as were evidenced by the newly drawn staples on the window sill."

Q. Did you say anything about pieces of wood being found on the staples? A. I did not.

Q. When did you think of that? Was that three weeks ago? A. It was prior to that time.

Q. How long prior; a week or two before then? A. It was on July 3rd.

Q. Well, then you knew that when the insurance company asked you to tell them all of the facts; is that correct? A. I did.

Q. But there is not a word in your statement about that, is there? A. No, sir.

Q. Is there a word in your statement that you examined the holes in the wood and that you recall that the holes in the window frame or sash were the same diameter as the points of these staples? A. There is nothing.

Q. Is there a word in your statement that you saw paint on the ends of the staples opposite the points and there was no paint on the staples at the points; is there a word in your statement about that? A. It says having freshly been pulled.

Q. Please follow what I say. We have that, and that is in evidence and you read that. Now tell me whether there is anything in the statement about what I have just asked you? A. There is nothing about paint.

Q. Now what time did you go down on July 3, 1923, to the finishing room to make this examination? A. After eight o'clock.

Q. Well, that might have been twelve o'clock. Was it? A. My statement shows what time I went down.

The Court—He is asking you now if you know.

A. Between eight and nine o'clock, as I recall it.

Q. Did you make any other written statement or written memorandum other than this one of July 11, 1923, from July 3rd up to the present time? A. I did.

Q. When was that? A. On July 3rd or 4th or 5th.

Q. For whom did you make that? A. For the National Surety Company's representative.

Q. Was that in writing? A. It was.

Q. Have you got a copy of that? A. You have the copy there.

Q. I have? A. The one about the sensitive bulldog.

Q. Oh, the one about the sensitive bulldog. You mean that is a letter that you wrote to the Burns agency? A. Burns Agency.

Q. That is the only other writing that you made in regard to these occurrences, isn't it? A. As far as I recall.

Q. And the rest of the testimony which you gave yesterday was from your recollection of the matter; is that correct? A. It was.

Q. How many times have you talked this matter over in the last few weeks with either Cramer & King or their representatives and their counsel? A. Possibly three of four times.

Q. At that time or any of these times were the questions discussed of the very material propositions in regard to visible marks of forcible entry and the watchmen and the time clocks? A. It was.

Q. Now you say you got down to your finishing room on July 3, 1923, between eight and nine o'clock; is that correct? A. It is.

Q. Did you go down immediately when you were notified or did you attend to some of your duties first? A. I went down immediately.

Q. Well, now, was it nearer to half-past eight or nine o'clock that you went down stairs? A. I don't recall.

Q. No idea? A. I can't recall the exact time.

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

Q. You don't remember the time quite so well as you do that you found little pieces of wood sticking to these staples; is that correct? Don't remember that so well, the time you went down stairs? A. Not the exact time.

Q. Well, I will give you a half-hour's leeway.

Mr. Rosenkrans—Is that a question.

Q. You understand me, Mr. Witness, do you not? A. I don't get that last question.

Q. I am giving you a half-hour's leeway to figure this out. Can you be more specific as to the exact time? A. As far as I can recall, it was near 8:30.

Q. Near 8:30. Why, isn't it a fact that Mr. Cortese did not notify you about this until 9:05? A. I don't recall the exact time.

Q. Well, look at your statement of July 11th and see if that refreshes it. Or was it Mr. Omar Cramer who informed you? A. Mr. Omar Cramer informed me.

Q. At what time? A. 9:05, according to the statement.

Q. Well, you don't say the statement is not correct, do you? A. I do not.

Mr. Prince—May I have that photograph, please, now, that was marked for identification yesterday?

Q. Well, we will see what we can do without it for a moment. Do you remember that photograph

which counsel for the plaintiff showed you yesterday and asked you in words or substance as to whether that was a correct reproduction of this particular window which you had described, do you remember that? And you said it was; is that correct? A. I do.

Q. Now was that a photograph of the outside or the inside of that window? A. The inside.

Q. Well then, what you meant was that that was a correct reproduction of the inside of the window which you had described, and not the outside; is that correct? A. Exactly.

Q. Now were you there when that photograph was taken? A. I was.

Q. Isn't it a fact that that photograph was not taken until November 28, 1923, the day after this second loss was discovered? A. I don't recall the exact date of the photograph.

Q. Well, you notified the company on November 27, 1923. Does that refresh your recollection? A. No, sir.

Q. Well, it was not taken until after this second claim was made; isn't that correct? A. I don't recall whether it was taken before or after.

Q. Was it taken in July, 1923?

Mr. Rosenkrans—Here it is.

Q. This photograph which is marked Plaintiff's Exhibit 2 for Identification. A. I don't remember what month that was taken in, excepting it was taken after the robbery.

Q. Well, will you say that that is the condition in which you found the window on July 3rd, with

one of these panes of glass out? A. That doesn't show one of the panes of glass out.

Q. What does it show here? A. That is a clear glass.

Q. A clear glass? A. Exactly.

Q. And the others are what, opaque? A. Frosted glass.

Q. I see. Is that the condition in which it was on July 3rd when you first looked at it? A. As far as I recall.

Q. Don't you recall this photograph was not taken until November 28, 1923? A. I do not recall.

Q. Who sent for the photographer? Did you? A. I believe so.

Q. Who was it? A. Mr. Heinrichs.

Q. Lives in this city? A. He has business in this city.

Q. Did you receive a bill from him? A. We did.

Q. Have you got it here? A. I have not.

Mr. Prince—Going to produce him?

Mr. Rosenkrans—I don't know.

Q. Well, now, will you say that this one window which appears on this photograph is the window which you described yesterday, or is that the window on the floor above? A. That is the window which I described yesterday.

Q. Well, were not some changes or repairs or something done to this window on July 3rd, or shortly thereafter, 1923? A. There were some repairs.

Q. Isn't it a fact that before any representatives of the National Surety Company arrived at the

premises that it was claimed by Cramer & King that the screenwork on the outside was repaired and it was re-nailed to the window frame and the lath put on it, and that Cramer & King called one of its carpenters and took a claw-hammer and ripped off the molding again and tore the screen away to show how it was claimed the screen was found on the morning of July 3, 1923? A. No.

Q. Isn't that so? A. No.

Q. The screen was never ripped off?

Mr. Rosenkrans—I object.

Q. Is that what you say? A. The screen has been ripped off.

Q. When? A. A few days after July 3rd.

Q. What day? A. It was the day when the National Surety Company's photographer —.

Q. What day was it? A. I don't recall the exact date.

Q. Was that done under your supervision? A. No.

Q. Well, who did it, do you recall; what one of your employees? A. Our carpenter, William Clark.

Q. Is he any longer with the company? A. He is not.

Q. He took a clawhammer, did he not, what is known as a clawhammer, and ripped off the molding; is that right? A. I don't know how he removed it.

Q. You were not there at all? A. No, sir.

Q. Well, was Clark there on the 3rd of July, to your knowledge, and did he make any examination of the window as it was found? A. I believe he did.

Q. Did you see him do it? A. I did not.

Q. What you just stated now when you say you believe, it is what somebody told you; is that correct? A. It is true.

Q. Now when you got down stairs on July 3rd to look at that window, who had been there before you or who was there when you arrived, let us put it that way—Mr. Omar Cramer? A. Mr. Michael Cortese.

Q. Yes. A. And Mr. Cramer was down there; I don't recall whether he came down with me or preceded me or followed me, but he was down there at the same time I was.

Q. Who, Mr. Cortese? A. Mr. Omar Cramer.

Q. Mr. Cortese was there before you. His business was in that room? A. His business was in that room.

Q. Is that correct? A. Right.

Q. You wrote out a statement for Mr. Cortese on July 11, 1923, did you not? A. I did.

Q. This is it, is it not? A. It is.

Q. By the way, was Cortese the first one to discover this?

Mr. Rosenkrans—If you know, of course. If the witness knows.

Mr. Prince—May I have counsel for the plaintiff stopped from making these suggestions or interruptions? I think if he has an objection to make to the Court that is one thing; but by saying these things —.

The Court—Mr. Rosenkrans, make your suggestions to the Court, so there will be no misunderstanding.

Q. Do you understand now? A. So I was told.

Q. Now, Mr. Cortese on July 11, 1923, said it was then noticed that the screen had been pulled aside, but closer examination, however, revealed —.

(Objected to as improper. Objection sustained. Question withdrawn.)

Q. At the time Mr. Cortese made this statement, was that on the same day that you made your statement? A. Yes.

Q. In whose presence did Mr. Cortese tell you the facts upon which you wrote this statement,—Mr. Omar Cramer?

Mr. Rosenkrans—I object to that, because that presupposes what has not been shown. He says he did the typewriting. He doesn't say he formulated the statement.

The Court—Suppose you ask him about that.

Mr. Prince—All right.

Q. The statement which you wrote out for Mr. Cortese, did he tell you those facts?

Mr. Rosenkrans—I object to that question for the identical reason I object to the last preceding question. It presupposes what this witness has not said. He said he did the typewriting.

The Court—I think you better ask him that.

Q. Who told you what to write in this statement

of Mr. Cortese of July 11, 1923? A. It was a representative of the insurance company at our plant, examining Mr. Cortese.

Q. What you wrote was the examination; is that correct? A. Upon answering the questions the statement was formulated by this representative.

Q. And you wrote them down? A. I did.

Q. Then after that was written out Mr. Cortese read over and he signed it; is that correct? A. That is correct.

Q. Now who was present at the time that the statement was prepared besides you and Mr. Cortese and the representative of the insurance company? Mr. Omar Cramer? A. I don't think so.

Q. Who else was present?

Mr. Rosenkrans—I object. I think that when a statement in writing is identified by counsel it should be marked for identification.

Mr. Prince—No objection to marking it for identification, if you want it marked.

Mr. Rosenkrans—And that preceding statement.

Mr. Prince—As the plaintiff's exhibit for identification.

Mr. Rosenkrans—No, not as plaintiff's exhibit.

The Court—It cannot be marked as plaintiff's exhibit. You are asking about it and you want it identified, it may be marked for identification.

Mr. Prince—I except to your Honor's ruling.

The Court—Mark it for identification.

(Paper marked D-6 for identification.)

Mr. Prince—Counsel for the plaintiff also wants this other one marked, the Lundgren statement of three pages.

The Court—Mark it for identification for the defendant.

(Paper marked D-7 for identification, consisting of three pages.)

Q. You were secretary of the Cramer & King Company at the time this statement was made; isn't that correct? A. It is.

Q. Did not Mr. Cortese tell you on July 11, 1923, before you wrote out this statement, that —?

Mr. Rosenkrans—I object to it in advance, if the Court please.

The Court—Finish the question.

Q. —"It was then noticed that the screen had been pulled aside. Closer examination, however, revealed that the dust had not been brushed or scraped from the window sill. My opinion is that it would have been rarely possible for a man to enter without removing some of the dust from the ledge. I did not notice any marks on the window that would indicate force on the window."?

Mr. Rosenkrans—I object on the ground that it is not cross-examination. Of course this witness is not answerable for statements that somebody else makes.

Mr. Prince—May I ask another question, then, before your Honor rules on this?

Q. This statement of Mr. Cortese, after you type-

wrote it, you delivered it to a representative of the defendant insurance company; isn't that correct? A. Mr. Cortese handed it after signing it, to the representative, yes.

Q. In your presence? A. He did.

Q. And you made no objection to it? A. No.

Mr. Prince—Now, your Honor, I press the question.

The Court—I am inclined to sustain the objection to that for the present.

Mr. Prince—May I ask one other question, then, your Honor?

Q. When this statement of Cortese was delivered to the insurance company in the manner you described, did you intend that to be Cortese's statement of the facts?

Mr. Rosenkrans—I object to it. It does not make any difference what he intended. It is immaterial and incompetent.

The Court—I will permit the question.

Mr. Rosenkrans—There is no foundation for it, if the Court please. The evidence as it stands, is that this statement was obtained, not by this witness as secretary of the company, but by the representative of the defendant company.

The Court—I know, but he is asking him now whether he as secretary of the company intended it to be a statement of the facts delivered to the defendant company as an officer of that company. I permit that question. You may answer.

A. It was represented to be a statement of Mr. Cortese's views in the matter.

Q. And you intended that to be a statement of the facts when you delivered this to the insurance company; isn't that correct?

Mr. Rosenkrans—I object.

The Court—I do not think there is any testimony that he delivered it.

Q. Well, when Cortese gave it to the representative of the insurance company in your presence? A. Cortese gave it to the representative as a statement of his own version of the affair.

Q. Well, did the representative of the insurance company tell you he wanted these statements befor they were taken? A. He did.

Q. And in compliance with that request you permitted Cortese to deliver his statement to the representative of the insurance company; isn't that correct? A. I did.

Q. And when you permitted that and it was delivered in that way to the insurance company you intended that should be Cortese's statement of the facts as he saw them; is that correct? A. I did not contend anything. It was simply Cortese's statement as he saw the thing.

Q. What did you intend when you permitted this delivery to the insurance company, that is was not Cortese's statement of the facts, or was? A. It was submission to the terms of the policy.

Q. Please answer the question; not what you say it was. A. I pretended it was Cortese's statement of the facts as he saw them.

Mr. Prince—Now I press my former question, your Honor.

The Court—There has been nothing new developed from this testimony.

Mr. Prince—I meant this question where I asked your Honor to reserve the objection.

The Court—I do not see that there is anything in the evidence since that, Mr. Prince, which has aided you in any way in your position. I sustain the objection.

Mr. Prince—I respectfully except.

Q. Is Mr. Cortese in court? A. He is.

Mr. Prince—May I ask that he be directed to remain, your Honor?

The Court—I don't know whether I have any authority to do that or not. Doubtless he will be here if they have him here, I suppose. There is a method by which you can retain him.

Mr. Rosenkrans—I will say to counsel that he will be sworn.

Mr. Prince—All right. I will accept that promise. That is all.

Re-Direct Examination by Mr. Rosenkrans:

Q. This screen, Mr. Lundgren, in the window of the basement finishing room next to the door, the outer door, that was twice ripped off, was it? A. It was.

Q. When was it first ripped off? A. The night of July 2nd.

Q. When was it next ripped off? A. Sometime after; I can't recall the exact date.

Q. Well, approximately? A. It was a time when certain photographs were to be made of the window.

Q. Who wanted the photographs made, do you know? A. The National Surety Company.

Q. Do you know why the screen was ripped off the second time? A. To show the condition as it was on a prior occasion.

Q. Now have you any notion how long after July 3rd the screen was ripped off the second time; a week or a month or three months? A. May have been several weeks.

Q. All right. Now, Mr. Lundgren, you said in answer to counsel's question on cross-examination that in your statement of July 11, 1923, you said that the hours of operation begin at 7:20 A. M.

Mr. Prince—Those are not the exact words, however.

Q. "The hours of operation are from 7:20 A. M. to 12 Noon, and 12:30 P. M. to 4:30 P. M." On direct examination yesterday you stated that work began at six A. M. Now which of those two statements is correct, or are they both right?

(Objected to as not proper re-direct examination. Question permitted.)

A. They were both correct.

Q. Would you explain how both are consistent and right? A. In this way. The whistle blows at 7:20 A. M., at 12 Noon, 12:30 P. M. and 4:30 P. M., at which time many of the regular employees come

and go. When I made the statement that operations begin at 6 P. M.—.

The Court—A. M.

A. —Six A. M., I did it with this in view, that we have men who come to work at 6:00 A. M., starting the regular daily operation; these men are necessary be present in order that the rest of the folks can start at 7:20 A. M.

Q. What is the nature of the duties of those men who arrive at 6 A. M.?

Mr. Prince—I object to the nature of the duties, unless the witness knows.

The Court—Yes, unless he knows of his own personal knowledge.

Q. Do you know of your knowledge what these men arriving at the mill at six A. M. do? A. I do.

Mr. Prince—I object to that. The testimony shows he never got there until eight, and when he says of his own personal knowledge, he may mean what somebody else told him.

The Court—He said he was in the office sometimes at 7:30; once as early as 7:00 A. M. I think that is the earliest he has fixed his arrival, as seven o'clock.

Q. When you were at the mill as early as 7:00 A. M., will you say whether or not you ever saw any employees of the mill at work in the mill?

Mr. Prince—I object to that. I think we ought to have some definite time fixed. The policy went into effect in July.

The Court—Yes, I think it ought to be since April.

Q. You say that sometime between April and July, 1923, or some times, you arrived at the mill as early as 7:00 o'clock; is that right? A. Correct.

Q. Now on that occasion or occasions did you see any other employees of Cramer & King at work anywheres about the mill?

Mr. Prince—I object to that. The witness testified on cross examination that he could not recall wether it was before or after April, 1923.

The Court—There is some doubt in my mind. Suppose you ask him first, Mr. Rosenkrans, the earliest he has been at the mill between April and July.

Q. To the best of your recollection after the lapse of two years, nearly two years, can you name the earliest hour that you were at the plaintiff's mill between April 1st and July 3rd, 1923? A. I believe it to be about seven o'clock.

Q. Now on any occasion when you were at the mill during that period of time as early as seven o'clock, did you see any other employees of the mill there? A. I have.

Q. What they were busied about, if anything? A. Saw the men in the boiler house taking care of the boilers; I seen men in the various departments preparing the baths; I have seen Mr. Bush, our

solicitor, looking after orders; I have seen some of the foreman come in preparing the day's work.

Q. All right. On July 3, 1923, not July 11th, the date the statement was made, but on July 3rd were the premises of the plaintiff enclosed by a fence and gate? A. In the rear, yes.

Q. That is on the Tenth Avenue side? A. Yes, for a short space on the Tenth Avenue side.

Q. Now let me understand you. The premises of the plaintiff faced 33rd Street; that is right, isn't it? A. Correct.

Q. It also faced Tenth Avenue? A. Yes.

Q. Now on July 3, 1923, were those premises completely enclosed by fences and gates? A. They were not.

Q. What part was unenclosed at the time? A. The main building on the southerly and westerly sides, also on the easterly side; the dyehouse on the southerly side.

Q. The door leading from the finishing basement to the rear of the yard faces in what direction with reference to the points of the compass? A. Faces west.

Q. Now was the yard in front of that door approachable from 33rd Street or Tenth Avenue without going through a fence or the gate on July 3, 1923?

Mr. Prince—I object to that, whether or not it was approachable. They may have gone over the fence, one way.

The Court—That may be so.

Q. Well, where was the fence that stood there on July 3, 1923; in what part of the rear of the

plaintiff's premises? A. It is west of what is called the greig room, situated about 150 feet west of the main building.

Q. On July 3, 1923, could a man have left the finishing room by this door which you have described and made his way across the rear of the yard on to Tenth Avenue without passing through, over or under any gate or fence?

(Objected to as not proper redirect examination. Question permitted.)

A. There was no fence that a man would have to pass around or through to reach Tenth Avenue.

Q. There is a fence there now? A. There is now.

Q. When was it put up? A. About a year ago.

Mr. Prince—I think I ought to withdraw my former objection.

Q. In your own statement of July 11, 1923, you said, "We have two men in the custody of the plant during the night, Herbert White, 1 North Court Street, Paterson, who receives the classification of watchman, and Garrett Fenmore, who assumes the duty of watchman and night fireman." Will you say whether or not that statement was correct? A. It is.

Q. Now you said that Garrett Fenmore was listed on your pay roll book as night fireman. What did you mean by that?

(Objected to. Question withdrawn.)

Q. In point of fact, was Mr. Fenmore listed on your payroll book as night fireman? A. His name —.

Q. Was that correct or not? A. He was.

Q. And can you show it? A. I can.

Q. Where is it? A. It is immediately between the other two firemen. That is why I stated —.

Mr. Prince—I object to his explanation.

Q. All right. Now do you say in your statement of July 11th that Garrett Fenmore is listed on your payroll book as night fireman, simply because his name appears on the payroll between two of the firemen, or is there some other reason for that statement?

(Objected to as leading. Question withdrawn.)

Q. Will you show us where on your books Garrett Fenmore is listed as night fireman? Turn to it. A. Right there.

Q. The pages are not numbered? A. No; it is July 7th, the payroll closing July 7th.

Q. All right. Now you point to a payroll closing July 7, 1923? A. Correct.

Q. And the second name on that page is G. Fenmore? A. Correct.

Q. Now is there in or about that name the word "night fireman"? Does that appear there any where? A. No, sir.

Q. Well, then, why do you say that he is listed upon this page as the night fireman?

Mr. Prince—I do not object.

A. The name is listed with the other firemen.

Q. That is what you mean when you say—? A. And that was part of his duties.

Q. Yes; and that is what you meant in your statement of July 11th when you said —?

Mr. Prince——I object to that interpretation by counsel as to what he meant. He is giving us the facts.

The Court—Sustain the objection. That was Fenmore you were talking about?

The Witness—It was, yes.

Q. Now in your statement of July 11, 1923, you say that you stated, "Gabriel Both arrived at the plant at six A. M., relieving Fenmore; at his arrival he does not make any rounds but attends to the steam raising and boiler room, the place being unoccupied with those exceptions from six A. M. to 7:20 A. M." Is that statement true? A. No.

Mr. Rosenkrans—Now, if the Court please, I have some questions that would have been properly asked yesterday in the continuation of this man's direct examination, but they were overlooked, and I want to ask them now.

Mr. Prince—I am not going to object to that, if your Honor please.

Q. Do you know whether any steps were taken on the morning of July 3, 1923, to notify the defendant of this loss?

Mr. Prince—We concede we had notice of the loss. You need not waste time about it.

Mr. Rosenkrans—As required by the policy?

Mr. Prince—I don't care what the pleadings are.

Mr. Rosenkrans—As required by the terms of the policy?

Mr. Prince—As required by the terms of the policy, yes. Now by reason of that concession I do not expect you to raise any question when we sum up to the jury. I am trying to simplify your proof for you.

Mr. Rosenkrans—Yes. You assisted me greatly in that respect. Now I ask the defendant to produce the original proofs of loss.

Mr. Prince—They are produced by the defendant. If you want to offer them in evidence I have no objection, if you limit your offer to showing it is offered for the purpose of showing compliance with the terms and conditions of the policy, and not as to any proof of its contents.

The Court—Well, is there any dispute as to the proof having been filed?

Mr. Prince—None whatsoever, but the offer I think should be limited. In other words, it is a self-serving declaration, and as long as it is offered and limited to showing compliance with the terms and conditions of the policy I have no objection.

The Court—That is the only force it will have. It will be admitted for that purpose only.

(Papers marked Exhibit P-3.)

Q. Mr. Lundgren, do you know whether or not the local police were notified of your loss on the morning of July 3, 1923? A. They were.

Q. Who notified them? A. I did.

Q. Do you know whether any investigation was made by the Police Department? A. There was.

Q. By whom?

Mr. Prince—Does he know this of his own knowledge, or what somebody told him?

The Court—He is asking him whether he knew.

A. I saw two representatives of the Paterson police force.

Q. Do you know them by name? A. I know one of them by name, Mr. Lord. His companion, I do not know his name.

Mr. Rosenkrans—That is all for the present. I will have to recall this witness as a bookkeeper presently.

Re-Cross Examination by Mr. Prince:

Q. Mr. Lundgren, on direct examination the counsel for the plaintiff said to you, "To your knowlegde, when were these screens on this window in question first ripped off?" And your answer was, "The night of July 2, 1923." Was it ripped off that night to your personal knowledge? A. No, it was not.

Q. You did not see it at all on the 2nd of July, did you? A. I don't believe I did.

Q. Now you stated that on the morning of July

3rd you found the window sash standing on the ledge of the window. Do you remember that? Let us get a clear understanding of that. That is the substance of what you said, isn't it? A. Yes.

Q. Now let us see what kind of a window this was. It was divided into a number of compartments in which there were panes of glass; is that correct? A. Yes.

Q. About how many panes? A. Eight or nine, I don't know exacty.

Q. It was a window that extended the full length of the opening in the wall; isn't that correct? A. No, sir.

Q. Were there two windows, a top and a bottom window? A. There was one large window and a transom.

Q. A transom. The transom was closed when you saw it on the 3rd of July, wasn't is? A. It was.

Q. So the window itself was just one window sash; is that correct? A. Correct.

Q. Now to take that out, what did you do; the whole thing came out, or how did you get it out? Did it operate on hinges at the top or not? A. No; it was lifted out.

Q. Lifted out; is that correct? A. Correct.

Q. Now when you saw it on the morning of July 3rd, the top of this window sash, was that in place?

Mr. Rosenkrans—The top of the sash? What is that, the transom?

Mr. Prince—No, the top of the window.

Q. Let me take a piece of paper so we can illustrate.

The Court—You have the photograph of the window itself.

Mr. Prince—That was taken much later, your Honor.

Q. Take this piece of paper which I hold in my hand; we will assume that this is the window itself. By the window I do not mean the panes of glass, but the sash. You understand what I mean? A. Yes.

Q. Then it is divided into eight or nine different apartments which are glass? A. Yes.

Q. Is that correct? A. Yes.

Q. Now when it is closed—maybe I can illustrate with this. Now when it is closed it fits tightly up, like I have it, against this brief case; is that correct? A. True.

Q. When it is all in place? A. Exactly.

Q. Now when you want to take it out you just remove the whole window sash; is that correct? A. Yes.

Q. Now when you got there in the morning, taking the top of the window frame indicated by the top of this piece of paper, where was that; all placed where it should be when the window was closed? A. As I recall, it was setting out on the window sill.

Q. How wide was this window sill? A. About 14 inches.

Q. What was the space between the inside of the bottom of the window and the sash where it was when the window was completely closed? A. I couldn't say how many inches.

Q. Three or four inches? A. Possibly six inches; possibly three. It was standing out, however, from the frame.

Q. Standing out. When you say the window sill was 14 inches in width, you mean from the inside of the window sill to the outside of the window sill, which is on the outside of the building? A. No, I do not. I mean the inside.

Q. Let us look at this window here in the courtroom. Tell us what you call the window sill, as I indicate it. A. Yes.

Q. That runs on the outside of the window proper, doesn't it, the window sill? A. Yes; that also runs out.

Q. The window in your place did the same thing? A. Yes, sir.

Q. That is the 14 inches you are talking about? A. No, sir.

Q. You mean 14 inches on the inside? A. Yes.

Q. This window sill and this window was 28 inches? You don't mean that? A. I don't say it was 14 outside; it was 14 inches inside.

Q. You mean the window sill on the inside was wider than the window sill on the outside? A. Yes.

Q. This particular window? A. Yes.

Q. Did you ever measure it? A. No.

Q. Did you ever look at it to determine the number of inches on that particular day? A. No, sir.

Q. Now the bottom of the window stood out from the place where it ordinarily is when the window is tightly closed, from three to six inches, is that correct? A. Possibly that, yes.

Q. And the top; where was that, in place, right up against the frame or an inch away from the

frame? A. As I recall, the window stood on the ledge.

Q. You told me the bottom of it; I am talking about the top. You have told me three or four times the window stood on the ledge. We have got the bottom of it. It is from three to six inches. Let us go to the top. Where was the top of that window? A. It was leaning against the window frame.

Q. Leaning against the window frame; is that correct? A. Yes.

Q. Now July 3, 1923, was that a rainy morning? A. No, it was not.

Q. Wasn't raining at all that morning? A. I don't believe so.

Q. Will you look at this paper and see whether that refreshes your recollection at all? A. (Examining paper.) No, sir.

Q. You can not say any different than you have just said? Your recollection is it did not rain? A. As I recall, it did not rain.

Q. Now you say the whistle blows at seven o'clock in the morning; is that correct? A. No, sir.

Mr. Rosenkrans—He did not say so.

Mr. Prince—I think he just told me so. I seem to have two or three other witnesses.

Q. Now the work that was done in the plant between six and seven o'clock in the morning, Mr. Lundgren, isn't it a fact that all that was done between those hours, that some of the people would come there and fire up the boilers in order to get up power, and get things ready generally, so that when the help came at 7:20 o'clock in the morning things

were prepared for them, so they could do the work that Cramer & King were engaged in; isn't that so? A. Not generally—not only generally, but specifically.

Q. I am correct; is that right? A. The —.

Q. No, no. Am I right, that is the question.

Q. What was the question?

(Question repeated.)

Q. You said in answer to the question —.

The Court—I will permit the question.

Mr. Prince—I withdraw the question, because I have got the answer. That is all.

Q. Just one question. In your statement of July 11, 1923, you said: "Gabriel Both arrives at the plant at six A. M., relieving Fenmore; at his arrival he doesn't make any rounds, but attends to the steam raising and boiler room, the place being unoccupied with this exception from 6:00 A. M. to 7:20 A. M." Counsel for the plaintiff asked you on redirect examination whether or not that statement was true. Did I understand you to say that the statement which you made in that regard was not true? A. Not entirely. That statement —.

The Court—That is all.

HERBERT WHITE, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Mr. White, where do you live? A. At 48 North 3rd Street, Paterson.

Q. How long have you lived in Paterson? A. About 37 years.

Q. Do you know Cramer & King? A. Yes, sir.

Q. Do you do anything for them? A. Yes, sir.

Q. What? A. Just now, you mean? Watchman now.

Q. What? A. Night watchman.

Q. How long have you been employed by Cramer & King? A. About 30 years.

Q. How long as night watchman by them? A. About 7 years.

Q. Between the 9th of April and the 3rd of July, 1923, did you do any work for them other than that of night watchman? A. No, sir.

Q. During that period did they have any night watchmen besides you? A. No, sir.

Mr. Prince—I object to this witness characterizing the work of somebody else. That is one of the material questions in this case, your Honor.

The Court—Well, I suppose you might tell what they had, if they had anybody else, and what he did, and what the position was may be a jury question.

Q. At what time did you begin to work during this period? A. Six o'clock A. M.

Q. Six o'clock? A. Or P. M.

Q. P. M.? A. Yes.

Q. When did you quit work? A. Six o'clock A. M.

Q. From six o'clock P. M. to six o'clock A. M. during this period, did you see any other employees upon the premises? A. Yes, sir.

Q. Who? A. Firemen.

Q. Who were they, do you know them by name? A. Gabriel Both and —.

Q. Do you know what part —?

Mr. Prince—I submit he be permitted to answer the question. Who else?

Mr. Rosenkrans—Well, I am getting at this in the way I want to. I can control this.

The Court—Proceed.

A. Joe, I don't know his other name—little Joe. He is here.

Mr. Prince—Indicating Cortese.

Q. Who else? A. That is all.

Q. —did you see during the night time between April 1st and July 3, 1923? A. I seen him in the morning.

Q. I am talking of who you saw there during the night time? A. Besides them firemens?

Q. Yes, besides anybody. Besides the firemen whom you have named, who was it, Mr. White, that you saw? A. I seen the whiz man, Paul. I think he is the man works in boil-off house.

Q. What time did you see him? A. At six o'clock in the morning.

Q. Now during the night hours, did anybody else work with you? A. The night fireman.

Q. What was his name? A. Fenmore.

Q. Is he living or dead, if you know? A. He is dead.

Q. Did he work with you? A. Yes.

Q. For how long? A. For about near two years, I think.

Q. During this period between the 9th of April and ending the 3rd of July, 1923? A. Yes.

Q. He worked with you, did he? A. Yes.

Q. What did he do during that period; what work did he do, if you know?

Mr. Prince—I object, unless the proper foundation is laid. Let us have how he knows.

The Court—What did you see him do?

A. Fireman.

Q. What else? A. Firing the furnace.

Q. What else? A. He made the round also in the back, like watchman.

Mr. Prince—I object and move to strike out "like a watchman."

The Court—Strike it out.

Q. When he moved around in the back, what did he do? A. Punched the clock.

Mr. Prince—I object and move to strike out, unless it is shown that this witness saw him do that. It is very material in this case.

The Court—Well, I will permit him to tell what he saw. I am assuming he is doing it.

If it develops afterwards it may be stricken out. The motion at present will be denied.

Q. During this period from April 1st to July 3rd, 1923, how often during the time between six P. M. and six A. M., on the average, did you see Fenmore on the plaintiff's premises? A. Well, I seen him about seven or eight times a night.

Q. During the night? A. Yes.

Q. What were your duties as night watchman? A. Punched the clock every hour.

Q. How many clocks did you punch? A. Twelve.

The Court—Twelve clocks?

The Witness—Twelve clocks.

Q. How did you punch them? A. With a key.

Q. Where were they located? A. Well, in the front building.

Q. Yes. A. That is where we stopped, in the front building.

Q. That is where you started? A. About halfways the building; Fenmore goes in the back.

Mr. Prince—I object and move to strike out out the latter part.

The Court—I will permit it to stand.

Q. Now when did you make your first round? A. Six o'clock.

Q. In the evening? A. Yes, sir.

Q. How many rounds did you make between six P. M. and six A. M.? A. Twelve.

Q. How often did you make them? A. Every hour.

Q. About what time did you start to make this early round? A. Well, mostly about five minutes to six, sometimes ten, and sometimes five after. That was allowed.

Q. Did you have any instructions as to when you should commence to make your early rounds? A. The instructions was always I had —.

Q. What were the instructions? A. Start ten minutes to the hour or ten after the hour.

Q. You had a leeway of 20 minutes, did you? A. Twenty minutes.

Q. Now between April 1, 1923, and July 3rd of that year, will you say whether or not you made your early rounds every night? A. Yes, sir.

Q. Did you take anything with you when you made these rounds? A. A revolver.

Q. What? A. A revolver.

Q. Anything else? A. No—a lantern.

Q. A lantern? A. Yes.

Q. Did you have a dog? A. Yes, I have a dog.

Q. And did the dog make the rounds with you? A. Yes.

Q. Now do you know of your own knowledge whether Fenmore carried a lantern or anything on his rounds?

Mr. Prince—I object unless it is shown that he saw him making his rounds. Hour Honor, the testimony now is he saw him seven or eight times between April 1st and July 3rd on the premises. Now he is going to tell us what he did between those dates.

The Court—He asked him of his own know-

ledge, what he knew. I do not see how he could make it any plainer than that.

Mr. Dunn—What he saw him do.

The Court—That is what he says. You can only tell what you saw, of course, Mr. White.

A. Well, I seen him start.

Q. You saw him start? A. I seen him start to go around. Of course I didn't go along with him.

Q. No. When he started did he carry anything? A. He carried a lantern.

Q. Did you see it? A. Yes. He had to carry a lantern because there was no light.

Q. You say he also acted as the night fireman? A. Yes.

Mr. Prince—I object to that statement as an incorrect statement of what he says. He did not say he also acted as night fireman. He said he was the night fireman.

The Court—He said he saw him start out with a lantern. Proceed.

Q. While he was working as fireman, where would he be, what part of the mill? A. In the boiler house.

Q. Did you sometimes visit the boiler house during the night time? A. Yes.

The Court—See him there?

The Witness—Sometimes, yes, sir. Most when I go in he is there.

Q. When you started to make your early rounds,

did you sometimes start from the boilerhouse? A. Yes, sometimes. Most of the time on the front.

Q. Will you say whether or not you ever saw Fenmore start from the boiler house at the same time you did? A. He goes out of the boiler house to the back to make his rounds.

Q. Did you see him? A. Yes; and I go to the front.

Q. With his lantern? A. With his lantern.

Q. While you were making your rounds will you say whether or not you ever heard anything from Fenmore, the sound of his footfall or saw the gleam of his lantern in the other parts of the premises of the plaintiff? A. Well, if I was before him in the boiler house I heard him coming down the stairs from the plugger room, what they call the plugger room; I could hear him coming down; then he has to make two more keys before he came up to the boiler house, if I was ahead of him in the boiler house.

Mr. Prince—I object and move to strike out what he said he had to do, your Honor.

The Court—Strike it out.

Q. Now on the night of July 2nd and 3rd, how often, to the best of your recollection, after the passage of nearly two years, lacking four months—how often did you see Fenmore on that particular night? A. On that particular night?

Q. Yes. A. About the same; about seven or eight times.

Q. Was he in the same or different parts of the mill when you met him on those seven or eight times? A. Around the same place.

Q. Where was that place? A. Boiler house.

Q. On that night do you say whether or not you left the boiler house to go your rounds? Was that your starting point? A. Not always. No, not always.

Q. At any time during this particular night did you start out from the boiler house to make your rounds? A. Well, maybe some time I start; I can't say what hour. Sometimes I start on the front, most of the time.

Q. Now when you made this hourly round you say you started at different points? A. Yes.

Q. You did not always have the same beginning point? A. No, sir.

Q. You had charge of twelve signal stations? A. Twelve signal stations.

Q. Do you know whether or not they bore numbers? A. What's that?

Q. Do you know whether or not these different signal stations, as I call them, were numbered? A. Well, they were numbered, but you could not see the number in the boxes.

Q. No. Now during the night of July 2nd and 3rd, did you hear anything unusual about the plaintiff's mill? A. No, sir.

Q. When was it that you first learned of the robbery? A. The next day.

Mr. Prince—I object to his assuming there was a robbery.

The Court—Yes.

Q. When did you first hear that a robbery had been claimed to have taken place during the night of July 2nd and 3rd? A. On the 3rd of July at

ten o'clock in the morning. They got me out of bed —the superintendent.

Q. Yes. All right. Now, Mr. White, you said you met someone in the morning about six o'clock? A. Yes.

Q. Some employee or employees of the company? A. Yes.

Q. Who was he or who were they? A. Gabriel Both.

Q. Yes; and do you know what he did? A. Fireman.

Q. At the mill? A. Fireman.

Q. Day fireman? A. Day fireman.

Q. Did you always meet him before you left? A. Yes, sir.

Q. Do you know whether or not he had any duties besides those of day fireman? A. What's that?

Q. Do you know whether or not he did anything? A. No.

Q. —besides being day fireman? A. No.

Q. You don't know? A. Yes. No, he didn't do nothing else. He do nothing else but fireman.

Q. He got at the mill before you left? A. Yes.

Q. Always? A. Always.

Q. Morning after morning? A. Morning after morning.

Q. Who else did you meet before you left at six A. M.? A. Joe—little Joe—Italian name, I can't say that name.

Q. Do you know what his business was? A. Fireman also.

Q. Did you meet anybody else? A. One of the dyers; I don't know his name—I think Paul, I think run the whiz machine.

Q. Paul, you say, was a dyer, was he? A. No; he run the whiz machine; took care of the dye-house in the morning.

The Court—You mean you met Joe just that morning, or every morning?
The Witness—Every morning.

Q. Who else did you meet every morning? A. John.

Q. Do you know what John's business was? A. In the boil-off, the boxes.

Q. Who else, if anybody, did you meet morning ofter morning, before you left about six o'clock? A. Nobody else.

The Court—Meet this Paul every morning?
The Witness—Yes, sir.

Q. Do you know a room in the plaintiff's plant known as the basement finishing room? A. What's that?

Q. Do you know any room or apartment of Cramer & King plant which has last been described here as the basement finishing room? Do you know of such a room there? A. Yes, I know such a room, yes.

Q. Was that room part of your rounds, your nightly and hourly rounds? A. Yes, sir.

Q. Will you say whether or not there was a signal station in the finishing basement room? A. Yes.

Q. Was that a room that you visited hourly and nightly? A. Yes.

Q. And did on the night of July 2nd and 3rd? A. Yes.

Q. Did you sound the signal from that room? A. Yes.

Q. On the night of July 2nd and 3rd? A. Yes.

Q. Hourly? A. Yes, sir.

Q. How many rooms, roughly speaking, has the plant of Cramer & King? Just give the jury some idea of the extent of the plant.

Mr. Prince—Do you mean that he watched in or —?

A. Do you mean the entire building?

Q. Yes. A. Around 20, I think.

Q. In how many of those rooms did you make your nightly and hourly rounds? A. Twelve rooms.

Q. Was there a box in each room that you visited, or nearly each room? A. Yes, a box in each room. There is rooms there was two boxes.

Q. How long did it take you to make a round? A. About 15 minutes.

Q. On the average? A. On the average, if nothing happened.

Q. How fast did you walk? A. Well, regular walk.

Q. Hurriedly, without hurrying, just an ordinary walk? A. Ordinary walk, yes.

Cross-Examination by Mr. Prince:

Q. Now on the morning of July 3, 1923, you punched the last clock, which was located in the

finishing room; isn't that correct, Mr. White? A. I punched the last box.

Q. The last box that you punched was in the finishing room?

The Court—On July 3rd.

A. Not in the last box what I punched.

Q. What is that? Isn't that where you finished your round for that night on the morning of July 3rd? A. No, sir.

Q. What room was it in? A. The greig room.

Q. The last time you were in the finishing room on the morning of July 3rd, was it 4:59 A. M.; is that correct? A. I suppose it was.

Mr. Rosenkrans—Of course if you don't know, Mr. White, you should say so.

Mr. Prince—I object to counsel instructing the witness as to what to say.

The Court—Do not interrupt.

Q. Mr. White, take your glasses and take it easy; look at this statement dated July 11, 1923. Is that your signature? No, the signature? A. Yes.

Q. That is your signature, isn't it? A. Is that correct? A. That is correct.

Q. You made that in the presence of Mr. Lundgren, do you remember, on that day? A. Yes, sir.

Q. And you told him what you knew about it, and then he typewrote this statement, and then you read it over and you signed it and it was given to the insurance company's representative; is that correct? A. That is correct.

Q. Now you said in that statement, "The last time I was in the finishing room was at 4:59 A. M." Do you remember that? A. Yes.

Q. That was correct, wasn't it? A. Well, I think so. Of course I didn't carry no watch and look at my watch.

Q. No. When you were in the finishing room the last time you punched the clock, didn't you? A. Yes.

Q. Have you ever seen these reports from the company? A. No, sir; I don't see them.

Q. You don't see them? A. I didn't see them.

Q. There was a door leading from the finishing room out into the yard, was there not? A. Yes, sir.

Q. You said in this statement: "During the night I didn't have occasion to see whether or not the door leading from the finishing room basement was locked or not." Is that correct? A. I looked at first when I come there, that the doors are shut.

Q. Shut; but you didn't look to see whether it was locked? A. Exactly locked, no.

Q. Your answer is, "Exactly locked, no." Is that what you said? A. Yes.

Q. You say making your rounds would take you ten or fifteen minutes if nothing happened. Is that what you said? A. Fifteen minutes, yes.

Q. Up until July 3rd or 2nd, nothing had happened; isn't that correct? A. No, sir; nothing had happened, not what I know.

Q. You said there were 20 buildings there.

Mr. Rosenkrans—He didn't say so.

The Court—Twenty rooms.

Q. Oh, 20 rooms in the building? A. In the whole building, yes.

Q. How many buildings did you watch in? A. About twelve.

Q. Twelve buildings? A. Not buildings.

Q. I asked you how many buildings. Only one building, wasn't there? A. One building.

Q. And that is the building in which the boxes were, and the finishing room? A. Yes.

Q. Is that right? A. Yes.

Q. How many rooms were there altogether in the building, do you know? A. Where I watched?

Q. Yes. A. Twelve.

Q. You watched? A. Twelve rooms.

Q. You watched 12 rooms, or was that all the rooms there were in the whole building? A. No, sir.

Q. How many rooms were there in the whole building? A. About 18.

Q. Eighteen rooms. Now after you made your five o'clock round in the morning of July 3rd, you saw Garret Fenmore in the boiler house; isn't that right? A. Yes.

Q. And you remained with him in the boiler room until 5:30 A. M., after which you came through the alleyway to the front office and remained there until time to leave; is that correct? A. Yes, sir.

Q. Then you left at six o'clock? A. Six o'clock.

Q. Is that right? A. Yes.

Q. You made no rounds at six o'clock or around six o'clock, did you? A. No, sir.

Q. And the last round that you always made be-

tween April 1st and July 3rd was a round around five o'clock or ten minutes before or ten minutes after; is that correct? A. Yes, sir.

Q. That is also true of Fenmore, isn't it? A. Yes, sir.

Q. Now when you made this last round at five o'clock you had with you this ferocious and sensitive bulldog?

Mr. Rosenkrans—I object. This witness has not used those words.

The Court—This witness has not characterized the bulldog.

Mr. Prince—I thought we had etablished that as a fact in this case.

The Court—That was Mr. Lundgren.

Mr. Prince—I thought we had established by him that it was a fact. There has been no dispute that that is what it was. Well, I will eliminate that.

Q. You had with you this bulldog and he would walk through the plant with you? A. Yes.

Q. Through the rooms with you, is that correct? A. Yes.

Q. After you made your rounds at five o'clock and finished your rounds, nothing had been disturbed, and apparently nobody had been in; is that right? A. I told you the dog was sick at that time.

Q. I didn't ask you anything about the dog being sick. I move to strike that out, your Honor.

The Court—Strike it out.

Q. Did you understand the question, Mr. White? A. Not always, no, I can't understand you.

(Question repeated by stenographer.)

Q. Just take it easy and listen to the question and give me your answers. A. I can't understand it or the words.

Q. All right; we won't have a quarrel.

(Question repeated by stenographer.)

A. Yes.

Q. You said on your direct examination that you had heard nothing unusual during the night of July 2nd; do you remember that? That is correct, isn't it? A. That is correct.

Q. Now where was the boilerhouse? Was it in the same building with the finishing room, or was that another building? A. No, the same building.

Q. The same building. Where was the boiler house? A. About in the middle of the shop.

Q. Middle of what? A. Middle of the whole shop.

Q. Of the other shop? A. Middle of the whole shop. It is all one building.

Q. Let us understand. You remember where the finishing room was? A. Yes.

Q. That was in the building? A. That was in the building.

Q. Was the boiler house located in the same building or was it a separate building?

Mr. Rosenkrans—Same building as what?

Q. As the finishing room? A. Same building.

Q. Where was it, down in the basement? A. Boiler house?

Q. Yes. A. Yes.

Q. So that either ten minutes before the hour or ten minutes after the hour up to five o'clock each morning between April 1st and July 3rd, 1923, you would make your rounds and punch your clock for about 15 minutes, and then you would meet Fenmore and you and he would sit down in the boiler room until it became time to make your next round at the next hour, is that correct? A. No, sir.

Q. Well, if you did not sit in the boiler room in the meantime, what room did you sit in until it became time to go your next round? A. In the office and the front.

Q. Either sit in the office in the front or in the boiler room; is that correct? A. Well, that is usual, or the finishing room or some place in the front. Not always the boiler room.

Q. You sat in some room until time to make your next round? A. Yes.

Q. You and he would sit there and smoke your pipes? A. I don't smoke.

Q. You don't smoke? A. No.

Q. Well, you would tell stories to each other; is that correct, to keep each other company, to pass the time? A. That may be. I did not stay long, either.

Q. When you were sitting in these various rooms, whatever room it happened to be, did you have this bulldog with you, or did you let him roam around there through the building? A. He go where he please the dog.

Q. And the doors were open to the various rooms

so that he could roam through the building and go into any room he wanted to? A. Yes.

Q. Is that right? A. That is right.

Q. And there were really only two floors there above the basement floor; isn't that right? A. Two floors above the basement.

Q. Did those two floors extend the full length of the building or only part of the way? A. Part of it.

Q. And the flooring on the floors above the basement, were those wooden floors? A. Wooden floors.

Q. They were not covered with any soft carpet or anything to deaden the sound, were they? A. No, sir.

Q. If anybody walked on the floor above you could you hear him? You told us you heard Fenmore. Isn't that right? A. Yes.

Q. You heard nobody walking on these floors up to the time you made your last round at five o'clock in the morning; isn't that right? A. No, sir.

Q. You didn't hear anybody? A. I heard nobody.

Q. Didn't hear a bit of noise in the building at all? A. Not at all.

Q. And the first you knew that any claim had been made here that Cramer & King were robbed was when they routed you out of bed at ten o'clock in the morning July 3rd; isn't that true? A. Yes.

Q. That is the first, Mr. White, that you really knew anything about it; isn't that correct? A. That is right.

Q. Was it raining in the morning of July 3rd? A. It was raining afterwards.

Q. Raining after what? A. After I went home.

Q. After you went home at what time? A. I don't know; I went to bed when I came home.

Q. When you got awake it was raining; is that right? A. Yes.

Q. Now you say at six o'clock on the morning of July 3rd you saw Gabriel Both there; is that correct? A. Yes.

Q. At that time you were in the timekeeper's office? A. Yes.

Q. Now they had a timekeeper there, did they, so that when everybody came to work they had to register on a time clock; is that correct? A. They have no clock.

Q. What is that? There was a man there to register the time they came to work? A. No, sir.

Q. What is that? A. No, sir.

Q. What do you mean by the timekeeper's office? A. Where the timekeeper works.

Q. What else does he do, if you know? A. Keep the time there, I suppose.

Q. Keep the time that the various people come to work and the time they leave; is that correct? A. Well he was not there at six o'clock in the morning.

Q. What time did he get there? A. I don't know. I ain't there in the daytime.

Q. Well, at no time then between April 1st and July 3rd was the timekeeper ever to work as early as six o'clock when you left; is that right? A. No, sir.

Q. Well, you say no, sir; you mean I am correct? A. You are correct, yes; he wasn't there, no.

Q. You never saw the timekeeper? A. No, sir.

Q. By the time you left in the morning the time-

keeper had not arrived yet; isn't that correct? A. That is correct.

Q. By the time you came to work in the evening he had already gone home, the timekeeper? A. Not always.

Q. Not always? A. I have seen him sometimes.

Q. Once in a while you saw him. About how many times would you say you saw him between April 1st and July 3rd, 1923; can you recollect, Mr. White? A. Well, maybe six or seven times. Once in a great while.

Q. Most of the time he had already gone home; is that correct? A. Yes.

Q. Most times when you got to work at six o'clock at night everybody else had gone home; isn't that right? A. No, sir.

Q. Was there always somebody there? A. Most of the time somebody working.

Q. Who was there? A. Firemens.

Q. But outside of the firemen? A. Well, sometimes they working overtime.

Q. Once in a while? A. Well, most all the time.

Q. Well, were they very busy in the silk business between April and July, 1923, that they had to work overtime? A. Well, they working overtime even if they be slack sometimes.

Q. They did work overtime? A. Sometimes, one piece they want to get it out.

Re-Direct Examination by Mr. Rosenkrans:

Q. Of what material is this main building constructed, stone or wood? A. The finishing room, you mean?

Q. Yes; the building in which the finishing room is? A. That is built of stone.

Q. Now where is the boiler room with reference to the finishing room, how far away? A. How far away from the finishing room?

Q. Yes. A. Well, I will have to say how many yards or what?

Q. Yes, how many yards or feet? A. Maybe a hundred yards, I guess; I never measured that.

Q. You just estimated, did you?

Mr. Prince—He said a hundred yards.

Q. A hundred yards? A. Maybe, about.

Q. That is 300 feet. A. Yes.

Q. Now do you know whether or not the boiler room is in the addition to the main building or whether it is in what has always been the main building? A. Always in the building.

Q. But it was in a part of that building away from the part in which the finishing room is found? A. It is away from it, yes.

Q. Now the partition walls that divide apartment from apartment, room from room, in the main building, of what are they built? A. What they made of?

Q. What are they made off? A. Some of stone and some of wood.

Q. The doors, Mr. White, in the various rooms through which you passed from the boiler room to this basement finishing room, were they open or closed, or partly open and partly closed, as a rule? A. From the boiler house?

Q. In the daytime? A. From the boiler house to the finishing room?

Q. Yes, the doors. A. They were open.

Mr. Prince—He already said open.

A. Open. They are open.
Q. At night time? A. At night time, yes.

The Court—Did you have this dog with you the night of July 2nd?
The Witness—Yes.

Q. Was there anything unusual about the condition of that dog on that night? **10**

Mr. Prince—I object to it.

A. Yes; that dog got hurt.

Mr. Prince—I object to this witness qualifying as an expert or as a veterinary surgeon to determine the condition of the dog.
The Court—I will permit that question. **20**

Q. How long before had be become hurt? A. He got hurted a half a year before.
Q. Yes. How? A. Automobile hit him on 33rd Street.
Q. Was he hurt temporarily or permanently?

Mr. Prince—I object to that. We have doctors who are experts in accident cases.
The Court—That might call for an expert opinion on whether it is permanent or not. **30**

Q. Well, what result, so far as you observed it, followed, if any, from the injury which this dog re-

ceived from an automobile six months before July 3rd, 1923?

Mr. Prince—I object to it.

The Court—Permitted.

A. Well, he got hurt. He was so bad we thought he would die, and we had twice a doctor for him.

Q. Did that have any effect on him, so far as you could see? A. Yes.

Q. What effect? A. Well, we thought he would die, so bad he was.

Q. Did he get any better? A. He never got all right, no. He ain't right over that today.

Q. He is not? A. No.

Q. Well, did it have any effect on his hearing or sight? A. Not his hearing.

Mr. Prince—I object.

The Court—I don't know whether he can tell about that or not.

Mr. Rosenkrans—So far as he observed.

The Court—As far as he could see he may tell.

Q. As far as you could see, did it affect the dog's hearing or sense of smell or sight? A. Not that, only his walking.

Q. How did it affect the walking, Mr. White? A. Well, he wobbled in the back.

Re-Cross Examination by Mr. Prince:

Q. This dog went to the mill with you every night? A. Yes, sir.

Q. He made his rounds with you every night? A. As usual, yes.

Q. Now you say this accident happened to him about six months before; is that correct? A. Yes, about.

Q. You say you had a doctor for him twice; is that correct? Have any broken legs? A. No, sir.

Q. The doctor didn't have to set his leg, did he? A. No.

Q. He still living; is he? A. Yes.

Q. At the present time? A. Yes.

Q. This is nearly two years after the July 2nd— is that right; still alive, isn't he? A. Still alive, yes.

Q. He makes the rounds with you, doesn't he; is that right? A. Yes.

Q. How old is he? A. Oh, he is about seven years, seven or eight years, not exactly.

Q. He still has his teeth, hasn't he? A. Yes.

Q. He can still bite, can't he? A. Yes.

Q. He could on the night of July 2nd bite, couldn't he? A. Well, I think he could bite, yes.

Q. Do you think if any burglar had been in there and attacked you the dog would have gone for him on the night of July 2nd? A. If he seen him, yes.

Q. I mean if he saw him. A. Yes, if he seen him or heard him.

Q. Nothing the matter with his sight, was there? A. He woud run fast at that time.

Q. I said the sight, seeing. A. No, not seeing.

Q. You said there was nothing the matter with his smelling, either; he could smell all right? A. Yes, I think so.

Q. Now on the second floor of this main building there was a door, was there not, which led down a

stairway on the outside of the building, wasn't there? A. The finishing room? Second floor?

Q. No, on the second floor of the building in which the finishing room was, wasn't there a staircase leading from the outside of the building? A. No, sir.

Q. There was a fire escape? A. Fire escape.

Q. That is what I meant. A. Yes.

Q. A fire escape, and you went through a door from the second floor on to that fire escape; isn't that right? A. I went through that?

Q. No, no. Wouldn't anybody go through, you or anybody else could? A. You couldn't get through from the outside.

Q. You could from the inside? A. From the inside you could.

Q. In making your rounds at times between April and July 2nd, when you came to that door isn't it a fact that you found the door open on some occasions, where employees had gone out and did not close the door tightly after them and then you would close it? A. At six o'clock sometimes.

Q. Yes. A. Yes.

Q. Sure? A. Sometimes.

Q. Sometimes? A. Very seldom.

Q. There was something the matter with the catch on that door, wasn't there? A. No, sir.

Q. Now when you went home on the morning of July 3rd, which way did you go out? A. The back.

Q. Is that on Tenth Avenue or 33rd Street, which? A. Tenth Avenue.

Q. Was there a gate there that led on to Tenth Avenue? A. Not on Tenth Avenue.

Q. Which was it on? A. In the yard next to the greig room.

Q. Were those wooden gates, two doors, or how? A. One gate, sliding gate.

Q. Did that have any bar, wooden bar, across it? A. No, sir.

Q. What gate was it that had the wooden bar—?

Mr. Rosenkrans—I object to it. There is no evidence that any gate had the wooden bar.

Q. Was there any gate with a wooden bar? A. No, sir.

Q. Now was that gate that you went out of on the morning of July 3rd locked or unlocked? A. I unlocked it at six o'clock for the firemens to get in.

Q. And left it open? A. Then we left it open.

Q. Is that right? A. Yes.

Q. And the greig room, how near was that to the finishing room? A. About a hundred yards away from it.

Q. Do you really mean a hundred yards? That is 300 feet. You do not mean that, do you, the greig room was 300 feet away from the finishing room? You don't mean that, do you, Mr. White? A. Well, I thought it was, but of course there was the dye-house between it.

Q. Dyeing room was between it? A. Yes.

Q. How far would you say it is from where you are sitting to the other side of the courtroom? A. What do you mean, the doors?

Q. No; where you are sitting now, from the wall over there beside you? A. Oh, maybe about 25 yards.

Recess.

After Recess.

HERBERT WHITE, resumed.

Re-Cross Examination by Mr. Prince (continued):

Q. Mr. White, at the adjournment of court we were talking about distances. I think that you said that the distance from where you are sitting on the witness stand to the wall on the other side of the room was 25 yards, 75 feet. Is that what you mean? A. Yes, sir.

Q. And using that as a criterion, you say that the boiler room was 300 yards from the finishing room, is that right? A. Yes, sir.

Q. You mean it was four times the distance? A. Yes, sir.

Q. Well, did you hear the testimony in this case given by Mr. Lundgren that this building was 150 feet wide by about 150 feet in length? A. Boiler house?

Q. No, the whole building in which the finishing room is contained? A. No, sir; I didn't hear that.

Q. Well, you say that it was 900 feet from the finishing room to the boiler room, not both the boiler room and the finishing room, but in the same building; is that right? A. Well, the buildings are connected together.

Q. Well, they are in different buildings? A. Different buildings, yes, sir; only they are connected together.

Q. Now to go from the building in which the finishing room was to the building in which the boiler room was, did you have to go through any door? A. Yes, sir.

Q. Where was that door? A. Down the basement.

Q. There weren't any boxes that you had to put

your watchman's key in in the boiler room, were there? A. No, sir.

Q. And there weren't any boxes in the building in which the boiler room was that you had to put your key in to register, were there? A. In the boiler house?

Q. In the building in which the boiler house was contained. You understand what I mean by contained? A. No.

Q. In which the boiler room was. The boiler room you say was in the building adjoining the building in which the finishing room was; is that right? A. No, the dye is between it.

Q. The what? A. The dye is between that.

Q. But you said in the building in which the finishing room was, in order to get from that building to the next building in which the boiler room was you had to go through a door; is that right? A. Yes, sir; you have to go through more than one door.

Q. More than one door. How many doors? A. Two doors.

Q. Now, Mr. White, I do not want to mislead you. I do not mean from the finishing room itself. Is that what you understood me to mean? A. There is a door from the finishing room going in the alleyway.

Q. All right. Wait a minute. Let us follow that. The finishing room is in the building; that is right, isn't it? A. Yes.

Q. Now to go from that building into the building in which the boiler room was you went through one door; wasn't that right? A. Have to go through two doors.

Q. Two doors. Were those doors closed at night time when you were —? A. No, sir.

Q. What kind of doors were they, metal doors or wooden doors or what? A. Wooden doors.

Q. You say they were open or closed at night time? A. Open.

Q. Now you would sit in the boiler room near the fire, is that right, with Fenmore, at night time? A. Sometimes for a minute.

Q. Yes. Now were there any boxes at all in the building in which the boiler room was that you had to turn with your watchman's key? A. Not in the boiler house.

Q. Not in the boiler house. I don't mean the boiler room only. I mean the building in which the boiler room was contained. Let us put it this way. I will withdraw the question. A. The building is all connected together.

Q. Not all of the buildings? You don't mean the whole 20 buildings? A. There is only two buildings.

Q. The rest is all connected together. There is only two? A. What I call two buildings.

Q. Now the boiler room is in the basement of the building, is that right? A. Yes.

Q. Are there any other rooms in the basement outside of the boiler room? A. Yes, sir.

Q. What rooms are they? A. Print shop.

Q. What else? A. Steam room.

Q. What else? A. Flocker room.

Q. What else? A. That is all in the basement.

Q. How many stories are there above the boiler room in that building? A. Above the boiler house?

Q. Yes, in that building? A. Only one in the back, in the building, yes.

Q. How many stories? A. Two stories.

Q. There are rooms on those other two stories above the boiler room; is that right? A. Not above the boiler house.

Q. I am talking above the boiler house, how many stories are there? Do you understand me, Mr. White? A. No, sir.

Q. I am not trying to mix you up. I am trying to get the facts. All right; take it easy and we will get the facts. Now just forget where the finishing room is and walk in through these two doors into the building. Would you say the boiler room is in the basement? Have you followed me that far? A. Yes.

Q. Now in that building where the boiler room is, how many stories are there above the basement, one or two? A. Two stories.

Q. Now either in the basement or in these two stories in the building in which the boiler room is, are there any boxes that had to be turned with the watchman's key? A. Not me.

Q. Now you say there was an alleyway between the building in which the finishing room was and the building in which the boiler room was; was there any roof on that alley? A. No, sir.

Q. Was there any door leading from the outside into that alley? A. When you came out of the finishing room?

Q. No, from the outside, from the yard, could you get into that alley, excepting from the building in which the finishing room was or the building in which the boiler room was? A. Have to come through the gate to get in there.

Q. There was a gate there, a wooden gate? A. Yes.

Q. Leading into this alley; is that right? A. Yes, sir.

Q. How long was this alley? A. About 200 feet.

Q. Two hundred feet. This gate, was that a wooden gate? A. Yes, sir.

Was that a sliding door, or were those swinging doors? A. Sliding gate.

Q. How high was this gate from the ground? A. About 14 feet.

Q. But it was a wooden gate? A. Wooden gate.

Q. Was there a wooden bar across that at all? A. No, sir.

Q. Was there any other way to get in this alley excepting the three methods you have described? A. No, sir.

Q. But there was no roof on it? A. No roof on it.

Q. Now the building in which the boiler room was and the building in which the finishing room was, were the walls tight against each other, or were they two hundred feet apart? A. No, tight together.

Q. Tight together. Where was this alleyway; that was not between the buildings then? A. Yes, it was between the buildings.

Q. How could it be between the building 200 feet long if the buildings fit tightly to each other? A. On 33rd Street the buildings are together.

Q. Yes. A. Then it goes alongside the river to to boiler house, and that is connected together.

Q. Ah, I see. A. And here comes an alleyway.

Q. So the alleyway was on the Tenth Avenue

side? A. Have to come in through the Tenth Avenue side.

Q. No; is the alley on the Tenth Avenue side? Does it run along parallel with Tenth Avenue? Do you know what I mean by parallel—the same direction? A. Same direction, yes.

Q. So that when you wanted to go from one building to the other, you go through this alleyway, out into this alleyway, outside of the building? A. Some places, yes.

Q. Well, that is the way you went? A. Certainly.

Q. Yes. So when you were sitting in the boiler room you were over 200 feet away from the building in which the finishing room was situated; is that correct? A. Yes.

Re-Direct Examination by Mr. Rosenkrans:

Q. Mr. White, at any time during your rounds on the night of July 2nd and 3rd, 1923, when in the finishing basement room, did you look at the window nearest the door that leads out to the back? A. No, sir; not around six o'clock when I came in the first round.

Q. The first round. Do you know whether or not there was any merchandise silks in the basement room on the night of July 3rd at any time? A. If I know there was silk there?

Q. Yes. A. Yes.

Q. Did you pay any attention to it? A. Well, no.

Q. No? A. I saw it laying, and that is all.

Q. Was it a large quantity or a small quantity of silk there on that night?

Mr. Prince—I object to his characterizing the quantity.

The Court—That is a comparative term, I suppose. What one man might think a large amount another man would think was a small amount.

Mr. Rosenkrans—Yes.

Q. On what was the silk in the finishing room on the night of July 2nd and 3rd? A. On the table.

Q. On the table. In what shape was it? A. On beams.

Q. Were those beams round or flat or how? A. Round.

Q. Roughly speaking, of course, how many beams were there?

Mr. Prince—I object to that, may it please the Court, upon the ground that the witness has not counted them; and in addition to that, that the policy requires that the plaintiff must prove its loss solely from its books and accounts. We are not compelled to rely on the memory or recollection of anybody, but the plaintiff must prove its loss solely from its books and accounts. That question has been definitely passed upon in a New York case. I do not know whether there is any New Jersey case on the question or not; and also in a Pennsylvania case. The New York case is Harris vs. General Accident and Insurance Company, 187 New York Supplement, 291; and the Pennsylvania case is Weinstein vs. Globe, 121 Atlantic, 316. May I send for those two decisions?

The Court—I will hear you. You may send for them. We will pass that for the moment.

Q. At any time on your rounds on the night of July 2nd and 3rd, did you look at the table in the basement room for the purpose of satisfying yourself whether any merchandise had been removed between six P. M. and any of the times—and six A. M.?

(Objected to as leading, calling for a conclusion, immaterial, irrelevant and incompetent. Question permitted.)

A. No, sir.

Re-Cross Examination by Mr. Prince:

Q. Just one or two questions. Counsel for the plaintiff asked you whether on your first round that you made at six P. M. on the night of July 2, 1923, you looked at this window that we have been talking about.

Mr. Rosenkrans—I did not ask that question.

A. Yes.

Q. That is what you understood counsel for the plaintiff to ask you, didn't you, and you said on your first round you looked at it? A. First round, yes.

Q. That is the window that Mr. Lundgren testified about finding those staples at the next morning; is that correct? That is the same window that you looked at? A. That is the same windows, yes.

Q. When you made your other rounds did you

look at the window, too? A. Well, from a distance I looked at the window.

Q. You were in the room and you had your light; is that correct? A. Yes.

Q. By the time you made your last round at 4:59 o'clock in the morning of July 3rd, did you see the screen pulled off? A. No, sir.

Re-Direct Examination by Mr. Rosenkrans:

Q. How large a room is this basement finishing room, Mr. White A. How large?

Q. About how wide and how long? A. About 50 feet square, that room, I guess, about.

Q. Where is the signal station into which you hourly put your key in that room? A. In the middle of the room, in the back, on the wall.

Q. How far from the window nearest the door that leads to the outer yard?

Mr. Prince—Door or window?

A. I don't understand that.

Q. How far is this—there is a door in the finishing room that leads from the basement finishing room to the back of the premises, isn't there? A. You mean the door what goes outside?

Q. Yes; there is a door that leads outside? A. Yes.

Mr. Prince—From the finishing room.

Q. From the basement finishing room, yes; and the window we have been talking about is nearest that door? A. Near that door, yes.

Q. Now how far is the signal station into which you put your key hourly on the night of July 2nd and 3rd? A. It is around 35 feet.

The Court—From what?
The Witness—From that window.

Re-Re-Cross Examination by Mr. Prince:

Q. Mr. White, when you made your last round at 4:59 on the morning of July 3rd, when you were in that finishing room was the window itself closed? A. I don't know.

Q. Didn't look at it at all? A. I didn't see it. I didn't personally look at it.

Q. You did not see it open, did you? A. No.

Q. Didn't feel any draft coming from an open window, did you? A. No, sir; if I seen that —.

Q. It was daylight at that time, wasn't it, five o'clock in the morning on July 3, 1923? A. Yes, sir.

Q. Well, did you see the window open at that time? A. No, sir.

Q. Did you see the same merchandise on the table at that time that you saw when you went into the finishing room at six o'clock the night before, to the best of your recollection? A. Well, I didn't take notice through the night if there was any missing.

Q. I see; you did not notice any missing at any rate, did you? A. No, sir; I didn't notice it. If I noticed it I will call the police.

Q. You saw the silk on the table, didn't you,

when you finished at five o'clock in the morning? A. There was silk on the table.

Q. It didn't look to you as if any had been taken away through the night? A. I didn't notice it. There was silk.

By The Court:

Q. When you speak of six o'clock or any hour on July 3rd, are you speaking of standard time or daylight saving time, in July, 1923? A. Well, it is daylight saving time.

Q. You went to work by daylight saving time, too, did you not? A. Yes.

OTTO R. STAPFER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you reside, Mr. Stapfer? A. 908 East 28th Street, Paterson.

Q. How long have you lived in Paterson? A. Oh, since 1892.

Q. Where do you work? A. Cramer & King.

Q. How long have you been employed by Cramer & King? A. Around 30 years.

Q. What did you do? A. Superintendent.

Q. Do you know Herbert White? A. Yes.

Q. Did you know Mr. Fenmore? A. Yes.

Q. Do you know who employed Mr. Fenmore? A. I did.

Q. Do you know who gave him his duties? A. I told him—.

Mr. Prince—I object to what he told him.

The Court—Who?
The Witness—I did.

Q. What duties did you assign to Mr. Fenmore?

(Objected to as immaterial, irrelevant and incompetent. Question permitted.)

A. As assistant watchman and also fireman; that the firing part was done between his rounds.

The Court—Oh, no; he didn't ask you that.
Mr. Prince—I ask that it be stricken out.
The Court—Strike it out.

Q. As assistant watchman and as fireman? A. Yes.

Q. Did you fix the hours during which he should work? A. From six to six.

Q. When would he begin? A. Six P. M., to six A. M.

Q. Did he perform his duties as fireman during the same hours as he performed those as watchman, according to your instructions to him?

(Objected to. Question withdrawn.)

Q. What instructions did you give him with reference to the time when he should perform duties as assistant watchman and the time when he should perform duties as fireman?

Mr. Prince—I object.

A. He should make his rounds hourly.

New Jersey State Library

The Court—I will permit it.

Q. When did you tell him to work as fireman, through what hours? A. In between.

Q. In the night time, then? A. Yes.

Q. Between six P. M. and six A. M.? A. And six A. M.

Mr. Prince—I object to it as leading.

The Court—It is leading.

Mr. Prince—May I have the answer stricken out?

The Court—I will decline that.

Q. What were your hours at the mill? A. Around eight o'clock I came in, sometime a little sooner, until halfpast four or six o'clock at night.

Q. There are two eight hours in the day and one in the evening. A. Eight A. M., of course. I don't work night.

The Court—To what time, P. M.?

The Witness—Between half-past four to six sometimes, and sometimes eleven o'clock at night; all depends.

Q. Now this position of superintendent you held from April 9, 1923, to July 3, 1923? A. Yes.

Q. Were you familiar with the plant? A. Yes, sir; could walk through it in the dark.

Q. Do you know where the room described here as basement finishing room is located? A. Yes.

Q. Do you know whether or not there is a door leading from that basement finishing room? A. Yes.

Q. To the rear of the premises? A. Yes.

New Jersey State Library

Q. Do you know whether or not there is a window? A. Right next to it.

Q. Near that door? A. Right next to it.

Q. How many feet away? A. Oh, not—maybe more than two, if it is that much.

Q. On July 2, 1923, will you say whether or not you looked at the window next to the door? A. I was in the finishing room in the afternoon and the window looked all right to me.

Q. At about what hour in the afternoon? A. Might have been around four o'clock.

Q. Did you look at that window within or without or both? A. Both.

Q. At the same hour? A. Well, a little bit later. Takes a little time to get outside.

Q. Now the time that you looked at it on the afternoon of July 2nd, will you tell us in what condition the window was? A. There is a screen outside that, a moulding which fastens the screen right onto the window sill or frame of the window.

Q. Yes. A. And the window itself, the glass was O. K., nothing the matter with it.

Q. What sort of screen was that? A. Wire screen.

Q. How heavy? A. Well, about one-eighth of an inch thick.

Q. And the meshes were how far apart? A. I don't know; around half an inch, I should think—no—yes, half an inch.

Q. How was that screen fastened to the window sash? A. With nails.

Q. What sort of nails? A. Wire nails.

Q. Where did the moulding run that you say covered the edges of the screen? A. It was fastened on the screen and also on the frame of the window; in

fact, all windows are the same that way at that time.

Q. Did the molding run up and down the sash? A. All the way round.

Q. You say that was intact? A. Yes.

Q. On the afternoon of July 2nd? A. Yes.

Cross-Examination by Mr. Prince:

Q. You were the superintendent in your department, the finishing room? A. General superintend of the mill.

Q. How many buildings were there in the plant? A. Well, roughly speaking, around 18 to 20.

Q. Connected with each other? A. That is to say, rooms.

Q. Every one of them connected? A. No. Some of them are. You can walk from one right into the other.

Q. Sometimes you have to go through alleyways though, have you not? A. Of course, exactly, quite naturally.

Q. Those alleyways have no protection on the top, have they? A. No.

Q. There was an alleyway between the boiler room and the building in which the finishing room was; is that correct? A. There is an alleyway leading from the boiler room to the finishing room, yes.

Q. Were there walls in that alley? A. Brick and stone.

Q. Brick and stone; how high were they? A. Oh, I should say about 20 feet; takes a year of Sundays to break through it, too.

Mr. Prince—I move to strike that out.

The Court—Strike it out.

Q. You heard Mr. White testify, didn't you? A. Yes.

Q. You heard him say that the finishing room was about 300 yards distant from the boiler room, didn't you? A. Yes.

Q. Is that correct? A. Almost a city block.

Mr. Rosenkrans—I object; you cannot compare one witness's testimony with the other. 10

A. About that.

Mr. Prince—I asked him what the fact was.

The Court—You asked him whether he heard Mr. White say it.

Mr. Prince—I withdraw it. 20

Q. What did you say the distance was? A. About 300 feet.

Q. 300 feet? A. Yes; that is a hundred yards.

Q. What is that? A. That is about a hundred yards, isn't it?

Q. That is about a hundred yards? A. Yes.

Q. Now what was it that prompted you on the afternoon of July 2nd around four o'clock to go and look at this particular window and door on the inside and outside? A. Part of my duty. 30

Q. It was part of your duty to examine the windows? A. All windows.

Q. What is that? A. All windows, not only that one.

Q. Did you go through all these 20 buildings and examine every window? A. Yes.

Q. How long did it take you to do that? A. A couple of hours.

Q. What time did you start? A. Around two, half-past one.

Q. What time did you finish? A. Well, around four or five o'clock, or about five o'clock, I should say.

Q. Was this the last window that you examined? A. No.

Q. Which was the last window? A. Up in the office.

Q. What is that? A. Up in the office.

Q. When you examined this window did you go outside of the building to look at it? A. Afterwards, yes.

Q. What is that? A. After I looked at it inside I walked outside afterwards, yes.

Q. You are positive, are you, Mr. Stapfer, that this screen was nailed to the window sash by wire nails? A. Yes.

Q. No doubt about that in your mind, is there? A. No.

Q. And the lath that were attached partly on the screen and partly on the sash? A. You mean the molding.

Q. The wooden part alongside of the window, that was nailed on with wire nails, too? A. You mean molding?

Q. Yes. A. Yes.

Q. That is correct? A. Yes.

Q. You say the molding was not only on both sides of the window but running on all four sides; is that correct? A. Yes.

Q. Ever have any trouble with your men smoking in the building? A. In what time?

Q. During hours. A. Once in a while.

Q. And that was between April 1st and July 3rd?

Mr. Rosenkrans—I object to it on the ground it is not cross-examination.

The Court—I will permit it.

A. Yes.

Q. The men working in the finishing room would sometimes go over to the windows and smoke and blow the smoke through the windows? A. No.

Q. Well, it was contrary to your rules? A. Yes.

Q. That they should smoke; isn't that right? A. Yes, of course.

Q. And as a matter of fact Mr. Gorman was discharged for smoking in the building, isn't that right? A. I don't know anything about it.

(Objected to as irrelevant. Question permitted.)

Q. Did Mr. Gorman work for this company? A. Who is Mr. Gorman?

Q. Do you know the name? A. Well, there is lots of names down there; I can't remember them all. Tell me where he worked; maybe I can answer.

Q. Do you remember the name? A. No.

Q. Do you remember that he was discharged on April 2, 1923—I mean July 2, 1923? A. No, sir.

Q. Was he under your supervision? A. Not directly, no.

Q. Do you keep a book or record of any persons that work under your supervision? A. The timekeeper keeps that.

Q. Well, what time does the timekeeper come to work?

(Objected to as not proper cross-examination. Objection sustained.)

Q. What time did you leave the premises on the 2nd of July, 1923? A. Around six o'clock.

Q. Was it before or after? A. Well, I doubt I can remember that to the minute.

Q. Was your time entered on the time book? A. No, sir.

Q. Didn't keep a record of the time of the superintendent; is that correct? A. Apparently not.

Q. Well, now, please just answer the question, did they or not? A. No, sir.

Q. A record was kept, though, of the times that the different workmen came and left; is that correct? A. That is correct.

Q. Are you familiar with the time book? A. Well, I have occasion to look at it once in a while.

Q. Well, have you got it in court, sir?

(Book produced.)

Q. Look at the time book of Cramer & King and turn to July 2, 1923. A. I do. There you are. The dates are under each date on the top. That is the end of the pay. The formen have no time in there. That is just the pay. There is the different men right there.

Q. What is the first time recorded on July 2, 1923, that anybody came to work?

(Objected to as not proper cross-examination. Objection sustained.)

Mr. Prince—May I have this page marked for identification?

Mr. Rosenkrans—You designate it.

The Court—It may be marked.

(Book marked Exhibit D-8 for identification.)

Q. Now in addition to the screen on this window that we have been talking about in the finishing room, how many sets of windows were there; just the one? A. In the room itself?

Q. No, in this particular window? A. You mean panes of glass.

Q. Well, was there more than one set of windows; a double window or single window? A. Well, there is a transom and a window.

Q. Well, the transom. A. For instance, like over the top there.

Q. You mean the transom is above the window? A. Yes.

Q. Now, eliminate the transom, of course. A. One window.

Q. You said there was one window? A. Yes.

Q. You said there was one window; that is correct? A. Yes.

Q. These panes of glass wer all intact on the 2nd of July? A. Yes, sir.

Q. And also on the 3rd of July when you got there?

Mr. Rosenkrans—I object to it, that it is not cross-examination; he has not been examined as to anything that occurred on the 3rd day of July.

The Court—I think I will permit that question.

Mr. Rosenkrans—Exception.

A. That is to be answered?

The Court—Yes.

A. On the 3rd of July, then I know the window stood on the window sill, that is, inside.

Mr. Prince—I ask to strike it out.

The Court—Were the panes of glass intact? Strike out the answer.

A. Yes.

Q. What time did you get there on the 3rd of July? A. The usual time.

Q. What time was that? A. Around eight o'clock.

Q. What time did you go into the finishing room? A. On the 3rd of July?

Q. Yes; for the first time. A. Around nine, half-past nine; around nine o'clock.

Q. Which was it, half-past nine or nine o'clock? A. Nine o'clock.

Q. Who was in there before you, if you know? A. Foreman, Mr. Cortese.

Q. Who else? A. All the workmen.

Q. How many? A. About 12 or 13.

Q. When was the first that you heard about any unusual occurrence on the 3rd of July? A. After I came in in the morning.

Q. What time was that? A. After eight o'clock, sometime.

Q. How long after eight o'clock? A. Between

eight and nine; I don't exactly remember the time after two years.

Q. No idea of the time? A. I said between eight and nine.

Q. Well, no more definite idea? A. No, sir.

Q. Was it before or after half past eight? A. I don't know.

Q. When you heard about it, did you immediately go to the finishing room? A. I did.

Q. Well, when you got to the finishing room was Mr. Lundgren there already? A. That I don't remember; I think he was, but I don't know.

Q. Well, what is your best recollection? A. I believe he was.

Q. Did you hear Mr. Lundgren testify that Mr. Cortese did not notify him of this occurrence until 9:05? A. No, sir; I did not. I was not here.

Re-direct Examination By Mr. Rosenkrans:

Q. You say that you inspected the windows both within and without the building because that inspection was in line with your duties as superintendent? A. General duties, yes.

Q. How often did you perform that duty? A. About once a week.

Re-cross Examination by Mr. Prince:

Q. Well, what days of the week did you usually do this? A. Usually beginning of the week, Monday or Tuesday.

Q. Well, do you remember what day of the week July 2nd was, 1923? A. I think it was Wednesday, wasn't it?

Q. Well, I thought you said you made your in-

spection on Monday or Tuesday of the week. How was it this particular week you made it on Wednesday? A. I didn't say that, did I? Did I say that?

Q. Please answer the question. A. Well, I know, but you are asking me something that I cannot answer. Ask me right and I will answer it.

Q. That is all. A. All right.

JOHN CHESSARE, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live? A. 20 South Hillman Street, Paterson.

Q. How long have you lived in Paterson? A. About 14 years.

Q. By whom are you employed? A. Cramer & King.

Q. How long have you worked for them? A. Seven years.

Q. Did you work for them from April 1st to July 3rd, 1923? A. Yes.

Q. What did you do for them during that period of time? A. Doing what?

Q. What did you work as? A. Working in boil-off.

Q. What time of the day did you go to work during that period? A. Six in the morning.

Q. How long did you work? A. Well, I quit about—of course if it was a busy day we had to work over time—five or six or half-past four; I cannot depend on.

The Court—What time did you say you commenced in the morning?

The Witness—Six.

Q. Now in this particular period of time beginning the 9th of April up to July 3, 1923, will you say whether or not you went to work every morning at six o'clock? A. Yes, sir.

Q. Except Sundays? A. Except Sundays.

Q. And holidays? A. Yes.

Q. Do you know whether or not anybody else came to work for Cramer & King at six o'clock in the morning during that period? A. Yes, I know a few; the fireman.

Q. What is his name? A. Well, I don't know exactly the name, but I know him. The one who is the head over firemen is Al, and another fellow is Joe. I don't know the second name.

Q. Who else? A. That man from the dye house, his name is Paul.

Q. Who else? A. That is all I can remember; and the watchman, I saw him there.

Q. Day watchman? A. Night watchman.

Q. You saw him, did you, when you came to work at six o'clock? A. Yes.

Q. Do you know his name? A. I know his first name, "Hoopey."

Q. Is he the man on the stand here? A. Yes.

Q. Did you know the other watchman, Fenmore? A. No.

Mr. Prince—I object to your characterizing them.

The Court—Just ask him if he knew Mr. Fenmore.

Q. Did you know Mr. Fenmore? A. No, sir.

Q. Well, now, on the 3rd day of July, 1923, what time of day did you go to work? A. Six.

Q. Did you see anybody there that morning at six? A. Well, I saw the same fellows I have been seeing before, the fireman and the fellow from the dye house and the watchman.

Q. What did you do at six o'clock? A. Prepared work for men.

Q. Go right to work for men? A. Get ready.

Q. What work did you do in order to prepare the work for the men? A. Well, get the tubs ready, get the steam ready, and some piece ready; so many things to do.

Q. Did you do that same work every day? A. Every day.

Cross Examination by Mr. Prince:

Q. How did you work, time work or piece work? A. Time work.

Q. Do you remember whether the plant was very busy in July, 1923? A. Well, I think it was.

Q. Yes; the silk business was in very flourishing condition at that time? A. Not exactly very busy, but I think it was busy enough to keep work all day long and overtime besides.

Q. Did you work overtime on July 2nd? A. I think I did. I can't exactly remember.

Q. We want you to exactly remember. Please don't say anything else unless you do exactly remember. A. I can't remember from three years ago if I did work overtime.

Q. Will you say you worked overtime on July 2nd? A. Well, I think I did, but I am not quite—the time book will tell you.

Q. Well, please to look at it and see if that refreshes your recollection. You and I ought to be able to agree on the fact as to what the time book

shows. A. Yes, but I have to find my name on it first.

Q. Well, find your name if you can. A. I think it is there. We went by number. You have to get the number.

Q. What is your name? A. Chessare.

Mr. Rosenkrans—It is not there.

The Witness—My number is 164, so look under 164. Here.

Q. There it is. Now did you work overtime on July 2nd? A. I think I did.

Q. No, but according to the book.

Mr. Rosenkrans—That is not July 2nd. You are looking at July 7th.

Q. As your last witness told me, that is the end of the pay week. Here is the column, 2nd, 3rd, 4th, 5th, 6th and 7th.

(Question repeated by stenographer.): "Now did you work overtime on July 2nd?"

Q. Look at the time book—you said the time book would show whether you worked overtime. Look at the time book and tell me whether you worked overtime. A. It showed I did not work overtime.

Q. Shows you did not work overtime. And when you did not work overtime your quitting time was 4:30, wasn't it? A. Yes.

Q. Now what you did from six o'clock until 7:20 in the morning was to get the work ready

so that when the regular workmen came they could do their work; isn't that right? A. Yes.

Q. And what the fireman did was to fire up the boilers so as to get heat and power? A. Yes, sir.

Q. Is that correct? A. Correct.

Q. They had to do that before the men could do their work? A. Yes.

Q. Now just what was it you did? Just give me each of the things, and talk slowly? A. Well, I turned the steam on the tubs.

Q. What tubs? A. Water tubs. So many tubs in there. There is not only one. I got piece ready.

Q. You got pieces ready; you mean piece material? A. Material.

Q. What would you do to get that ready? A. Well, get that ready to put on the sticks there when silk is raw.

Q. To get that ready to put on the sticks what did you do, carry it into any particular room? State what you mean by getting it ready. A. Yes, they had to be carried from the greig room to the boil-off.

Q. Had to be carried from the greig room to the boil-off, and the boil-off, they were tubs, is that correct? A. Yes.

Q. Heated water in there? A. Yes.

Q. You didn't do any actual work? A. No, sir.

Q. You were not one of the working men to do any dyeing or finishing or any of the work? A. No, sir.

Q. That this company was engaged in; is that correct? A. No, sir.

Q. And the other men you found there at six

o'clock they also were only men who got things ready for the workmen to do the work? A. Yes, sir.

Q. Is that correct? A. Yes, sir, correct.

Redirect Examination by Mr. Rosenkrans:

Q. In the course of the day did you do again what you did between six and 7:30? A. Repeat it?

Q. How did you spend the rest of your time? A. Doing some work.

Q. What work? A. Well, do some work there, boil off some silk, and sometimes I had to attend to some work, too.

Q. And you say that you do the actual boiling off? A. Yes.

Q. And when do you start that work? A. For that hour I do that special work and get the tubs ready; they take an hour; and when the regular men come in I go back to my work.

Q. What particular work do you do? A. I do all kinds of work in there.

Mr. Prince—May we have the hour? He has told us what he did between six and 7:20. Does counsel mean after that hour?

Q. What particular work do you do while at the plant of Cramer & King?

Mr. Prince—I object to that, your Honor; it is a mere repetition.

A. Well, particular work—

The Court—Wait a minute.

Mr. Prince—That is mere repetition. The witness told us fully on direct examination and on cross examination what he did between the hours of six and 7:20, and I think it is needless repetition.

The Court—Six and 7:20?

Mr. Prince—Yes, in the morning, when the other men came, as he said. He told us in detail about it.

The Court—What is the purpose of this?

Q. You say that you put the goods on the sticks? A. Yes.

Q. When do you do that? A. In the morning.

Q. At what hour in the morning? A. Between six and seven.

Q. And after the goods are put on the sticks what is done with them? A. They pour the boil-off and it is soaped.

Q. Who puts them in the soap and boil-off? A. Some of the other men, some of the employees put in there.

Q. Under whose directions? A. The foreman, Cortese.

Q. What relation or connection have you got with the foreman? What do you do? A. Well, I have got for my establishment, I have got this big work to do; we are on satin crepe goods and we are on silk, what we call mercerize them. That is the result of work I do.

Q. Who do you do that under? A. Under Paul. Of course my foreman is Paul, Cortese.

Q. So when you got there at six you put the goods on the sticks?

(Objected to as repetition. Objection sustained.)

Q. What else do you do between six and 7:20? A. I turn the steam on so that the tubs going to be boiling by that time, and the rest of the men come in.

By Mr. Prince:

Q. How far is the room where you work from the finishing room? A. Oh, I don't know exactly the distance, but I think it is about between 250 and 300 feet.

PAUL BIE, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Paul, who do you work for? A. For Mr. Cramer, of 33rd Street.

Q. How long have you worked for him? A. Nine years.

Q. Did you work for them in the spring or summer of 1923? Have you worked for them all the time during the last nine years? A. Yes, all the time.

Q. Did you hear about a robbery? A. Yes.

Q. In the mill? A. Yes.

Q. You remember it, do you? What time did you come to work? A. In the morning, six o'clock.

Q. How long had you been coming to work at six o'clock in the morning before the robbery, for how long a time? A. All the time, all the time.

Q. For years, you mean, year after year? A. Three years, two years, three years, yes.

Q. What did you do when you got at the mill at six o'clock in the morning? A. I don't understand.

The Court—Are you a dyer or finisher?
The Witness—No, dye-house.

Q. What did you do in the dye-house? A. Whiz machine.

Q. Anything else besides running the whiz machine? A. Whiz machine, and I got engine, grease the engine.

Q. When you got in the dyehouse at six o'clock in the morning, what did you do the first thing? What was the first thing that you did, the first work that you did? A. I don't understand.

(By agreement of counsel Joseph A. Pelegrina was sworn and acted as interpreter.)

Q. When you got to the mill at six o'clock in the morning during the months of April, May, June and July, 1923, what was it you first did? A. I don't remember if it was on the 2nd or 3rd.

Q. What did you usually do at six o'clock in the morning? A. I would put oil on the engine and put steam in the boxes.

Q. What else did you do? A. Then I worked at the whiz machine.

Q. What did you do on the whiz machine? A. I would dry the goods, dry the piece.

Q. Did you see anybody else at the mill at six

o'clock in the morning? A. I would enter and never look at anyone, always alone.

Q. Did you happen to meet—

A Voice—Let him repeat that again. His answer was a little different.

A. From morning until night I would enter at the same time for two years.

The Witness—(In English)—Two years ago.

A Voice—That was not the question. The question was whether he saw anyone, and his answer was—

Mr. Rosenkrans—Never mind.

(Question repeated.)

A. The fireman, the ones that had to make steam.

Cross Examination by Mr. Prince:

Q. What time did you start to work on the whiz machine? A. He said at times he would start at ten o'clock in the morning, ending there at seven or eight or possibly later, according to the work he had to do.

CARLOS GUARICO, called.

The Court—Do you speak English?

The Witness—No speak English. I speak Italian.

The Court—How long have you been in America?

The Witness—Four years.

The Court—Where do you live?

The Witness—Water Street, 18th Street.

The Court—Use the interpreter.

(Witness sworn and examined through interpreter.)

Direct Examination by Mr. Rosenkrans:

Q. Who do you work for? A. Cramer & King.

Q. How long have you worked for them? A. Four years that I work there.

Q. What do you do for them? A. I was working in boiler room, now I work in the dye-house.

Q. When did you commence to work in the dye house? A. It is now seven months.

Q. What did you work at in April, May, June and July, 1923?

Mr. Prince—Must have been in the boiler room. It is apparent.

A. I was bringing coal in the boiler room.

Q. What time did you go to work from April to July, 1923, what time of the day? A. Six o'clock.

Q. In the morning or evenings? A. Morning.

Q. What time did you stop work? A. Between six and six-thirty.

Q. When you got at the plant of Cramer & King at six o'clock in the morning during this period, did you see anybody else there? A. There was the people in the boiler room; one man in the dye house and one man at the strip, and the watchman.

Q. What did you do as soon as you got to the mill at six o'clock in the morning? A. I would bring coal in the boiler room, or bring coal in, rather.

Cross Examination by Mr. Prince:

Q. What other work did you do besides bringing coal into the boiler room? A. I would bring in coal and bring out ashes. That is all.

By Mr. Rosenkrans:

Q. All day long? A. All day.

GUISEPPI COMALONG, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Well, Joseph, who did you work for? A. For Mr. Cramer.

Q. How long have you worked for him? A. Five years.

Q. What did you do for him? A. Fireman.

Q. Same thing right straight through from the time you commenced work? A. Six in the morning.

Q. What time do you go to work? A. Six.

Q. In the morning? A. Yes.

Q. How long have you been going to work at six o'clock in the morning? A. Six in the night.

Q. Eh? A. Six in the morning until six in the night, twelve hours a day.

Q. You work from six to six? A. Yes.

Q. How long have you been starting to work at six o'clock in the morning? A. Well, I start at six o'clock in the morning.

Q. When did you first commence to work at six o'clock in the morning; you say you have been working for them for five years or six years? A. Yes.

Q. Five years. Now when you first started to

work for them five years ago, what hour did you commence? A. I can't remember the date when I started.

Q. No, but what time in the morning did you begin to work five years ago? A. Six o'clock.

Q. You always worked at six o'clock in the morning? A. Yes, six o'clock.

The Court—Always worked at six o'clock at night?

The Witness—Six o'clock every day.

Cross Examination by Mr. Prince:

Q. When you got there in the morning at six o'clock were the fires banked pretty low? A. Why, sure, it is low.

Q. What you would do would be to put more coal on and take out the ashes and get the fire going to get up steam? A. Get up steam for the people to work.

Q. Get up steam so when the men would come in later after seven o'clock there would be steam to work with? A. Get steam ready.

Q. Is that correct? A. Yes.

WILLIAM H. LORD, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Sergeant, what is your business? A. Detective sergeant.

Q. Connected with what? A. Police Department, Paterson.

Q. How long? A. Thirty-three, thirty-four years.

Q. Do you know the plant of the Cramer & King Company? A. Yes.

Q. This city? A. Yes.

Q. Did you have occasion to visit that plant on the morning of July 3, 1923? A. Yes.

Q. Anybody go with you? A. Sergeant Keppler.

Q. What time did you arrive at the plant, if you recall? A. I think it was somewheres around nine o'clock, if I am not mistaken.

Q. Did you go into a room that has been described here as the basement finishing room? A. Yes, sir.

Q. Will you tell us what you looked at there and what you found? A. Well, I went down into the finishing room and when I arrived there they had the window out, and I went on the outside and I looked, and there was a wire mesh up there, about one-eighth or three-sixteenths mesh wire was up on the outside, that had been loosened on the bottom and pulled up; I suppose it was up probably nearly three feet, pulled out, so as to make an entrance in through there —.

Mr. Prince—I object, and ask that it be stricken out.

The Court—Strike it out.

Mr. Rosenkrans—What do I understand is stricken out?

The Court—"So as to make an entrance," strike that out.

Q. Now this screen that you say that was ripped out —? A. Yes, sir.

Q. — from the sash. Along what part of the

sash was it ripped from? A. From the lower left corner of the window.

Q. As you stood facing it? A. That is, facing it from the outside, yes.

Q. Now along what distance at the base of the sash had it been ripped? A. From the bottom up.

Q. Well, all right. Let us take that. How far up? A. Well, I should judge very near three feet.

The Court—You mean both sides?

The Witness—No, sir; just the one side, just like one corner ripped up from here.

Q. The left side, you say, as you stood facing the window from the outside? A. Yes.

Q. Now how about the length along the base or bottom of the sash, how far there? A. That would be, I should judge, around about 18 inches or two feet.

Q. Now did you observe how the wire screen had been fastened to the sash?

Mr. Prince—I object to that. The witness has not shown that he saw it fastened to the sash.

The Court—I don't suppose he could tell.

Q. Well, tell us what else you saw. A. Well, there was one of Burns's men there —.

Mr. Prince—What did you see, Mr. Witness?

The Court—With relation to the window.

A. I went inside to look at the window frame.

Q. No, Sergeant, if you will pardon me; first tell us all that you observed when on the outside of the building, looking at the exterior of this window nearest to the door. A. Well, there was a mark of a tool on the bottom where the —.

Mr. Prince—I object to it and ask that it be stricken out as the witness's conclusion.

The Court—Strike it out. Just tell us what you saw.

A. Why, I saw the mark there on the window frame.

The Court—Saw a mark.

Q. What kind of a mark? A. Looked like one of these —.

Mr. Prince—I object to him stating the conclusion what it looked like.

The Court—I can't tell until I hear his answer.

Mr. Prince—I want to make my objection timely.

The Court—Your objection is timely.

A. It looked like a jimmy mark.

Mr. Prince—I object and ask to strike it out.

The Court—In the first place, so far as his experience is concerned, it doesn't show he has ever had any experience in jimmy marks or other kind of marks.

Mr. Rosenkrans—All right; I will include that.

Mr. Prince—May I have the answer stricken out?

The Court—Strike out the answer for the present, yes.

Q. You say you are a sergeant of the detective department? A. Yes.

Q. Of the Police Force of the City of Paterson, and have been how long? A. I have been in the Police Department for nearly 34 years. It will be 31 years next April, I went on the Detective Bureau.

Q. How long in the Detective Bureau? A. Since 1894, the 1st of April.

Q. What have been your duties in the Detective Bureau? A. Why, to detect crime and make investigation of robberies, etc.

Q. During this 30 years, have you in the pursuance of your duties made investigation of crimes and alleged crimes, burglaries and alleged burglaries? A. Plenty of them.

Q. How many? A. Oh, God, I couldn't tell you that.

The Court—Don't swear, Sergeant.

The Witness—I couldn't tell how many, but we have —.

Q. Do you number them by the hundreds or thousands? A. Go into thousands.

Q. Have you made a study of the tools employed by burglars in forcing entrances into buildings —?

Mr. Prince—I object to that.

Q. — and the characteristics of marks made by various tools so employed?

Mr. Prince—I object to the question as leading, suggestive, and immaterial, irrelevant, and incompetent, and no proper foundation laid.

The Court—I will permit the question.

Mr. Prince—Exception.

A. Yes, I have.

Q. Now what marks, and where were they, were observed by you on the morning of July 3rd on the window in question?

Mr. Prince—I object to the question.

The Court—Well, of course, if it is intended to elicit the same answer he gave before, I will sustain the objection.

Mr. Rosenkrans—No; I want a full statement now.

The Court—Describe the marks in detail.

A. The mark was down at the bottom of the window case where the wire had been fastened on there and loosened there, and it seems as though it had been pulled out.

Mr. Prince—I object, and ask that the answer be stricken out. The witness has not shown that he had any present knowledge of where the screen was fastened before the time he observed it, or that it would push it out, as he describes it.

The Court—Do not express any opinion of it.

The Witness—No, but it showed from the —.

Mr. Prince—I object. Follow the Court's instructions. May I have the answer stricken out?

The Court—What it seemed to him may be stricken out.

Mr. Prince—I except to your Honor's refusal to strike it all out.

The Court—Is the motion to strike it all out?

Mr. Prince—I have no objection to "the mark is on the bottom."

The Court—The motion is to strike it all out?

Mr. Prince—My motion is to strike out all excepting the words "the mark was down at the bottom."

The Court—Strike it all out except the first statement.

Q. Can you locate the mark more closely than you have? A. Well, it was where the wire was on, and it looked like it had been pried up —.

Mr. Prince—I object.

The Court—Now, Sergeant, I warned you.

The Witness—I cannot answer it any other way.

The Court—Then do not answer.

Mr. Prince—I move to strike out the answer.

The Court—Strike it out.

Q. How wide was the window? A. I don't know. I think it is something like about three feet.

Q. Three feet wide? A. Three feet wide.

Q. You say this mark was on the bottom of the sash? A. Yes.

Q. Where with reference to the wire screen, the lower edge of the wire screen? A. Where the wire —when I shoved it down, where the paint had been, it was where the wire would come at the bottom of the window.

Q. Was there more than one mark there that you saw? A. I only saw the one.

Q. Now on that part of the sash where the wire screen had not been disturbed or ripped out, what if anything held the screen to the window sash? A. I think it was staples, little staples.

Q. Yes. Did you see staples there other than those that were affixed in the sash? A. There was some on the floor, yes—on the ground.

Q. On the ground. Did you look at them? A. No, sir; I did not.

Q. Did you see any holes in or about the window frame? A. I didn't take notice to that.

Q. Did you see any molding on any part of the window frame? A. Yes, there was molding run up around the whole square of the window.

Q. Yes. Was it upon the window, all of it, do you know? A. No; there was about three feet of it off, or more.

Q. And the piece that was off, did you see that piece? A. Yes.

Q. Where was it? A. It lay along in by the window, on the outside.

Q. Now the ground on which you stood on the outside of the building as you looked toward this

window that you have described, will you say whether that ground was on the level with the window sill, or below or above it? A. I think it is a little above the ground.

Q. The window sill? A. Yes.

Q. About how far above? A. Well, that I can't say, just how far above. I know it it a little above, anyhow. It may be six inches.

Q. All right. Is there anything between the building, the wall of the building in which this window was set, placed, and the ground upon which you stood? A. Anything between it?

Q. Yes. A. This wire mesh.

Q. No; I am talking about now the wall of the building and the ground on which you stood as you looked into the building. A. No, not as I remember.

Q. Recollect any ditch or areaway?

Mr. Prince—I object to counsel suggesting to the witness the answer he wants.

The Court—I will permit that.

Mr. Prince—I respectfully except.

A. There is like a little bit of a—I don't know what you call it—an air shaft about probably a foot, and it run along the whole front of the window, just set down a little below the window sash.

Q. Now did you look at the window from within the building? A. Yes, sir.

Q. Tell us what if anything you noticed about that window? A. Well, there was—on making an investigation, I was inquiring of the people that worked around there —.

Mr. Prince—I object to any conversation.
The Court—He asked you what you saw.

A. I saw a piece broke off of the window frame on the inside, probably six or seven inches long, it was, a fresh break.

Mr. Prince—I object, and ask that it be stricken out.
The Court—I will deny the motion.
Mr. Prince—Exception.

Q. Where was that fresh break on the window? A. I am standing on the inside, it was to the right.

Q. One your right hand side? A. Facing, looking outside.

Q. As you stood up on the floor of the basement looking in the outside of the building, it was on your right hand side? A. Yes.

Q. About how far up along the length of the window? A. Well, it was up about two foot or 30 inches, something like that.

Q. Now, when you saw this window, where was it with reference to the window frame in which it belonged? A. It stood—they had had it taken out, and it stood up along the inside of the building.

Q. Did you look at the window frame from which it had been taken? A. I put the window back in again after.

Q. Now when you put it back into its window frame, was anything to hold it there? A. There was —.

Mr. Prince—I object to that, may it please

the Court. This witness doesn't know its condition before that time.

Mr. Rosenkranz—I am not asking about its condition.

Mr. Prince—He is seeking to prove the condition at that time as distinguished from the condition on July 2nd.

The Court—He said it had been removed when he got there.

Mr. Rosenkrans—I will show by other witnesses what was there before the morning of July 3rd in respect to that window. I am showing by him what the condition was that he found it in when he visited the premises and inspected the window. I will connect it up. I will show how the sash was held in that window casing prior to the morning of July 3rd. Now I want to learn from this witness in what condition he found that frame and sash on that morning.

The Court—I know, but what condition he found it in after somebody had taken it out would not be of much benefit to us.

Mr. Rosenkrans—Not in itself, but in connection with what I say I will show by other witnesses.

The Court—I do not think his testimony will corroborate the condition it was before it was moved.

Mr. Rosenkrans—Let me put it this way:

Q. Sergeant, when you restored the sash to its frame, did it stay there of its own weight?

Mr. Prince—I object to that on the same

ground as the last question. This window frame had been removed before that time. We don't know what happened to it in the meantime with the number of people around there before this gentleman arrived.

The Court—I think the objection is well taken. I sustain the objection.

Mr. Rosenkrans—I ask an exception.

Q. The panes in the window, were they intact at the time you saw them? A. I think they were. I am not sure about it.

Q. Now I am going to ask you a question, and do not answer until the Court rules upon it, because I am not quite certain just what took place heretofore. This mark which you have described as being upon the window sash upon the outside of the window, what in your judgment was that mark produced by?

Mr. Prince—I object to it.

The Court—I sustain the objection.

Mr. Rosenkrans—Exception.

Q. What sort of mark was it, Sergeant?

Mr. Prince—I object.

The Court—Describe it; not by what you think it was made by, but what you saw.

A. It was a mark about like that.

The Court—Indicating about how wide?

The Witness—About an inch and a half.

Q. In length? A. In width.

Q. About how long? A. Well, it would not be over an inch or an inch and a half.

Q. Will you say whether or not it brought to your mind any indication of whether it had been ancient or whether it had been lately made?

Mr. Prince—I object to the question as calling for the operation of the witness's mind and expressing an opinion.

The Court—I do not think that is the subject of expert testimony, as to whether a scrape or crack on a window is fresh or old. It seems to me everybody could decide that. Of course he cannot tell the length of time.

Mr. Prince—It is a comparative term. I object to its competency, relevancy or materiality.

The Court—I will permit the question.

Mr. Prince—Exception.

A. It was old wood, and you couldn't tell a great deal about it. There was an impression there in the wood.

Q. The wood was on the weather side of the building? A. On where?

Q. The wood was exposed to the weather? A. Yes.

Q. What color was it? A. I think it was light.

Q. Had it been painted? A. Painted white.

Q. And you say this mark went deep, was a deep indentation into the wood?

Mr. Prince—I object.

The Court—I do not think he said so.

A. I said there was an impression there on the wood.

Q. How deep was that impression? A. Oh, that I could not tell.

Q. About how deep? A. You could see there had been a mark there. There was a mark there.

Mr. Dunn—A dent? Do you mean a dent?
The Witness—Yes.

Q. Did or didn't it break through the texture of the wood? A. No; it was just the mark of a tool of some kind, is what I —.

Mr. Prince—I move to strike that out.
The Court—Strike out "a tool of some kind."
Mr. Rosenkrans—I object to that being stricken out and pray an exception.
The Court—You may have it.
Mr. Rosenkrans—That is all.

Cross Examination by Mr. Prince:

Q. Sergeant, Captain Tracey is the Chief of the Police Department here? A. Yes, sir.

Q. And you have been working under him for some years? A. Well, ever since he has been chief.

Q. How long is that? A. Five or six years.

Q. Now according to the rules and regulations of the Police Department of Paterson, when you make an investigation you are required to make a written report? A. I make a report.

Q. What is that? A. I did make a report of the loss.

Mr. Prince—I move to strike out that he made a report of the loss. I asked him wheth. he was required to make a report.

The Court—Strike out the answer. Answer yes or no.

A. We make a report.

The Court—He asked you if you are required to by the rules.

The Witness—Yes; we are required to make a report.

Q. Did you make a written report of this case? A. I did.

Q. Have you got that written report in court with you? A. I have.

Q. Will you produce it?

(Witness produces a paper.)

A. It only states about loss, that is all.

Q. I didn't ask you what it states. Now this report which you handed me is typewritten; is this the original report you made out? A. Yes, sir.

Q. Didn't you have a book in which you wrote your investigation first? A. A memorandum book, yes.

Q. Is that still in existence? A. I don't know.

Q. Will you make a search there for it between now and Monday? A. I can do.

Q. What? A. I can do, yes.

Q. Will you? A. Yes.

Q. If you find it will you produce it in court on Monday? A. I will.

Q. Now, Sergeant, what time did you get to the premises of Cramer & King? A. I don't know; may have been around nine o'clock.

Q. Since the time you made that investigation you have made many other investigations, have you not? A. Lots of them.

Q. About how many? A. Oh, I couldn't tell you that.

Q. Would you say thousands, about? A. Since then?

Q. Yes. A. No, not as many as that.

Q. Say hundreds? A. Oh, I don't know; I couldn't say.

Q. Would you say hundreds? A. I couldn't say.

Q. Would you say fifty? A. I couldn't say.

Q. Would you say ten? A. Oh, I say ten.

Q. Would you say 25? A. I don't really know. I couldn't tell that, because we are going out very often making investigations.

Q. Yes. You make more than one investigation a day, don't you? A. I used to, but I don't no more; haven't done for this last couple years.

Q. When did you stop? A. A couple of years ago.

Q. A couple of years ago means when? A. Oh, I can't tell right to the day and month.

Q. No idea? A. No.

Q. You see, Sergeant, you have been very specific in regard to your recollection about intimate details here, and I want to get your recollection as to some other events, and therefore I want you to tell me as nearly as you can when you stopped making investigations. A. I couldn't do that.

Q. Was it more than two years ago? A. I make investigations yet.

Mr. Rosenkrans—I object to the question, because the witness has not said he stopped making investigations. What he said is, that he doesn't make them so frequently as he formerly did.

The Court—Yes, that is true.

Q. Well, how frequently have you made them in the last two years? A. I couldn't even tell that. I have a diary that I keep of everything that I do every day.

Q. Would that tell you how many investigations in round numbers you made since July 3rd, 1923, up to the present time? A. It would.

Q. To the present time? A. Yes.

Q. Is that a very bulky record? A. No.

Q. Will you look at that between now and Monday and be prepared to tell me in round figures, not exactly, Sergeant, how many investigations you have made since July 3, 1923? A. Yes, I can do that.

Q. Is this the only written report or written memorandum that you made in reference to this matter? A. That is all.

Q. You have testified to a number of things, have you not, Sergeant, which are not contained in your written report? A. Well, that only refers —.

Q. Please answer my question. A. Yes, I did.

Q. Is there a word in your written report about finding any mark on the premises? A. No.

Q. When did you first know that you were going to testify as a witness for the plaintiff in this action? A. I don't know. One day this week, I think.

Q. For the first time? A. Yes.

Q. What day this week was it? A. I think it

was the day before—the day before the trial started.

Q. The trial started yesterday. A. I was served with a subpoena.

Q. Anybody talk to you about this matter at all from the plaintiff's side? A. I was speaking to Mr. Westerhoff. He came to the office to see me about it.

Q. When was that? A. I think it was Wednesday, if I am not mistaken.

Q. Of this week? A. Of this week.

Q. Is that the first time you have ever talked to him or to anybody else about the plaintiff's side? A. No; I was talking to Matt Connolly; he was talking with me about it.

Q. I said from the plaintiff's side. Don't you understand me? A. I understand that, but you asked me —.

Q. Please answer the question, Sergeant.

The Court—How do you know whether it is Mr. Connolly of the plaintiff's side or the defendant's side, Mr. Prince?

Q. Well, did he come to you as a representative of the plaintiff? A. I didn't know who he was representing at the time.

Q. You knew before you gave the answer, did you not, just now? A. He told me later on.

Q. Well, then you knew before you gave the answer that he didn't come to you from the plaintiff; isn't that correct? A. Yes.

Q. Now I ask you whom from the plaintiff's side came to see you to talk to you about this? A. Mr. Westerhoff.

Q. When for the first time? A. On Wednesday; I think it was Wednesday.

Q. You say that is the first time anybody from the plaintiff's side talked to you about this matter? A. Yes.

Q. How long did the conversation take? A. Oh, I don't know that.

Q. Oh, about? You have some idea of time. You have been a detective for 30 years. A. Well, that is all right.

Q. Time is an essential thing in discovering crime. A. May have been 15 or 20 minutes; may have been an hour; I can't tell you.

Q. That is the best answer you can give? A. Yes.

Q. Now is there anything in your report as to the time that you arrived at the premises of Cramer & King? A. No.

Q. Is there a blotter in the Police Department showing what time this loss was reported? A. I believe so.

Q. Did you get the report in person? A. Got it from the captain.

Q. Who was that at the time? A. Mosely.

Q. Is he still connected with the Police Department? A. He is.

Q. Have you looked up those records before you testified? A. No, sir.

Q. Do you know what the records show as to the time of the receipt of this notice? A. I do not.

Q. You say it was in the neighborhood of nine o'clock in the morning, that is your recollection? A. As near as I can recollect, yes.

Q. May have been half-past nine or ten by the time you got out there? A. No, I don't think so.

Q. Well, you say it was not? A. I wouldn't say it was not or it was, but I don't think it was.

Q. Now when you got out there a number of people had been in the finishing room in advance; is that correct? A. That I don't know.

Q. Didn't you learn that from your investigation? A. I knew there had been some people around, but who had been there I don't know.

Q. Where did you first go when you went to the premises of Cramer & King on that morning? A. The office.

Q. On the second floor? A. The first floor from 33rd Street.

Q. One flight up, you mean? A. Yes.

Q. Who was it that took you down to the finishing room? A. The clerk, the young man who was on the stand.

Q. Mr. Lundgren? A. Yes.

Q. Is that the man? Is he in court? A. Yes, that is him.

Q. The gentleman that just stood up, Mr. Lundgren? A. Yes.

Q. He is the man you first talked to, is he? A. Yes.

Q. He took you down stairs to the finishing room? A. Yes.

Q. Did he tell you his theory of how the burglars got in? A. He did not.

Q. He did not tell you a word then? A. I asked him where —.

Q. No, I didn't ask you what you asked him. Did he tell you where? A. He said that burglars had been in there.

Q. Did he tell you how they got in; yes or no? A. Took me down to show me.

Q. He took you down to show you the way that he claimed the burglars got in; is that right? A. Yes.

Q. When were you last to the mill of Cramer & King? A. I think it was Wednesday.

Q. Wednesday of this last week? A. This week.

Q. Who did you go out there with? A. Mr. Harris.

Q. Who is Mr. Harris? A. Or Westerhoff, I should say.

Q. Mr. Westerhoff; he came down to the Police Department and took you out to the mill to look over the ground again; that is correct? A. That is right.

Q. Isnt that the reason your recollection is so clear as to whether there was a left hand side or the right hand side of the window? A. No; I knew it was.

Q. Is there a word in your report whether it was the left hand side or the right hand side? A. No, sir; there is not.

Q. Is there a word in your report as to whether or not the screen was fastened with staples? A. No, sir.

Q. Mr. Westerhoff went with you, and when you were out there you looked at this particular window and you discussed the matter with him at that time, didn't you? A. I showed him —.

Q. Did you? Yes or no? A. Yes.

(Adjourned to Monday, March 23, 1925, at 10 A. M.)

Paterson, N. J., March 23, 1925.

Trial of the cause resumed at 10 A. M.

WILLIAM H. LORD, resumed.

Further Cross Examination by Mr. Prince:

Q. Sergeant, did you look up the blotter at Police Headquarters? A. I tried to find it, but I could not find it.

Q. Did you speak to your superior officer about it, Captain Mosely? A. Captain Mosely, yes.

Q. Did you find that little memorandum book of yours? A. No, sir; I did not.

Q. Did not find that either; is that right? A. I did not find it.

Q. Where did you last see that little memorandum book? A. Oh, I destroyed that. They accumulate so fast. I only have a small book.

Q. I didn't ask you whether you destroyed it. When did you last see it? A. Oh, I don't know that.

Q. You didn't tell me on Friday you had destroyed it, did you? A. I didn't know.

Q. Well, do you remember now that you destroyed it, or do you only say that because you can't locate it? A. I can't locate it.

Q. In the little memorandum book you make your notes of the various things you observe when you go out on cases in order to make your report; isn't that correct? A. Right.

Q. Now have you thought over the number of investigations you have made since you made this one on July 3, 1923? A. I started in and I got a few of them.

Q. Are you able to give me any estimate in round figures now as to the number of investigations you made? A. For about five months I can.

Q. Just give me an idea. A. (Witness produces paper.)

Q. I don't want the names, but just the number. A. I will give the dates when I kept them.

Q. Just the number. A. About 17 of them, I think.

Q. About 17 in five months that you checked up; is that correct? A. I think so.

Q. Was that an average, would you say, 17 in five months? A. For this last while back, yes.

Q. Before these five months your investigations were more? A. Before that, yes.

Q. And would you say since that time you made 75 to 100 investigations; would that be fair? A. Probably so.

Q. That is a fair estimate, isn't it; is that right? A. Yes, I should say so.

Q. Now on Wednesday of last week, you say that was the first time that anybody representing the plaintiff ever talked to you about this matter since you were up to the premises at or about the time of this alleged occurrence; is that right? A. On Wednesday, yes.

Q. That is the first time? Is that right? A. Yes, sir.

Q. Neither Cramer nor King nor anybody representing it nor any lawyers or anybody else talked to you about this matter? A. Never talked to me about it.

Q. What is that? A. They never talked to me about it.

Q. Was the matter called to your attention in any way, directly or indirectly? A. No, sir.

Q. You knew nothing about this lawsuit until last Wednesday; is that correct? A. Not a thing.

Q. That is right, isn't it? A. That is correct.

Q. There was nothing then between July 3, 1923,

and last Wednesday, except this matter to refresh your mind; no specific instance outside of what you remembered of the alleged occurrence; that is correct? A. No; that is right.

Q. You didn't know until last Wednesday you would ever be called upon to testify in this case? A. Not from the complainant's side.

Q. Then you say somebody from the defendant's side talked to you? When was that? A. Probably a couple of weeks ago.

Q. Up until this few weeks ago you didn't know that you were going to testify; is that right; or never had any inkling of it? A. Any more than he said he thought I would be subpoenaed.

Q. That is a few weeks ago? A. Yes, a couple of weeks ago.

Q. So between July 3rd, then, and a couple of weeks ago, there was nothing that called this matter to your specific attention? A. Not a thing.

Q. Now on Wednesday of last week you saw Mr. —who was it? A. Westerhoff.

Q. He came down to the police station; is that correct? A. Yes, sir.

Q. What time of the day? A. I think it was in the morning.

Q. Can you be any more specific, whether it was morning or afternoon? A. I am pretty sure it was in the morning.

Q. He talked to you there for about an hour, you say; is that correct? A. No; we went down to the plant.

Q. No; did he talk to you at police headquarters? A. Only a few minutes.

Q. Whose suggestion was it to go to the plant, yours of his? A. Mr. Westerhoff's.

Q. Did he say why he wanted you to go to the plant? A. Wanted to look it over.

Q. You had looked it over in 1923 and made a written report; isn't that correct? A. Yes.

Q. So he said to you, "Let's go down to the plant and look it over in order to refresh your recollection," isn't that right, Mr. Sergeant? A. He wanted to have a look at it himself.

Q. In order for him to have a look at it himself and in order to go down to his own client's premises to look at it, you say he came around to police headquarters and asked you to go with him? A. Show what we found, yes.

Q. It was his suggestion then you go down to the plant to look at it; is that right? A. It was, yes.

Q. What did he say to you when he said, "Let's go down and look at the plant"? A. He said, "I would like to go down and look over where that robbery was down in Cramer & King's, and just explain things to me the way they were."

Q. Now that is what he said? A. "As you found them." That is all.

Q. So you went down there and spent an hour about it with him? A. No, it was not an hour; probably a half hour.

Q. How long did it take you to go to the plant? A. Only a few minutes.

Q. How did you go down, in his automobile? A. Yes, sir.

Q. Then you spent just a few minutes there with him? A. I don't believe we were there over 15 minutes.

Q. Over 15 minutes. Did you speak to Captain Mosely about permitting you to go down there on

the time of the City of Paterson, to explain to some lawyer what you say you saw there two years ago? A. I didn't have to explain.

Q. Never mind what you had to. Did you? A. No, sir.

Q. When you went down there on Wednesday did you see this mark or any remains of it that you say you saw there on the outside of the window, July 3, 1923? A. There was a slight impression on there.

Q. Did you? A. I wouldn't swear it was the same mark.

Q. You wouldn't swear it was the same mark? A. No.

Q. Did you point it out to the counsel for the plaintiff, that that was the mark? A. I showed him where it was.

Q. Did I ask you that, Sergeant? A. I did, yes. I pointed it out.

Q. This mark the remains of which you saw on Wednesday, you said, "That is the mark that I saw there on July 3rd," is that right? A. Yes.

Q. Now was there more than one mark there when you got to the premises on Wednesday, on the outside of the window? A. No, sir.

Q. That is the only mark on the frame? A. That is all I saw.

Q. Is that correct; and you say now that was the same mark that you saw there on July 3rd? A. It was not as plain.

Q. No, it was not as plain, but it was the same mark? A. I imagine it was.

Q. That is your best recollection, isn't it? A. Yes, sir.

Q. Sergeant, did you ever hear that after the

plaintiff claimed to have discovered this screen in its condition on July 3, 1923, that the screen was nailed back to the window, and when the investigators from the insurance company came there Cramer & King had one of their carpenters take a clawhammer and rip the screen off again to try to show the insurance company the condition in which the screen was found on July 3rd, and at that time that a clawhammer made a number of marks on the window frame? A. That I don't know.

Q. What is that? A. I don't know.

Q. You never heard of it, did you? A. No.

Q. Don't know anything about that? A. I do not.

Q. But you are positive the mark you saw on the window frame on the Wednesday of last week was the same mark you saw there on July 3rd, only not as plain; is that right? A. It was not as plain, not near.

Q. But that is the same mark? A. I imagine it was.

Q. That is your best recollection? A. My best recollection, yes.

Q. Now, when you told us on Friday that you found a piece of the molding or a lath, I believe you called it— A. Molding.

Q. Molding; all right. —lying on the window sill— A. Alongside.

Q. On the window sill, was that? A. No; alongside of the window.

Q. Was it standing upright? A. Upright.

Q. But off the frame? Aren't you positive of it? A. I know there was a piece of molding there.

Q. Are you positive you saw it standing there?

Never mind what you know now. A. I am pretty sure about it.

Q. Well, will you say it was there?

(Objected to. Question permitted.)

A. I know there was a piece of molding there.

Q. Off the frame? A. It was not tacked on to the frame. It was off to one side.

Q. Was it on the ground or standing on the sill, upright? A. It was standing like against the sill.

Q. Partly on the ground? A. Yes; one end on the ground.

Q. And partly against the mill; is that correct? A. Yes.

Q. Did you see any molding off the window frame? A. There was a piece off, yes.

Q. Did you take this piece that was standing on the ground and fit it in? A. I did.

Q. Did it fit? A. Yes, sir.

Q. Perfectly? A. Yes, sir.

Q. Now that is one or two pieces that you saw? A. One.

Q. You are positive of that? A. Positive.

Q. That was from the upright side, wasn't it? A. To the left hand side, facing.

Q. I mean the piece that you saw on the ground which you picked up, that fitted into the remaining part of the molding on the left hand upright side of the window frame? A. Yes.

Q. Not on the bottom of the window frame? A. No; it was not on the bottom, it was on the up.

Q. The piece that ran the width of the window

frame, that was all intact? A. That was intact.

Q. There is no doubt about that, is there, sergeant? A. Not to my knowledge.

Q. Did you preserve that piece of molding? A. No, sir.

Q. You say you saw some staples on the ground; is that right? A. There was a couple on the ground.

Q. How many? A. One or two.

Q. Did you pick them up? A. I did not.

Q. Examine them at all? A. No, sir.

Q. Didn't even pick them up, did you? A. No, sir.

Q. Now you say there was a hole in front of that window; is that correct? A. Yes.

Q. And that was directly in front of the window on the ground or in the ground? A. On the ground, yes.

Q. Is that correct? What was the width of that hole? A. About the width of the window, three foot.

Q. Three feet. Well, that was probably the length of the hole, was it? A. The length, yes; it was about 10 or 12 inches wide.

Q. How high did you say the window sill was from the ground? A. Probably about a foot.

Q. So we have a foot from the ground to the window sill and then we have almost a foot of a hole; is that correct? A. Yes.

Q. That hole was not covered with anything? A. No.

Q. In other words, if you stepped in there in the dark you would go down; is that correct? A. That is right.

Q. Now a number of people, you were advised,

were outside that window before you got there; is that right? A. That I don't know.

Q. Made no inquiry about that, did you? A. I did not.

Q. Around that hole did you make a search for footprints? A. I see footprints around there, but I didn't—

Q. And you don't know whether they were made by the people of the plant or not? A. I did not.

Q. In other words, by the time you got there that evidence was gone because you were advised other people had been around the window; is that correct? A. That is right.

Q. Now did you make any examination of the window for finger prints? A. I did.

Q. Find any? A. I did not.

Q. Nowhere around the window at all; is that correct? A. I couldn't see any.

Q. You looked very carefully for them, didn't you? A. I did.

Q. Because that is one of the most important things in making your investigation, isn't it? A. Yes.

Q. Now there was a lot of dust on the window sill, wasn't there? A. That I couldn't say now.

Q. What is that? A. I couldn't say that now, whether there was or not.

Q. Well, didn't you make an examination at that time? A. We was looking for prints.

Q. Not we; didn't you? A. Yes.

Q. You say that this was white paint on the window sash; is that correct? A. Yes.

Q. Did you touch it at all? A. I don't know whether I did or not.

Q. Well, to determine whether it would take a

print of a finger easily? A. No, I don't know as I did.

Q. Didn't it occur to you in making your investigation? A. No, sir.

Q. You won't say one way or the other, will you, whether there was a lot of dust on the window sill, inside and outside, of the window itself? A. I don't know.

Q. You have no recollection of it at all? A. I don't recall whether there was or not.

Q. I think you said on Friday that when you got down to this finishing room, taken down there by Mr. Lundgren, and he gave you his theory of this proposition, that you found the entire window out of the window frame standing against the wall; is that correct? A. Inside, yes.

Q. About how far from the window was it? A. Oh, it was just alongside of the window, just so as to let the air in.

Q. Inside of the window? What was it, three or four feet away? A. No; it was just practically parallel with the window, just set off to one side so the air will shoot in through.

Q. Set off aside? A. Yes.

Q. No part of it was in the window frame at all? A. Not a bit.

Q. On the inside of that room how high was the sill from the floor? A. I don't know; it might have been three feet.

Q. When you were up there last Wednesday did you get on the inside of the finishing plant and look at it? A. Yes.

Q. Now did you see anything else but what you have told us about? A. When? When I was down Friday or Wednesday?

Q. Oh, no; I mean when you were down there

on July 3, 1923? A. Well, there was a piece off of the window frame.

Q. You told us about that. I say, something that you didn't tell us about. A. No; I don't know of anything.

Q. Now have you told us your complete recollection? A. As near as I can.

Q. Let me have that report, will you, please, that you had here on Friday?

(Witness produces paper.)

Q. When you made the report to the Police Department of Paterson you didn't say a word in it, did you, that you did not find any finger prints, did you? A. No.

Q. Now you interviewed a number of the employees of the plant in your investigation; isn't that correct? A. That is right.

Q. You interviewed Herbert White? A. Yes.

Q. Did you see the dog? A. I don't know as I did.

Q. You interviewed a man by the name of Joseph Gorman, did you not, who was working for them? A. Yes.

Q. You asked him a lot of questions, didn't you? A. Yes, sir.

Q. And in your investigation you interviewed many of the employees; isn't that correct? A. Several of them.

Q. How long were you at the plant on July 3rd? A. Oh, probably an hour.

Q. When did you go back again? A. I think it was the following day.

Q. What time? A. Well, that I don't know.

Q. How long were you there on the following day? A. Probably a half an hour or more.

Q. Positive of that, are you? A. I was there probably a half an hour or more, I say; I don't know.

Q. The first day you were there was the day you were notified of this alleged occurrence; that is right, isn't it? A. That is right.

Q. Then the next day you went there and you were there for about a half an hour or so; is that correct? A. Or more, yes.

Q. How many people did you see working there on the second day you were there? A. Plant in full blast.

Q. The plant was running? A. Yes.

Q. You remember that day was the 4th of July, don't you, the second day? A. Yes, sir.

Q. The plant was working on the 4th of July, you say? A. There was somebody there.

Q. But you said it was a minute ago, it was running in full blast. Do you mean that? A. I can't just recall.

Mr. Rosenkrans—I object to the question, if the Court please, because he said less than what counsel ascribes to him; he qualified that.

The Court—He has anwered now.

Q. What did you do there on the 4th of July? A. We questioned different people.

Q. Well, whom did you question? A. That I can't recall now.

Q. Did you make a report of what you found on the 4th of July? A. No, I did not.

Q. Did you work on the 4th of July yourself? A. Yes, sir.

Q. Did you see Mr. Cortese there at the plant at all? A. Who?

Q. Cortese. A. I don't know him, as I know of.

Q. What is that? A. I don't know him, as I know of.

Q. He was the boss of the finishing plant, wasn't he?

Mr. Rosenkrans—Of the basement.

A. Yes, I saw him.

Q. You saw him; talk to him at all? A. I was talking to him.

Q. Now you say you saw one mark on the outside of the window frame? A. Yes.

Q. That was about an inch and a half long, an inch and a half high; is that correct? A. Inch and a half high?

Q. Yes. A. I said it was an inch wide and about an inch and a half long.

Q. An inch and a half long, and to distinguish it we will say an inch high, is that correct? A. High?

Q. Well, you talk about width; I don't know which way you mean, whether width is the length or the height. A. Well, say it is run this way.

Q. That doesn't get on the record, this and that. Just follow me. Here is our window frame, the same as the window frame in the court. A. Yes.

Q. Now how wide was the mark running paralled to the width of the window? A. About an inch and a half.

Q. That is right; and then it was about an inch high then, running perpendicular to the window sill? A. Yes.

The Court—What part of the window was that on?

The Witness—Down on the lower left corner.

Q. Was that mark deep into the wood or— A. No, sir.

Q. I think counsel for the plaintiff asked you whether the texture of the wood on the window was broken by this mark and you said no. A. I said no.

Q. That is correct, isn't it? A. That is correct.

Q. It was very light, wasn't it, sergeant? A. Light mark there.

Q. What about the paint on this mark, white paint on it? A. There was white paint there, yes.

Q. See any white chips of paint on the window sill? A. No, sir.

Q. Now, sergeant, this screen which you say you saw away from the window; you say it was bent up? A. Yes.

Q. On the lower left hand corner? A. That is right.

Q. How far was it bent up; was it bent all the way up so it came in contact with the part of the screen— A. No.

Q. —above the piece? A. No; just pulled out.

Q. How far? A. Well, it was about three feet.

Q. Was it 45 degrees pulled out? A. Something like that.

Q. In other words, it extended out almost straight from the window? A. Not quite straight out, but it was at a little angle.

Q. Inclined down? A. Yes.

Q. It was up less than 45 degrees? A. Less, yes.

Q. So with the point of the screen that had been fastened to the bottom of the window pulled out, it was less than 45 degrees up from the window; is that correct? A. It was about in that position (indicating).

Q. Yes, I see. What would you say the distance was from the screen, the end of the screen which had been pulled out, which formerly had been fastened to the window sash? You follow me? The distance from that point to the window frame itself to which you say it formerly had been attached? A. That I couldn't tell.

Q. Well, have you any idea of it; was it five inches, three inches, four inches, five inches? A. May have been three feet or more.

Q. It may have been three feet or more? A. Yes; from the window pulled out.

Q. Why, I thought you told me that it had only been loosened from the window a distance of about three feet on the side? A. Yes.

Q. And about 18 inches on the bottom; isn't that right? A. Yes, that is right.

Q. You did not mean it was out three feet then. It couldn't go that far, could it? A. Well, now, I don't know; I couldn't—

Q. Just follow me, sergeant. Let's take the lower part of the window and let us assume your statement 18 inches pulled out, and it is pulled out in the position which you find it was an

angle less than 45 degrees; well, if there was only 18 inches loosened from the bottom, certainly it could not be out more than 18 inches, because there was only 18 inches of wire to pull out; isn't that correct? A. On the side—

Q. Isn't that correct? The bottom of it? A. The bottom is all.

Q. That point wasn't out three feet, was it? A. It may not have been three feet. I won't say it was, because I wasn't looking at them things so closely as that at the time.

Q. You looked at it closer last Wednesday; is that correct? A. I looked at it, yes.

Q. Did you ever tell anybody this was an inside job? A. No, sir.

Q. Well, was that ever your impression? A. No, sir.

Q. That is the reason you examined the various employees on the inside, because you never had that idea; isn't that right, sergeant? A. No; we was following up information we got.

Q. Now on your direct examination you were asked by Mr. Rosenkrans—I don't know whether it was direct or cross—at any rate, you were asked this question Friday: "The panes in the window"—we were referring to this window in question—"were they intact at the time you saw them," and you gave this answer, "I think they were, I am not sure about it." A. Yes.

Q. Well, have you refreshed your recollection since Friday? A. I have not.

Q. In other words, sergeant, in making the investigation as to whether or not there was a burglary there, you cannot recall whether or not any of the panes of glass in this particular window were broken or not; is that correct? A. I don't recall whether there was any broken or not.

Q. And you said nothing in your report about it one way or the other, did you? A. No, I did not.

Q. Well, if they had been broken, don't you think that would have been in your report? A. I imagine it would, yes.

Q. That would have been an important matter, wouldn't it? A. Yes.

Q. Do you remember on Friday you said that this window frame was old wood and you couldn't tell a great deal about it? A. Yes.

Q. Do you remember that? A. Yes.

Q. Is that correct? A. Yes.

Q. That window had not been freshly painted, had it, when you got there on July 3rd? A. I don't think it was.

Q. A good deal of the paint was off, wasn't it? A. That I don't know, whether it was much off it or not.

OTTO KEPPLER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Sergeant, what is your business? A. Police officer.

Q. Connected with what department? A. Detective Bureau.

Q. Of what city? A. Paterson.

Q. You have been connected with the Paterson Police Department for how many years? A. 33.

Q. Do you know Sergeant Lord? A. Yes.

Q. Did you visit with him the premises of the plaintiff on the morning of July 3, 1923? A. Yes, sir.

Q. Do you recollect at about what hour you arrived there? A. Well, somewheres between nine and ten—half-past eight to half-past nine, something like that.

Q. Now do you know the location in the plaintiff's plant of the room that has been described here as the basement finishing room? A. Yes.

Q. Did you enter that room? A. Yes, sir.

Q. On that day? A. Yes, sir.

10 Q. Do you recollect what was in the room? A. Yes, sir.

Q. What? A. Silk.

Q. Anything else? A. Machinery.

Q. How much machinery? A. I couldn't tell that.

Q. Was it full of machinery, or otherwise? A. Well, I couldn't tell that.

Q. Now was your attention drawn to the door leading from the basement finishing room to the 20 back of the plaintiff's premises? A. Yes, sir.

Q. To a window? A. Yes.

Q. Nearest that door? A. Yes, sir.

Q. Now did you examine that window? A. Yes, sir.

Q. Both from the inside and the outside? A. Yes, sir.

Q. Taking first the inside, will you describe to the jury what you found there? A. Well, the window was standing on the floor, in front, 30 taken out.

Q. The window itself? A. Yes.

Q. Did you look at the sash?

Mr. Prince—Pardon me, do you mean the window that was standing on the floor or the window frame?

The Witness—Window frame.

Mr. Prince—I objected to that on Friday and your Honor sustained the objection.

The Court—I sustain the objection.

Q. Did you look, sergeant, at the window casing or frame from the inside? A. Yes, sir.

Q. What, if anything, did you observe about it? A. Well, there was a little piece about four or five inches long tore off there by a nail that Sergeant Lord told me.

Q. Was that a fresh or an old tear?

(Objected to.)

The Court—You may describe what it looked like.

A. It looked fresh to me.

(Answer objected to and asked to be stricken out. Answer permitted to stand.)

Q. Did you examine the window sash itself as it stood upon the floor of the basement? A. No, sir.

Q. Now you say that you also examined the window frame and sill? A. Yes, sir.

Q. From the outside of the building? A. Yes.

Q. Tell us in detail what you saw? A. Well, on the outside of the building there was a screen, the screen was pulled up on the left side.

Q. Yes. Now where was the screen? A. It was pulled up.

Q. Well, how heavy a screen? A. Why, just ordinary wire; small, thin wire; regular screen.

Q. Well, screen is of many sizes. A. I couldn't tell how heavy.

The Court—Can't you tell what kind of a screen it was? Some description of it?

A. It was a screen with—no, I couldn't tell you, I couldn't say what you would call it. It was a regular screen. It was not very heavy; it was light.

Q. Well, compare it with the ordinary window screen in a house? A. Well, it was a little heavier than that.

Q. Say as a protection against flies and mosquitoes? A. No; it was heavier than that.

Q. How wide were the meshes? A. Oh, maybe a quarter of an inch.

Q. Now you say it was pulled up? A. Yes.

Q. Where was it pulled up? A. From the bottom.

Q. Only on the bottom? A. Well, bottom and on the side, left side.

Q. Left side as you stood facing the window? A. Facing the window, yes.

Q. How far up along the window frame was it pulled from the left side? A. Well, might be two feet and a half, something like that; three feet.

Q. Along the bottom how far? A. Well, about 18 inches.

Q. Did you notice any molding in or about the window frame or casing? A. Yes, sir.

Q. Tell us about it? A. Well, it was the mark there that Sergeant Lord, he showed it to me; he says, here is a point here—

The Court—Don't tell what he said.

A. He showed me the point, just with a chisel—

(Objected to and move to strike out. Stricken out.)

Q. I am asking you now, sergeant, whether or not you saw any molding in or about the window? A. Molding?

Q. Yes. A. Yes; there was the molding there.

Q. Where was the molding there? A. Why, the molding was pulled off on the left hand side.

Q. For what distance? A. Broke off somewhere around the top.

The Court—Is that outside or inside?
The Witness—Outside.

Q. Did you find or see the molding anywheres about? A. Yes; I believe it laid in the yard there.

Q. Laid in the yard. Now you have spoken about a mark that you observed. Where was that mark? A. Why, that mark was about—it was in very nearly the corner of the window.

Q. Which corner? A. The left hand side—left corner facing the building.

Q. Where with reference to the screen? A. Well—

Q. If the screen had been fastened down again in its place?

(Objected to. Objection sustained.)

Q. Well, you say the screen was pulled away from the window sash or frame? A. Yes.

Q. Did you determine with your eye what part of the window frame that screen if placed against the window frame would have come?

(Objected to. Question permitted.)

A. Well, I don't know just how far it came on the frame.

Q. Just what I mean. A. On the frame. I know what you mean. On the frame or on the side?

Q. You say this window screen was loose here for two and a half or three feet, some such distance? A. Yes.

Q. And that it was also loose along there? A. Yes.

Q. And that it was pulled out. I am asking now whether you determined where it would have come to along the window, the bottom of the window frame if put back in its place. A. Why, it was nailed up against the works there, the side.

Q. Yes; but if this corner—this one corner loose on the screen, wasn't there?

(Objected to. Question permitted.)

Q. Now I am asking you whether or not you determined where that corner would have landed against the window frame if put back against the window frame? A. Well, it was tacked there before it was torn off.

Q. Why do you say so, that it was tacked there before it was torn off? A. I saw a few of the little staples there that were pulled out, like a wire staple.

(Objected to and asked to be stricken out. Stricken out.)

Q. You say you saw the staples? A. Yes.

Q. Where were they? A. Laying around the floor or on the—around the window sill.

Q. How many to the best of your recollection? A. Four or five.

Q. Did you see any holes? A. Yes; you could see where they were pulled out.

(Objected to. Answer stricken out, except "yes.")

Q. You say you saw holes? A. Yes.

Q. Now was there any correspondence between the diameter of the holes that you saw there and the diameter of the staples, the four or five staples that you saw there?

(Objected to. Question permitted.)

A. Yes.

Q. What correspondence? A. Why, the staples fit in the little holes there.

Q. Did you judge that by your eye or by actual experiment? A. I judged it by my eye; I saw it.

Q. Will you locate as accurately as you can where the mark upon the window was? A. Well, it was quite a ways up, I couldn't just say; a foot up or something.

The Court—On the side or bottom.
The Witness—On the side.

Q. Part of this screen, sergeant, if you look

around here, was still intact upon the window? A. Yes.

Q. Now if you prolonged the line, the edge, the outside edge of that part of the screen which was still intact and fastened against the window downward to the edge, to the bottom of the window frame or casing, where did this mark come with reference to that line so prolonged? A. Well, a nail was—was a nail sticking in there.

Q. That is not quite responsive. Do you understand what I am asking you? On the upper part of the window, the window screen was still fastened to the window frame, wasn't it? A. Yes.

Q. How was it fastened there? A. Fastened by staples, little, small staples.

Q. Small; about four or five that you saw? A. Yes.

(Objected to as leading and suggestive; objection sustained and answer stricken out.)

Q. Will you say whether or not the staples that remained on the window frame and which fastened the screen to the window resembled or did not resemble the four or five staples that you saw upon the window sash?

(Objected to. Question permitted.)

A. They resembled them; yes.

Q. Now taking the line of the outer edge of the screen which was still fastened to the window frame at the time you saw it, and prolonging that line downward to the bottom of the window frame, will you tell us where that mark that

you saw here somewheres was with reference to the prolongation of that line?

(Objected to; question permitted.)

A. It looked to me to be up about a foot and a half.

Q. In the line? A. Yes, on the sash.

Q. The prolonged line or to the right or left of that, or where? A. On the left of it.

Q. On the left of what? A. The window sash.

Cross Examination by Mr. Prince:

Q. How long have you been in court on this case? A. When it started.

Q. Were you here when Sergeant Lord testified? A. Yes, sir.

Q. Both on his direct and on his cross examination? A. Yes.

Q. Here all day Friday and all day today? A. Yes, sir.

Q. Where were you sitting? A. Over there.

Q. Where over there, in the first row? A. First row.

Q. Did you hear the various questions that both counsel asked Sergeant Lord? A. Some of them.

Q. Did you hear any talk about the mark? A. No.

Q. Didn't hear what Sergeant Lord said about that, did you? A. No, sir.

Q. Now you and Sergeant Lord were there together, weren't you? A. Yes.

Q. Sergeant Lord was the one who called your attention to these things? A. Yes.

Q. Is that right? A. Yes.

Q. Sergeant Lord was your superior or your partner, which? A. No; partner.

Q. In other words, you two detectives work together; is that right? A. Yes, sir.

Q. Did you hear how far Sergeant Lord said the screen was pulled away from the window? A. No, sir—I heard him, but I don't remember.

Q. Oh, you heard him, but you don't remember? A. I don't remember what he said, no.

Q. Did he say it Friday or today? A. I couldn't tell you.

Q. You mean you don't remember? A. I don't remember.

Q. You heard him say something about it? A. Something about screen, yes.

Q. But you don't remember whether it was today or Friday; is that right? A. Yes.

Q. Did you make a written report on this matter? A. No, sir.

Q. Did you ever make any note or memorandum of what you say you saw? A. No, sir.

Q. When were you last up to the premises? A. Last Wednesday.

Q. Oh, you went up with counsel for the plaintiff and with Sergeant Lord? A. Yes, sir.

Q. Anybody else go along? A. Yes, sir.

Q. What's that? A. Yes, sir.

Q. Who else went along? A. Mr. Freeman.

Q. Who? A. Partner of Mr. Westerhoff's.

Q. Oh, the two attorneys were there? A. Yes.

Q. Did they first come down to police headquarters? A. Yes, sir.

Q. What time? A. A little after eight in the morning.

Q. What time did you go out there? A. A little after eight.

Q. How long did you talk about it down at the police headquarters? A. Didn't talk about it at all at police headquarters.

Q. Not a word was said about it? A. Not in police headquarters.

Q. They didn't say a word to you? A. Harry came upstairs and he said the machine is down stairs, that is all.

Q. Harry who? A. Harry Westerhoff.

Q. Oh, you are an intimate friend of his for many years; is that the idea? A. I know him, yes.

Q. You call him by his first name; is that correct? A. Yes.

Q. So Harry came up stairs and said the machine is down stairs? A. Yes.

Q. That was the signal for you and your partner to get your hats and coats on and go down in the machine to go out to the plant; is that the idea? A. Yes, sir.

Q. What did he tell you before that, that he was coming for? A. When he served the subpoenas.

Q. When was that? I don't know when that was; give me the date. A. The day before—Tuesday.

Q. Two days before? A. Tuesday.

Q. He came down to hand you a subpoena and he said to you, "Tomorrow I will come down here with a machine and take you and Sergeant Lord out so you can look over the window to refresh your recollection," is that right? A. We went down to look at it.

Q. Is that right? A. No.

Q. Did he say to you he would take you out to the premises to look over the window again,

because you were going to testify and you better have the matter pretty fresh in your minds? A. No.

Q. Nothing like that at all? A. No.

Q. Well, did you say to him that it is not necessary for me to go out there and look at the window or at conditions? Did you say this? A. No, sir.

Q. What did you say—"All right, you would go out and look at it?" A. I said we will go and look at it.

Q. You went out and looked at it? A. Yes.

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

Q. How wide was this window? A. Oh, I don't know. About the width—about three feet, I guess.

Q. Now the screen on the left hand side as you faced the window from the outside on July 3, 1923, how far did you say that was pulled away? A. Two feet and a half up above; three feet.

Q. What is two feet and a half; indicate with your hands. A. (Witness indicates.)

Q. That is two feet? A. Two feet and a half.

Q. What is your best judgment of two feet? A. Well, we will say two feet is here, about; it was about that much, two feet and a half.

Q. That is two feet and a half that you have indicated; is that correct? A. I think so.

Q. From the bottom how far would you say it was pulled away? A. Oh, about 18 inches.

Q. That is exactly what Sergeant Lord said, didn't he? A. I don't know what he said.

Q. You didn't hear what he said in court, or you don't remember? A. I wasn't listening to him.

Q. You were not listening to him? A. No.

Q. Did you read over the report that was made by Sergeant Lord at police headquarters before you took the witness stand? A. No, sir.

Mr. Prince—May I have that, sergeant? Where is he?

The Court—Gone out.

Mr. Prince—May I have your copy a minute?

Mr. Rosenkrans—For the purpose of examining this witness upon another man's report; no.

Mr. Prince—You will see the pertinency of it. Is this the original?

Mr. Rosenkrans—No.

Mr. Prince—Counsel for the plaintiff hands me a copy of the police report.

Q. Just look at that. A. I saw it.

Q. When did you see it? A. Why, I saw it Wednesday, I guess.

Q. Wednesday of the last week? A. Yes.

Q. Well then, you did read it over on Wednesday? A. Why, yes.

Q. Didn't you say a moment ago when I asked you whether you had ever examined or read over Sergeant Lord's report before you took the witness stand, no? A. Well, I thought you meant this morning.

Q. I meant at any time before you took the stand. A. I read it, yes, last Wednesday.

Q. You discussed the matter with Sergeant Lord? A. No, I don't think so.

Q. Had no talk at all with him about it? A. None at all, only just making up the report.

Q. Did you have any talk with him, whether

it was much or little? A. No.

Q. No talk at all? A. No.

Q. You and he did not agree what you were going to say on the witness stand or anything about the case? A. No, sir.

Q. Is there a word in his report about a mark? A. No, sir.

Q. Did you make any independent report? A. No, sir.

Q. Do not the rules of your department require you each to make a report of what you saw? A. No, sir.

Q. Now this mark which you saw, was that on the window enclosing the glass, the window which was taken out and stood on the floor, or was it on the window casing after the window was out? A. Well, what I saw was on the casing.

Q. Didn't you hear Sergeant Lord say that on the inside the mark he saw was on the window itself, it was standing down on the floor? A. Yes.

Q. What's that? A. I heard him say that, yes.

Q. That is not your recollection of it? A. That is not mine, no.

Q. You didn't see any mark on the window frame that was standing on the floor, did you? A. I didn't examine it, no.

Q. You didn't examine it? A. Not that window that stood there, no.

Q. What's that? A. I said I didn't examine it, not the window frame.

Q. And the mark you saw on the sash was on the left hand side about how high from the window sill? A. Oh, a foot and a half.

Q. You only saw one mark, didn't you? A. Yes.

Q. That is right, isn't it? Is that right? A. Well, I saw that one.

Q. Well, did you see any other that you recall? A. Yes.

Q. Where else did you see the mark? A. Why, when they removed the screen.

Q. Well, that was a new mark made a few days afterwards; is that correct? A. A few days afterwards?

Q. Yes. A. No; that was made the morning I was there. I saw it.

Q. What's that? A. That was made on July 3rd. It was there.

Q. You mean in removing the screen they made a mark? A. They must have.

Q. Eh? A. Yes.

Q. Well, who was there when they made that mark? A. Oh, I don't know. The thieves, I guess.

Q. I move to strike out the answer. We are talking about the mark on July 3rd we have been talking about. A. That is what I am talking about.

The Court—You asked him.

Q. Were you there when the people of Cramer & King removed the screen? A. No, sir.

Q. You were there on what days? A. I was only there once.

Q. On July 3rd. You didn't go back there on July 4th, did you? A. No, sir.

Q. What time do you say you got there on July 3rd, morning? A. Sometime after nine.

Q. Didn't you say on your direct examination between 8:30 and 9:30? A. Yes.

Q. What's that? A. Yes.

The Court—Just a moment. Let me hear that question where he said "The thieves, I guess."

(Former question and answer repeated by stenographer.)

The Court—You may strike that out on the ground that it is speculation.

Q. Now you say it was sometime between 8:30 and 9:30? A. Yes.

Q. May have been as early as 8.:30? A. No; we have roll call at quarter past or 20 minutes past nine; I know it was later than that.

Q. Twenty minutes past nine? A. We have roll call quarter past, and it takes nearly 25 minutes past.

Q. If a report comes in to the detective bureau that there has been a robbery, do you mean to tell us that you do not go out to make an investigation until after you have a roll call? A. Well, we didn't get it.

Q. No, no; please tell me. Not what you say you did. A. Yes, they go out if they have to go.

Q. If you got a telephone call and you were a detective, do you wait for roll call? A. Why, no.

Q. What time did you go up there, do you know? A. Well, some time between half-past eight and half-past nine.

Q. Can you be any more specific than that? A. No, sir.

Q. Was it before nine?

Mr. Rosenkrans—I object to it.

Mr. Prince—This is cross examination.

Mr. Rosenkrans—It is in the discretion of the Court, the length to which it can be extended.

The Court—I will permit it.

A. I could not say.

Q. Did you make any note or memorandum of it? A. No, sir.

Q. Did you have a little memorandum book? A. I had one, yes.

Q. Did you write anything in it at all? A. I suppose I did, yes.

Q. You suppose you did? A. Yes.

Q. Don't you know whether you did? A. No.

Q. Did you look at it to refresh your recollection? A. Well, I haven't got any now. I must have tore it up. I only got books back about a year, so I haven't got that. That is nearly two years. I destroyed them.

Q. You destroy them over a year? A. About over a year.

Q. How many investigations have you made since July 3rd up to the present time? A. I couldn't tell you.

Q. A thousand? A. Yes.

Q. What is that? A. Yes.

Q. All over Paterson, of all kinds, natures and descriptions? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. Do you say, sergeant, you remember that you saw little staples on the ground and on the window sill, and there were either four or five of them; is that correct? A. Yes.

Q Did you pick them up at all? A. I had a hold of them, yes.

Q. Did you pick them up? A. Yes.

Q. Did you examine them? A. I knew what they were.

Q. Did you examine them? A. I didn't have to examine them; I knew what they were.

Q. Did you? A. No.

Q. Well, you and Sergeant Lord were there at the same time? A. Well, he might have been inside and I might have been outside.

Q. Not what might have been, but what is the fact? Were you both on the outside making your examination at the same time; yes or no? A. No.

Q. He was inside and you were outside? A. Sometimes, yes.

Q. Well, at the time you saw these staples, was he inside or outside? A. I couldn't tell you.

Q. Now these staples that you saw lying on the ground, were they directly under the window? A. Well, they lay on the window sill.

Q. But the ones on the ground? A. Yes.

Q. Were they directly under the window? A. Oh, I couldn't say that, no. They laid away from it.

Q. How far away from the wall or window? A. I couldn't tell.

Q. How's that? A. I couldn't tell you.

Q. Give me your best recollection; one inch, two inches, three inches, four inches? A. I couldn't tell you.

Q. No idea? A. Laid on the floor, that is all.

Q. On the floor or on the ground? A. On the floor.

Q. I am talking about outside now, not inside. A. I found some outside and some inside.

Q. Now you found some inside; is that correct? A. Yes.

Q. Now the ones that you found on the outside, lying on the ground, how close were they to the wall? A. Oh, I couldn't tell you.

Q. Were they directly in front of the window? A. They were near the window, yes.

Q. When you say near that doesn't mean anything. Were they directly in front of the window, within this three feet? A. Well, I couldn't say; I don't know how far they were.

Q. What's that? A. I don't remember.

Q. Then you must have a mental picture, haven't you, sergeant, of seeing these lying on the ground? A. I remember picking them up, yes.

Q. Now where did you pick them up from? A. Some on the ground, some on the window sill.

Q. I am talking about on the ground; I am talking about those that were lying on the ground.

Mr. Rosenkrans—I object. I think he is entitled to go on and tell.

(Answer repeated by stenographer.)

The Court—That is a specific question. Have you finished your answer to that question?

The Witness—Yes.

The Court—Proceed.

Q. Now I am talking, sergeant, of those which you say you saw lying on the ground. Now limit yourself to those, please. Where did

you pick those up from; were they directly in front of the window on the outside? A. I don't remember.

Q. Have you no idea at all? A. No.

Q. But you remember picking those up from the ground? A. Yes.

Q. How many did you pick up from the ground? A. Oh, I don't know; I couldn't tell; I don't remember.

Q. Well, you said you only saw four or five altogether? A. I saw four or five, yes.

Q. You picked those all up from the ground? A. No, I didn't pick them all up.

Q. How many did you pick up from the ground? A. Maybe one or two.

Q. You remember that, do you? A. It might have been more; I don't know, I don't remember it.

Q. You remember picking up one or two? A. I picked up some of them.

Q. From the ground? A. No; the ground and window sill.

Q. No; I am talking about from the ground. Were you? A. Yes.

Q. Where did you pick them up from the ground, that is what I want to know? A. I don't remember.

Q. You have no idea? A. No, sir.

Q. Well, it wasn't off to the right hand side of the window frame, was it? A. I don't know; I couldn't tell you.

Q. Was it to the left hand side? A. I told you I didn't remember.

Q. Well, I am trying to refresh your recollection. A. You couldn't refresh it because I don't remember it.

Q. How far away were they from the building when you picked them up? A. I don't know.

Q. Were they a mile away from the building? A. No.

Q. Were they a foot away from the building? A. I don't remember.

Q. Were they two feet away from the building? A. I told you I didn't remember where I picked them up.

Q. Were they three feet away from the building? A. I couldn't tell you.

Q. Were they an inch or two inches away? A. I don't know.

Q. Now when you were standing in front of this window on the outside examining it, how close did you walk up to the window to make your examination? A. There is a little pitch there, I remember, that catches water or something, built in there, and I stood on the outside of it. That is about that wide. I know you couldn't get your foot in it.

Q. Couldn't get your foot in it? A. I mean lengthwise.

Q. You could get it in sidewise? A. Yes.

Q. The staples were not down in there, were they? A. They might have been.

Q. Is that where you picked them up there? A. Maybe; I don't know.

Q. How deep was that pit? A. Oh, only a foot, foot and a half.

Q. Foot or a foot and a half? A. Something like that.

Q. Now you say you saw molding broken off from the left hand side of the window; was that broken off all the way up to the top? A. No, sir.

Q. How far up was it broken off? A. Oh, about a foot and a half from the top.

Q. About a foot and a half from the top? A. Yes.

Q. How high was this window? A. I couldn't tell you.

Q. No idea? A. No.

Q. Six feet? A. I don't know.

Q. How long was it on Wednesday? A. Well, it is a different window now than it was then.

Q. The whole window has been changed? A. Yes.

Q. The height and the width? A. Got iron bars on it now.

Q. They have bars on it. Has the window frame been changed? A. I couldn't tell you whether it is the same one or not.

Q. You mean you could not recollect on Wednesday whether it was the same window or not? A. No.

Q. Is that right? A. Yes.

Q. Did you see any marks there on Wednesday? A. I couldn't see any marks, no.

Q. You didn't see any marks? A. I did not, no.

Q. Did you hear Sergeant Lord say he saw the same mark on Wednesday that he saw on July 3rd, only it was fainter on Wednesday? A. He looked at it and I didn't.

Q. What did you do up there on Wednesday? A. I was looking at the window.

Q. Why, a moment ago you said he looked at it and you didn't. A. I didn't look at the mark, no.

Q. There were bars on the outside? A. Yes.

Q. How wide apart were those bars? A. Four or five inches.

Q. They run up the full length of the window? A. Yes, sir.

Q. What was the length of the window on Wednesday? A. I don't know.

Q. The height of it? A. I didn't measure it.

Q. What is your estimate? A. I have no idea.

Q. Don't you know whether it was ten feet or two feet? A. No.

JOSEPH A. PELEGRINI, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live, Mr. Pelegrini? A. 537 Eleventh Avenue, Paterson.

Q. How long have you lived in Paterson? A. A year.

Q. Your present business is what? A. I am superintendent of the Atlas Finishing Company in Homestead, N. J.

Q. That is down on the Meadows? A. Yes.

Q. How long have you been there? A. Why, about two months.

Q. Did you ever do anything for Cramer & King, the plaintiff? A. I did.

Q. When? A. About a year ago, not quite. I left Cramer & King last September.

Q. September, 1924? A. 1924, yes.

Q. When you left, how long had you been employed by them? A. Four years.

Q. What did you do for them? A. Supervisor and solicitor.

Q. They were then located at the present plant, Tenth Avenue and 33rd Street, Paterson? A. Yes, sir.

Q. You are familiar with that plant? A. I am.

Q. And familiar with it as it existed and stood on the 3rd day of July, 1923? A. I was.

Q. Now, Mr. Pelegrini, in the first place on July 2nd and 3rd, 1923, what if anything was there on the southwest corner of Tenth Avenue and East 33rd Street? A. Why, there was nothing there to my knowledge.

Q. The southwest corner? A. No; there was nothing there, excepting that Mr. Cortese called my attention to—

Mr. Prince—I object.

Q. I am not talking about your plant. Across the street from your plant, south. A. Oh, the garage.

Q. No. Now as you stand in front of the main office—the plant of Cramer & King fronts on what street? A. Fronts on 33rd Street.

Q. Is bounded on one side by what other street? A. By Tenth Avenue.

Q. Which side is it bounded on by Tenth Avenue? A. South.

Q. Now as you come out of the offices of Cramer & King building on East 33rd street and walk south, you cross Tenth Avenue, do you? A. Yes, sir.

Q. What was there, if anything, on the southwest corner of Tenth Avenue and East 33rd street? A. A hedge.

Q. Across the street from your premises, from the premises of Cramer & King?

Mr. Prince—I object. What has that to do with these issues, what is on the other side of the street or any other place? How is that material, relevant or competent?

The Court—I will permit the question.

A. Saloon.

Q. What else? Where is the saloon located? A. Right on the corner of Tenth Avenue and 33rd Street.

Q. What kind of a building? A. Wooden building.

Q. Did you know whether or not the building contained anything other than a saloon? A. Why, there is a dwelling up stairs.

Q. Do you know how many windows there were at that time in that building looking out on Tenth Avenue? A. Why, I believe there are two.

Q. Where are they located? A. The back of the building.

Q. That is, you mean the rear of the building? A. The rear of the building facing Cramer & King on Tenth Avenue.

Q. That is the side of the building, isn't it, to be more accurate? A. Well, it is the rear of the building facing Tenth Avenue.

Q. All right. Two stories you say this building has? A. Yes, sir.

Q. How many windows do you say look out? A. Why, two to my knowledge.

Q. That is on the ground floor? A. No; on the second floor.

Q. How about the ground floor? A. Why, there is one facing Tenth Avenue and the other facing the corner of 33rd and Tenth Avenue, which is the saloon, and a door in the center.

Q. Now you are familiar with the door leading from the basement finishing room to the rear of the plaintiff's grounds? A. I am.

Q. And with the window that stands nearest that door? A. Yes.

10 Q. Now can you say whether these three windows in the saloon and dwelling house on the corner of Tenth Avenue and East 33rd Street command the rear of the plaintiff's premises? A. They do.

Q. And particularly the door that I have mentioned and the window nearest that door? A. It does.

Q. And did on the 3rd day of July, 1923? A. Yes, sir.

20 Q. You have been connected with the silk dyeing business for how many years? A. 22 years.

Q. In what capacity or capacities? A. Why, in the dyeing, finishing, printing, color mixing and chemistry.

Q. While working for Cramer & King will you say whether you were an inside or outside man or both? A. I was both.

Q. Other than your employment with Cramer & King, have you come in contact with the silk dyeing trade on the outside? A. I have.

30 Q. For how long? A. Why, for the full four years.

Q. Now, Mr. Pelegrini, do you know what the term "silk dyer" covers, according to the custom and usage of the silk dyeing trade?

Mr. Prince—I object to that question as immaterial, irrelevant, and it is an attempt to vary the terms of a written contract, and there is no custom pleaded, and it has nothing to do with these issues. We have a policy of insurance here. The insurance policy contains an express warranty that the business conducted by the assured in the premises is that of silk dyers.

The Court—I will permit it.

A. I do.

Q. What does it cover? A. It covers dyeing, finishing and printing.

Q. Do you know of your own knowledge whether there is any usage or custom in the silk deying trade which is concerned with the liability or non-liability of a silk dyer to its customers for the loss of merchandise of its customers in its custody for processing, where the loss results from burglary?

Mr. Prince—I object to the question as incompetent, irrelevant and immaterial.

The Court—I will overrule the question for the present. It does not seem to me to be material at this time.

Mr. Rosenkrans—Exception.

Q. As solicitor for Cramer & King, what were your duties? A. Why, I would go into New York City and see the various customers.

Q. With what object? A. Why, to obtain different merchandise for dyeing, printing and finishing.

Q. You heard of the robbery or the alleged

robbery in the plant of Cramer & King? A. I did.

Q. On July 3, 1923? A. I did.

Q. Do you know whose goods were then stolen, or were claimed to have been stolen?

Mr. Prince—I object.

The Court—It is identifying the goods, that is all.

Mr. Rosenkrans—This is merely an introductory question. I mean to show by this witness first that one of the lots then claimed to have been stolen belonged to a customer whom he procured.

The Court—You said stolen, and then you changed it to claimed. I suppose you eliminate the stolen?

Mr. Prince—It is clearly hearsay.

The Court—It is only identifying the goods. I will permit the question, leaving out the word "stolen."

A. The Piedmont Silk Company, of 354 Fourth Avenue.

Q. Did you have anything to do with the Piedmont Silk Company? A. Yes, I did.

Q. What did you have to do with them? A. Why, I solicited their business and obtained 500 pieces of merchandise from them for dyeing, printing and finishing.

Q. About when? A. Why, I believe it was around April or May; of that I am not positive.

The Court—1923?

The Witness—1923.

Q. Do you know whether or not those 500 pieces were delivered to Cramer & King?

Mr. Prince—I object to that unless he shows some foundation, some knowledge.

The Court—Do you know of your own knowledge?

Mr. Prince—Not what somebody else told you.

A. I do.

Q. Were they received? A. Yes, sir.

Q. Do you know whether or not it was a part of those 500 pieces which were claimed to have been stolen, among other goods?

Mr. Prince—I object.

The Court—Were claimed—I think that is too broad.

Q. Do you know whether or not it was a part of these 500 pieces which were stolen?

(Objected to. Question withdrawn.)

Q. You say that you solicited this order of 500 pieces? A. I did.

Q. From the Piedmont Silk Company for Cramer & King? A. I did.

Q. Was that business reduced to writing? A. Yes, sir.

Q. In what sense or to what degree?

Mr. Prince—I object; the writing is the best evidence.

The Court—The writing speaks for itself.

Q. Well, I mean was there anything more than an invoice?

Mr. Prince—I object to it as leading and suggestive to the witness.

The Court—Yes. Let the writing be procured if there is any.

Q. Were you at the plant of Cramer & King on the morning of July 3, 1923? A. I was.

Q. What hour did you arrive there? A. Why, about 8:10.

Q. Now at that time was there any fence or other barrier between Tenth Avenue and the door leading from the basement finishing room to the rear of the premises? A. No, there was not.

Q. Or any barrier between Tenth Avenue and the window nearest to the door in question? A. There was not.

The Court—Was this finishing room on the side towards Tenth Avenue, or on the northerly side of the mill?

The Witness—It was on the side of Tenth Avenue.

The Court—The southerly side?

The Witness—Southerly side, but facing northerly side.

Q. How large a room in this basement finishing room? A. Why, I should judge about 50 by 150 feet, with an angle in the center taking away part of the space, which is part of the dye house.

Q. And the apartment in which the door leading from this room to the outside of the premises, what was the approximate dimensions of that

apartment? A. About 50 by 75 feet, approximately.

Q. Now on the 2nd and 3rd of July, 1923, what was in that room? I don't ask what merchandise was there, but what other object or objects was there, if anything?

Mr. Prince—I object, unless the witness shows he knows.

The Court—He asked him what was there. If he don't know he can say so.

A. There was all different qualities of merchandise, such as crepe de chine, satin faced cantons, cotton back satins, which was a great quantity we had there at the time, and tussars, cantons and all sorts of merchandise, cotton voiles.

Q. And did you say whether or not you saw those goods there? A. I saw them personally.

Q. When? A. Why, on the 2nd of July.

Q. What hour, about? A. Why, I was there all morning.

Q. Now what other objects were in this basement room, if any, besides merchandise? A. There were button breakers.

Q. What are they? A. They are something to make the merchandise, such as cotton back satins, soft, in order to soften the finish, which is applied to the back of the particular quality, such as cotton backs.

Q. Are they machines? A. They are machines with a lot of rollers in them containing buttons, which is known as a button breaker.

Q. How many such machines? A. There were two.

Q. What other machines, if any, were there? A. There is a Palmer, and three Callendars.

Q. How many others? A. Two ironing machines.

Q. Any others? A. Not in that particular room.

Q. Now how large are those machines? A. Well, they are 60 inches wide and about 96 inches long.

Q. How are they operated? A. They are operated by power.

Q. Well, the power is obtained from what source? A. Electricity—motor.

Q. Whatever generates the electricity, is that located in the basement or elsewhere? A. Elsewhere.

Q. By what means is the power transmitted to the machines in the basement? A. By wires.

Q. Are there belts there? A. There are.

Q. Numerous? A. Why, practically all machines, excepting the motors—Callendars.

Q. Shafting? A. On three machines, I believe.

Q. Now the merchandise, silks and satins that you have described, where were they at the time you saw them on July 2nd with reference to the door leading from the basement room to the ground outside? A. They were on the opposite side of the building.

Q. On what? A. Facing 33rd Street, on the tables.

Q. How many tables were there? A. Why, there is a very long table there, possibly 75 feet long; in fact, the full length of the building.

Q. Now when you went in the finishing room —you say that you heard of this robbery about 8:10? A. On July 3rd, yes.

Q. About 8:10, I think that you said? A. Yes.

Q. Or is that the time you said you arrived there? A. I arrived there at 8:10, and that is just the time I heard of the robbery.

Q. Who told you of it? A. Mr. Cortese, the man in charge of the finishing department.

Q. What did you first do? A. I immediately went to investigate.

Q. Where did you go to investigate? A. I went to the beaming department, or the drying department.

Q. Where is that with reference to the basement? A. That is about 100 feet away, possibly 200 feet away, rather, from the finishing department, the room in question.

Q. You went there with what object?

Mr. Prince—I object to that.

The Court—Well, how is that material?

Mr. Rosenkrans—I want to show that he went there to find out whether the goods had been carried there from one department to another.

The Court—Let him tell what he found.

A. Did you find the missing goods?

Mr. Prince—I object.

A. I did not.

Mr. Prince—I object.

Mr. Dunn—It doesn't appear he knew what goods were missing.

The Court—Sustain the objection.

Mr. Prince—Have the answer stricken out?

Mr. Rosenkrans—Isn't it proper for me to show with what object he went from one department to another?

The Court—It doesn't appear yet he had anything to create any object in going.

Mr. Rosenkrans—He said he heard of a robbery.

The Court—He can tell what he found when he went, or what he did not find.

Q. You heard of a robbery of what?

Mr. Prince—I object, may it please the Court; that is not the proper way to prove it. They must prove their robbery under the terms of the policy from their books and accounts, and not by oral testimony.

The Court—Of course it is not admissible toward proving a robbery. It is only admissible to show the specific character of the goods which he may tell whether he located or whether he did not. In itself it does not prove much, but I think it is admissible.

Mr. Prince—He has not shown that he knew what these particular goods were in advance.

The Court—I think he ought to show that, if he knows, Mr. Rosenkrans, what kind of goods.

Q. Well, do you know what kind of goods were alleged to have been stolen?

Mr. Prince—I object.

The Court—I will permit the question.

A. Crepe de chine.

Q. On July 2nd did you see crepe de chine in this finishing room? A. I did.

Q. On the morning of July 3rd did you see crepe de chine there in the same quantities? A. No, I did not.

Mr. Prince—I object.

The Court—When there is objection you will wait.

Mr. Rosenkrans—I had not finished.

The Court—The witness answered. He assumed you had finished, I suppose. Strike out the answer.

Q. Did you find on July 3rd the same quantities of crepe de chine in this basement finishing room that you saw there on July 2nd?

Mr. Prince—I object to the question on the ground that it does not appear that he was in the room on the 3rd of July, that he made any examination, and upon the further ground that it is not within the terms and conditions of the policy, and not proper method of proof.

The Court—I will permit the question.

A. No, there was not.

Q. Can you identify the sort of goods of which there was a lesser quantity in the basement finishing room on July 3rd than the quantity observed by you to be there on July 2nd?

Mr. Prince—I object to that upon the ground that there has been no proper foundation laid; immaterial, irrelevant and incompetent, and not within the terms and conditions of the policy.

The Court—I will permit it.

A. Yes.

Q. Tell us what they were?

Mr. Prince—Object to it upon the same grounds.

The Court—Permitted.

A. Why, there were crepe de chines that were already dyed in various colors and prepared for printing.

Q. Do you recollect what colors? A. No, I don't recollect the colors. I would have to look at the orders in order to remember.

Q. Now you say that you went from the basement finishing room to some other apartment or department? A. I did.

Q. What was that other department? A. That was the rolling up room, what they call the prepare room, and the drying room, in which was Mr. Meima.

Q. Did you find the crepe de chine, any crepe de chine of the sort that you saw in the basement finishing room on July 3rd in this other apartment?

Mr. Prince—I object to that.

The Court—Permitted.

A. Not the lot in question.

Q. Not the lot in question. Now did you take any other steps towards looking for the lot in question? A. Why, I immediately notified Mr. Cramer; and Mr. Omar Cramer and I investigated to locate if there was any place where the goods had been—

Mr. Prince—I object and move to strike it out.

The Court—The motion will be denied.

A. —had been placed or otherwise stolen.

Mr. Prince—I object to the last part and move to strike it out.

The Court—He said he tried to find out if they were stolen. I will permit that.

Q. Did you locate the lot or any part of it? A. No, I did not.

Q. Did you make any examination of the room in which these goods were seen by you to be on July 3rd? A. I did.

Q. What part of that room particularly? A. Why, there was the rear of the building, window right close to the door entering the yard of the particular plant in question.

Q. Did you see anything about the door, first? A. The door was partly open.

Q. Yes. This was at what hour that you observed it? A. This was about 8:30.

Mr. Prince—I move to strike out the answer, your Honor, the door was partly open, as it appears he was not the first person in there and he doesn't know what the

condition of the room was when the rooms were opened in the morning.

The Court—I will deny the motion, on the ground the objection is too late.

Q. Do you know of your own knowledge how that door was customarily fastened?

Mr. Prince—I object to that on the ground there is no proof that the witness was ever in the room before.

The Court—He asked him do you know of your own knowledge. I will permit the question.

Q. How was it customarily fastened? A. By a cross wooden bar.

Mr. Dunn—I object to that, unless he asks him how it was fastened the night before.

The Court—What do you say to that, Mr. Rosenkrans?

Mr. Rosenkrans—I cannot prove my entire case in one moment. I will show in due course who locked this door, and how it was locked.

The Court—I will permit the question.

Q. On the afternoon of July 2nd.

The Court—I do not believe we are much interested in how it was locked except the evening of July 2nd.

Mr. Rosenkrans—I am going to show that.

The Court—If he doesn't know then he cannot give us any aid in it. I will sustain the objection to that. Strike out the answer.

Q. Do you know of your own knowledge what there was upon this door by which it might be locked?

Mr. Prince—I object to that as purely speculative and calling for the operation of this witness's mind and his conclusion, and no proof that he saw it on the afternoon of July 2nd.

The Court—Well, I think you can only answer in that respect on July 2nd, if he knows.

Mr. Rosenkrans—I ask an exception.

Q. You say the door was ajar, do you?

Mr. Prince—I object to that.

The Court—He said so. I will permit it.

Q. Did you see anything at or near the door?
A. Why, I saw bars standing there alongside of the door; two by four wooden bar.
Q. Do you know where that bar fitted—belonged?

Mr. Prince—I object.

The Court—Permitted.

A. On the door, to fasten the door.

Mr. Prince—I move to strike out the latter part, "to fasten the door."

The Court—Motion denied.

Q. Did you examine the window nearest the door? A. I did.

Q. On the inside or the outside or both? A. On the outside and the inside.

Q. Now will you describe to the Court and jury what you observed about the window nearest the door on the outside? A. Why, when I went through the door, the first thing I did was to notice the piece of molding standing alongside the window on the left hand side looking in, and I saw the wire mesh was pulled from the left hand corner about between 15 and 18 inches from the bottom and approximately two feet and a half from the side.

Q. Which side? A. Going to the top, on the left hand corner.

Q. As you stood facing the window? A. Facing the window; and I noticed some staples on the window sill partly painted and partly not. Then I entered on the inside of the building.

Q. Wait a minute. Did you notice anything else about those staples? A. Why, there was paint on the top of the staples and at the point there was no paint, showing that they were from —.

Mr. Prince—I object.

The Court—No.

Q. All right. Now the molding which you say you saw in the yard, do you know where that molding belonged? A. Why, that belonged on the left hand side of the —.

Mr. Prince—I object to this witness stating where it belonged. He has not shown that he ever saw the molding before.

The Court—The question is, do you know. If you know, I will permit the question.

A. I do.

Q. Where did it belong?

Mr. Prince—I object.

The Court—Permitted.

A. On the left hand side of the window frame.

Q. Now did you examine the molding? A. I did.

Q. Will you tell us what you observed in respect to it? A. Why, I saw some parts of the molding which was slightly scratched or marred.

Q. What part? A. Why, at the bottom, and also about 18 inches from the top.

Q. Can you describe more fully and minutely what marks or scratches you saw upon the molding? A. Why, yes.

Q. Do so. A. Why, part of the molding was—that is, part of the wood from the modling was taken away; in other words, you could see that the molding had been tampered with by some tools.

Mr. Prince—I object and move to strike out the last part of the answer of the witness,—you can see they had been handled by some tool.

The Court—Strike out "by the tools."

Q. Were those marks or scratches new or old?

Mr. Prince— I object.

A. New.

Mr. Prince—I object.

The Court—I will permit it.

Mr. Prince—I object. This witness has not been qualified as any expert, and there is no proper foundation laid or presented showing that he ever saw the window before this time, where this molding was; and it is immaterial, irrelevant and incompetent.

The Court—I will permit it.

A. New.

Q. The staples that you saw near or outside of the window, where were they? A. They were lying on the window sill.

Q. How many? A. Why, I noticed four or five. I don't quite recollect.

Q. Did you notice any holes in the window frame or sash? A. I did. The places there where the staples had been taken from.

Mr. Prince—I object and move to strike it out.

The Court—Strike it out.

Mr. Rosenkrans—I consent to the last sentence being stricken out.

Q. Did you look to see whether there was any

correspondence between the holes that you saw in the window and the staples themselves? A. Yes.

Mr. Prince—I object to it upon the ground it is immaterial, irrelevant and incompetent, and that no proper foundation has been laid, and as calling for the conclusion of the witness and the operation of his mind.

The Court—I will permit it.

A. Yes.

Q. What correspondence did you see?

Mr. Prince—I object.

The Court—Permitted.

A. The approximate distance or size of the staples and the holes.

Q. What do you mean by that? A. About a quarter of an inch.

Q. Each was about a quarter of an inch? A. The staple was about a quarter of an inch staple, you might say; the hole was about a quarter of an inch hole from one to the other, approximate figure.

Q. Now did you see—of course now counsel will object to this.

Mr. Prince—I object.

The Court—That is improper.

Mr. Prince—I ask that it be stricken out.

The Court—Strike it out.

Q. Did you observe any correspondence between

the number of holes in the window frame and the number of staples on the window sill? A. I did not.

Mr. Prince—Now you see I did not object.

Q. Do you recollect how many holes you saw on the window frame or sash? A. Why, I should judge about —.

Mr. Prince—I object.

A. — five; I am not positive.

Mr. Prince—I object.

The Court—What is your recollection? I will permit the question.

Q. How many staples did you see? A. I saw four or five, I don't quite remember.

Q. That is, withdrawn, or at least lying on the window sill? A. On the sill.

Q. Where were those holes with reference to the wire screen? A. Why, they were about three-quarters of an inch to an inch from the side of the frame.

Q. In what position was that part of the wire screen which was not in contact with the window itself?

Mr. Prince—I object to that, may it please the Court, unless it is shown that this screen was in the position in which he saw it when the premises were opened that morning and nobody had touched it in the meantime.

The Court—I suppose to make that ad-

missible, Mr. Rosenkrans, you will have to show that he was the first man who was there, or that it remained in the same position.

Q. Will you illustrate on this window where it was that you saw the holes with reference to the line of the edge of the screen still in contact with the window? A. Why, it was right alongside of the frame. An entire different window than this.

Q. As I understood you, towards the top of this window, this wire screen was undisturbed at the time you saw it. A. It was still fastened, yes.

Q. Now it had an edge, of course, didn't it? A. Yes, sir.

Q. Where it ended? A. Yes.

Q. Now at some point it was ripped out from the window sash? A. Yes.

Mr. Prince—I object to that. He hasn't said that. Counsel is assuming that.

The Court—I will sustain the objection.

Q. Where were these holes with reference to the edge of the wire, the line of the edge of the wire, if that line were prolonged down to the bottom of the sash?

Mr. Prince—I object to that.

The Court—I will permit it.

A. Right straight along the sash or window; same way at the bottom.

Q. Now what did you notice about the window from the interior of this basement finishing room?

Mr. Prince—I object upon the same ground as before, that there is no proof it was in the same condition when he examined it as it was when the premises were opened.

The Court—Yes; I think that objection is well taken.

Cross Examination by Mr. Prince:

Q. Now you say you saw four or five staples lying on the window sill; is that correct? A. Yes.

Q. See any lying on the ground? A. No.

Q. Or didn't you look? Didn't see any? A. I didn't, no.

Q. Didn't you look? A. I didn't see any. I didn't look and I didn't see any.

Q. How many holes will you say were in the window frame when you looked at it? A. Why, about four or five.

Q. Four or five holes? A. Double holes.

Q. Well then, you mean there were eight or ten holes, is that right? A. About ten holes, yes.

Q. That is all you saw? A. That is all I saw, from these staples. There were other nail holes.

Q. One minute. I move to strike out from the staples. I asked him how many holes he saw.

The Court—I will permit it to stand.

Q. Now won't you please tell me how many holes you saw altogether there, the edge of the wire? A. About 18 holes.

Q. About eighteen holes? A. Yes.

Q. Now was it your duty to go to New York

every day and solicit orders? A. In the afternoon, yes.

Q. And in the morning what would you do? A. Supervise the technical end of the Cramer & King business.

Q. Well, what was the name of your position, outside of being a solicitor? A. Supervisor.

Q. Who was the man immediately under you? A. They were all under me.

Q. Now do you remember what day of the week the 2nd of July was, 1923? A. What day of the week?

Q. Yes. A. Not exactly, no.

Q. Were you in the finishing room every day? A. Yes.

Q. At what times did you go down there? A. According to what particular work I had to do.

Q. Well, was there any particular time every day that you went down there? A. No.

Q. What time were you there on the 2nd of July, do you recall? A. About 8:30.

Q. In the morning? A. In the morning.

Q. Then you went to New York? A. Then I went to New York at 12:31.

Q. At 12:31? A. Took the train from the city of Paterson at 12:31.

Q. When did you next go to the plant? A. The following morning.

Q. At 8:30? A. At 8:00 o'clock or 8:10; between 8:00 and 8:10.

Q. So the last time you were in the plant on July 2nd was quarter after twelve? A. No.

Q. Well, what time did you leave? A. Eight o'clock, and I left there at 11:15.

Q. 11:15? A. Correct.

Q. Now between 11:15 on July 2nd, until between 8:00 and 8:10 on July 3rd, you were not in the plant; is that correct? A. I don't quite get that.

(Question repeated by stenographer.)

A. No.

Q. That is correct, isn't it? A. Correct.

Q. Now when merchandise came in from customers in New York, did you personally check them off? A. No.

Q. Did you ever check off merchandise that came in from customers? A. Yes.

Q. You did? A. Yes.

Q. Did you check any merchandise in the plant, in the finishing room on July 2nd? A. We don't check —.

Q. You, not we. You personally. A. I don't check any goods.

Q. You never check any goods, do you? A. Not check, no.

Q. Then you didn't check any on July 2nd, did you, personallly; you yourself I am talking about; is that right? Please answer. A. No checking to be done in the finishing room.

Q. I move to strike out the answer.

The Court—Strike it out.

A. There is no such a thing as checking in a finishing department.

Q. I move to strike out the answer.

The Court—Strike it out.

Mr. Rosenkrans—I object.
The Court—Strike it out.

Q. Did you do any checking in the finishing department? A. Investigate goods, that is what I do.

Q. Did you do any checking of merchandise to see what merchandise was in that room on July 2nd? A. Yes.

Q. Where is the record of it? A. There is no such a record.

Q. You mean you made a mental note of it; is that what you mean? A. From the corresponding ticket.

Q. Do you mean you made a mental note of it? A. Yes.

Q. Or did you make a written note of it? A. There is no writing.

Q. Then you made a mental note of it? A. Correct.

Q. Well, did you make that mental note on other days, other than July 2nd? A. Every single day.

Q. And you never made a record of it even up to the present time? You never made a written record of it up to the present time?

Mr. Rosenkrans—I object.

A. I am not Cramer & King.

Mr. Rosenkrans—What does it refer to?
The Court—Proceed.

Q. What merchandise will you say from this mental note that you made was in the finishing room

on May 30th, 1923? A. It was a lot of crepe de chine there for Customer 32.

Q. On May 30th? A. On May 30th?

Q. Yes; that is the date I picked out. A. I don't remember that. There was a lot of different merchandise.

Q. I didn't ask you that. Suppose you listen to the question. I picked out a date at random. Let us say April 15th. Now from this mental note you made, tell me what merchandise was there on that day? A. I don't remember. There was all kinds of merchandise.

Q. Was there any crepe de chine there? A. Yes.

Q. There was crepe de chine there every day, wasn't there? A. Absolutely.

Q. Now when you say you made a mental note of the merchandise there on July 2nd, what you mean is you made a mental note of the different kinds of merchandise, crepe de chine, pois de chine, and various other kinds of merchandise; is that correct? That is what you mean, don't you? A. Yes.

Q. You didn't make a mental note of the number of pieces of crepe de chine or anything else? A. I did.

Q. Oh, you did? A. I did.

Q. You remember all those, do you? A. I remember Customer 32, because it was my customer.

Q. I didn't ask you that. I move to strike out the answer.

The Court—Strike it out.

Q. I didn't ask you anything about a particular customer. Now tell me how many pieces of crepe de chine you remember was in the finishing room on April 15, 1923? A. April 15th?

Q. Yes. A. I don't remember.

Q. On May 30th? A. I don't remember.

Q. Now these machines in the finishing room, were they high from the floor? A. No; they are just about 39 to 40 inches high, possibly 42 inches high, the button breakers; and the Callendar is about six feet high.

Q. What do you call it, a Callendar? A. Callendar is a three-roller or four-roller Callendar, whereby you give a luster to the merchandise that is going through them.

Q. I didn't ask you that. A. You asked me what the Callendar was.

Q. When you come to the door to go to the finishing room, not from the outside, somewhere in the plant—there is such a door, is there? A. No, sir.

Q. How do you get into the finishing room? A. Why, you walk through a small hall there and you go up two or three steps and then five or six or possibly ten steps down, which enters into the finishing room.

Q. So there are two doors in the finishing room? A. There is no doors.

Q. There is a doorway, then? A. Doorway.

Q. There is one doorway? A. Two doorways.

Q. Or two doorways; is that correct? A. Yes.

Q. Now when you walk up this particular stairs in this hallway and before you go down the five or six steps, you can see all over the finishing room, can you not? A. No; you see the centering frame room, not the finishing room.

Q. Do you see the window from that elevated position? A. No.

Q. Do you see the door leading into the yard? A. No.

Q. But when you walk down these five or six

steps and go into the finishing room then you can see the window and door? A. No, you cannot see it yet, until you get through another place, where there is a sort of partition there.

Q. Well, then, you are not really in the finishing room yet? A. That is part of the finishing room, yes.

Q. What kind of work is done in the first part? A. Why, spray room, and there is a Regal machine, a couple of iron frames.

Q. Then you go beyond these and you go into the finishing room; that we will call the finishing room proper? A. Yes.

Q. How wide is this finishing room proper? A. Between 50 and 75 feet.

Q. When you get to that point can you see both this window you have described and the door leading into the hallway? A. After you have entered it to a small extent there is a big machine known as the Palmer, and you might see the door and the window.

Q. From what point, how far distant from the door and window can you see it? A. From what point? Why, you can see it at a distance.

Q. How far away? A. About 50 feet.

Q. So that when you are 50 feet away from the door and the window you can see it in the finishing room; is that correct? A. Can see what?

Q. The window and this door leading into the hallway? A. Yes.

Q. None of this belting or these pulleys or these machines obstruct your view? A. Well, part of it, yes.

Q. Well, what do you mean, part of it? A. Well, part of the window and part of the door. The rear

machine, that is the Palmer, obstructs the view of the door and the window until you have come around that particular machine.

Q. Yes. Then you are 50 feet away from it? A. At a straight angle, but not coming towards the machine.

Q. When you get to a point that is about 50 feet away from the window you can see the window clearly, can you not? A. At a straight angle.

Q. Yes. I don't care whether it is straight or crooked. You can see it? A. You have to enter that room about 10 feet before you can see that window and that door.

Q. How far away from you are the door and window before you get a clear view of it? A. How far?

Q. Yes. A. Approximately 25 feet.

Q. At a distance of 25 feet there is nothing to obstruct your view? A. Well, there is two belts leading in front of the window, not in front of the door.

Q. In front of the door? A. In front of the window. I said not in front of the door.

Q. In front of the door and not the window? A. Not in front of the door, and in front of the window.

Q. How close are they? A. I should judge one is about six feet and the other one is about 16 or 18 feet.

Q. Now this table on which the crepe de chine was that you saw there on the morning of July 2nd up to 11:15 o'clock, you say that was on the opposite side of the room from the window? A. Correct.

Q. How far away from the window was the edge of the table? A. How far away?

Q. Yes? A. About an inch.

Q. And the table was how long? A. Speaking of the window?

Q. The one window we have been describing. A. No; that was on the opposite side of the building.

Q. I am talking about the window and the window sill on which you found some staples. A. That was 75 feet away.

Q. 75 feet away; is that correct? A. Correct.

Q. And the crepe de chine was how far from the window? A. 75 feet away.

Q. Well, wasn't that piled up on one little table, in one spot? A. It was all piled up on the table lengthwise.

Q. How long is that table? A. The full length of the building.

Q. How many feet was that? A. 75 feet or 50 feet, running that direction.

Q. So this crepe de chine was 50 feet or 75 feet away from the window that you have described on which you found the staples? A. Right.

Q. Between the crepe de chine on that table and the window you had two belts—any machinery? A. Well, all the low machinery.

Q. All the low machinery. They were operated by motors? A. No, by belts.

Q. How many machines were there between the window and the table? A. Four.

Q. Four; there were two belts? A. Three or four.

Q. Two belts and three or four machines. A. The other belts running the opposite direction.

Q. I am talking now about the particular window and the crepe de chine. A. Two belts and four machines.

Q. That is all there was between it? A. That is all there was.

Q. Were there aisles there that you could walk? A. One aisle.

Q. How wide was that? A. About four feet; between three and four feet.

GABRIEL BOTH, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live? A. 205 East 25th Street.

Q. What city? A. Paterson.

Q. How long have you lived in Paterson? A. 19 years.

Q. Who do you work for? A. Cramer & King.

Q. How long have you worked there? A. 15 years.

Q. Have you done the same thing for them throughout these 15 years? A. Yes, sir.

Q. What is it that you have done for them? A. Fireman.

Q. Day or night? A. Daytime.

Q. Now do you recall the 3rd day of July, 1923? A. Yes.

Q. Do you know what time you came to work on that morning? A. Six o'clock.

Q. In the morning, six o'clock? A. Yes.

Q. From the 9th day of April, 1923, to the 3rd day of July of that year, what time was it that you came to work? A. Six o'clock.

Q. Always? A. In the morning.

Q. Morning after morning? A. Every day.

Q. You quit work when? A. Six, sometimes half-past six.

Q. In the evening? A. From six to six.

Q. Sometimes half-past six? A. Yes.

Q. Now did you see any other employee of Cramer & King there during that period when you arrived at six o'clock? A. I meet Fenmore, the night fireman.

Q. You met him. Who else? A. And the watchman, Mr. White.

Q. Anybody else? A. Well, sometimes I see the fellow in the dye house.

Q. The boil-off man in the dye house? A. Yes.

Q. Anybody else? A. That is all in the morning, and then two fellows come in the boiler room.

Mr. Prince—He said six o'clock.

The Witness—Six o'clock, yes.

Q. You say six o'clock, and you saw two fellows? A. Little fellow, Joe Long, he starts at six o'clock, too; and Carlo.

Q. Carlo starts at six o'clock too? A. Yes.

Q. Do you know where they work, Joe Long and Carlo? A. Well, Joe Long is in the boiler room at this time.

Q. They always come at six o'clock; did they? A. Six o'clock.

Cross Examination by Mr. Prince:

Q. When you came down in the morning, which door did you come in, Mr. Both? A. To the back door.

Q. What door is that; is that the door into the finishing room, where the finishing room is? A. No, the big gate in the back.

Q. That is on the other side entirely? A. On the other side, yes.

Q. When you come in at six o'clock in the morning, you didn't go near the finishing room? A. No; I come to the back of it.

Q. Do you remember the morning of July 3rd when you came there? A. Yes, sir.

Q. See the big gate open? A. Open.

Q. Were you the first one to go in there? A. Well, I guess so.

Q. Well, when you got inside did you see Joe or anybody else? A. Well, I think—I don't think Joe was in. I met Fenmore then.

Q. You often found the gate open when you came down in the morning, didn't you? A. Well, they open up six o'clock in the morning.

Q. Yes. Sometimes White would go home before you got there; isn't that right, sometimes? A. I don't know. I can't tell you.

Q. What is that? You did not always meet White when you got there? A. Well, the building is big, so many departments.

Q. You did not always meet him; is that right? A. Most all the time I meet him, yes.

Q. And on many occasions when you got there you found this gate open; is that right? A. I find them open in the morning, yes.

Q. It was open at six o'clock to let the employees come in; is that correct? A. Yes.

Q. Now on the Tenth Street side of the premises of Cramer & King, was there any fence there on July 3rd? A. No fence around there.

Q. What was there on the Tenth Street side, the Tenth Avenue side? A. All open.

Q. Could you walk right from Tenth Avenue right up to the buildings? A. Yes, sir.

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Q. Well, you come in what side, the 33rd Street side? A. I come from the hill on Ninth Avenue.

Q. Oh, Ninth Avenue. I see. That is all.

MICHAEL CORTESE, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Now, Mr. Cortese, your home is where? A. Paterson.

Q. How long have you lived here? A. About 32 years.

Q. Who do you work for? A. Cramer & King.

Q. How long have you worked for Cramer & King? A. Altogether about 15 years.

Q. Now did you work for them on July 2nd and 3rd, 1923? A. Yes, sir.

Q. What were you doing for them? A. Boss finisher.

Q. In what room did your duties take you or keep you? A. I've got three rooms.

Q. Where were they? What were they? A. Main floor up stairs, and two down.

Q. Is one of the rooms down stairs this basement finishing room? A. Basement is a finishing room.

Q. How many men did you have under you in the basement finishing room? A. About 12 or 13.

Q. Now do you know a man by the name of Emero, Angelo Emero? A. He used to work for me.

Q. At this time, July 2nd? A. Not at the present time.

Q. No, in July, 1923. A. In July he was, yes.

Q. Do you recollect the afternoon of July 2, 1923? A. I do.

Q. Do you know what time you left the basement finishing room on that day? A. About 4:30, 4:35.

Q. The men that you had under you, had they gone or did they remain when you left? A. All gone.

Q. What door or what means did they take to leave the basement finishing room? A. Through the back way at the time.

Q. Is that out of the door that has been spoken of here? A. Yes.

Q. Leading from the basement finishing room to the rear of the plant of the plaintiff? A. Yes.

Q. Do you know whether or not that door was locked after your men left?

Mr. Prince—I object to that unless the witness shows that he examined it.

The Court—The question is, do you know.

A. My duties was to close the door, the last man in the place.

The Court—Your duty?

The Witness—Yes.

Q. Will you say whether or not you closed that door after your men left on the afternoon of July 2, 1923? A. Positively.

Q. How did you close it? A. Pulled it shut and put that wooden bar in between.

Q. Now you recollect the morning of July 3rd, the following morning? A. Yes.

Q. What time did you arrive at the plant next morning? A. About 7:05.

Q. Where did you go to? A. Where I keep my coat.

Q. Where is that? A. That is the room before you get to where this here window is.

Q. Take off your coat there? A. No; before you get there—before you get to that room. That is the room before that.

Q. Did you leave your coat somewheres? A. In the closet.

Q. Then what did you do? A. Then go down to the kitchen.

Q. Where did you go to from there? A. To put the steam on.

Q. Then where did you go to next? A. Then I had a smoke outside.

Q. Then what did you do? A. Then the whistle blew and we started to work.

Q. What time was that? A. 7:20.

Q. Where did you go to work first? A. In the kitchen, getting the finisher ready.

Q. Did you go into the basement finishing room at any time that morning? A. Not in the second room, no, not until I missed my goods.

Mr. Prince—I object and move to strike it out, "until he missed his goods," until they fix the time.

The Court—Fix the time.

Q. When was it you went into the basement finishing room? About when was it? A. Right after I had our finish ready, and then I go down.

Mr. Prince—What time?

The Witness—Well, it is in the morning.

Q. What time? A. Well, we are starting 7:20.

The Court—When you got to the finishing room what time was it?

The Witness—In the morning?

The Court—Yes.

The Witness—7:05.

The Court—In the finishing room? 10

Q. This basement finishing room. A. Well, 7:07.

Q. All right. Now by the basement finishing room, I mean the room where the door was which you let the men out of in the afternoon before?

Mr. Prince—I object. There is no evidence —counsel misstates the evidence; he didn't say he let the men out at all. 20

The Court—Well, the men went out, then.

Q. By the basement finishing room I mean the department out of which your men went on the afternoon of July 2nd, you barring the door after them. A. Yes.

Q. Now when was it —

Mr. Prince—I object to that statement. It is not the evidence. 30

The Court—That is what he says.

Mr. Prince—No; he said he pulled the door shut and he put the bar in between.

The Court—Permit the question.

A. In between the bars.

Q. At what hour was it that you first re-entered that room on the morning of July 3rd? You may have told us already, but I want to get it clear? A. Really I don't know what you mean.

Q. What time was it? A. Did I enter in the other room?

Q. Yes, on July 3rd, first. A. Well, I just said that before, and I didn't go there.

Q. Sometimes you went there, didn't you, in the morning of July 3rd? A. Not in the morning right away, no.

Q. I didn't ask you right away. I mean when was it, later or earlier? A. That morning I don't remember what time it was when I went in there.

Q. Can you tell us about what time? It is two years ago, we don't ask you exactly. A. Well, say about quarter to eight. Quarter of eight.

Q. Now was anyone else in the room when you got there at a quarter of eight? A. Well, the boys was working around the machines.

Q. Can you name them? A. My gosh, if I had a memory like that—

The Court—If you can't remember, say no.

Q. All right. Now did you discover anything when you went into this basement finishing room? A. After I had my finish ready I discovered the goods was gone.

Mr. Prince—I object and move to strike it out. The question calls for a yes or no answer, I submit, your Honor.

The Court—Yes, I think it calls for yes or no.

Mr. Prince—There is nothing to show he made an examination of any particular merchandise on July 2nd.

The Court—You may strike it out, the goods being gone.

Q. On July 2nd, do you know of your own knowledge whether any goods came into the basement finishing room? A. Certainly.

Q. Did they? A. Sure.

Q. What goods? A. All kinds of rolls, crepe de chine, cotton crepe and cotton back and everything else.

Q. Do you know what department of the plaintiff's plant they came from into your room? A. From the make-up department.

Q. They are on rolls, you say? A. On rolls, yes.

Q. These rolls are round, are they? A. Round.

Q. What is their diameter? A. About six inches.

Q. Do you know whether there is more than one piece of goods on one roll? A. Yes.

Q. How many on the average? A. They average about six or seven, according to the quality of the cloth.

Q. Do you know the average number of yards in a single piece? A. I do not.

Q. Any idea? A. No, sir.

Q. Now what kind of goods was it, according to your recollection, that came into your room on July 2nd, on rolls?

Mr. Prince—I object. He has already told us—crepe de chine.

The Court—I think he told us that.

Q. Can you tell the colors? A. Colors? No.

Q. Now the goods that came into your room on July 2nd, where were they placed? A. On a table.

Q. Who placed them there? A. Boys that carry the work in.

Q. Where you there? A. Not always.

Q. At any time were you there? A. Yes, sure.

Q. Were these goods that came freshly into your department on July 2nd there at the time you left the room on July 2nd? A. Yes, sir.

Mr. Prince—I object to it.

The Court—Permitted.

Q. Were they there in their entirety when you went back in the room for the first time on the morning of July 3rd?

Mr. Prince—I object to that question. There is no proof, your Honor, that he was the last person in the room on July 2nd, or the first person in the room on July 3rd.

The Court—Permit the question.

Q. Were they all there? A. Not July 3rd, no.

Q. Do you know how many rolls were missing?

Mr. Prince—I object to that.

The Court—Permitted.

Mr. Prince—Your Honor is permitting oral testimony without proof by the books and accounts?

The Court—I will permit the question.

A. Between 17 and 18.

Q. When you learned that these 17 or 18 rolls were missing, what did you first do? A. I went to Mr. Meima's department to find out if he had any orders—

Mr. Prince—I object to what he did.

The Court—I permit the question, what he did, not what he said.

Q. Well, what did you do?

The Court—Went to Mr. Meima's department.

Q. Did you find the missing pieces there? A I asked—

The Court—No. Did you find them there?

The Witness—No, I didn't find them there.

Q. What else did you do? A. Then I started for the office.

Q. What did you do at the office? A. As I was doing that Mr. Pelegrini was coming down and I happened to tell him. During that time Mr. Omar Cramer happened to come down, because that is the first step they make in the morning, to see how much work I have got and what I have to turn out. Therefore I told them that the goods was missing.

Mr. Prince—I object.

The Court—I don't care what you told them.

Q. Then what did you do after speaking to these men; then what did you do? A. Well, I told them that was missing the silk.

Mr. Prince—I object.

The Court—Strike it out.

Q. What did you do after you had told them—after you had a talk with them, what did you do; not what you said to them, but what did you do? A Of course I done my work.

Q. Now, Mr. Cortese, this window that is nearest the door through which your men went out of the basement finishing room on the afternoon of July 2nd, did you look at that window from the outside at any time during the day of July 3rd? A. Certainly.

Q. With any care? A. Any care? Sure.

Q. Eh? A. Certainly.

Q. When did you look at it? A. The very same day. I could not help it.

Q. Now what did you see about that window, if anything? A. I didn't see anything wrong with it. The screen was up, fastened, and everything else.

Q. I am asking you about July 3rd now, 1923.

Mr. Prince—That is what he told you about.

A. You asked me July 2nd. On July 2nd?

Q. All right. I didn't think I did.

Mr. Prince—You did not.

Q. On July 3rd did you examine the window nearest this door on the outside of the building?—I will withdraw that question. On July 2nd did you examine the window from the outside? A. Not examine it, but I looked at it. There was nothing the matter with it.

Q. Nothing the matter with it; and you knew what was on that window on July 2nd? A. What was on that window?

Q. Yes. By way of protection or otherwise? A. A. Screen was there.

Q. Anything else besides the screen? A. Molding.

Q. That was intact, in its place? A. Certainly.

Q. Now did you look at that same window from the outside of the building on the following day, July 3rd? A. Sure.

Q. What time? A. About 8:20.

Q. Did you notice anything about it then, anything different from what you had seen the day before? A. Sure.

Q. Will you tell the jury what it was? A. As I said, I met Mr. Pelegrini and Mr. Omar Cramer —.

The Court—What you saw about the window.

A. The window was —.

Q. Did you go there alone? A. No, sir.

Q. Or with somebody else? A. Always with somebody else.

Q. Who did you go with? A. Mr. Omar Cramer and Mr. Pelegrini.

Q. Let us get on the outside of the building, in company with these two men. Now you tell us what you saw about this window, if anything? A. As we walked around, looked from one window to another, we came to this here window; naturally you could not help but see it —.

Mr. Prince—I object and ask that it be stricken out.

The Court—No; just what you saw.

A. That is the window frame—the window pane, it hang down; there is a space as big as this here board, and the window stood there, and of course you could see the screen was pulled from the bottom over to one side.

Q. How far; about what distance along the edge of the bottom of the window was the screen loose? A. I should judge about two foot.

Q. Going up the other way, lengthwise of the window frame, about what distance was it loose? A. About 18 inches.

Q. Did you notice anything else about the window different from what it was the day before? A. Well, I noticed the molding was standing up against the wall of the building.

Q. What molding? A. The molding that was on the screen.

Q. The day before? A. The day before.

Mr. Prince—I object to that as leading and suggestive.

The Court—Let him tell himself.

Q. Did you look at the molding that was standing up, or off the window? A. Not carefully, no.

Q. See any staples?

Mr. Prince—I object to counsel suggesting to the witness the answer he wants. He has not exhausted his memory yet by asking him whether he saw anything else.

The Court—Let him tell us what he saw first.

Mr. Prince—Now the harm is done, because he suggested to the witness the answer he wanted.

The Court—Proceed.

Q. What else did you see about the window besides what you have already told us? A. Well, I saw pieces of wood around, and regards to staples, I never seen any, because I wasn't that close to the window.

Q. What pieces of wood did you see around? A. Piece of the molding.

Q. Now have you told us all that you recollect that you saw from the outside of the building with regard to this window? A. What is that?

Q. Have you told all that you can now remember? A. That is as far as I remember.

Q. All that you saw from the outside of the building? A. Yes.

Q. Did you look at the window from the inside? A. From the inside you could not see much.

Q. Well, did you look at it? A. That the window stood up there, that is all.

Q. In its proper place? A. No.

Q. Where was it? A. Well, I should judge

about six inches away, one corner tacked on top, that is leaning up against the frame.

The Court—Was the window on the inside of the frame or outside?

The Witness—No, inside.

Cross Examination by Mr. Prince:

Q. Do you remember that on July 11, 1923, you signed a statement which I show you and ask you to identify it and your signature to it? A. I signed it, yes.

Q. That is your signature, isn't it? A. Yes, sir.

Q. You were up in the office of Cramer & King? A. Yes, sir.

Q. When the man came over and you told Mr. Lundgren and he typewrote what you said you knew about this matter? A. I haven't said a word in that statement—

Q. You never said a word in that statement? A. No, sir.

Q. Is that it? Have you seen a copy of the statement? A. I seen it now, yes.

Q. Now you see the original. Did you see a copy that your counsel had? A. No, sir.

Q. Never looked at that? A. No, sir.

Q. Who told you to say that you didn't say a word in this statement; did anybody? A. No one.

Q. You want the jury to understand that you signed this paper in the presence of the secretary of your company, Mr. Lundgren, after he typewrote it, but you didn't say a word that was in it; is that correct? A. It was not explained to me.

Q. Is that what you want us to understand? A. That I didn't see it.

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

Q. Well, was Mr. Lundgren, the secretary of the company, there at the time you signed this? A. I don't know where he is today.

Q. No; I am talking about July 11, 1923. A. I don't know.

Q. When you signed this paper, weren't you in the office of Cramer & King? A. I was.

Q. Was not Mr. Lundren there? A. He was.

Q. Did he typewrite this statement when you were in the office? A. I suppose he did.

Q. Well, now; didn't he? Not what you suppose. You were there. Didn't you see him typewrite it? A. Well, he was typewriting something; I don't know what he was typewriting.

Q. Then after he typewrote he took it out of the machine and he gave it to you and you signed it; isn't that right? A. Didn't give it to me. Gave it to one of your men.

Q. Then they handed it to you in the office of Mr. Lundgren and you signed it; isn't that correct? A. Wasn't handed to me at all.

Q. When you signed it wasn't it handed to you at all? A. It was thrown on the desk and asked for me to sign it.

Q. It was thrown on the desk and asked you to sign it? A. Yes.

Q. And then you signed it? A. Yes.

Q. So you had not talked to Mr. Lundgren before that at all, had you? A. No, sir.

Q. Had not told him a word of what you had observed or anything else? A. No, sir.

Q. Is that right? You never had a talk with him? A. No, sir.

Q. Well, your name is Michael Cortese, isn't it? A. Yes.

Q. You reside at 10 North West Street, Paterson, N. J., or did on July 11, 1923; isn't that correct? A. That is correct.

Q. Now that is in your statement, isn't it? I show it to you. That is in your statement, isn't it? A. Yes.

Q. That was true and correct, wasn't it? A. Yes.

Q. Well, didn't you tell that to Mr. Lundgren that day, that that was your address? A. That is about all I did tell him.

Q. You did tell him that? A. Yes.

Q. Now what you told him then was what your name and address was; is that correct? A. Yes.

Q. You didn't tell him anything else that is in this statement at all? A. No, sir.

Q. How do you know what is in the statement? A. I don't know.

Q. Why do you say then you didn't tell him anything else in the statement excepting that? A. Well, I am telling the truth.

Q. You never read this statement? A. No, sir.

Q. At no time? A. No, sir.

Q. Nor a copy of it? A. No, sir.

Mr. Prince—I call upon counsel and ask them if they have a copy of it, to produce it?

Mr. Rosenkrans—Have you served a notice?

Mr. Prince—Whether I have or not—I will serve it overnight if you want me to go on formality. On the record I ask you to. Will you state or not?

Mr. Rosenkrans—You know how to try your case.

Mr. Prince—I am asking you.

Mr. Rosenkrans—You have my answer.

Mr. Prince—Mr. Dunn, please serve a notice to produce tomorrow morning a copy of this statement.

Mr. Dunn—All right.

Q. On July 11, 1923, were you employed by Cramer & King Company as finisher foreman? A. Yes.

Q. Had you been employed at that time for about 15 years? A. Yes, sir.

Q. That is in this statement, isn't it? A. Yes.

Q. That was true at the time, wasnt it? A. Certainly.

Q. Did you also at that time have 19 men under your supervision? A. Yes.

Q. That is in your statement, isn't it? A. Yes, sir.

Q. That was true, wasn't it? A. Yes, sir.

Q. Did you tell Mr. Lungren at that time before the wrote this statement, "upon arriving and leaving the plant I use the front main entrance, but upon leaving I occasionally allow the men in the lower department to leave by means of the rear finishing room door"? A. Yes, sir.

Q. You told him that, too; didn't you? A. Yes, sir.

Q. That was true, wasn't it? A. Yes, sir.

Q. Did you also tell this to Mr. Lundgren before he wrote out this statement: "On the night of July 2, 1923, I recall leaving a number of men out by this means and inserting the bar into the socket and closing the inner door." Did you tell him that? A. Yes.

Q. Then you told him more than your name and address, didn't you, before he wrote out this statement? You told him all the things which I have just read to you, didn't you? A. Yes.

Q. Now did you tell him this, too: "On the morning of July 3rd I noticed the bar missing from the door. I thought nothing of this incident until later when looking for the rolls upon which we were working were found missing; the bar was found standing in the place where it is usually kept near the door." Did you tell him that, too? A. Yes.

Q. That was true, wasn't it? A. Yes.

Q. Now did you tell Mr. Lundgren this: "At 7:20 I discovered the goods were missing from the place where I had placed them preparatory to finishing them, and shortly notified Mr. Cramer of the occurrence." Did you tell him that, too? A. Yes.

Q. That is all, excepting one paragraph, of the statement, isn't it? Isn't it? A. Except what?

Q. There is only one paragraph left of the statement now which I have not read to you; isn't that correct? A. Yes.

Q. Let me read the last paragraph to you: "At the time of the discovery of the lost goods it was the first thought that the orders had been given to re-process them in some other department, but later found that this was not so." Did you tell that to Mr. Lundgren before he wrote out the statement? A. Yes.

Q. Now I read the last to you: "After ascertaining that the goods were not in the plant, search was made for a possible means of disappearance. It was then noticed that the screen had been pulled aside. Closer examination, however, revealed that the dust had not been brushed or scraped from the window sill. My opinion is it would have been rarely possible for a man to enter without removing some of the dust from the ledge. I did not notice any marks on on the window that would indicate force on this window." Told that to Mr. Lundgren, too? A. I did not.

Q. That is the only thing in the statement which you say you did not tell Mr. Lundgren; is that right? A. There is a man here put that in, though.

Mr. Prince—I offer this paper in evidence, signed by this witness.

Mr. Rosenkrans—You cannot do that. I object to it. You can identify it.

The Court—It will be marked for identification.

(Paper marked D-6 for identification.)

Q. Did you know that was in there before you signed it, Mr. Cortese? A. I did not.

Q. Didn't you look at the paper? A. No, sir.

Q. You saw Mr. Lundgren, the secretary of the corporation, write this out? A. Yes.

Q. On the typewriter? A. Yes.

Q. Then you say you saw him hand it to the man who was there? A. Yes.

Q. Who was that, by the way, do you know? A. Mr. Luizi.

Q. Mr. Luizi, the man sitting right here? A. Yes.

Q. Is that correct? A. Yes.

Q. Then Mr. Luizi handed it to you in Mr. Lundgren's presence, and Mr. Lundgren told you to sign it? A. Mr. Luizi read it out.

Q. He read it out to you? A. And I didn't understand it, so I simply signed it.

Q. Well, he read it out to you in the presence of Mr. Lundgren, did he? A. Yes, sir.

Q. He was secretary of your company? A. I don't know.

Q. Oh, I see. Who have you talked to about this case? A. No one.

Q. No one at all? A. No, sir.

Q. None of the lawyers? A. No, sir.

Q. They didn't know; you didn't tell them what you were going to testify about on the witness stand; is that correct? A. No, sir.

Q. Is that right? A. Yes, sir.

Q. You didn't talk to Mr. Cramer or anybody else, did you, about this? A. That we was coming down here, that is all.

Q. Did you? A. Yes.

Q. You have not talked to a soul about this case since July 3, 1923; is that right? A. Not real conversation, no.

Q. What? A. Not really a conversation.

Q. A talk, whether it was a conversation or not? A. Well, a word in between here and there.

Q. What were the words here and in between there? A. Well, we were going to come down a certain day, that is all.

Q. And tell what you knew; is that right? A. What's that?

Q. Just going to tell what you knew; is that right? Didn't even have that much talk? A. No, sir.

Q. Now you say these rolls of merchandise were six inches in diameter? A. Yes, sir.

Q. Each roll contained six or seven pieces? A. All depends on the quality of the cloth.

Q. About six or seven pieces. Well, take crepe de chine; six or seven pieces of crepe de chine? A. About seven.

Q. So that nineteen pieces would be on three of these rolls; is that correct? Nineteen pieces of crepe de chine would be on three rolls? A. There would be more.

Q. What is that? A. It would be more.

Q. More than 19 pieces? A. Three rolls, yes.

Q. Well, I suppose some of the rolls had less on than others? A. Well —.

Q. Suppose one had seven on and two had sixes; that would be 19 pieces; is that right?

Mr. Rosenkrans—That is a matter of multiplication.

The Court—He may answer.

Q. Is that right? A. I don't know how many pieces on a roll. Average of seven pieces on a roll.

Q. Do you mean some more and some less? A. Some six and some seven. You were trying to let me tell you 19 pieces on three rolls.

Q. That is possible. A. Three times seven is 21.

Q. That is correct; but if two of them were six-rolls and the other was seven, that would be 19

rolls, wouldn't it? Can't you figure that out? A. Yes.

Q. I am right, am I not? A. Right, the way you say.

Q. Yes. Now which way did you go out of the premises on the night of July 2nd? A. 33rd Street side.

Q. How many men did you leave go out of this door, if any, on the afternoon of July 2nd? A. About 13 or 14.

Q. Was that the way they usually went out, sometimes? A. Down stairs, yes.

Q. Well, did you always leave them out down stairs? A. Always.

Q. Now what time did you finish work there in the finishing room? A. When?

Q. July 2nd? A. Four-thirty.

Q. That was the usual time for quitting? A. That is the quitting time.

Q. You were not very busy on July 2, 1923? A. Not to work overtime, no.

Q. The mills were not very busy at that time; the silk market was slack? A. We wasn't.

Q. You had work to do, but you were not rushed? A. We don't call that slack when you work your full day.

Q. You were not so busy you had to work overtime? A. Not that day, no.

Q. Now what time did you leave the premises on July 2nd—out of the building entirely? A. About 20 minutes of five.

(Adjourned to March 24, 1925.)

Paterson, N. J., March 24, 1925.
Trial of the cause resumed at 10:00 A. M.

JOSEPH CORTESE, resumed.

Further Cross Examination by Mr. Prince:

Mr. Prince—Will counsel for the plaintiff kindly produce the copy of Cortese's statement for which I asked yesterday?

(Mr. Rosenkrans produces paper.)

(Paper marked D-9 for identification.)

Q. I show you this copy of your statement marked Defendant's Exhibit 9 for Identification, and I show you the original and ask you if Defendant's Exhibit 9 for identification which was produced by counsel for the plaintiff is an exact copy of the original which is marked Defendant's Exhibit 6 for Identification?

The Court—You can find out yourself.

Mr. Prince—It is not in evidence.

The Court—I suppose he will have to read it all over and compare it with somebody.

Mr. Prince—Will counsel any way to save time concede it is an exact copy?

Mr. Rosenkrans—I think it is. It seems to me to be a carbon copy.

Mr. Prince—Will you concede it to be a fact?

Mr. Rosenkrans—I have not seen the original.

Mr. Prince—All right. (Hand paper to Mr. Rosenkrans.)

Mr. Rosenkrans—It appears to be a true copy.

Q. Now did you ever see before I just handed it to you this paper marked Defendant's Exhibit 9 for Identification, which I again hand to you? A. You will have to read it out to me.

Q. No. Did you ever see that? A. No, sir.

Q. Don't you read? A. Very little.

Q. Well, did you talk to counsel for the plaintiff before you testified on the stand at any time? A. No, sir.

Q. He never asked you what you knew about this matter at all? A. All I know I had to appear down here on Thursday.

Q. And he never asked you what you knew about this matter at all? A. No, sir.

Q. Nobody ever did that? A. Not as far as I know.

Q. Well, don't you know whether anybody talked to you about it at all? A. About the robbery? Yes.

Q. When was that? A. Oh, I don't remember.

Q. What's that? A. I don't remember.

Q. How long ago? A. A week ago.

Q. Where was that? A. In the shop.

Q. Who was it? A. What do you mean, who was it?

Q. Who was it that talked to you in the shop about a week ago? A. That is the time I got my subpoena.

Q. Who was it talked to you? A. Frank.

Q. Frank who? Frank Lundgren? A. Yes.

Q. Did you talk about your testimony at all, and

what you remember about it? A. He just told me to go down and tell what you know.

Q. Down where? A. Down here.

Q. That is the only talk you had with anybody ? A. That is all.

Q. That is the only talk you had with anybody since July 3, 1923? A. As far as I can remember it.

Q. Well, you say as far as you remember; what do you mean by that? A. That is the only talk I remember.

Q. Now isn't it a fact that on this window in question on the morning of July 3, 1923, when you looked at it, that the dust on the window sill had not been brushed or scraped from the window sill? A. I was not as close as that.

Q. You were not as close as that? A. No, sir.

Q. You wouldn't say one way or the other, whether it was brushed aside or not, will you? A. I can't see what I didn't see.

Q. You remember Mr. Connell, the gentleman sitting over there. Will you stand up, Mr. Connell. Do you remember seeing him in February? A. I remember seeing him, yes, but I wouldn't swear it was February or March.

Q. It was either February or March of this year; is that correct? A. Yes, sir.

Q. Do you remember that he had with him a copy of this statement which you made on July 11, 1923, and he read it to you? A. Yes.

Q. You remember that? A. I do.

Q. And you remember at that time after he read it to you you said, "That is correct," and you had said that? A. In what way? What do you mean, correct?

Q. Do you remember that after he read it to you —? A. Yes.

Q. — and you said that was correct, that you had signed and said that? A. No, sir.

Q. You did not say that at all? A. No, sir.

Q. What did you say to him? A. I told him that I didn't know.

Q. You didn't know? A. He was —.

Q. Is that correct? A. The last words he brought out about the smoking, and I told him I didn't know.

Q. You told him you didn't know whether there had been smoking in the place or not? A. That is right.

Q. But about this statement, after he read it to you didn't you say that was correct? A. Well, that is a question, if he read the whole statement out right.

Q. Whatever he did read to you, you said that was correct? A. Whatever I understood I said was correct.

Q. Yes. Now on direct examination you said on July 2, 1923, you went out into the yard and examined this particular window. Did you do that? A. Not as close.

Q. Well, did you go out at all in the yard on July 2nd? A. I did.

Q. What did you go out to look at this window for? A. When the representative came over.. I went out with them.

Q. No; I am talking about July 2nd. A. Oh, July 2nd?

Q. Yes; that is the day before. A. You couldn't help it. Couldn't help but going out.

Q. What do you mean you couldn't help but go-

ing out? A. Twelve o'clock you generally go out, don't you?

Q. I don't know. Do you? A. Well, if you was working in the shop you would go out then. Certainly, I went out.

Q. Did you go out at twelve o'clock on July 2nd? A. Yes.

Q. You went out every day, did you, to take a smoke? A. Yes.

Q. Did you always go out through this door from the finishing room? A. Not always, no.

Q. Do you remember whether you went out there on July 2nd? A. I wouldn't swear to it.

Q. You are swearing to everything, Mr. Cortese. You understand that, don't you? You understand that, don't you? A. I wouldn't want to tell you that I did go out exactly the day.

Q. That is what I want to know. Will you say now that you went into the yard on July 2nd and you were outside of the finishing room? A. Yes, sir.

Q. Did you? A. Yes.

Q. On July 2nd. That particular day, you remember that? A. Maybe more than once.

Q. No, no; I am talking about July 2nd, that particular day. A. I did.

Q. What's that? A. I did.

Q. You did. You went out there through the door from the finishing room? A. Yes.

Q. On that day? A. Yes, sir.

Q. How is it you remember that day more than some other day? A. You are talking about smoking. I go out that door every day.

Q. Every day? Every day you go out of that door from the finishing room? A. Yes.

Q. When you went out on July 2nd did you examine that window? A. Not examine, no.

Q. You just went out and walked into the yard and smoked; isnt that right? A. If you walked outside —.

Q. Please answer the question. You just went out into the yard and smoked? A. That is it.

Q. The same as you did every day? A. Yes.

Q. Is that right? A. Yes.

Q. Who was it first told you that any goods were missing on the morning of July 3rd? A. No one.

Q. Were you the one to discover it? A. Yes, sir.

Q. You discovered that at a quarter to eight? A. Around quarter to eight.

Q. Now you had been in the finishing room before that, hadn't you? A. 7:06.

Q. 7:07 you said yesterday. Which was it? A. A minute under or over, either seven or six; of course I was not looking at the time.

Q. When you went into the finishing room at 7:06 or 7:07 in the morning of July 3rd, what did you do in there? A. Prepared my finish.

Q. What is that? A. Prepared my finishing.

Q. What did that consist of? A. Glue.

Q. What is that? A. Glue, dextrine and different mixtures.

Q. Yes? A. Oils and that sort.

Q. How long were you in there doing that? A. Maybe 20 minutes.

Q. You walked around the different parts of the finishing room in doing your work? A. Not while I was doing that, no.

Q. Where was that located? A. Down the basement, near to the dye house.

Q. What is that? A. Near to a dye house.

Q. That is in the finishing room, is it? A. Yes, sir.

Q. How far away was it from this particular window we are talking about? A. I couldn't tell you that.

Q. No idea? Can you indicate it in the court-room? Is it about as far as from where you are sitting to where I am standing? A. About twice as long as this room.

Q. About twice as long as this room? A. Yes.

Q. The whole room is only 150 feet, isn't it? A. A. Then you have to go around the bend; you have to walk.

Q. How near were you to the table where this merchandise was? A. About from here to the door.

Q. Did you go in the finishing room at all? Did you go over to the door nearest to the window? A. Not the first thing in the morning, no.

Q. The first time you went over to the door was at quarter of eight; is that correct A. Yes, sir.

Q. Now your men started to work at 7:20; is that correct? A. 7:20.

Q. You arrived in the room at 7:07; is that correct? A. Yes, sir.

Q. Then you prepared this preliminary work? A. Yes, sir.

Q. Then you went out of that room; is that right? A. I did.

Q. Where did you go to from there? A. In my office.

Q. Where was that? A. In the finishing room, the first floor you come to; it was in the basement.

Q. I see. Then between the time you left the

finishing room after you prepared your work and quarter to eight, how many men came to work and went into that room? A. About 12 or 13.

Q. When you came back quarter to eight they were working; is that correct? A. Carrying rolls first thing in the morning.

Q. Were any of the men between the time, 7:20 and quarter of eight, working near this window and this door? A. No, sir.

10 Q. What is that? A. No, sir.

Q. Didn't you hear a witness tell you that there were some machines right near this window, within a few feet of it, within six feet of it? A. There are.

Q. What is that? A. There is.

Q. What kind of machine is that? A. An ironing frame.

Q. Wasn't anybody working on that machine? A. Not the first thing in the morning.

20 Q. I don't mean the first thing in the morning; I mean between 20 minutes after seven and quarter of eight. A. After nine o'clock that machine starts.

Q. Well, how near was anybody working to this window between 7:20 in the morning and quarter of eight? A. About 20 feet away.

Q. Twenty feet away? A. Yes.

Q. How many men were working about 20 feet away? A. Only one.

30 Q. Where was the next man nearest to that window? A. On the Palmer.

Q. That doesn't mean anything. How many feet away? A. About 10 feet away.

Q. And another man, now how near was he working to to this window? A. About 20 or 25.

Q. And there were a number of men working there within 10 to 25 feet; isn't that right? A. Carrying rolls down, yes.

Q. Yes, surely. And you were not in back of this room then between 7:20, we will say, and quarter of eight; is that correct? A. In that particular room, yes.

Q. Yes, that particular room I am talking about. That is right, isn't it? Mr. Cortese, isn't that right? A. Yes, that is right.

Q. Now this molding you say, you saw on the outside of the window, was that standing part of it on the ground and part on the building, or had it been thrown on the ground? A. Standing.

Q. Standing up; is that correct? A. Yes, sir.

Q. How did your men get into the finishing room, do you know? A. 33rd Street side.

Q. The 33rd Street side; well, that is the side on which the finishing room is, isn't it? A. The front part of the building.

Q. Did they come in through this door in the finishing room near this window that we have been talking about? A. No, sir.

Q. Did you have an assistant boss in that finishing room? A. Yes, sir.

Q. Who was that? A. He is not working with us at present.

Q. Who was it? A. A fellow by the name of John Cabello.

Q. John who? A. John Cabello.

Q. How do you spell it? A. You got me.

Q. When did he leave? A. About a year ago.

Q. Do you know where he is now? A. I do not.

Q. Now on your direct examination you say you

looked at the window at 8:20 with Mr. Cramer and Mr. Pelegrini? A. Yes, sir.

Q. What did you do between quarter of eight when you say you discovered this, and 8:20? A. I went to Mr. Meima to find out.

Q. Mr. who? A. Meima, to find out if he had got orders to remove the silk.

Q. I see. It took you all that time? A. Then I went back to my room again.

Q. That is 35 minutes, you know. A. Then I went back to my room again.

Q. How long did it take you to go over to ask Mr. Meima; five minutes? A. Five or six minutes.

Q. Well then, what did you do for the rest of the time? A. Went back to my room again.

Q. Stayed there? A. And looked after my finish.

Q. Well, when was the first time you talked to anybody about it—8:20, 8:15? A. I don't know exactly what time.

Q. Well, how long was it before you looked at the window; just immediately before, wasn't it? A. I never looked at a window until Mr. Cramer and Pelegrini came down with me.

Q. They came down immediately when you told them about it, didn't they? A. But I never knew anything about the window.

Q. I didn't ask you that. Of course you didn't know anything about the window. Did they come down and look at the window when you reported this alleged loss to them? A. Then we went around looking for the silk.

Q. Did they? A. They came around right away.

Q. Right away? A. Right away.

Q. Then you only told them a few minutes befor that, didn't you? A. That is it.

Q. Well, do you know what time Mr. Pelegrini was there that morning? A. I do not.

Q. You did not go right up stairs to the office at 8:45 or 7:45 when you discovered this matter, and tell them about it, did you? A. I started and I met Mr. Pelegrini and Mr. Omar Cramer.

Q. Well, that was nearly 8:20? A. Well, it was between that time—I couldn't say the exact time, what it was.

ANGELO MERO, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live, Angelo? A. 80 Murray Avenue, Paterson, N. J.

Q. Who did you work for in July, 1923? A. Cramer & King.

Q. How long had you been with them then? A. About 10 or 11 months.

Q. Do you remember hearing about this supposed robbery on July 3rd? A. Yes, sure.

Q. Do you remember the day before, July 2nd; do you remember the afternoon of that day? A. Yes, sure.

Q. What department did you work in on July 2nd? A. July 2nd? Finishing room.

Q. Who was your boss? A. Mike Cortese.

Q. Do you remember leaving work on the afternoon of July 2nd? A. Leaving work?

Q. Yes. A. Yes, sir.

Q. What door did you go out of? A. The rear finishing room door, back door.

Q. Now did you do anything about any of the windows in the basement finishing room before you left? A. Why, yes, I locked it, put the catch on the top.

Q. I call your attention particularly to the window nearest the door, at least to the rear part of Cramer & King's premises. Did you do anything to that window? A. The one nearest to the door?

Q. Yes. A. I always locked it every night.

Q. Did you on the afternoon of July 2nd? A. Yes.

Q. About what time? A. About 25 after four.

Q. Do you remember how you locked it? A. Yes.

Q. How? A. There was a catch on the top of the window, see; just had to turn it over and she locked; and then I had two nails, one nail on each side, see.

Q. So you could just bend them over so the window would not come out? A. The catch on the top was loose.

Q. That is the catch on the top? A. Yes, sir.

Q. Come down here and show where the nail was that you say you twisted and turned? A. This here is too big, see. I used to have a nail and just sticking one on each side of the window, on here.

The Court—Indicating about how high from the base?

The Witness—About that high.

The Court—How far from the base, can you tell?

The Witness—I just can't tell you.

The Court—How far was it, a foot or a foot and a half or two feet?

The Witness—About that.
The Court—About what?
The Witness—About a foot and a half.
The Court—On each side, you say?
The Witness—Yes, on each side.

Q. In the window casing? A. Yes.

Q. And you say you turned it yourself? A. Just enough to let the window come out, you know.

Q. Twisted it? A. Yes, sir.

Q. So that its head rested up against the sash? A. Didn't rest; because I had just to bend it over a little bit, so as to hold the window in.

Q. Now what time did you get back into the finishing room on the morning of July 3rd? A. About 20 minutes after seven, 25 after.

Q. Was anybody there before you, as far as you know? A. Well, everybody was there and start to work.

Q. I mean at the time you first got there? A. Sure.

Q. How did you get in the building that morning? A. In the finishing room, you mean?

Q. No, into the building. A. Through 33rd Street side.

Q. Near the river? A. Yes, sir.

Q. Was that the usual entrance? A. That was the usual entrance.

Q. Now did you examine the window particularly at any time on July 3rd? A. No, I didn't see that.

Q. That is, you did not examine the window; is that what you mean? A. No, not right away I didn't.

Q. Did you at any time on July 3rd? A. Yes,

after I seen Mr. Cramer and Mr. Cortese and I forget who else was around there, and then I seen it.

Q. What did you see about it, if anything? A. I seen the window laying on the window sill.

Mr. Prince—What does he mean by laying?

Q. Well, what position was the window in? A. It was laying right on the window sill.

Q. Where was the bottom of the sash of the window? A. It was laying on the window sill—do you mean on the inside?

Q. Yes. A. It was laying on the window sill.

Mr. Prince—Ask him if he means lying or standing?

Q. Do you mean that the wnidow was aslant? A. Yes, right in the window, like.

Q. Was it standing upright?

Mr. Dunn—He don't know what upright is.

Q. How was it lying in the window? A. It was lying in the window, yes.

Q. Well, can you show us by that window how it was? A. Well, that there—

Q. Here is the sill. The sill is broader in the middle, isn't it, than this? Where is this sash? A. This here window, see—this here window is like that.

Mr. Prince—I do not think the jury can see. Let him illustrate it over here.

A. Right against here, that way.

Q. At an angle? A. Yes, that is the way it was laying.

Q. Now did you notice the nails in the window casing?

Mr. Prince—I object unless we have some time fixed, your Honor.

A. No, sir.

Q. You did not look to see?

Mr. Prince—I object.

The Court—Do not lead him.

Q. Did you notice anything else about the window? A. That is all I seen.

Q. Did you go on the outside? A. No, sir.

Q. Was your attention drawn to the wire screen on the outside? A. No, sir.

Cross Examination by Mr. Prince:

Q. Nobody told you about the wire screen on the outside? A. No, sir.

Q. And you worked there all that day, didn't you? A. I didn't work—I worked in the finishing room, yes.

Q. But all that day? A. All over.

Q. July 3rd? A. Yes.

Q. Nobody during this day said anything to you about the screen on the outside of the window; that is right, isn't it? A. No, sir.

Q. Now on July 11, 1923, you were called to

the office and Mr. Lundgren was there, the secretary of the company, wasn't he? A. Yes, sir.

Q. And Mr. Luizi was there, this gentleman over here? A. Yes, sir.

Q. And you were asked a lot of questions by Mr. Luizi and Mr. Lundgren, and you were able to tell what you knew about it? A. Yes.

Q. And you told them what you knew about it; is that correct? A. Yes, sure.

Q. Then after you had told Mr. Lundgren what you knew about it he sat down and he typewrote a statement; is that correct? A. Yes.

Q. You read English, don't you? A. Yes.

Q. Then after he typewrote it he handed it to you and you read it over and then you signed it; is that right? A. He didn't hand it to me at all.

Q. Didn't hand it to you at all? A. No, sir.

Q. Who did he hand it to? A. Well, it was laying right there on the desk where he was typewriting.

Q. You read it then, didn't you? A. Didn't let me read it, either.

Q. Mr. Lundgren didn't let you read it? A. No, sir.

Q. And he told you to sign it, though, didn't he? A. I don't remember signing it.

Q. Well, look at this paper and say whether that is your signature? A. Yes, that is my name.

Q. You remember now that you signed it? A. Yes.

Q. Is that correct? A. Yes.

Q. I read this statement to you from the paper which you signed: "On July 3, 1923, after the loss was discovered, I was unable to notice any signs that the window had been forced and only that

the window stood on the sill." You said that, didn't you? A. Yes.

Q. That is correct, isn't it? A. Yes.

Q. Now you also said then, did you not: "On July 2, 1923, about 4:30 P. M. I looked at the window next to the rear finishing room door and saw that the fastenings were on, this being a uniform performance before leaving." You said that, too? A. Yes.

Q. And that was correct, wasn't it? A. Yes.

Q. Now the fastening on the top of this particular window, Mr. Mero, it was a little piece of iron fastened to the top of the frame with a screw, and this little piece of iron turned; is that correct? A. Turned, yes.

Q. And when you put the window in place and wanted to fasten it you turned this little piece of iron upright; is that right? A. Yes.

Q. And the top of it fit into a groove in the part above the casing or on the top of the casing; is that correct? A. Yes.

Q. That held it there? A. Yes.

Q. Is that correct? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. And these nails, they were big nails, weren't they? A. The ones I put in were not, no, sir.

Q. Yes? A. Yes, pretty big.

Q. About how long were they? A. Well, about—

Q. Just tell me with your fingers. A. About that long.

Q. You moved your fingers. You do not mean that long? A. About that long.

Q. About that long; is that right? How many inches would you say? You know what inches

are, don't you? A. Well, about—I don't know, I couldn't say.

The Court—Show us again, how many?

The Witness—About that long.

The Court—Seems to be about two inches.

Q. Two inches. You mean the nail was driven into the side of the casing—just look around here —right in here; is that correct? A. Yes, sir.

Q. And the nail was bent; is that correct? A. Yes, bent out on both sides.

Q. It was bent like this, is that right; like my finger, that way? A. Yes, but this hit the window. Just to hold the window, see.

Q. I know, but the nail was bent? A. Yes.

Q. Then when you put the window in you grabbed the head of the nail and you turned it around this way? A. Yes.

Q. Is that correct? A. Yes.

Q. And hold the window? A. On both sides, yes.

Q. Is that correct? A. Yes.

The Court—When you open this window, is it the kind that slides up, or pulls out on the inside?

The Witness—Why, you just pull it out.

Q. You just lift the whole window frame out, don't you? A. Half of the window, yes.

Q. What is that? A. Half of the window.

Q. I am not talking about the little transom on the top. I am talking about the window itself. A. Sure, you can take it right out.

Q. Take it right out, the whole window and the frame and glass and everything, isn't that right? A. Yes, everything.

Q. Now when you turned those nails in the morning back to the position they were before you put the window in—do you understand what I mean; when you turned the nail heads down on the morning— A. Yes.

Q. Do you understand what I mean? A. Yes.

Q. Then you loosened this catch on the top? A. Well, no, I didn't open it all the time, no.

Q. But any time you opened it? A. Just loosen the catch, sure.

Q. Just follow me. In order to take this window out in the morning, how did you take it out? A. Well, I didn't take it out all the time.

Q. No, no; but when you did take it out? A. I just loosened the catch.

Q. Loosened the catch on the top, turned it back? A. And the nail on both sides, and then took it out.

Q. And the nails on both sides, and you grabbed hold of the window and pulled it right out? A. Yes.

Q. Just a little bit of a pull? A. Yes.

Q. If you were not there to catch it it would fall on the floor, wouldn't it? A. Yes.

PATRICK J. McMAHON, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live, Mr. McMahon? A. 314 Caldwell Avenue, Paterson, N. J.

Q. Lived in Paterson how long? A. About 43, 44 years.

Q. Your business has been what? A. At the present time?

Q. Well, generally? A. Clerical work.

Q. In the months of April, May, June and July, 1923, what were you doing? A. I was night clerk in the Paterson Burglar Alarm & Messenger Company.

Q. Where were they located? A. 113 Ellison Street, Exchange Building.

Q. Do you know whether their wires were connected with the plant of Cramer & King at that time? A. Yes, sir.

Q. What were your duties as night clerk? A. Why, to keep tabs or record of all the watchmen that were ringing into the office.

Q. Now will you describe the system that was being operated at the time by this Paterson Burglar Alarm? What was there in the mills with which the system was connected? A. Why, there were boxes with different numbers that were rung with a key. The key was inserted in the box and pulled around.

Q. Now when that key was put in one of these boxes at the mill of the Cramer & King, what would that do or show, if anything, in your central office? A. Why, that would register on the tape.

Q. What sort of a tape? A. Why, a tape, of course, I should think about five-eighths of an inch wide; come in with one dot, or would be a space, maybe two dots, space, maybe four dots—whatever the box was.

The Court—Operate like a stock ticker?
The Witness—Something like that.

Mr. Prince—Would the dots indicate a number? Was that a code?

The Witness—A number, yes.

Q. Then when the tape began to run and these dots appeared, these marks appeared, what were your duties with respect to them? A. Why, have to record the time those boxes came in, and I had a regular form for that purpose.

Q. On what did you record it, what paper? A. A sheet of paper, yes, regular form we had.

Q. Then what other duties did you have? A. Then making out the reports and mailing. Usually mailed them the following day.

Q. In what form were the reports made? A. Why, mailed on regular postal card form.

Q. What did they show? A. Showed the time—they showed the box numbers, that is the stations and the different times they were rung in by the different watchmen.

Q. These postal cards were mailed to whom? A. Usually the following morning or the following night, to the different customers.

Q. Who had the service of this burglar alarm system? A. Yes.

Q. Now do you recollect whether this system was maintained in the premises of Cramer & King during these months of April, May, June and July of 1923?

Mr. Prince—I object to that. We have the postal cards that were mailed to the assured. They are the best evidence. This question calls for a conclusion.

The Court—I will permit that.

A. Yes, there was.

Q. Now were you the only night clerk during that period? A. Why, no, there was different ones. I was the night clerk, but they used different parties there at different times.

Q. Well, during how much of the time during those four months did you receive these signals? A. Well, I would be over there usually from six o'clock at night until sometimes seven and eight in the morning, sometimes later.

Q. At what time did you get there at night? A. Six o'clock in the evening.

Q. And stayed all night then? A. Yes.

Q. How often during that period did signals come to you from the mill of Cramer & King? How often at night, I mean, did the signals come to you from the mill of Cramer & King?

Mr. Prince—I object to it. There has been no proper foundation laid. That is not the best evidence.

The Court—If he has the records of it I suppose they will show exactly.

Q. What becomes of these tapes which you mentioned? A. Well, they were usually saved for a certain length of time and then destroyed.

Q. And the sheets upon which you recorded your records? A. I believe the sheet took the same form as the tapes.

Q. Well, what do you mean by that, they were eventually destroyed? A. Eventually destroyed, yes, sir.

Q. Do you know whether those records are in existence? A. I could not say.

Q. For these months? A. I could not say.

Q. Do you know who does know? Do you

know who does know whether they are in existence or not?

Mr. Prince—I object to that.

The Court—You may ask him who was in charge of it, I suppose, who would know.

A. Well, it might be possibly that Mr. Ritchey.

Q. Is this company for whom you worked during this period in existence now? A. I could not say.

Q. About what time during this period did you first get your signals from the mill of Cramer & King?

Mr. Prince—I object to that.

The Court—He says there is a record of it. I suppose that would be the best evidence.

Mr. Rosenkrans—Mr. Ritchey is not in the courtroom at the present time. He has been here and will be here. When here I will show by him that these records were destroyed.

Mr. Prince—Have you talked to him and do you know of your own knowledge?

Mr. Rosenkrans—I know he has said so to me, and he will testify to it.

The Court—Well, of course, I cannot permit it until that testimony is disclosed.

Mr. Prince—Well, now, wait a minute. I do not want to embarrass opposing counsel too much. If he says he is going to connect it up, with that understanding, of course—but there is a danger that he does not connect it up, and the jury might be-

come confused. That is the only thing I have in my mind.

The Court—Well, if he says he is going to connect it up, I suppose it will do no harm, I will admit it subject to your motion to strike it out.

Q. Mr. McMahon, how often between six P. M. and six A. M. during the months that I have mentioned—

Mr. Prince—Before that, let me say this, that he was not there all the time, not every night.

Mr. Rosenkrans—I understood him so.

Mr. Prince—Get that clear.

Q. You say you were night clerk? A. Yes, sir.

Q. During the months of April, May, June and July? A. Yes, sir.

Q. Now during those months was there any other night clerk there? A. Only on a Friday night from six until twelve; I had six hours off.

Q. With that exception? A. I was there all the time.

Q. You were always there? A. Yes.

Q. Night after night? A. Yes.

Q. Who was the night clerk who relieved you on every Friday evening? A. Usually Mr. Ritchey.

Q. During the nights that you were on duty from six P. M. to seven A. M. during these months, how often nightly did you receive signals from the premises of Cramer & King? A. From six P. M. until five A. M., inclusive. Six P. M.,

the night before, until the following morning at five A. M.

Q. Do you know how many boxes on the premises of Cramer & King you received signals from? A. At that time I should think there would be in the neighborhood of 18 or 20; I would not be sure.

Q. Will you say whether or not during that period you received the signals from these premises hourly? A. I believe I did.

Q. Mr. McMahon, if the signals failed to come in when due, was there any duty that you were instructed to perform? A. Well, it was usually the custom that I tried to get them on a telephone, and if I could not raise them on a telephone I notified police headquarters.

Q. Do you recollect that at any time on any occasion during these four months from May to July, 1923, that you had any occasion to call up this particular mill of Cramer & King? A. I can't remember. I could not say.

Q. But so far as you can remember—

Mr. Prince—I object. He says he cannot remember; he could not say.

The Court—I will permit the question.

Q. So far as you do remember? A. So far as I do remember, I don't remember anything about it.

Cross Examination by Mr. Prince:

Q. Now I show you Defendant's Exhibits 3, 4 and 5, Mr. McMahon. Are those the kind of cards that were mailed each day to Cramer & King? A. Yes, sir.

Q. And they were adressed to Cramer & King, East 33rd Street, Paterson, N. J.; is that correct? A. Yes, sir.

Q. And that would be an exact copy? A. I believe so.

Q. Of your record? A. As I drew it off the sheet, yes, sir.

Q. Yes. What you did was, you would make a record from your tape onto your form, your sheet form? A. Yes.

Q. And then from that you would put it on these cards? A. Yes, sir.

Q. And these cards were an exact replica in form as your sheet? A. Yes.

Q. In other words, the same arrangement? A. Yes.

Q. With the box numbers and the different times? A. Yes.

Q. Is that correct? A. That is right.

Q. And between April and July 3, 1923, that was the course that was adopted? A. Yes.

Q. Mr. Ritchie, isn't it a fact that he did not come to work for the company until August, 1923? A. That I could not say.

Q. Well, you see you said a moment ago on your direct examination that you were off Friday night from six to twelve o'clock and Mr. Ritchie relieved you. Now we are talking of the period between April and July 3, 1923? A. That I could not remember all the time. I could not remember when he started, when he took hold of the business. The only thing I remember is when he was relieving me. Of course, I don't know whether he was there in July or August or when it was.

Q. I see. Then you will not say now, will

you, Mr. McMahon, that between April 1st and July 3, 1923, on Friday nights it was Mr. Ritchie who relieved you? A. Well, I could not say positively.

Q. Now is that the only time that you were off between April 1st and July 3rd? A. Yes, sir.

Q. Only Friday nights? A. Yes, only on Friday nights.

Q. Were not away for sickness or anything else? A. No, sir.

Q. Don't you recall as a matter of fact you had a lot of trouble with the service in Cramer & King and you were obliged a number of times to telephone them because they did not register on the clocks? A. Oh, not so very often.

Mr. Rosenkrans—During this period.

Mr. Prince—Yes, I am talking of the period from April 1st.

A. Not so very often.

Q. There were occasions? A. Yes, there were occasions.

Q. There were occasions between April 1st and July 3rd? A. Yes.

Q. When you did not get the signal, and then you in the performance of your duties and the exercise of care would immediately get the mill on the telephone? A. Yes.

The Court—1923 you are talking about?

Mr. Prince—Yes, I am talking about 1923.

Q. That is correct, is it, Mr. McMahon? A. Yes, sir.

Q. And your recollection is there were a number of such occasions? A. Yes, I should think there would be.

Q. On each of those occasions did you always get the mill on the wire, on the telephone? A. Well, no, there was some times I didn't get them and I usually notified the police.

Q. And then you notified the police headquarters? A. Yes.

Q. And that was also between April 1st and July 3, 1923? A. Well—

Q. That is the period we are talking about. A. I rather think so, yes.

Redirect Examination by Mr. Rosenkrans:

Q. Now, Mr. McMahon, on direct examination so far as you could recollect, you never had occasion to notify, to telephone to the mill of Cramer & King during the months of April, May, June and July?

Mr. Prince—I object to that. That is not the evidence and he did not say that.

The Court—He said as far as he could recollect.

Mr. Prince—That is what he said.

Q. Well, didn't you say that you had no recollection of having telephoned the mill of Cramer & King during those months?

Mr. Prince—I object to their attacking their own witness.

The Court—I will permit the question.

A. It is possible I did, but I could not positively say.

Q. What do you now say, whether you have or have not any clear recollection of having telephoned to the premises of Cramer & King during the months of April, May, June and July, 1923?

Mr. Prince—I object to the question, whether or not he had a clear recollection. What we want is his best recollection.

The Court—I will permit the question.

A. I cannot recollect as I made any telephone calls at all. I may possibly have. If I had my records here I could tell right to a T, what happened, because I always kept footnotes on my records.

Q. By your records you mean what, these sheets? A. The sheets I used to keep the time on.

Q. Now before Mr. Ritchie came to work for your company, did anyone else relieve you on Friday nights? A. Well, there was Mr. Quinn.

Q. How long did you work for the telephone company altogether? A. For the burglar alarm company?

Q. Yes. A. About five years.

Q. Now in or about this period in question, this spring and early summer of 1923, did anyone other than Ritchie and Quinn relieve you on Friday nights?

Mr. Prince—I object. There is no proof that Ritchie relieved him during this time.

He doesn't know when Ritchie came to work.

The Court—I will permit it.

A. To the best of my recollection and as I understand about Ritchie, why, Quinn must be the one, because he and I always—I relieved him at night, and he always—If I were late in getting in he always kept tabs on the time.

Recross Examination by Mr. Prince:

Q. There were times, then, when you got there after six o'clock? A. Oh, yes.

Q. Sometimes seven, sometimes eight, sometimes nine? A. No, sir. Might be shortly after six.

Q. Now, Mr. McMahon, if you had the cards which you sent to Cramer & King between April 1st and July 3, 1923, like the cards marked as Defendant's Exhibits 3, 4 and 5, which I show you now, you could tell then from those cards whether the clocks registered every hour, couldn't you? A. Oh, yes.

Q. They would show that clearly? A. Yes.

Q. And would you also make notes on the cards you sent to them? A. No, sir.

Q. But if a clock did not register on a particular hour, why, that would be shown by the card? A. It would show on the card, yes.

Q. Were there times between April 1st and July 3, 1923, when some of the boxes in Cramer & King were out of order and did not register at all? A. Sometimes.

Q. I don't suppose you can tell me the exact number of boxes during that time from your recollection, can you? A. No, sir.

Q. Your best recollection is there were some, but you cannot say the number, is that correct? A. I cannot say the number; yes, sir.

Q. That is equally true, isn't it, of the fact that your best recollection is that there were times when the boxes did not register hourly and you had occasion to telephone to Cramer & King, and also to the police department, but you cannot tell me the number of times; isn't that so? A. Occasionally, yes.

Q. That is correct, isn't it? A. Yes.

Redirect Examination by Mr. Rosenkrans:

Q. Occasionally during those four months? A. Yes.

Q. Now, Mr. McMahon, was there any time during which this service was maintained for Cramer & King when you had pronounced trouble in receiving the signals?

Mr. Prince—I object to that, whether he had pronounced trouble.

The Court—"Pronounced' 'is a comparative term. I will sustain the objection to that.

Q. Was there any period of time during which this service was maintained between your central office and the mill of Cramer & King when you had any frequent or unusual trouble?

Mr. Prince—I object to the question.

The Court—I think they are comparative terms. He may state the degree of fre-

quency and leave it to the jury as to whether or not it was frequent.

Q. Was there any time during the entire period when the system was maintained in the mill of Cramer & King when you recollect having telephoned them time and again because the signals did not arrive when due?

Mr. Prince—I object to the question upon the ground he is attempting now to attack the credibility of his witness; and in addition to that, his question embodies comparative terms, and it is assuming a state of facts which are not in evidence, as the witness has not said he did this frequently. The witness has testified that there were occasions between these times, but that he could not recollect the exact number of times, but if he had these cards he could tell exactly.

Mr. Rosenkrans—I am undertaking to refresh his recollection. I am proposing to show that there was a period subsequent to July, 1923, when he had constant or almost nightly trouble in getting these signals.

The Court—I do not suppose that makes any difference unless he is confusing the period.

Mr. Rosenkrans—That is what I want to show, and during that period he did telephone to the police station.

Mr. Prince—I think this statement of counsel is absolutely unfair. In the guise of a statement to the Court he tells the

witness what he wants him to say. I think that method is absolutely unfair and unwarranted. Of course the witness understands now what he wants.

The Court—I will permit the question.

A. There was one time, I cannot just remember the exact date, I had occasion for to call up Mr. Stapfer, I believe he is the superintendent of the plant, and get in touch with him on account of the watchmen not ringing in, and I on that occasion was informed that they had—

The Court—No, not what you were informed.

Q. When was that time with reference to these months of April, May, June and July, 1923; before or after, or within the time? A. That I really could not say.

Q. No idea? A. No, I have not.

Q. Do you know who were the night watchmen at the mill of Cramer & King at the time when you had occasion to call up the superintendent?

(Objected to. Question permitted.)

A. No.

Q. Was it about the time you called up the superintendent that you had occasion to call up the police department with reference to the mill of Cramer & King? A. Yes, I usually done that.

Q. No, you don't get my question, Mr. McMahon. You say that there was one occasion

when you called up the superintendent of the mill under whom the night watchmen were working?

Mr. Prince—I object. He didn't say anything of the kind.

The Court—I understood him to say so. Proceed.

Q. Otto Stapfer?

Mr. Prince—He said he called up Otto Stapfer.

Q. You say there was a time when you called up Otto Stapfer, the superintendent? A. Yes.

Q. Now do you say whether or not it was at or about the same time, the same period of time, that you had occasion to send the members of the police department up to the mill of Cramer & King during the nighttime? A. Well, I believe the police had been up there and they couldn't gain admittance.

Mr. Prince—I object and ask that it be stricken out.

The Court—Strike it out. Listen to the question.

Q. You say that you have some recollection of having called up the police department and told them to go up to the mill of Cramer & King, because you did not get the signals when due? A. Yes.

Mr. Prince—I object to it as leading and

suggestive and hearsay, and not binding upon this defendant, what conversation he had with the police department.

The Court—I do not think the question is proper. I think it probably embodies facts which are not in the testimony. If he did say it, he said it. There is no use stating it to him again.

Q. Will you say whether the time when you called up the police station with reference to the mill of Cramer & King was or was not about the time that you telephoned to the superintendent? A. Yes.

Recross Examination by Mr. Prince:

Q. When was the time that you called up Mr. Stapfer? Was that between April 1st and July 3, 1923, Mr. McMahon; is that your best recollection? A. Well, now, I wouldn't be sure about.

Q. I know; I don't want you to be sure, I want you to give me your best recollection. A. My best recollection, I should think so.

WILLIAM QUINN, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you reside, Mr. Quinn? A. 100 Cedar Street, Paterson.

Q. What do you do? A. Well, I was repair man for the Paterson Burglar Alarm Company.

Q. For how long? A. Oh, probably 10 or 12 years.

Q. Is that company operating now? A. I don't think so.

Q. Well, when did you begin to work for it and when quit? A. Oh, about 18 years since I started to work there.

Q. When did you do your last work for it? A. Last September.

Q. Were you employed by it at the time that Mr. McMahon was? A. Yes.

Q. Now, do you recollect the months of April, May, June and July, 1923? A. Well, yes, I know the months, yes.

Q. What were your duties with this concern during these months? A. Well, to repair the lines and take care of the boxes around.

Q. Did you do any night work at all during those months? A. Well, if they should call me up I would have to go out on the line and fix it.

Q. Yes? A. At night.

Q. Were you in the central office during the nighttime? A. Well, very seldom.

Q. Were you there regularly on Friday nights? A. No.

Cross Examination by Mr. Prince:

Q. Did you ever repair any boxes at Cramer & King's? A. Yes.

Q. Did you do that during the months of April, May, June and July, 1923? A. Well, I don't know.

Q. Can't recollect one way or the other; is that correct? A. I have been on so many I could not tell which.

Q. Would you know a list of the boxes that were in there? A. I think I would.

Mr. Prince—Well, I think we can arrange that between counsel. May this witness stay here for a few minutes? If I cannot arrange it I will have to ask him about it. That is all.

CHARLES McKINLEY, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where are you employed, Mr. McKinley? A. Cramer & King Company.

Q. How long have you been with them? A. About 17 years.

Q. What do you do for them? A. Foreman of the greig and preparing departments.

Q. How long have you been working for them in that way? A. Between 16 and 17 years.

Q. The same department? A. Yes.

Q. The same duties? A. Yes.

Q. Now when silk first arrives at the mill of Cramer & King to be processed, do you have anything to do with it? A. Yes, after the order has been made out.

Q. Do you know who determines at the mill what quantities of goods has arrived?

Mr. Prince—I object to that.

The Court—I will permit it. You may answer, if you know.

A. I determine that by checking it off on the orders which we receive from the customer.

Q. Do you make any record of your checking up? A. Yes.

Q. In the spring or early summer of 1923, do you remember ever receiving any shipment of goods from the Piedmont Silk Company? A. Yes.

Q. Did you check up the goods when they arrived? A. Yes, sir.

Q. Determine the quantity? A. Yes, sir.

Q. Did you make a record? A. Yes, sir.

Q. Have you got it? A. Mr. Lundgren has it, I presume.

Q. Where did you place your record when made, of making it? A. In a small production book which we carried for that purpose.

Q. Do you recognize this book? A. Yes, sir.

Q. What is it? A. That is my production book for my daily production, which I prepared everyday.

Q. Examine that book and say whether or not it contains a record of any shipment from the Piedmont Silk Company?

Mr. Prince—I presume he means a record made by this witness?

The Court—I presume so. Is this book in your handwriting?

The Witness—Yes.

Q. Does it? A. Yes; I have a record of 500 pieces—

Mr. Prince—I object and move to strike it out.

The Court—Strike it out. The question is whether there is a record.

A. Yes.

Q. Under what date? A. March 23rd and March 26th.

Mr. Prince—May I be excused for just a moment to take up something with counsel about some witness?

(Interruption.)

The Court—Now you may go ahead.

Mr. Rosenkrans—I will withdraw this witness and redeem my promise.

(Witness temporarily withdrawn.)

JOHN J. RITCHIE, JR., sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you reside, Mr. Ritchie? A. 698 East 28th Street, Paterson, N. J.

Q. How long have you lived in Paterson? A. All my life.

Q. What was your occupation in the spring and summer of 1923? A. Real estate broker.

Q. Did you ever have any connection with the Paterson Burglar Alarm System? A. On the 1st of October, 1923, I took over the management, and part owner.

Q. Where were they located at the time? A. 113 Ellison, Room 23.

Q. That was their central office? A. Yes, sir.

Q. Now when you took over the management of the company, did you find any records? A. Yes, I found records there for the last six or seven years.

Q. Did you make any disposition of those records? A. Yes; about a month or so after I had taken over the management I had to have

room for new stuff that was coming in, and I sent all the records out to the janitor and I suppose he sent them down and burned them up.

Mr. Prince—I object and move to strike out the latter part.

The Court—Strike out what he supposed.

Q. You say you sent them out to the janitor? A. To the janitor.

Q. What instructions did you give the janitor, if any, with respect to those records?

Mr. Prince—I object.

The Court—I will permit it.

A. Why, to burn them up.

Q. Have you seen them since? A. No, sir.

Q. Now did you prior to October, 1924—were you ever employed in any character at any time by the company? A. Prior to October, 1924?

Q. 1923. A. No.

Mr. Prince—Which was it you are talking about?

Mr. Rosenkrans—1923.

Q. Did you ever relieve Mr. McMahon as night clerk on Friday nights? A. I did.

Q. When was that? A. After October, 1923.

Q. Not before? A. No, sir.

The Court—Those records which you destroyed were up until what period, covered what period?

The Witness—Up until October 1, 1923.

Q. The company itself, do you know whether that is in existence or not?

Mr. Prince—I object to it as incompetent, irrelevant and immaterial.

The Court—I will permit it.

A. They are now out of business.

Q. When did they go out of business? A. October 1, 1924.

Cross Examination by Mr. Prince:

Q. Did you ever examine the records when you got there on October 1, 1923, yourself? A. I did not.

Q. What is that? A. No, sir.

Q. Never have looked at the records at all, have you? A. No, sir.

Q. Of your own personal knowledge you don't know what records were destroyed, do you, if any were destroyed—of your own personal knowledge? A. Only from being marked on the outside. They were wrapped up and marked.

Q. That is all you know, from the marking on the outside; is that correct? A. That is correct.

Q. Are there any records in existence at the present time of that company? A. There is.

Q. Where are they? A. At their office on Ellison Street.

Q. Where is it? A. 113 Ellison Street.

Q. They still have an office there? A. Everything is there that we left there on the 1st of October.

Q. Have you gone down there and made a search of all the records there were there to see if there were any records there prior to October 1, 1923? A. Yes.

Q. When did you do that? A. About three weeks ago.

Q. Looked through all the records you had there? A. Yes.

Q. Did you yourself do that? A. Looked through the cabinet where they were kept.

Q. What is that? A. I looked through the cabinet where they were kept.

Q. Were there any records at all in the cabinet? A. Yes.

Q. Did you look through each and every record that was there? A. I looked through each and every drawer. They are laid out into monthly drawers.

Q. You did not look at any monthly drawers, did you? A. I supervised it.

Q. No; did you do it personally? A. Helped to.

Q. You mean by supervising it, you told somebody else to do it? A. I helped them to do it.

Q. All the time? A. Not all the time.

Q. You mean you were there a part of the time? A. That is it.

Q. You helped part of the time? A. Yes, sir.

Q. That is since October 1, 1923? A. Yes, sir.

Q. Not prior to that time? A. I was not there.

WILLIAM CLARK, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live, Mr. Clark? A. 49 Hopper Street, Prospect Park.

Q. How long have you lived here? A. 14 years.

Q. What is your business? A. Carpenter.

Q. For whom do you work? A. I worked for Brown Brothers now.

Q. Were you ever employed by Cramer & King Company? A. Yes.

Q. When? A. A year ago.

Q. Do you know when you commenced to work and when you stopped working for Cramer & King? A. I worked about two years.

Q. When did you commence to work for them, begin to work for them? A. I couldn't tell you, just.

Q. Were you working for them as a carpenter in July, 1923? A. Yes, sir.

Q. That would be two years this coming July? A. Yes, sir.

Q. Do you recollect hearing about a robbery at the mill on the 3rd day of July, 1923? A. Yes, sir.

Q. Do you know a room there known as the basement finishing room? A. Yes, sir.

Q. Do you know the door that leads in the basement finishing room to the back of the yard of Cramer & King Company? A. Yes.

Q. Do you know a window in the basement nearest to that door? A. Yes, sir.

Q. Now did you look at that window on July 3rd? A. Yes, sir.

Q. Who was with you at the time, if anyone? A. The foreman of the finishing room.

Q. That is Mr. Cortese? A. Yes, sir.

Q. Anybody else? A. No, not that day.

Q. Did you look at that window from the outside or within? A. From the outside and inside.

Q. Did you see anything about it on the outside, notice anything about it? A. Yes.

Q. What did you notice? A. The molding was off, the wire was pulled off as a triangle.

10 Q. Now do you know whether the wire was replaced, put back where it belonged? A. Yes.

Q. Who did it? A. I did it.

Q. Was the molding replaced? A. Yes, sir.

Q. Who did that? A. I did it.

Q. Now at any later time did you take the molding off again? A. Yes.

Q. About when? A. I couldn't tell you the exact time.

Q. Well, was it weeks afterwards? A. Yes.

20 Q. I call your attention to Labor Day of that year. Do you remember Labor Day, the first Monday in September? A. Yes.

Q. Was it before or after Labor Day that you took off the molding? A. I couldn't tell you.

Q. Was it about that time, or don't you know? A. Well, it was about eight or nine weeks after, I think.

Q. Eight or nine weeks after. Who was there when you took the molding off again? A. It

30 was three men there, I don't know the names.

Q. You see any of them here today? A. I don't think so.

Q. Did you take anything else off besides the molding at that time? A. Yes, sir.

Q. What else? A. The screen.

Q. To what extent did you remove the screen at that time? A. The same triangle as it was before.

Q. Then after you had removed the molding and the screen to the extent it was on July 3rd, what if anything did you do? A. Take the window out.

Q. Yes? A. Put it on—

Q. What else did you do? A. Put it on the sill.

Q. Yes. Where did you stand when you removed the window? A. Inside.

Q. Inside? A. Yes.

Q. You put it on the sill? A. Stood it on the sill.

Q. Then what did you do? Did you go outside? A. Yes, I go outside.

Q. When you got outside what was it that you did, if aything? A. Well, it was one fellow says—

The Court—No.

Q. You can't tell what he said, but you can tell us what you did. That is what I want you to tell us. A. Went through the window.

Q. You went through the window? A. Yes.

Q. How did you get through the window? A. Removed the window from the sill.

Q. Yes. You say that you had first taken off the molding?

Mr. Prince—I object to him repeating the evidence.

The Court—Do not repeat his testimony, Mr. Rosenkrans.

Q. Well, how did you get through the wire, the screen? A. There was pulled up.

Q. Then the window, how did you get through the window itself? A. Got ahold of the window and set it on the floor.

Q. Now do you recollect whether or not in getting through that window on this day that you have described you touched with any part of your body or limbs the sill on the inner side of the window? A. Yes, sir.

Q. Did you or didn't you? A. I did.

Q. What part of the sill? A. In the center.

Q. What part did you touch the sill in the center? A. The outside part.

Q. The outside part. What part of you? A. My shoe.

Q. Now did you notice the inside of the window on July 3rd? A. Yes, sir.

Q. Tell us what you saw about it?

Mr. Prince—I object to this unless we have some time on it.

The Court—I suppose he ought to specify the hour.

Q. What time was it you looked at the inside of the window on July 3rd? A. Four o'clock.

Mr. Prince—In the afternoon?

The Witness—Yes.

Mr. Prince—I object to his telling what conditions he saw then.

Mr. Rosenkrans—All right.

Q. Was there inside with you at that time

when you looked at the window that day? A. When?

Q. Whenever it was. You say four o'clock. Who was there with you at that time? A. I was all alone then.

Cross Examination by Mr. Prince:

Q. Now the first time you saw the window on July 3rd there from the inside or outside was four o'clock in the afternoon? A. Yes.

Mr. Prince—I move to strike out all of the testimony given on direct examination as to the conditions he found on the window, upon the ground that it clearly appears in evidence a number of people were at that window before, and it has not been shown that the condition of the window was the same when he saw it as it was when this alleged loss was discovered in the morning.

The Court—What do you say, Mr. Rosenkrans?

Mr. Rosenkrans—Well, upon the arrival of Mr. Pelegrini, who is temporarily absent, I will show the window on the outside was in the same condition at four o'clock in the afternoon as it was between eight and nine o'clock on the morning of July 3rd.

The Court—Suppose you do that now.

Mr. Rosenkrans—He is not here, or we would have done it first. Mr. Pelegrini is not here. He went out to get a witness.

The Court—You may reserve your motion until he comes.

Mr. Prince—They supply everything that seems to be necessary when there is this lapse of time.

The Court—What is the purpose of that statement?

Mr. Prince—Well, it seems whenever we permit the witness to go away this way and then comes back, they supply the necessary evidence.

The Court—You must know that that statement is highly improper. If you have any legal objection you may state it. You can not sum up the case now.

Q. You started to repair this screen at four o'clock in the afternoon; is that correct? A. Yes.

Q. Who told you to repair it? A. The foreman in the finishing room.

Q. Who is that? A. Mike. I don't know his last name.

Q. What was the width of this window? A. About three feet.

Q. You say about three feet; was it two feet six inches? A. I couldn't say. I didn't take and measure the window.

Q. You are a carpenter, aren't you? A. Yes.

Q. You are in the habit of judging distance in inches and in feet; isn't that correct? A. Yes.

Q. What is that? A. About three feet wide.

Q. What is that? A. Three feet, about.

Q. Well, do you remember when you were fixing the molding, you broke the molding? A. I did not break it, no.

Q. Didn't you tell that to Mr. Connell? A. Not that day.

Q. What is that? A. I did not break it.

Q. You mean you did not break it on July 3rd. When did you break it? A. He was talking about the sill. Broke the sill.

Q. Who broke the sill? A. I broke the sill.

Q. You broke the sill? A. Piece of it.

Q. You broke a piece off the sill? A. Yes.

Q. When you went through the window that time? A. Yes.

Q. Is that correct? A. Yes.

Q. Now when you saw this screen at four o'clock in the afternoon, how far was it pulled away from the bottom of the lefthand corner as you were on the outside? A. 24 inches on the bottom.

Q. Did you measure it? A. Yes.

Q. With a ruler? A. Yes.

Q. In whose presence? A. It was nobody there.

Q. Then that was almost the entire distance across, or within ten inches of it; isn't that right? A. Yes.

Q. Isn't it a fact that that window was only two feet six inches wide; isn't that so? A. About that, yes. Between—

Q. About? A. Between three feet and 30 inches.

Q. What? A. Between 36 and 30 inches.

Q. You say the screen was pulled off or stood six inches from the bottom when you looked at it; is that right? A. About 10 inches was fastened yet.

Q. About 10 inches was fastened? A. Yes.

Q. And only 20 inches was pulled off; is that right? A. No; 24 inches was pulled off.

Q. That is two feet? A. Yes, sir.

Q. That is when you went through the window in the afternoon; is that correct? A. No.

Q. That is not correct? A. I didn't go through the window that afternoon.

Q. You did not go through the window that afternoon? A. No, sir.

Q. Did you try to go through the window that afternoon? A. No, sir.

Q. Now did you measure it on July 3rd? A. Yes, sir.

Q. Did you write down your measurement and give it to anybody? A. No, sir.

Q. That is all from your memory? A. Yes.

Q. Now when was it you crawled through this window? A. I couldn't tell you.

Q. No idea? A. It was quite a while after; I couldn't say.

Q. (Aside) Where are those two men? Get them in here, please. Did you nail back the screen on July 3rd? A. Yes, sir.

Q. What did you put it back with, staples? A. Staples.

Q. Where did you get the staples? A. It was laying on the window sill, some of them, a couple or so.

Q. Yes; where, on the ground? A. By the window.

Q. Right under the window? A. No, a little ways away from it.

Q. Did you put back the lath? A. Yes.

Q. How many laths did you have there; one? A. What do you mean, molding?

Q. Yes, the molding? A. Yes.

Q. The molding was only off from the upright side on the left-hand side; is that correct? A. And the bottom.

Q. And bottom? A. Yes.

Q. Oh, there were two pices of molding off that you saw? A. Yes.

Q. Is that correct? A. Yes.

Q. Where were they laying? A. In the sewer.

Q. In the sewer? A. Yes.

Q. That is, that hole about a foot wide right along under the window; is that right? A. Yes.

Q. Both pieces of molding were laying down there when you saw it at four o'clock? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. A piece from the bottom of the window and the upright from the side of the window; is that correct? A. Yes, sir.

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

Q. Did you hear Mr. Lord testify in this case that eighteen inches of screen was only pulled away when he examined it on that morning? A. Yes, sir.

Q. Well, he is wrong about it—

Mr. Rosenkrans—I object to that.

The Court—Sustain the objection.

Q. Now, when you took this screen off a couple of weeks or sometime afterwards, when you saw the hole through the window, what did you take it off with, a claw hammer? A. Pinch bar.

Q. Did you put marks on the window when you took it off at that time? A. Yes, sir.

Q. Now, did you take off the molding on the bottom and on the side of the window? A. Yes, sir.

Q. Was it then that you broke off the molding on the side or the bottom? A. The upright.

Q. The upright on the side? A. Yes, sir.

Q. Where did you break that off, how far up from the bottom? A. About three feet.

Q. Wasn't that on the fifth of July, two days afterwards, the day after the fourth of July, that you opened that screen? A. I couldn't tell you.

Q. Will you say it was not? A. I don't know.

Q. What is that? A. I don't know.

Q. Who have you talked to about this case? A. The secretary.

Q. Mr. Lundgren, you mean? A. Yes, sir.

Q. When was that? A. I couldn't tell you when it was.

Q. About how long ago; last week, this week? A. About three weeks after when I fixed it.

Q. Was this one of the men—stand up, will you, please? Was this one of the men who was there when you tore it off—that screen? A. I couldn't tell you.

Q. You can't recall that? A. I didn't take no notice of the men who were standing there.

Q. Well, now, you only saw that on one occasion, didn't you, where you tore off this screen after you fixed it? A. Yes, sir.

Q. Now, did you talk to Mr. Lundgren last week about this case? A. Yes, sir.

Q. Where? A. In the mill.

Q. In the mill? A. Yes, sir.

Q. In the mill of Cramer & King? A. Yes, sir.

Q. What did he do; send for you? A. Yes.

Q. Did he call you on the 'phone or what? A. No; he left me a note.

Q. Where? A. Day before.

Q. Where did he leave the note? A. My father.

Q. He said he wanted to see you? A. Yes, sir.

Q. When was that? A. A couple of weeks ago.

Q. Did he tell you to come out to the mill? A. Yes, sir.

Q. Did you go out to the mill? A. Yes, sir.

Q. Go down to the finishing room with him? A. Yes, sir.

Q. You talked over all this evidence; is that right? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Did you talk over the size of the hole you found there? A. Yes, sir.

Q. And what you found there? A. Yes, sir.

Q. All about the testimony that should be given here; isn't that right? A. Yes, sir.

Q. Now, when you went through the window after you made this hole in the screen did you go through standing up or did you crawl through on your stomach? A. Crawled through.

Q. You crawled through on your stomach; is that right? A. Yes, sir.

Q. You first put your head and your hands through? A. Yes, sir.

Q. Then you laid on your stomach on the window sill; is that right? A. No; wasn't laying on my stomach.

Q. You were not laying on your stomach? A. No.

Q. What, then? A. On my hands.

Q. That is your head? A. Resting on my knees.

Q. You rested on your knees; you kneeled; is that correct, and went through? A. Yes, sir.

Q. How tall are you? A. Five feet seven.

Q. Now, I ask you to kneel on one of these two chairs—will you do that for me; just imagine this here side of the chair is the window sill? A. Yes, sir.

Q. And just kneel on that the way you went through. A. Like this.

Q. Now, just stay there about a minute. And you went through that hole just the way you are there now? A. No; a little more down.

Q. Show me how you did it. A. Like this.

Q. You went through that way? A. Yes, sir.

Q. Did you catch your coat on the screen? Did you catch the back of your coat in the screen when you went through? A. Yes, sir.

Q. You did catch your coat in the screen? A. A little bit, yes.

Q. You scraped your knees along the window ledge, didn't you? A. Yes, sir.

Q. You took all the dust off; that got your trouser knees all dirty when you did that? A. Yes.

Q. Don't you remember you brushed them off afterwards? A. Yes, sir.

By Mr. Rosenkrans:

Q. Did you wear shoes at the time you climbed through this window? A. Yes, sir.

Q. Heavy or light? A. Heavy ones.

Q. How much do you weigh? A. 180.

Q. How does your weight now compare with your weight in 1923? A. About the same.

By Mr. Prince:

Q. One other question I want to ask you. After

you pulled this screen up and then you went through the window, you had to take the window itself and lift it out, didn't you? A. After I crawled through the wire, yes.

Q. After you crawled through the wire. Did you go through the wire before you took the window out? A. Not all.

Q. You reached through the hole which you made in the wire; isn't that correct? A. Yes, sir.

Q. And then you pushed the window out and took it out; is that correct? A. Yes.

Q. Before you took the window out it had been unlocked; isn't that right? A. Oh, yes, yes.

Q. Oh, yes. All right. That is all.

MICHAEL CORTESE, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Cortese, were you by when the carpenter who just left the stand replaced the screen and molding on the window nearest to the basement door on the afternoon of July 3rd? A. Yes, sir.

Q. Now, will you say at the time he commenced his work there of putting the screen and the molding back whether outside of that window was in the same condition as it was when you first saw it on the morning of July 3rd? A. Yes, sir.

Mr. Prince—I object to the question upon the ground that this witness has already sworn that he did not examine the window until 8:20 and any number of people had been there before he had, and it

does not show that the condition of the window was the same at 8:20 as it was when the premises were opened at 7:20 or seven o'clock or six o'clock, whatever time they got there.

The Court—When did you first see the outside of the window?

The Witness—With Mr. Cramer and Mr. Pelegrini.

The Court—In the morning?

The Witness—Yes.

Mr. Prince—What time—8:20, wasn't it?

The Witness—8:20.

The Court—I will permit the question.

(Answer repeated by stenographer.)

Q. Now, Mr. Cortese, were you by when the carpenter went through the window on some day later than July 3rd? A. Not by him, no.

Q. Did you see him go through? A. I seen him from a distance.

Q. Where were you when you saw him go through; on the outside or inside the building? A. No, inside.

By Mr. Prince:

Q. Mr. Cortese, do you remember now the statement which you made in the office of Cramer & King which I show you? Have you recalled that since you have been on the stand before? A. Yes.

PHILIP EDHOLMES, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Your name is what? A. Edholmes.

Q. By whom are you employed? A. Piedmont Silk Company.

Q. How long have you been with them? A. Four years.

Q. What do you do for them? A. Assisting manager.

Q. Are you familiar with their forms of invoices? A. Yes, sir.

Q. Do you know whether there has been any change in their form of invoices during the last two or three years? A. No, sir, there is no change that I know of.

Q. I show you a sheet of paper marked at the head "Fleitmann & Company, Inc." What is this paper? A. That is one of our memorandum invoices.

Q. I call your attention to the printing in red ink and ask you to read it.

Mr. Prince—I object to that.

The Court—Read it to himself.

Mr. Rosenkrans—No, aloud. I ask him to read it.

Q. Now, how long to your knowledge has the Piedmont Silk Company printed upon its invoices the matter occurring there in red ink?

Mr. Prince—I object to that as immaterial, irrelevant, and incompetent, and not within the issues. If counsel proposes

to show his loss by a record and bill of the Piedmont Silk Company, I contend it is not admissible and consequently immaterial, irrelevant and incompetent. The policy requires that to show their loss by their books and accounts which they have kept, not by records of some other concern.

The Court—I will permit the question.

The Witness—It has been on there as long as I can remember.

Q. How long is that? A. Four years.

Q. Now I call your attention to nine sheets of paper and ask you whether you can identify them. A. Yes, sir.

Q. What are they?

Mr. Prince—I object to that.

The Court—He may state the general character of them, not the contents. I will permit that.

The Witness—They are our memoranda covering the shipment of 500 pieces to Cramer & King.

Mr. Prince—I object and move to strike out the last part of the answer. He is undertaking to state the contents of it.

The Court—I will permit that question.

Q. As of what date was that shipment made?

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—On March 2nd and March 13th.

Q. What year? A. 1923.

Q. Now, what means were used in getting that shipment to the plant of Cramer & King?

Mr. Prince—I object to that unless it is shown that this witness has personal knowledge.

The Court—Yes; I think it should be means that he used.

A. In regards to transportation or what?

The Court—If you know.

Q. What mode of transportation? A. Cramer & King called with their trucks at our place, 356 Fourth Avenue.

Q. Have you any receipt or other written evidence of the delivery to the truck of Cramer & King? A. Yes, sir.

Q. By your house on these 500 pieces? A. Yes, sir.

Q. Will you produce it? A. That covers the 400 piece lot (producing paper).

Q. Have you any other receipt? A. This is the 100 piece lot (producing paper).

Mr. Prince—Let us find out what the fact is. This looks like a receipt. This does not look like a receipt.

The Witness—Perhaps I can explain that.

Mr. Prince—You were asked for the receipt.

The Witness—There ought to be attached

to it—I thought they were attached to it as a whole. There is the receipts.

Q. Were these 100 pieces and 400 pieces or either of them delivered in your presence? A. To their truckmen?

Q. Yes. A. No.

Mr. Rosenkrans—I will withdraw the witness for a moment and call McGowan.

(Witness temporarily withdrawn.)

GEORGE McGOWAN, sworn.

Direct Examination by Mr. Rosenkrans:

Q. What is your occupation, Mr. McGowan, at the present time? A. Driving a truck.

Q. For whom do you drive? A. Cramer & King.

Q. How long have you been driving? A. Since June, 1917.

Q. I show you a receipt dated New York, March 13, 1923, purporting to be signed by McGowan. Do you recognize that signature, McGowan?

Mr. Prince—I object to counsel reading from records and reading statements from the record into the evidence.

The Court—I do not think you can read that. You may ask him if he signed that.

Q. Did you sign this receipt? A. Yes.

Q. Where were you when you signed it? A. At Fleitmann Company's shipping department.

Q. Did you receive anything when you signed it? A. Four trunks.

Mr. Rosenkrans—I offer it.

Mr. Prince—I object to it on the ground there has been no proper foundation laid and not a record of Cramer & King.

The Court—I think that is a good ground. I think it is a self-serving declaration. Cramer & King are trying to introduce the fact that they gave a receipt.

Q. Mr. McGowan, as driver for Cramer & King what were your duties? A. Why, to drive a truck.

Q. What did you drive for them? A. Drove a truck over to New York to pick up goods and deliver goods.

Q. In the spring of 1923 do you know whether or not you visited the office or headquarters of the Piedmont Silk Company? A. Their shipping department, yes.

Q. Do you recollect whether or not on March 13, 1923, you went there?

Mr. Prince—I object to that as leading and suggestive and not within the terms and conditions of the policy.

The Court—I will permit it.

The Witness—I don't recollect the date only by looking at the receipt.

Q. Refreshing your memory by looking at the receipt, will you say whether or not you called at their shipping department on March 13, 1923? A. Yes.

Q. Did you receive anything then? A. Yes.

Mr. Prince—I object.

Q. From there to Cramer & King?

Mr. Prince—I object to the question.

The Court—I will permit it.

A. Yes, four trunks.

Mr. Prince—I object and ask that the answer be stricken out. He was asked whether or not he received anything, and his answer to that should be yes or no.

The Court—The answer seems to be relevant. I will permit it to stand.

Q. What did you do with those four trunks that you so received on that day? A. Put them in the truck.

Q. Then what did you do with them? A. By that time I was a helper. I was not driving at that time.

Q. What was done with them? A. They were delivered in Paterson.

Q. Where? A. Ware-room, upstairs.

Q. Of what place? A. Cramer & King.

Q. Did you see them delivered there? A. Yes.

Q. Helped deliver them there? A. Yes.

Q. When, with reference to March 13, 1923? A. That evening.

No cross examination.

THOMAS TURNER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. What do you do, Mr. Turner? A. Chauffeur for Cramer & King.

Q. How long have you been so employed? A. About five years.

Q. In the Spring of 1923 were you working for them? A. Yes.

Q. As chauffeur? A. Yes, sir.

Q. For a truck? A. Yes, sir.

Q. What were your duties at that time? A. Why, delivering silk and picking up silk.

Q. Do you know whether or not you went to New York for the purpose of transporting silk from New York to Cramer & King on March 5, 1923? A. I cannot say.

Q. Well, does this paper refresh your recollection? A. Yes.

Q. Were you in New York on March 3, 1923?

Mr. Prince—March 5th.

A. Yes. March 5, 1923.

Q. Where did you go to in New York? A. Piedmont.

Q. Did you obtain anything there? A. Yes.

Q. What?

Mr. Prince—I object.

A. 400 pieces.

Mr. Prince—I object to the question.

The Court—I will permit it.

Q. Will you say whether those 400 pieces were in containers or otherwise, and if so, in what containers they were? A. I couldn't say, but when we—

Q. Does this receipt refresh your recollection? Does this paper refresh your recollection? A. Eleven trunks.

Q. What was done with those eleven trunks? A. Were taken to the Paterson and put them in the greig room, Cramer & King's.

Q. When did you put them in the greig room at Cramer & King's, with reference to the day you received them in New York? A. In the evening, same day.

Q. Of the same day? A. Yes.

Cross Examination by Mr. Prince:

Q. Did you go to the Piedmont Silk Company or to Fleitmann & Company? A. Well, it is—

Q. No, no; never mind what it is. A. Well, went to the Piedmont Company.

Q. This paper that was shown to you by which you refreshed your recollection was Fleitmann & Company, wasn't it? A. They are a shippers.

Q. Yes or no? A. This Fleitmann & Company, they are shippers for Piedmont.

Mr. Prince—I ask that that be stricken out.

The Court—Strike it out.

Q. I want you to answer the question, only what I ask you. What you got there was eleven trunks; isn't that so? A. Yes, sir.

Q. The trunks were closed and locked; isn't that so? A. Yes, sir.

Q. You did not open the trunks to see what was in them, did you? Did you, yes or no? A. No, sir; it was not necessary.

Q. Well, did you? A. No, sir.

Q. Did you ever count the pieces that were in there? A. No, sir.

Mr. Prince—I ask to strike out his testimony, your Honor, in which he says he got 400 pieces of merchandise.

The Court—What do you say about that?

Mr. Rosenkrans—Yes.

The Court—I will strike it out.

Mr. Rosenkrans—Now, of course, that he received—

The Court—Nothing before me.

Re-direct Examination by Mr. Rosenkrans:

Q. Now, Mr. Turner, do you know what the connection was on the 5th of March, 1923, between the Piedmont Silk Company and Fleitmann & Company?

Mr. Prince—I object that there is no foundation shown by which the chauffeur could know what that was.

The Court—Ask him if he knows. Do you know of your own knowledge?

The Witness—Well, when we got to the Piedmont—

The Court—Do you know?

The Witness—Yes. Fleitmann is their shippers.

CHARLES McKINLEY, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Now, will you turn to your book, Mr. McKinley, that you were looking at earlier this morning, and will you read the item under March 26, 1923?

Mr. Prince—I object to him reading from the contents of books not in evidence.

The Court—Yes. I think that is so, Mr. Rosenkrans.

Q. What is this book? A. That is my daily production book.

Q. Does it show anything about the receipt of 500 pieces of silk from the Piedmont Silk Company in March, 1923?

Mr. Prince—I object to that.

The Court—Sustain the objection. It is leading.

Q. Will you say whether it does or does not?

Mr. Prince—I object.

The Court—I sustain the objection.

The Witness—It does not.

Q. Yes. What do you find under the date of March 26, 1923?

Mr. Prince—I object to that.

The Court—You see, you are asking him for the contents of some book.

Q. Will you tell us again what this book contains?

Mr. Prince—I object to that, telling what the book contains.

The Court—He may state the general nature of it.

A. Contains an amount of pieces I do daily, my daily production.

Q. When silk is delivered to Cramer & King to be processed, as I understood you this morning, you were the first man to check it up as counted? A. No; the receiving clerk.

Q. Oh, the receiving clerk? A. Yes.

Q. Is he here? A. I don't know, sir.

Q. What is his name? A. I don't know he was at that present time.

Q. Well, have you any record of the receiving clerk?

Mr. Westerhoff—We cannot locate him. We will have the book here, anyway. He has gone away and we don't know where he is.

Q. What was the name of the shipping clerk in March, 1923? A. I don't remember.

Q. Is he now with you,—the receiving clerk, I mean? A. I don't think he is.

Q. Don't you know? A. No; he is not.

Q. How long has he quit the employ of Cramer & King? A. Well, I couldn't say.

Q. Well, about how long, can you say? A. I don't know definite.

Q. Well, will you say whether your book con-

tains a record of the goods that came into the greig room?

Mr. Prince—I object to that as calling for the contents of the book not in evidence.

The Court—I will permit the question.

Mr. Prince—I also object on the ground that it appears in evidence that this is not the man who receives the merchandise.

10 The Court—That doesn't make any difference, I suppose, if he got it; it came into his possession. I will permit it.

The Witness—Yes, it does.

Q. Does it contain a record of the goods that came into the greig room in March of 1923? A. Of the goods I processed during that day, yes.

Q. How were the goods of the customers of Cramer & King, if you know, designated and iden-
20 tified once they got into the plant of Cramer & King? A. By their piece number and yards and quality.

Q. Does your book show the piece number, yards, and quality of any silk belonging to Piedmont Silk Company?

Mr. Prince—I object to that.

The Court—If you are going to claim that this book is one of the books of Cramer &
30 King, I suppose that may come within the terms of that policy, but if it is a private book that this man kept, that is a different thing.

Q. The book showing the receipts into the

greig room of which you had charge, was that book kept by you?

Mr. Prince—I object to that.

Q. Was that book kept by you for your own help or for the purposes of your own, or was it kept for the purposes and on account of the business of your employers, Cramer & King?

Mr. Prince—I object to that question. He is stating evidence which is not in the record. This witness said that this book was a record of the goods he processed and that is all. It is not record of goods received into the greig room.

The Court—That is not the evidence. Eliminate the first part of the question.

Q. The book kept by you showing the goods that you processed in the greig room, was that book kept by you for your own purposes or for the purposes of the business of your employer, Cramer & King? A. For the purpose of Cramer & King Company.

Mr. Rosenkrans—Now I offer it.

Mr. Prince—I object to it. No proper fondation laid; it is immaterial, irrelevant, and incompetent.

The Court—He says he kept the book and you say they cannot recover unless they do keep those books. I will admit that book.

(Book marked Exhibit P-4.)

Q. You have spoken of that book before as be-

ing a record of the goods that you processed, Mr. McKinley. In what room do you carry your processing on? A. In the greig room or preparing room.

Q. And if you know, in what department of the plaintiff's plant do goods received to be processed go for their first processing? A. From the greig room.

Q. Is it your room? A. They go through the first process in the greig room.

Q. In your room? A. Yes.

Q. Will you say whether or not this book has a record of all the goods which came into the greig room in March, 1923, to be processed?

Mr. Prince—I object to the question. The book speaks for itself and it is the best evidence under the terms and conditions of the policy. The fact is the thing to determine.

The Court—I will permit the question.

The Witness—Yes, they do.

Q. From what department of the mill do the goods come into your greig room? Where do they come from when they reach that greig room? A. All goods were received from the greig room in the greig or raw state.

Q. I can't hear you. A. All the goods we received from the customers in the greig or raw state come into my department.

Q. Do you keep any records for Cramer & King other than that book of the goods that you processed in the greig room? A. No, sir.

Q. When do you sit down and record in this book, P-4, with reference to the time that the goods are processed in the greig room? A. Every day.

Q. As the work is done? A. Yes, sir.

Q. Commenced or finished? A. Finished.

Q. As the work is commenced or finished? A. Finished. After it is finished.

Q. Now, will you point out the particular items in that book which have to do, if any there are, with silk received by you in the greig room in March, 1923, from Piedmont Silk Company to be processed?

Mr. Prince—I object on the ground that the book speaks for itself. It is now in evidence.

The Court—I will permit it. Point it out. Show the jury where it is.

The Witness—March 23.

Q. Read that? A. March 23—

Mr. Prince—I object to him reading it.

The Court—Well, counsel may read it to the jury.

Mr. Rosenkrans—All right.

Mr. Prince—Have the page marked specifically, Mr. Rosenkrans.

Mr. Rosenkrans—I offer the page.

Mr. Prince—Some means of identification, that is all. The page he has reference to, which is the page?

Mr. Rosenkrans—There are no numbers on the pages.

Mr. Prince—Then, mark it for identification.

(Pages in book marked Exhibit P-4-A and P-4-B.)

Q. Will you point out on the page marked P-4-A the item which deals with silk the property of Piedmont Silk Company?

Mr. Prince—I object. I would like you to look at this book, if you will, and you will see there is nothing there but numbers. They are now attempting to supply oral testimony as to matters in the book. This witness, from his recollection and from his knowledge of the business, is now pointing out what he says relates to particular merchandise. Neither the insurance company nor anybody else examining that book, without this oral testimony, could say that these are particular items of Piedmont Silk Company, and I say it is objectionable under the authorities.

The Court—I will permit it.

Q. Will you point out the item? A. Customer 32.

Q. Customer 32? A. Order 2026, 200 pieces was processed on this date for that customer.

Q. On March 23? A. Yes, sir.

Q. Then, under date of March 26, 1923? A. Yes; customer 32, order 2026, 300 pieces processed on that date.

(Recess.)

THOMAS TURNER, resumed.

Mr. Westerhoff—Just a minute. Counsel is getting some paper for us.

Mr. Prince—Counsel for the other side requested some paper from us. There is some paper, your Honor, which they say our accountant has which belongs to them. They did not give me notice to produce any specific paper, but all papers. I do not make any point about it. If our accountant has it I will produce it tomorrow morning. I do not know what the fact is, but all papers which they may have I will produce on their request, whether it is in the notice to produce or not. I make no point about that. I will endeavor over-night to find it. I will produce all the papers tomorrow that he has.

The Court—You may proceed.

Further Direct Examination by Mr. Rosenkrans:

Q. The date on Exhibit P-4-A, relating to the 200 pieces, will you tell me what that date is?

Mr. Prince—Does not the book speak for itself?

The Court—If you can read it. I gather from the question he could not make it out. He may tell us.

The Witness—March 27, 1923.

Mr. Prince—May I see it?

The Court—That refers to the 300 pieces?

The Witness—200 pieces.

Mr. Dunn—March 27th.

The Witness—Your Honor, that March

23rd was an error. There should be another date which should read March 27th instead of March 23rd.

Mr. Prince—In other words, when you said the goods came in before March 23rd, you meant March 27th?

The Witness—That is the date they were processed, those 200 pieces, yes.

Q. When these 500 pieces came to you to be processed, was there anything upon them by which they could be identified? A. Yes, sir; there was a ticket.

Q. What kind of a ticket? A. A regular piece ticket.

Q. Tag? A. Yes, something in the form of a tag.

Q. Were the goods marked for the purpose of identification in any other way? A. Yes, sir.

Q. How? A. By our customer order number and piece number.

Mr. Prince—That is on the ticket?

The Witness—No, sir, on the goods, by an embroidering machine.

Q. I show you a piece of goods and call your attention to a mark. Will you say whether or not these 500 pieces are marked in the same general manner as this piece of goods? A. Yes, sir; in a similar form.

Q. In a similar form? A. Yes, sir.

Mr. Rosenkrans—I offer it.

(Piece of goods marked Exhibit P-5.)

Mr. Prince—That is offered only for the purpose of showing similarity of marks?

Mr. Rosenkrans—That is all.

Q. Do you know what became of these 500 pieces after they had been processed by you? A. Went into the boil-off department.

Q. Who has charge of that department? A. Mr. Moncardis.

Cross Examination by Mr. Prince:

Q. Now, this record which you say you kept, Plaintiff's Exhibit P-4, you were asked to pick out the merchandise from the Piedmont, and you referred to pages which are marked Plaintiff's Exhibit 4-A and 4-B? A. Yes.

Q. Is the word Piedmont on either of those pages; yes or no? A. No, sir.

Q. What is that? A. No, sir.

Q. When was this pencil mark put on there, around these numbers 32, 2026, 200? A. I think it was last week.

Q. Last week? A. Yes, sir.

Q. That was put around there to indicate this particular merchandise; isn't that correct? A. That particular customer.

Q. Yes? A. Yes.

Q. That was not in there in July or August, 1923, was it, that pencil mark? A. No, sir.

Q. And unless somebody knew what the number 32 meant when he examined this book he could not tell to whom the merchandise belonged; isn't that correct? A. No, sir.

Q. That is right, isn't it? What I said is correct, isn't it; unless he knew what the number 32 meant he could not tell by an examination of the book which merchandise belonged to the Piedmont? A. Any of the employees.

Q. Well, suppose he was not an employee. Suppose he was an accountant from the insurance company. A. Not necessarily, no, sir.

Q. He could not tell, could he? A. No, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. Talk up loud so the jury can hear you? A. Yes, sir.

Q. That is equally true of the page marked Exhibit Plaintiff's 4-B? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, the only things in this entry on the page marked Exhibit P-4-A, are the figure 32, the figure 2026, and the figure 200; is that correct? A. Yes, sir.

Q. There is no indication in this book of the kind of merchandise or the quality; is that correct? A. No, sir.

Q. I am right? A. Correct.

Q. And the word pieces is not in there, is it? A. No, sir.

Q. Now, turning to Plaintiff's Exhibit page 4-B in this book, is there any way that a person could tell by looking at that page, unless they knew what a certain number meant, that there was merchandise received from Piedmont Silk Company? A. No, sir.

Q. Now, on page marked Plaintiff's Exhibit 4-B, I see another pencil line put around the last entry on the page. A. Yes, sir.

Q. When was that put on? A. About the same time as the other.

Q. Last week? A. Yes, sir.

Q. Who told you to put them on? A. I put it on for my own identification.

Q. You mean so you could find it in the book? A. Yes.

Q. And the only entry on that page are the following: The number 32, the number 2026, and the number 300; is that right? A. Yes, sir.

MISS ELIZABETH MILLER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you live, Miss Miller? A. 79 Carroll Street, Paterson.

Q. You have lived here how long? A. About fifteen years.

Q. Your occupation is what? A. I don't know; it is clerk, I suppose.

Q. Who do you work for? A. Cramer & King Company.

Q. How long have you worked for Cramer & King? A. About seven years.

Q. In what office or department of their mill do you do your work? A. Production office.

Q. Now, do you know how the customers of Cramer & King are designated in the mill? A. We give them numbers.

Q. Who attends to these numbers? A. I do.

Q. I show you a writing and ask you whether you have ever seen it before. A. Yes, sir.

Q. What is this? A. That is our customer list.

Q. Do you know who typed this list, who made it up? A. I must have made that list up.

Q. All right. Now, is the Piedmont Silk Company mentioned on this list? A. Yes.

Q. Where?

Mr. Prince—I object.

The Court—I suppose it speaks for itself.

The Witness—Piedmont is customer 32.

Mr. Prince—I object.

The Court—Do not answer when there is objection.

Q. Will you point it out on the list?

Mr. Prince—I object to that. He is geting in evidence by indirect method improperly what he could not get in directly. He assumes it is in the list.

The Court—He is asking her if she could point it out. If it is not there she cannot point it out.

Q. Was this list the list in use in the mill of Cramer & King in March, 1923? A. Yes; we always have a list and use it.

Q. This particular list? A. Yes.

Mr. Rosenkrans—I offer it.

Mr. Prince—May I ask a question on the offer?

Cross Examination by Mr. Prince:

Q. Do you remember when the accountant for the insurance company was at the office of Cramer

& King? A. No, sir; I had nothing to do with them.

Q. Do you know whether this list was shown to the accountants? A. I do not.

Q. When did you typewrite this list? A. Well, we always have one.

Q. No, no, but this particular list? A. That particular list, I don't know.

Q. Do you know whether it was before July or after July, this particular list?

The Court—July, 1923?

The Witness—Well, we must have had that list before.

Q. No, not what you must have had. Do not guess. I want to know what the fact is. Not what you think you must have had. A. I can't remember just when I changed the lists.

Q. You did change lists from time to time? A. Yes; whenever we get more customers we have to add them on and we have to make new lists out.

Q. This particular list, can you tell me with any reasonable degree of certainty when this particular list was typewritten? A. Must have had that since 1922.

Q. This same list? A. Yes, because that is when we got all the new customers.

Q. I don't mean a list of customers. I mean this particular one I am holding in my hand, this particular sheet. Just look at it. Do you say it has been in existence since 1922? A. Well, since the winter of 1922. That must have been made out some time that winter.

Q. This particular sheet of paper? A. Yes, sir.

Q. And you typewrote that? A. Yes.

Q. That was hanging up in your office there? A. Yes, sir.

Q. Just as it is in the present condition? A. I can't swear to that.

Q. What do you mean you can't swear to that? You mean it may have been changed since then? A. The only things that are changed are the right hand, and the telephone numbers.

Q. And the new telephone numbers? A. Yes.

Q. In other words, when concerns got new telephone numbers in New York you would rewrite the list; is that right? A. No, not the whole list. We just put in.

Q. Is there any change of any telephone numbers on that? Physical change, I mean; one number stricken out and other numbers put in? A. No, just an address—any changes like this, little address.

Q. Was the telephone exchange Watkins in existence in the winter of 1922? A. I don't know.

Q. Well, doesn't that refresh your recollection that this list was changed and rewritten since the winter of 1922? A. I don't remember.

Q. What about the central Ashland in New York? Don't you know that central was not in existence in 1922? A. I don't know. I don't remember.

Q. Well, now, let me ask you a question again. Now, do you still say that this particular paper was in existence in the winter of 1922, or did you make it up after that time? A. I don't remember that.

Q. You don't remember when it was made up by you, Miss? A. Not the exact date, no.

Mr. Prince—I object to the admission in evidence of the paper on the ground that it has not been shown it was in existence when this loss occurred.

The Court—She says that that paper was in existence in March, 1923.

Mr. Prince—She says she cannot tell when it was made.

The Court—That is not inconsistent with that statement, as I see it.

Q. Do you say that paper in that form was in existence in March, 1922? A. I said we always have a customer list.

Q. No, no. You always had a list?

The Court—March, 1923, is the time.

Q. March, 1923. This particular paper is the one we are talking about, not a list, but this particular paper which I hold in my hand before you. Do you say that this particular paper was in existence in its present form in March, 1923?

Mr. Rosenkrans—She has not said it and I object to it on that ground.

The Court—I will permit the question.

Q. What is your answer? A. Yes.

Mr. Rosenkrans—I offer it.

Mr. Prince—I object to it on the ground that there has not been any proof that this

was ever exhibited to the defendant company.

The Court—I will admit it.

(Paper marked Exhibit P-6.)

Re-direct Examination by Mr. Rosenkrans:

Q. Now, under the system used in making up this list, what does the figure 32 opposite Piedmont Silk Company mean?

Mr. Prince—I object to that. The paper speaks for itself. It is now in evidence.

The Court—I will permit that.

A. That is our customer's number.

Q. For Piedmont Silk Company? A. Yes.

Q. 32? A. Yes.

Q. And the figure 256 Fourth Avenue opposite 32, Piedmont Silk Company, means what? A. That is the address of customer 32, Piedmont Silk Company.

Mr. Prince—I object to that.

The Court—Permit it.

Q. Madison Square 10200 means what? A. That is the telephone number.

Mr. Prince—I object to that.

The Court—I will permit it.

Q. That is its telephone number? A. Telephone number of Fleitmann, factors for customer 32, Piedmont Silk Company.

Q. Miss Miller, when goods are received by

Cramer & King to be processed, does anything reach your hands, any paper relating— A. Invoice of the goods, the piece numbers and yards.

Q. Now I show you nine pieces of paper and ask you whether you can identify them. What are they, if you know? A. Those are invoices from the Piedmont Silk Company.

Q. Did they come into your hands? A. Not these invoices, no.

Mr. Westerhoff—Your Honor, we call upon Mr. Prince to produce the original invoices.

The Witness—Yes.

Q. Now, the invoices, Miss Miller, which did come into your hands—

Mr. Prince—There is no proof we have any original invoices.

Mr. Westerhoff—Your Honor, they took all our original papers. We ask them to produce them at this time.

The Court—Have you served a demand?

Mr. Westerhoff—Yes, on Mr. Dunn.

Mr. Rosenkrans—I am going to prove they had them.

Q. The invoices, Miss Miller, which you say came into your hands from the Piedmont Company, Inc., of which these are not the originals, as you say, do you know what became of those originals? A. They were given to the insurance company.

Q. About when? A. After the robbery.

Mr. Prince—I object, may it please the Court, and I move to strike out that answer upon the ground that the witness testified a few moments ago she never saw anybody from the insurance company.

The Court—Strike it out, on the ground that she spoke about the robbery.

Q. Well, about when? These original invoices, after you first saw them, who took charge of them, immediately? A. I take charge of them.

Q. They continue to be in your charge for how long? A. Well, after I made out my orders they were filed until Mr. Lundgren wanted them for the insurance company.

Mr. Prince—I object and move to strike out what someody else wanted them for.

The Court—Yes, strike that out, what they wanted them for.

Q. They remained in the file, then, until Mr. Lundgren wanted them? A. Yes, sir.

Q. When was it he wanted them? A. I can't tell you the exact date.

Q. Well, the approximate date? Did you hear of the robbery in Cramer & King's mill about the 3rd of July, 1923?

Mr. Prince—I object. We haven't yet proved there was a robbery.

The Court—An alleged robbery, I think, you had better call it.

Q. All right. Did you hear of an alleged robbery? A. Yes, I heard of it.

Mr. Rosenkrans—A robbery has been conceded here, by counsel, time and time again.

Mr. Prince—It has never been conceded. It has been denied.

Mr. Rosenkrans—He said it occurred between five and 7:20 day before yesterday, in argument.

The Court—You will never convince each other.

The Witness—Yes, I heard of it.

Q. Now, was it before or after that alleged robbery that Mr. Lundgren asked for the originals of these papers? A. After.

Q. All right. Now, will you step down, Miss Miller, a moment?

Mr. Prince—Have you finished with her?

Mr. Rosenkrans—No.

Mr. Prince—I want to have my right to cross examine.

(Witness temporarily withdrawn.)

FRANK J. LUNDGREN, recalled.

Direct Examination by Mr. Rosenkrans:

Q. I direct your attention Mr. Lundgren, to nine sheets of paper laying before you. Now, will you say whether or not you recognize those papers

as being copies of any original that you ever saw before? A. I do.

Q. What originals? A. Of the original documents received from the Piedmont Silk Company, Inc., covering the 500 pieces in question.

Mr. Prince—I object and move to strike it out.

The Court—Strike out about the 500 pieces in question.

Q. Did you ever make any disposition of the originals of these papers? A. I did.

Q. What disposition and when? A. A short time after the alleged robbery, an accountant by the name of Mr. Erb, introducing himself—

Mr. Prince—I object to what he said.

The Court—No; you can't tell what he said and bind the defendant.

Q. Well, did someone call for them? A. Mr. Erb.

Q. About when did he ask for them? A. A week or ten days after July the third, 1923.

Q. All right. Now, do you know who Mr. Erb represented?

Mr. Prince—I object. Unless it is shown how he knows that would not be binding upon the insurance company.

The Court—I think you will have to show his knowledge.

Q. Do you know?

Mr. Prince—If it is what Mr. Erb told him—

The Court—You may answer that particular question.

The Witness—Mr. Erb—

The Court—Do you know; yes or no?

The Witness—Yes.

Mr. Prince—May I cross examine? All right, wait until he asks the next question.

Q. When did you first see Mr. Erb in reference to this alleged robbery? A. Approximately one week to ten days after June 3rd, when he called at our office.

Q. Had you any intimation from any source as to his earliest call at your office that he would call?

Mr. Prince—I object to that.

The Court—I will permit that particular question.

The Witness—I didn't.

Q. Did he call after the day I had mentioned? A. He did.

Q. How often?

Mr. Prince—I object to that.

The Court—Permit the question.

The Witness—Once or twice.

Q. Was anybody with him on any of the occasions that he called?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—As far as I recall there were two men with him.

Q. Do you know who they were? A. Introduced to me as their brother.

Q. Do you know their names? A. Both of them Mr. Erb by name.

Q. And you gave the originals of these nine papers to Mr. Erb?

Mr. Prince—I object to that as suggestive and leading and incompetent and not binding on this defendant.

The Court—I do think he said that. I sustain the objection to that on the ground it may be leading.

Q. Now, what connection has Mr. Erb, if any, with your disposition of the originals of these papers?

Mr. Prince—I object to that as not binding on this insurance company, and that no authority has been shown in Mr. Erb to act for the company.

Mr. Rosenkrans—Suppose that it so. Suppose Mr. Erb was an impostor and not the genuine representative of the National Surety Company or Burns Detective Agency or anybody else connected with the defendant and these papers were given to Mr. Erb and he disappeared with them and they are gone, lost; why haven't we a right to show it for the purpose of introducing secondary evidence?

The Court—You may show that they are not available.

Q. What did you do with these papers?

Mr. Prince—I object to that.
The Court—I will permit it.
The Witness—I gave them to Mr. Erb.

Q. Did Mr. Erb ever return them to your office? A. He did not.

Q. Has anyone else ever returned them to your office? A. They have not.

Q. Do you know where they are now? A. I do not.

Q. Do you know where they have been at any time since you have placed them into the hands of Mr. Erb? A. I do not.

Mr. Rosenkrans—Now I offer these nine papers.

Mr. Prince—I object to that on the ground that these papers—

Mr. Rosenkrans—Wait. First, I withdraw the offer for a minute. I now call for the production under a written notice of the originals of those papers.

Mr. Prince—I will have to make the same disposition as to that as to those other papers they have talked about, your Honor. I did not know of any demand for these particular papers, and I will find out over-night whether or not we have any in our possession.

The Court—Of course, if the demand is

properly served it is your business to know.

Mr. Prince—Yes, but as I understand, I do not believe there have been any demands served for specific papers.

The Court—If there has been no demand served then the question is not before me.

Mr. Prince—I think the demand that was served read "Any and all papers."

Mr. Rosenkrans—Mr. Michael Dunn, will you take the stand?

Mr. Prince—Let me see what the paper is. Is this the one you have reference to?

Mr. Rosenkrans—No; there is another one.

The Court—Produce your notices.

Mr. Rosenkrans—I offer notice acknowledged on the 31st day of January, 1925.

Mr. Prince—May I see it? (Examines paper.)

Mr. Dunn—Served on me.

Mr. Rosenkrans—Yes. You ought to know.

Mr. Prince—There is no objection to its admission in evidence.

The Court—I will admit it.

(Paper marked Exhibit P-7.)

Mr. Prince—I would like you to look at it to see what call there is for the records they ask for now, and by which we could determine any such thing. You won't find a word in there about bills which they claim to have given to us from Fleitmann & Company or this silk company or anybody else. Of course, if we were mind readers we might guess what they want. This other paper

they asked me for today, which they say we got, there is not a word in there about it.

The Court—That seems to be a general demand for the production of papers, but as yet there is no testimony, as I see it, that it has been given to the defendant. The demand is broad enough. There is no doubt about that. This is an exhibit.

Mr. Prince—I say to your Honor and on the record irrespective of whether or not they have served a notice to produce specifying this, and they told me today what they wanted—this is the first intimation I have had of what they wanted—if anybody in the company has those papers they will be here tomorrow morning irrespective of any notice to produce.

The Court—Proceed.

Mr. Rosenkrans—I renew my offer that these invoices and copies of invoices be admitted.

Mr. Prince—I object to that, if your Honor please, upon the ground there has been no proper foundation laid, and on another ground, your Honor, if you will kindly look at these, we cannot be bound by this so-called memorandum up there on the top of the page, and it is not the proper way to prove it.

The Court—Without dealing with that point at this time, it seems to me they cannot be admitted on the ground that the originals have been given to the man Erb. I suppose I have no knowledge of where he is or whether he is available or subject

to subpoena. On the same ground, assuming he is, I have no knowledge in the testimony, that he was representing the defendant, so as to make it effective under your demand to produce. If he is not connected with the defendant, then, of course, they are still unaccounted for—the originals.

Q. Do you know where Mr. Erb resides? A. I do not.

The Court—It may be that all this difficulty may be obviated. Mr. Prince says if he has it he will have it tomorrow morning.

Mr. Prince—That is it exactly; it may all be obviated in the morning.

Mr. Rosenkrans—All right. I will call Miss Miller.

MISS ELIZABETH MILLER, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Now, Miss Miller, after you received the original invoices from the Piedmont Silk Company, what became your duties as clerk with reference to these invoices other than to file them away? Did you make out any other papers? A. Yes. We make out copies for our own use.

Q. Have you got those copies? Do you know whether those copies that you made out are in existence now? A. I do not.

Q. When did you last see them, the copies that you made out of the original invoices for your own use, to the best of our recollection? A. I don't remember at all.

Q. Miss Miller, as a part of your system, do you make a copy of the so-called shop orders? A. Yes; we make three copies of the original order.

Q. Are those what you meant to designate when you said you make copies of the original invoices for yourself? A. Yes.

Q. That is the term by which they are known in the shop,—shop orders? A. That is one term you could give them.

Q. All right. Those are the papers that you say you don't know when you last saw them? A. Yes, sir.

Cross Examination by Mr. Prince:

Q. What do you do with the third copy when you make it out? A. We keep one in the office and we give one to the folding room—

Q. What room? A. One to the making-up department and one to the greig room.

Q. Do you ever get them back from those departments? A. No, sir; they have a book that they keep them in. They file them away in the book themselves.

Q. Each department files away their copy? A. Yes, sir.

EDWARD MEIMA, sworn

Direct Examination by Mr. Rosenkrans:

Q. Mr. Meima, by whom are you employed? A. Cramer & King.

Q. In what department? A. Beaming and drying department, make-up department.

Q. Will you say whether or not you were employed in the same department in the spring of 1923? A. Yes, sir.

Q. Are books or records or memoranda kept in that department of the goods that pass through it? A. I keep my records.

Q. They are kept? A. They are kept.

Q. You keep them? A. I send one into the office.

Q. You make the records, do you? A. Yes.

Q. Now I show you five sheets and ask you to say what they are, if you know. A. Those are my records from day to day.

Q. Under what date? A. There is one March 30, 31st, 1923; March 28th, March 29th, 1923; March 27th, 1923.

Mr. Rosenkrans—Now I offer them.

Mr. Prince—I object to them.

The Court—It doesn't appear yet they refer to the goods that were given you, Mr. Rosenkrans.

Q. Do they refer to any goods of the Piedmont Silk Company?

Mr. Prince—I object to that, stating the contents of the papers before they are in evidence.

The Court—I will permit it.

The Witness—Yes, sir.

Q. Will you point out the items among the numerous items on these five sheets that relate to the property of the Piedmont Silk Company? A. I can.

Q. Read them.

Mr. Prince—I object to their reading them.

Mr. Rosenkrans—I offer them.

Mr. Prince—I object upon the ground there has been no foundation laid.

The Court—You haven't shown yet who made the entries.

Q. When were these records made with reference to the dates that they bear at the top of each page? A. The exact date.

Mr. Rosenkrans—I offer them.

Mr. Prince—Did you make them?

The Witness—I made them personally?

Mr. Prince—I still object to that upon the ground there has not been proper foundation for it.

The Court—I will admit them.

(Papers marked Exhibits P-8 to P-12 inclusive.)

Q. Calling your attention to Exhibit P-12, under date of March 27, 1923, I ask you to point out what item among these various items relates to the property of the Piedmont Silk Company.

Mr. Prince—I object. I submit the papers ought to speak for themselves.

The Court—I will permit the question.

The Witness—Here is one right here.

The Court—Indicating what?

The Witness—Indicating the Piedmont

Silk Company, customer 32. That is the way we go, by the number,—customer 32.

Q. The numeral in the extreme left-hand column, 32, indicates what? A. Piedmont Silk Company.

Q. The 2026 in the next column means what? A. That is the—

Mr. Prince—I object to his explaining what that means.

The Court—I will permit it.

The Witness—That is the lot number, and that is the yardage.

Q. 60? A. 60 is the yardage, the width is 39.

Q. And the next item? A. That is the crepe de chine, that is the article.

Q. And the next item? A. That is the color.

Q. And the next? A. That is the count of pieces.

Q. Forty-five pieces? A. Forty-five pieces.

Q. Now, looking at Exhibit P-11 under date of March 28th, point out the item that relates to the property of the Piedmont Silk Company. A. Customer 32.

Q. Yes? A. 2026 the lot number, yardage 60 yards, width 39, crepe de chine, bobolink the shade, amount of pieces, 110.

Q. Upon Exhibit P-10, under date of March 29th, what item relates to the property of this customer? A. Customer 32, lot 2026, 60 yardage, 39 width, crepe de chine, color blue and gray, 210 pieces.

Q. On Exhibit P-8, under date of March 30th, what item relates to the Piedmont Silk Company

silk? A. Customer 32, 2026, yards 60 yards, 39 inches width, crepe de chine, harvest and black, those two shades, and navy.

Q. How many pieces? A. 40 of harvest, 50 on black, 50 on navy.

Q. Now, upon Exhibit P-9, under date of March 31st, what item relates to the property of this customer? A. Customer 32, lot 2026, 60 yards, 39 inches width, crepe de chine, henna is the shade, 30 pieces.

Q. Now, from your department where do these pieces of silk go?

Mr. Prince—I object. The books are the best evidence, and I say that under the policy they are obligated to show the loss by their books and accounts, and not by the oral testimony, as to where the goods go from one department to another.

The Court—Permit the question.

The Witness—They go to the finishing room.

Q. Who is in charge of the finishing room? A. Michael Cortese.

Cross Examination by Mr. Prince:

Q. There is not any name on here of Piedmont Silk Mill, is there? A. No, sir.

Q. Who was number 75? A. Banta Textile Company.

Q. Who is number 83? A. 83, I don't know.

Q. Who was 72? A. Charles Brown?

Q. Who is number 18? A. Simon, I think,—Simon Silk Company.

Q. Unless you happened to remember those numbers or had a list from which you could determine whose merchandise it was; isn't that true? A. Yes, sir.

Q. That is correct? A. I don't get any list.

Q. What is that? A. I don't get any list of all the customers.

Q. Where did you learn who number 32 was? A. Oh, I ought to know.

Q. Where did you find out, not whether you ought to know? A. Where do I find out?

Q. Yes; somebody tell you that? A. No; by going upstairs and looking in the list.

Q. You went up and looked at a list? A. Exactly.

Q. Unless you had that list you could not tell whose merchandise it was; is that right? A. No, sir.

Q. That is right, isn't it? A. That is right.

Q. That is all.

The Court—What is the number of pieces?

The Witness—March 29th, 210 pieces; March 27th is 45 pieces; March 28th is 110 pieces; March 30th, two items, 90 and 15 pieces, that would be 105 for the two items; March 31st, 30 pieces.

Q. I notice on these Exhibits, Plaintiff's Exhibitis 8 to 12, around 32 there is a blue pencil mark with an arrow in blue. A. Yes.

Q. Did you put those on? A. No, sir.

Q. Who did? A. They are Frank Lundgren.

Q. When? A. I looked them over and he

asked me to look these lots up last week ago Saturday.

Q. Then that was put on at that time? A. So we could see it right away.

Q. They were not on there in July or August, 1923? A. No, sir.

CHARLES CORATO, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Charlie, whom do you work for? A. Cramer & King Company.

Q. How long have you worked for that company? A. About twenty-three years.

Q. In what department are you? A. Folding, and shipping department.

Q. Now, you had charge of that department in the spring of 1923? A. Yes, sir.

Q. Are records made in that department of the silk that passes through and out of it? A. Yes.

Q. Who makes them? A. Well, first we fold here and after we check them up.

Q. Who makes the records? A. I have a young girl who makes a memorandum out and we have a record of it and a memorandum is made.

Q. What is the name of the young lady that makes the records? A. Ann Brisha.

Q. When are those records made with reference to the time of the arrival of the goods in your department or their departure from your department? A. Go out of our department.

Q. When they go out of your department? A. Yes.

Q. What processes are the goods subjected to in your department? A. Well, we have to make them up and count the yards, put the yards on and count the yards and charge them up and send them to the customer.

Q. Do you recall these 500 pieces of the Piedmont Silk Company? A. Yes, sir.

Q. Passing through your department? A. Yes, sir.

Q. In the spring of 1923? A. Yes.

Mr. Prince—The best evidence is the books, and I submit that is the only way they can prove their loss.

The Court—I will permit the question.

Q. What did you answer? A. I remember they went out.

Q. They went out? A. Yes.

Q. Of your department? A. Yes, sir.

Cross Examination by Mr. Prince:

Q. What else went out on that day? A. Well, it is not the customer. We have to prove their goods and ship today.

Q. Never mind what you have to prove, but we want to know your recollection. What day was it that went out of your department? A. It is goods shipped today.

Q. What day did this merchandise go out of your department? You say you remember it. A. I can't remember the date.

Q. What is that? A. I have got the date there.

Q. I didn't ask you what date you have there. I asked you what day it was, from your recollec-

tion. A. I can't remember the day. We have our memorandum.

Q. How many pieces went out on that day of all kinds of merchandise? A. Figure about—

Q. Not about; I want to know exactly? A. About a thousand or more.

Q. Now, exactly. Whose else merchandise went out on that day? A. All different customers.

Q. Who? Give me the names of them. A. Charles Brown, Bernard Textile.

Q. How many went out to Mr. Charles Brown? A. I don't remember. We have a record.

Q. So 500 pieces of the Piedmont went out that day? A. Not 500 pieces.

Q. There was exactly 500? A. I didn't say went out. We have the goods shipped today.

Q. Answer the question. How many pieces did did you say of the Piedmont went out on that day? A. I can't remember.

Q. That is what I thought. That is all. A. But we got goods shipped today.

By Mr. Rosenkrans:

Q. Who does the actual measurement of the pieces in your department? You say they are measured. Who does it? A. We have a girl and we have books goods shipped today, and we have a record of goods shipped to each department.

Mr. Prince—I move to strike it out.

The Court—That only goes to the man asking the question.

Q. That is all.

Mr. Prince—That is all.

ANNA BUSH, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Whom do you work for? A. Cramer & King.

Q. For how long? A. Three and a half years.

Q. What do you do for them? A. Memorandum clerk for shipments.

Q. In the shipping department? A. No, in the folding department.

Q. What department? A. Folding.

The Court—Folding or bolting.
The Witness—Folding.

Q. Do you keep records of the goods that are folded in your department? A. Yes.

Q. Do you know whether or not they are measured there? A. Yes, sir.

Q. Is any record kept of the measurement? A Yes, sir.

Q. In each piece? A. Yes.

Q. Who keeps that record? Who makes that record? A. I do.

Q. Now, I show you ten pieces of paper and ask you first in whose handwriting they are. A. They are mine.

Q. When were these records made with reference to the dates that they bear? A. The same day that is written on the memorandum.

Q. What do these records show in a general way? A. That those pieces were shipped out and the yards were counted from the pieces, what the girls turned in.

Q. Did they show whose property the goods were? A. Yes, sir.

Q. Whose property? A. Piedmont's.

Mr. Prince—I object.

The Court—I cannot tell until they are in.

Mr. Rosenkrans—All right. I offer it.

Mr. Prince—May I just ask a question or two in reference to these?

Cross Examination by Mr. Prince:

Q. Is there any number 32 on any of these sheets of paper, Miss Bush? Any number 32 on there? A. Yes; Piedmont Silk Company.

Q. Where is 32; show me the number. A. No; we don't put the customer number on.

Q. What is that? Don't put the customer number on? The customer number is not on here? A. No.

Q. No number 32 is on here at all; is that correct? A. Right.

Q. You have written on the top here the words Piedmont Silk Company; is that correct? A. Right.

Q. Now, you don't measure these goods yourself, do you? A. No, sir.

Q. You don't stand there while it is being measured, do you? A. No, sir.

Q. Somebody else does the measure? A. Yes, sir.

Mr. Prince—I submit there has been no proper foundation laid.

The Court—I will permit it.

(Ten sheets of paper marked Exhibit P-13.)

Re-direct Examination by Mr. Rosenkrans:

Q. Now, in the left-hand column the word white indicates what? A. Color.

Mr. Prince—I object to any explanation of these, your Honor; they speak for themselves.

The Court—I will permit the question.

Q. The next column? A. Combination number, S-1001.

Q. What is the combination number? What do you mean by that? A. That is the customer's combination number.

Mr. Prince—I objcet.

The Court—I will permit it.

Q. And the next column, 73365 indicates what? A. The customer's piece number.

Q. The next column, figure 1 on the first line? A. That is our piece number.

Q. Is it one or 13? A. One.

Q. Then, the next item, 3572, what does that indicate? A. B, but I didn't put that on.

Q. B-572; what does that indicate? A. I did not put the B down.

Q. Well, the next item that you put down; what is that? A. 57-2/8 yards.

Q. Then, on the right-hand half of the paper, that is the same thing, isn't it? A. Yes, sir.

Q. And the figures at the bottom of the left-

hand half of the first page, 25 pieces, 1479 and 6/10 yards— A. Six-eighths.

Q. Six-eighths; that indicates the total of the pieces on that half of the paper? A. Yes, sir.

Q. Total yardage and the total number of pieces? A. Yes.

The Court—When did you make these records?

The Witness—On April 17th.

The Court—The day indicated on the paper?

The Witness—Yes.

Recross Examination by Mr. Prince:

Q. Miss Bush, are there some entries on those papers that you have just had in your hand made by somebody other than you? A. Yes, sir.

Mr. Rosenkrans—What are they?

Mr. Prince—I object and move to strike out the paper, on the ground there has been no foundation laid.

The Court—I will hold the motion in abeyance until I hear the question.

Re-Direct Examination by Mr. Rosenkrans:

Q. What is there on these sheets which you say you did not make in your own handwriting? A. On these sheets?

Q. Yes. A. Oh, I misunderstood you. I thought he said how did I get those yards.

The Court—I cannot hear you.

The Witness—I misunderstood him.

The Court—In what respect?

The Witness—I thought he meant where did I get the yards from.

The Court—Do you mean there is something on there which you did not write?

The Witness—Only B.

The Court—B?

The Witness—The letter B is written on the memorandum.

The Court—All the way down?

The Witness—Yes, sir.

Q. On each of these sheets? A. Yes, sir.

Q. Well, all right. Not all the way down on all of them? A. No, sir.

Mr. Prince—I object to counsel telling her what they are.

Q. Is there anything else on these sheets which you did not write? A. These—the O's.

Q. Anything else? A. The S's and the O's on here and B's. O and B and S. O and B. O, S, and B. S and B and O. S, B, and O. B, S. 500, 2988-5/6—no; 29, 885-6/8 yards.

Q. Now, with those exceptions which you just enumerated, will you say whether or not these ten sheets are entirely in your handwriting? A. Yes.

Q. Now, do you know who made the capital letters B, S, and O? A. No, sir.

Q. Nor what they mean, what they stand for? A. No, sir.

Re-Cross Examination by Mr. Prince:

Q. Were they on there, the various figures and

letters that you say you did not write, when you delivered them to the main office? A. What was that?

Q. Were those letters on these sheets of papers, these figures, which you say you did not write; were they on these papers when you delivered these papers to the main office? A. No, sir.

Q. They have been put on there, evidently, since that time; is that correct? A. I guess so.

Mr. Prince—I renew my motion.

The Court—I will deny the motion, but I will instruct the jury at this time to disregard the entries on this exhibit which the witness has just said were not made by her.

MISS ELIZABETH MILLER, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Miss Miller, I show you this paper and ask you whether or not you know what it is. A. That is a bill made out by Cramer & King Company.

Q. Who made it? A. I did.

Q. When with respect to the date it bears, April 17, 1923? A. The date on the bill.

Q. In general words, what is this bill for?

Mr. Prince—I object to that.

The Court—I do not quite understand, what the bill is for.

Q. What does it represent? What is it about?

Mr. Prince—I object to the contents of the bill.

The Court—I think the bill will speak for itself.

Mr. Rosenkrans—I do not think it does. It is a bill.

Mr. Prince—If it does not, then it is not a competent record.

The Court—In itself I do not just see without further proof.

Mr. Rosenkrans—I offer it.

Mr. Prince—I object to it upon the ground there has been no proper foundation laid; in addition to which it is not any record of the Cramer King Company, and if it a self-serving declaration, evidently a carbon copy of some paper sent to the Piedmont Silk Company. That certainly is not a book or record or account.

The Court—I do not think from the evidence so far it is admissible.

Q. When the goods of a customer have been processed by Cramer & King is any charge made for the work so far as you know?

Mr. Prince—I object to that. There is not any clause in the policy whereby they may recover labor which they have performed.

The Court—I will permit the question. Answer yes or no.

The Witness—Yes, sir.

Q. Who makes that charge, what clerk or bookkeeper? A. I make out the bills.

Q. You make up the bills? A. Yes, sir.

Q. What is the paper that I have shown you? A. That is a bill.

Q. Now, is that an original or a carbon copy? A. That is a copy. The original was sent to the customer.

Q. In this instance to what customer? A. Piedmont Silk Company.

Q. And this copy, what is done with those copies when the originals have been sent to the Piedmont Silk Company? A. This is put on our files; after it is sent to the ledger.

Q. Now, under the word yards appears certain figures to which I call your attention, and at the foot of those figures a larger figure; what does that larger figure mean?

Mr. Prince—I object to the contents of a paper not in evidence.

The Court—Sustain the objection.

Q. I am going to ask you again: At whose direction, if anybody's, did you make out the original of that bill of which this is a copy?

Mr. Prince—I object to that as immaterial, irrelevant and incompetent.

The Court—I will permit it.

The Witness—Well, that is my duty, to make out bills.

Q. You made out this bill in the regular course of your duties? A. Yes.

Q. From what source do you get the item three and one-half cents?

Mr. Prince—I object to that.

The Court—I sustain the objection.

Q. Who gives you that item?

Mr. Prince—I object to that.

The Court—Sustain the objection.

Mr. Rosenkrans—I will withdraw this young lady, unless you wish to cross-examine.

Mr. Prince—I have no questions.

MRS. MARIAN DEWALSCH, sworn and examined through Polish Interpreter.

Direct Examination by Mr. Rosenkrans:

Q. Mrs. Dewalsch, where do you reside? A. On 33rd Street.

Q. Do you know where Tenth Avenue is? A. Yes.

Q. Do you live near Tenth Avenue? A. Live on the corner of 33rd Street and Tenth Avenue.

Q. How far from the mill of Cramer & King? A. About 150 feet.

Mr. Prince—Is that from the entrance of Cramer & King?

The Witness—Of the ground, she says, the beginning.

Mr. Prince—That is about right, isn't it?

Mr. Westerhoff—It is not quite 150 feet. It would be 150 feet to the edge of the mill, I think. I think that is what she means.

Q. Did you hear of an alleged robbery at the plant of Cramer & King on July 3rd, 1923? A. Never. Didn't hear it and I didn't see it.

Q. Did you hear of it? A. She don't know of her own word, except she heard someone talk about it.

Q. When did you first hear about it from someone? A. In the morning, from my son who lives downstairs.

The Court—When was that?

The Witness—In the morning she heard it, and she heard it from her son who lives downstairs.

Q. Now, do you recall what time you got up that morning? A. Quarter after five. That is the time I always get up.

Q. Which floor do you live on? A. I live upstairs.

Q. Are there any windows in your house from which you can see the rear grounds of Cramer & King? A. Yes; the windows in the kitchen look out.

Q. Now, how many windows? A. Two windows.

Q. Now, do you recall whether or not you sat by either one of those two windows on the morning of July 3rd? A. I drew the curtains up on the window and looked out, but I didn't see anything.

Q. About what time did you look out the windows? A. Quarter after five.

Q. Now, did you look out of those windows again that morning between quarter after five and seven o'clock or half past seven? A. I constantly look out the windows because they face on the street.

Q. On what street? A. Tenth Avenue.

Q. Now, who else lived in that house on the 3rd of July, 1923, besides yourself? A. Upstairs—downstairs was somebody else live, but nobody else.

Q. Did you have a family? A. Yes, my son lives downstairs.

Q. Did you live alone upstairs? A. My other son, lives with me, and he goes to work and that is why I get up early.

10 Q. Did he live with you and go to work early in July, 1923? A. Yes.

Q. Now, you say another son lives downstairs or did live downstairs on the 3rd day of July? A. Yes.

Q. Was he in any business? A. Saloon.

Q. Where was his saloon? A. Downstairs.

Q. What time did he get up? A. I don't know.

No Cross Examination.

20 Mr. Prince—Your Honor, I consent to the marking in evidence of the list of the numbers of the boxes in the plant with their locations. These were the locations on the second and third of July and ever since April 1st, 1923.

(Paper marked Exhibit P-10.)

Mr. Rosenkrans—If the Court please, in the
30 absence of the invoices of the Piedmont Silk Company we are blocked for the time being, and instead of finishing up we will have to take up the property of another customer, for the time being.

The Court—All right.

EMIL THIRSTEIN, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Your business is what? A. Schwartzenbach -Huber Company.

Q. Did you know whether your company did business with Cramer & King? A. I do.

Q. In the spring and summer of 1923? A. They did.

Q. How long, as a matter of fact, had they been doing business together? A. I believe since twenty-four or twenty-five years.

Q. Did your company deliver any goods to the Cramer & King Company in the spring of 1923?

Mr. Prince—I object unless they show this witness had some knowledge of it except the mere fact that he is connected with that concern.

Q. Do you know whether they did?

The Court—Your personal knowledge, only what you know by yourself.

The Witness—They did.

Q. I will supplement that by adding to your knowledge. A. Yes, sir.

Q. Do you know whether or not it obtained from Cramer & King or their representatives any receipts for those goods? A. They did.

Q. Will you produce it? A. (Witness produces a paper.)

Mr. Rosenkrans—Now, won't you just re-

tire for a moment and I will call Mr. McGowan?

Mr. Prince—I will concede that he says he signed these receipt slips.

The Court—I don't know whether that is sufficient. The only concession would be the statement of the fact.

Mr. Prince—That is all I can concede. I don't know the fact. I would concede he would testify to that.

The Court—I don't know whether that will do.

(Witness temporarily withdrawn.)

GEORGE McGOWAN, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Did you know a customer of Cramer & King by the name of Schwarzenbach-Huber Company? A. Yes.

Q. And sometimes did you go to their headquarters? A. Yes, sir.

Q. And obtain silk to be delivered by you to your company? A. Yes, sir.

Q. Do you know whether you went there for that purpose on June 11, 1923, and received goods? Well, can you tell without refreshing your recollection? A. No, sir.

Q. I hand you a writing and ask you whether your recollection is refreshed by looking at that writing? A. Yes, sir.

Q. Now, will you say whether or not you obtained from the Schwarzenbach-Huber Company on

June 11, 1923, goods for the plaintiff Cramer & King? A. Yes

Q. Were those goods in containers? A. Cases and trunks; yes, sir.

Q. How many cases and how many trunks? A. Two trunks and five cases.

Q. To anticipate the question of counsel, I do not suppose that you opened those trunks and saw what they contained, did you? A. No, sir, but I know they were full; they were not empty.

Mr. Prince—I object and move to strike that out.

The Court—Strike out the full part. They were not empty may remain.

Q. You handle such trunks and containers constantly? A. Yes.

Q. And know what they are when empty? A. About, yes.

Q. And can you tell the difference when empty, and their weight when full? A. Yes, sir.

Q. Then with reference to that experience and that knowledge did you say that these containers were not empty? A. Yes, sir.

Q. Now, what did you do with these two trunks and five cases? After receiving them from Schwarzenbach-Huber Company? A. Put them on a truck and brought them to Paterson.

Q. Where did you deliver them in Paterson? A. Greig room.

Q. In whose plant? A. Cramer & King's.

Q. When, with reference to the day you got them? A. That same evening.

(No cross examination.)

Mr. Rosenkrans—I suppose if we ask for the original invoice I will get the same answer, it is not here this afternoon.

Mr. Prince—No. These we did not have. He was premature.

MISS ELIZABETH MILLER, recalled.

The Court—Inasmuch as it is ten minutes to four, if it will aid you, we will adjourn.

Mr. Prince—Before we adjourn may I have counsel tell me specifically whether there is anything else that he wants me to inquire about, irrespective of whether he has formally served notice to produce or not, outside of these bills of the Piedmont Silk Mill and these other papers he referred to. We ought to know what he claims we have now, if he claims anything else.

Mr. Westerhoff—We want the detailed invoices of Fleitmann & Company.

Mr. Prince—That is the Piedmont Silk Company. Is there anything else?

Mr. Westerhoff—The shop order.

Mr. Prince—The shop order, you told me about that. If we have that we will get it. Is there anything else?

Mr. Westerhoff—As far as we know now.

Mr. Prince—You say as far as we know now, but this trial ought to finish tomorrow, I think, and I do not want to be called upon to be placed in the unfortunate position tomorrow. If there is anything else now, I wish you would let me know.

Mr. Rosenkrans—You ought to know whatever you took away, I suppose.

Mr. Prince—No; you just told me we took away something else, and you were mistaken.

The Court—I think your notice is broad enough to cover everything if you have it.

(Adjourned to March 25, 1925, 10:00 A. M.)

Paterson, N. J., March 25, 1925.

(Trial of the cause resumed at 10:00 A. M.)

Mr. Prince—We have endeavored to try to shorten this as much as we can, your Honor, and we have agreed upon a few things.

Mr. Rosenkrans—We have agreed, first, that there can be no recovery for labor performed by the plaintiff upon the goods alleged to be lost, under the terms of the policy.

Mr. Prince—That is correct.

Mr. Rosenkrans—And secondly that the eighty per cent average clause has no application to these goods.

Mr. Prince—That is correct. We agree on that, too. Now, I have found among the papers of Fleitmann & Company a statement which counsel for the plaintiff told me this moning had been given to our accountant, because it was so long he did not have time to copy it on that occasion, and they gave it to him, and I produce it.

Demand for Exhibits

MISS ELIZABETH MILLER, recalled.

Mr. Rosenkans—Now, if the Court please, I have asked Counsel to produce in accordance with their agreement of yesterday afternoon, the original invoice of the Piedmont Silk Company, under date of March 2, 1923, and they answered that they do not have it. Now, I offer in evidence the copy.

Mr. Prince—Now, if your Honor please, those are not all the facts at all, and that is not quite a fair statement. We have produced in Court the paper which was obtained from the plaintiff in this action, and which they said yesterday was the original. We have physically produced the only paper which we obtained on that occasion from the plaintiff. Now, those are the facts, not quite as counsel says, and I object to the admission in evidence of what they say is a copy of the paper. In the first place it has not been shown that the paper they brought yesterday was an exact copy of the original. This paper is marked duplicate, and I hand it to the Court and ask you to look at the copy which they seek to introduce in evidence. They cannot prove any agreement between the Fleitmann Co., and the plaintiff, as that red stamp says, by merely stamping that on what they now say is a copy, especially if that does not appear on the duplicate they themselves gave us in July, 1923.

Mr. Rosenkrans—The duplicate dated July 17th, which counsel produces, is not a copy and does not purport to be a copy of the invoice.

The Court—One does not seem to be a copy of the other.

Mr. Prince—That is the second page, your Honor. It starts on the other page.

The Court—That is not a copy of the first page.

Mr. Prince—I do not know what the form was they handed it to you.

Mr. Rosenkrans—The paper produced is a statement of the Piedmont Silk Company of the value and kinds and descriptions of the goods alleged to be lost.

Mr. Prince—Well, your Honor, the paper which they offered in evidence is a paper of the Piedmont Silk Company and it was not a record which was kept by the plaintiff which was in existence in the premises of the plaintiff at the time of the happening of this loss, and consequently was not a record kept by the plaintiff.

The Court—On which score are you offering this, Mr. Rosenkrans? On what point?

Mr. Prince—He certainly cannot prove value that way anyhow.

Mr. Rosenkrans—Both for the purpose of establishing the fact and extent of loss, and also for the purpose of showing that we had books and accounts, memoranda, which complies with the requirements of the policy, as between the insurer and the insured.

Mr. Prince—It is the first time, your Honor, in my experience I ever heard counsel assert that he can prove value by producing a bill from a customer to him. That is not

any evidence of value. There is no way that I can cross-examine a piece of paper.

The Court—I doubt if it is admissible on that point, Mr. Rosenkrans.

Mr. Rosenkrans—That is not the sole and principal ground upon which it is offered.

The Court—The other one is to show you kept books?

Mr. Rosenkrans—Yes.

10 The Court—Would you say that a bill sent by the plaintiff to you is books of account kept by you?

Mr. Rosenkrans—Not books. "Books and accounts." I say this invoice is an account kept by us. That is, it was received by us and it was retained by us and kept by us in the regular conduct of our business.

The Court—Kept by you, as I understand it, means entries made by you. I do not think
20 the word kept means in the possession of.

Mr. Rosenkrans—I should think it would. This policy has got to be liberally construed, not strictly, in favor of the insured, and all We are required to do is to keep in our possession, that is, retain, have there, subject to the inspection and examination of the insurer after loss, writings, papers, memoranda, accounts, invoices, all the things that may be embraced under the general terms of ac-
30 counts and books, sufficient to reasonably apprise the insurer of the nature and extent of the loss that we claim. Now the invoices that we receive from our customers are part of those accounts. And it is upon that theory and for that reason we offer it.

The Court—Well, it does not appear yet, as I recall, that it is part of your books or accounts or records, does it?

Mr. Rosenkrans—This witness has said, as I recollect her testimony, that the original of the invoice of March, 1923, from the Piedmont Silk Company was received and that copies were made of it, as I understand her, and kept by her.

The Court—Has she said it was a part of the system of accounts and records of the Cramer & King Company, upon which they relied?

Mr. Rosenkrans—In effect.

The Court—I don't remember it. I do not recall any evidence that would show that the the paper which is now profferred in evidence was a part of the books or accounts kept by the plaintiff. You may ask her again, if you think there is any doubt about it. I think the paper was identified by the representative of the Piedmont Silk Company.

Mr. Rosenkrans—That is not admissible, and we do not press it.

MISS ELIZABETH MILLER, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Miss Miller, I show you papers dated March 17, 1923, and ask you to look at them. Have you ever seen them before? A. Not this paper, no.

Mr. Rosenkrans—That is the end of it, then.

Q. What is this book? A. This is our book of orders.

Q. Who makes the entries which it contains? A. The entries? Do you mean these sheets?

Q. Yes. A. I make those sheets out.

Q. And the sheet dates 3-19-23, can you tell us what that is concerned with, what that is about? This is your order book? A. Yes, sir.

Q. Is this memoranda or entries on the sheet which I have named the order of any customer of Cramer & King? A. Yes, sir.

Q. Whose order? What customer? A. Customer 32.

Q. Who is that? A. Piedmont Silk Company.

Mr. Rosenkrans—I offer it. Wait a moment.

Q. When was this order entered in this book by you with reference to its date? A. Those are put in immediately after they are checked off.

Q. When was that with reference to the 19th day of March, 1923, on or about that date? A. Must be either on that date or the day following.

Mr. Rosenkrans—I offer it.

Mr. Prince—May I look at it? Is it just this one page, Mr. Rosenkrans?

Mr. Rosenkrans—This order, Customer 32, 500 pieces.

Mr. Prince—That is not going on the record, is it? What are these?

The Witness—This is made from the copy.

Mr. Prince—It is just one page relating to the 500 pieces?

The Witness—Oh, there is more than one piece.

Mr. Prince—Up to where?

The Witness—There.

Mr. Prince—Then it is 7.

The Witness—7 pages, yes, sir.

The Court—Are they numbered?

The Witness—No, I don't think there is any sheet number.

Mr. Prince—They will have to be specifically marked. This is offered only as one of the accounts of the Cramer & King Company; is that correct?

Mr. Rosenkrans—Yes.

Mr. Prince—That is the only purpose for which it is offered?

Mr. Rosenkrans—Yes.

Mr. Prince—I object to its admission for any other purpose, your Honor, upon the ground that the correctness of the entry has not been shown. If it was only offered as a record of Cramer & King, I think it is admissible for that, but not as proof of its contents, because there has not been any proof.

The Court—Do you mean by that that the offering is solely to show they made entries?

Mr. Rosenkrans—Oh, no.

Mr. Prince—I asked you that specific question and you said yes.

Q. From where did you obtain the entries or memoranda which goes in these seven pages of this book? What is the source of this memoranda? A. This is a copy of the order that we receive from our customer.

Q. And kept by you in the regular course of that business? A. Yes, sir.

Q. Under the system of bookkeeping that was practiced by Cramer & King? A. Yes, sir.

Q. Do you know whether or not these entries are correct entries of the original invoices? A. Yes, sir.

Q. Are they? A. Yes, sir.

Mr. Rosenkrans—I offer it.

Mr. Prince—May I ask this question: As far as the entries themselves are concerned, you never checked those yourself, did you?

The Witness—Yes; we checked this.

Mr. Prince—I do not mean from the bill, but I mean with the goods themselves.

The Witness—Oh, I didn't do that, no sir.

Mr. Prince—All you did was to keep the bill they sent you?

The Witness—Yes, sir.

Mr. Prince—Is that correct?

The Witness—Yes, sir.

Mr. Prince—I object to it upon the very ground that I objected before. There has been no proof of the contents of this paper; but that is only offered as a book of account kept by them, and I think it is competent to that extent and to that extent alone.

Mr. Rosenkrans—It is also offered to show the truth of its contents.

Mr. Prince—What, that it is a copy of a bill. Why, that is the highest kind of hearsay.

Mr. Rosenkrans—It was shown yesterday that the original shop order was given to a

man by the name of Erb, and that we have not seen it yet, and that we do not know where Erb lives.

Mr. Prince—We do not admit any such thing was given to us. I have produced here under my agreement of yesterday every paper that we ever got from them, and I personally examined the files.

The Court—Well, I think it is admissible and I will admit it.

Mr. Prince—Your Honor admits it for all purposes?

The Court—Yes.

(Papers marked Exhibit P-14 to 20 inclusive.)

Cross Examination by Mr. Prince:

Q. Miss Miller, these three concerns in question here, the Piedmont Silk Mills or Silk Company, or Fleitmann & Company, who you said are factors for Piedmont Silk Company,—that is, Piedmont discounts their bills with Fleitmann Company, that is what you meant, wasn't it?

Mr. Rosenkrans—I object. I do not think the witness said anything on that subject.

The Witness—I just said Fleitmann were factors for Piedmont Silk Company.

Q. You said that yesterday? A. That is right.

Q. Then there was Schwarzenbach-Huber Company; is that right? A. Yes, sir.

Q. What was the third company? A. Rose Silk Mills.

Q. Rose Silk Company? A. Yes, sir.

Q. You had been dealing with these concerns

for some time prior to July 2, 1923; isn't that correct? A. Yes, sir.

Q. When you sent them statements at various times before July 2, 1923, for the work you performed on the merchandise, was this the form of bill in use at that time before July 2, 1923? Look at it, please. Of course, I do not mean the typewriting, I mean the printed part. A. Yes.

Q. Look at it carefully. A. As far as I recollect they have always been like that.

Q. Always been that way?

The Court—Used by you?

Mr. Prince—Used by Cramer & King Company.

Q. That is correct, isn't it, Miss Miller? A. As far as I remember, yes.

Q. You had stamped on your bills these words: "All goods are insured against loss by fire. Not responsible for reprint or redye goods." Is that correct? Look at the bill and refresh your recollection. Is that right? A. As far as I remember it has always been like that, yes.

LEONARD VAN HOFF, sworn.

Direct Examination by Mr. Rosenkrans:

Q. What is your occupation? A. I am employed by the Cramer & King Company as clerk.

Q. In what department do you work? A. In the office?

Q. How long have you been with Cramer & King? A. Why, since 1917.

Q. Were you working in the office in April, 1923? A. Yes, sir.

Q. I show you Exhibit P-13 and ask you whether you have seen it before? A. Yes, sir; I have.

Q. Did you do any work in connection with P-13? A. Yes, I did.

Q. What work? A. I shipped or I helped to ship those goods; I helped the shipping clerk get those goods to the Bamford Silk Company.

Mr. Prince—To what silk company?

The Witness—Bamford Silk Company.

Q. Do you know whether or not they were shipped to Bamford Silk Company? A. Yes, I know they were shipped.

Q. Now, before they were shipped do you know whether or not these items were checked up with reference to the goods themselves, to determine whether or not they are accurate? A. That I don't know. I received the memorandum from the shipping clerk. It is his duty to check them up.

Mr. Prince—I object. I move to strike out the answer, except "I don't know."

The Court—Strike out from "I don't know" on.

Q. From whom did you receive it? A. From the shipping clerk.

Q. Who is the shipping clerk? A. Charles Cornato.

Q. Is he here? A. Yes, sir.

Q. Now, do you know whether these goods were actually shipped to Bamford Brothers? A. Yes.

Q. I show you a writing dated April 17, 1923? A. That is right.

Q. Do you recognize it? A. Yes.

Q. What is this writing? A. That is a record of the rolls that were sent out to Bamford Brothers, for which their driver signed.

Q. Has this record any connection with P-13? A. Yes, sir.

Q. What connection? A. Those rolls represent the goods that are enumerated on this memorandum.

Q. Will you say whether or not this record of writing of April 17, 1923, was made by you in pursuance of the plan or system of bookkeeping or books and account? A. Yes.

Q. —then practiced by Cramer & King? A. Yes, sir.

Q. It was? A. Yes.

Mr. Rosenkrans—I offer it.

Mr. Prince—Does this receipt represent all the merchandise contained in Plaintiff's Exhibit P-13?

The Witness—Those two receipts.

Mr. Prince—Represent how many pieces?

The Witness—500 pieces.

Mr. Prince—No objection.

Mr. Rosenkrans—I offer these two sheets.

(Papers marked Exhibit P-21 and P-22.)

Cross Examination by Mr. Prince:

Q. Who are the Bamford Silk Mills? A. They are dyers.

Q. They are not the Piedmont Silk Millls? A. No.

Q. Nothing to do with Fleitmann & Company? A. Not a thing, as far as I know.

Q. Where is their place of business? A. At Belmont Avenue.

Q. In Paterson? A. Yes, sir.

Mr. Prince—I think you only offered the one receipt.

Mr. Rosenkrans—Two.

Mr. Prince—You only offered one dated April 19, 1923. I think you also want to offer one of April 17, 1923, don't you?

Mr. Rosenkrans—I understood I had offered these two pages.

Mr. Prince—One is April 17th and the other is April 18th? All right.

MISS INEZ BOSLAND, sworn.

Direct Examination by Mr. Rosenkrans:

Q. What is your occupation? A. Clerk.

Q. By whom are you employed? A. Bamford Brothers Silk Manufacturing.

Q. Where are they located? A. Belmont Avenue and Cliff Street.

Q. How long have you been employed by them as a clerk? A. Three and a half years.

Q. What were your duties as clerk in April, 1923? A. General office duties.

Q. Do you know whether or not on or about April 17, 1923, Bamford Brothers received 500 pieces of silk from Cramer & King? A. I do not.

Q. Do you know whether they received any num-

ber of pieces or rolls of silk from Cramer & King? A. I do not.

Q. Do you know whether subsequent to April 17, 1923, Bamford Brothers delivered to Cramer & King any silk? A. I do.

Mr. Prince—I object to that. If there is a record of that, that is the best evidence.

The Court—If she knows she may tell.

Q. Was any record made and preserved by Bamford Brothers of that delivery?

Mr. Prince—I object.

The Witness—Yes.

Mr. Prince—Is she from Bamford or from Cramer & King?

The Court—Bamford.

Q. Who made the record? A. I made one.

Q. Did you make the original? A. Yes.

Q. Have you got it? A. I have the carbon. Cramer & King have the original.

Q. Let me see it.

Mr. Prince—Why waste time with that? It is not one of your records. Why don't you produce the original?

Q. I call your attention to signature J. C. Harrison, is it?

Mr. Prince—I object to the contents of the paper, your Honor, calling the witness's at-

tention to anything which he reads into the record.

The Court—I do not think it is proper to call attention to the contents of the document.

Mr. Prince—This is a copy. Let us have the original. This is not a record of Cramer & King; it is a record of Bamford.

The Court—Proceed.

Q. When was this record made with reference to its date? A. April 25, 1923.

Q. The same day which it bears date? A. Yes, sir.

Q. You say that you made an original of which this is a copy at the time? A. This is a duplicate.

Q. Do you know what became of the original? A. Cramer & King's driver took it with him.

The Court—Made by a carbon duplicate, do you mean?

The Witness—Carbon, yes.

Q. What is this paper dated the 25th day of April, 1923, in general terms?

Mr. Prince—I object to it.

The Court—I will permit her to state in general what it is.

The Witness—That is a sheet from one of our invoice pads.

Q. What does it show or pretend to show?

Mr. Prince—I object to what it shows.

Q. What is its general nature?

The Court—I will permit her to tell its general nature.

The Witness—Its general nature, to show goods shipped by Bamford Brothers Silk Manufacturing Company to Cramer & King on that day.

Q. Do you know whether or not in point of fact they were shipped? A. The first sheet, yes.

Q. The first sheet; and the second sheet, do you know whether that was shipped or not? A. I don't know.

Mr. Rosenkrans—I offer the first sheet.

Mr. Prince—I object to it. That is not a record of Cramer & King. There is not any proper foundation laid. The witness has already shown that the original was in the possession of Cramer & King. We cannot put a copy in evidence where the original is not produced or unexplained.

The Court—I do not think it is admissible. I will exclude it.

JOHN E. FARISSIER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. What is your business? A. Driver.

Q. For whom? A. Cramer & King.

Q. How long have you been driving for Cramer & King? A. Five years.

Q. Do you recollect whether on the 17th day of April, 1923,—where did that young lady go with that memorandum? Have you transported any goods from Bamford Brothers Manufacturing Company to the plant of Cramer & King? A. I do.

Q. I show you a paper dated April 25, 1923, and call your attention to a signature. Whose signature is this? A. My signature.

Q. And another paper bearing date the 24th day of April, 1923? A. That is my signature, also.

Q. Without the use of these papers do you recollect how much or what quantities of silk you brought from Bamford Brothers to Cramer & King on those dates? A. Why, I don't recollect, no, the pieces, but there was 41 rolls all told.

Q. On the two dates? A. Yes.

Q. Is that right?

Mr. Prince—I object to that. He is asking the witness a question and he gets an answer, and then he asks him whether that is all right. What does he want to do, to attack the credibility of his own witness?

The Court—I will permit the question.

Q. Is that right? A. Yes.

Cross Examination by Mr. Prince:

Q. You recollect there were 41 rolls on that day? A. Why, —.

Q. Well, is that right? A. Not on the one day, I don't believe.

Q. Speak up. A. I don't believe on the one day. It was sixteen.

Q. You said that on your direct examination without looking at any paper. A. Two days.

Q. You remembered that without looking at any paper; is that correct? A. Yes.

Q. You never looked at those papers and figures when the question was put to you to find out the number of rolls; isn't that right? A. No, sir.

Q. That is correct? A. Yes.

Q. Now, on April 25th, let us see, did you get any merchandise from Bamford? A. Yes, sir.

Q. How many pieces, how many rolls? A. Sixteen rolls.

Q. On April 25th. All right. That is on the paper, isn't it? A. Yes.

Q. Now, let us take a date, May 10th; is that on that paper? A. No, sir.

Q. Now, let's see your recollection on that. Did you get any goods from Bamford on that day? A. Not as I recollect.

Q. What is that? A. Not as I know.

Q. You mean you don't know whether you did or not? A. No.

Q. Is that correct? A. I didn't get any.

Q. Didn't get any on that day? A. No.

Q. What about April 10th? A. I never picked up any goods, only these here pieces.

Q. These are the only ones you ever picked up in your life? A. From Bamford Brothers.

Q. You remember the date because the date is on the bill there; isn't that correct? A. Well, it is the only time I ever picked any goods at all from Bamford Brothers.

Q. Even though it is the only time, do you want us to understand that without looking at any paper two and a half years afterwards you can recall the particular day on which you picked up merchandise and the number of rolls without having first refreshed your recollection from some writing; is that what you want us to understand? Is it? A. Yes.

EDWARD MEIMA, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Meima, you recollect whether any goods were received, any silk was received by Cramer & King from Bamford Brothers on April 24 and April 25, 1923? A. I do.

Q. Will you say whether or not those goods came into your department? A. They went into a small silk vault.

Q. In what shape or upon what was the silk that was so received by Cramer & King from Bamford Brothers at that time? A. That came on rolls.

Q. Had you ever seen those rolls of silk before? A. Yes, sir.

Q. Can you say what they were? A. I can.

Q. What were they?

Mr. Prince—I object to it. The books and accounts are the only way they can prove their loss.

The Court—I will permit it.

The Witness—Crepe de chine.

Q. Whose crepe de chine? A. Customer 32.

Mr. Prince—I object to that.
The Court—I will permit it.
The Witness—Customer 32.

Q. Who was customer 32? A. Piedmont.

Q. Did you examine these rolls upon their receipt by Cramer & King from Bamford Brothers? A. I did.

Q. Did you see anyone else to your knowledge check up the yardage? A. I did myself—not the yardage; the pieces.

Q. Do you recall how many pieces you found there to be?

Mr. Prince—I object. The books are the best evidence.
The Court—I will permit it.
The Witness—I do.

Q. How many?

Mr. Prince—Same objection, your Honor.
The Court—I will permit it.

Q. Will the books refresh your recollection? A. They would.

Q. What book? A. My production books and papers.

Q. All right.

Mr. Prince—His production book was a little bit of a book.

Q. Will you say whether that book refreshes your recollection?

The Court—Was that made by him?

The Witness—I want my own.

Q. Well, do you know where your production book is? A. You had them here yesterday.
Q. Will you find it, if you recognize it? A. Yes.

Mr. Prince—I object to this witness' memorandum from which he is reading.

The Witness—This is no memorandum. This is a ticket of my own.

The Court—Do not read from that.

Q. Will you come down and find the book, if you recognize it? A. Certainly I can find it.
Q. Do you find your records here? A. I cannot find it there. He hasn't got them.
Q. When did you last see it?

Mr. Prince—He said a moment ago they were here yesterday.

The Court—I will permit it.

Q. When did you last see it? A. My records? Yesterday.
Q. Here? A. Yes, sir.
Q. Are these the records that you mean? A. These are the records I had yesterday.

The Court—In your handwriting?

The Witness—Yes, these are my handwriting.

Q. Now, by referring to those records do they

refresh your recollection as to the number of pieces that were received from Bamford Brothers March 24th and 25th, 1923?

Mr. Prince—I submit the record speaks for itself. They are in evidence, and it is not a question of this witness' recollection. I submit they must prove their loss from their books and accounts.

The Court—I will permit it.

The Witness—379 pieces I received back.

Q. Now, upon the fabric of the silk of these 379 pieces, will you say whether or not there is anything by which they could be identified as being part of the 500 pieces originally received? A. The numbers is on there, the piece number and the customer numbers and the lot numbers is on every end of each piece.

Q. How on? A. With a stitching machine.

Q. Woven into the fabric of the silk? A. Yes.

Mr. Prince—We had all that yesterday. We had the fabric marked in evidence, and I think we are wasting a lot of time in needless repetition.

Q. After these 379 pieces were put into a safe, what became of them, if you know?

Mr. Prince—They were put into a vault, he said.

The Witness—Some were printed and some were sent through as plain finish.

Q. Now, to whose department did they go after leaving the silk vault, if you know? A. The plain finish were sent into the finish room.

Q. And the others? A. The others were printed.

Q. You sent them into the printing department? A. Yes, sir.

Cross Examination by Mr. Prince:

Q. Were you in the finishing room on the 2nd day of July, 1923? A. Yes, sir.

Q. You saw this long table there? A. Yes, sir.

Q. About how many rolls of silk were there on that table when you left it on the 2nd of July, 1923? I don't want the exact number, but about, in a general way. A. Oh, I would just judge about thirty, at least.

Q. They were crepe de chine; what else? A. There was different classes of goods there.

Q. There were more than 19 rolls of crepe de chine, weren't there? A. Yes.

Q. What other kinds of merchandise? A. There was other crepe de chine, and printed goods there.

Q. What else? A. That I can't remember out of my head; I can tell you on my sheets.

Q. That merchandise was finished when it was there? A. No, sir.

Q. None of this merchandise was finished? A. No, that was not.

MISS ELIZABETH MILLER, recalled.

Direct Examination by Mr. Rosenkrans:

Q. What is the book which I lay before you? A. Our order book.

Q. Now, the entries on the page dated the 24th of April, 1923, who made those? A. I made out that sheet.

Q. What does it represent? A. Represents the print order.

Q. A corrected order? A. A corrected order from customer 32. Correct print instructions.

Mr. Rosenkrans—I offer it.

Mr. Prince—Those are instructions you made out yourself; is that correct?

The Witness—This is a copy. This is our copy of instructions received.

Mr. Prince—Some written instructions received from the customers; is that right?

The Witness—I don't remember whether I got those from the customer or whether I got them from Mr. Pelegrini.

Mr. Prince—I object to it unless it is offered solely as being a record or a book or account of the plaintiff, upon the ground there has been no proper foundation laid to show it is accurate or that it correctly represents its contents. If it is offered for that one purpose I have no objection. Other than that I submit it is incompetent.

Mr. Rosenkrans—I offer it as before for both purposes.

The Court—What other purpose? What is it to prove?

Mr. Rosenkrans—Let me ask a question.

Q. Did you make this order in accordance with your regular practice under the system of bookkeep-

ing kept at the time by Cramer & King? A. Yes, sir.

Mr. Rosenkrans—Then I offer it both to show the correctness of its entries and also to show the fact that we kept such books as the policy required.

Mr. Prince—I press my objection.

The Court—I will admit it.

(Paper marked Exhibit P-23.)

Q. Now, summarize what it is about, will you, so many pieces it relates to? A. 170 pieces.

Mr. Prince—We all know it is an order for printing quantities.

Mr. Rosenkrans—They have not heard the number of pieces.

The Court—You can read it to them.

Mr. Rosenkrans—I don't know what it means.

Mr. Prince—If you don't know what it means how do you expect us to know?

Mr. Rosenkrans—I am not a bookkeeper.

Q. 170 pieces, 39 inches,—is that 39 inches wide? A. Yes.

Q. 1204 is what? A. That is the quality.

Q. Crepe de chine. What is Prt? A. That is print.

Q. Pattern 100; 40 pieces, then follows the colors? A. Yes.

Q. Pattern 240, pieces, and then the colors. Pattern 325, pieces, and the colors. Pattern 425, pieces, and the colors. Pattern 500, and the pieces, and the colors? A. Yes, sir.

Q. That is 170.

Mr. Prince—No questions, Miss Miller.

EDWARD MEIMA, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Now, Mr. Meima, looking at a paper dated May 29th, is it, 1923? A. May 29th, that is right.

Q. In whose handwriting is this paper? A. This is my handwriting.

Q. Will you say whether or not it was made by you in the regular course of the system of keeping books practiced by Cramer & King? A. Yes, sir.

Q. Has this writing of May 29, 1923, any connection with Exhibit P-23? A. Yes, sir.

Q. What connection? A. It has been printed and washed, these goods here.

Q. Were the same number of pieces, 170 pieces, —? A. Not on one day.

Q. No. Well, all right. Will this book show? A. It shows here on what day they were washed after they are printed.

Q. How many pieces does this record show were washed before they were printed? A. They were printed on May 29th, and washed, rather, 25 pieces, on May 30th,—on May 11th, 50 pieces; May 10, 20 pieces; May 4th, 40 pieces; and 35 pieces—75, that is all.

Mr. Prince—That would be 174, wouldn't it?
The Witness—No, sir.

Q. 184?

The Court—170 I have it; is that right?

The Witness—170 is right. That is the way it should be.

Q. When were these entries made with reference to the dates that appear upon each page of it? A. The same day.

Mr. Rosenkrans—I offer it.

Mr. Prince—Same objection.

The Court—I will admit it.

(Papers marked Exhibits P-24 to P-28 inclusive.

Q. When these 170 pieces went through your department, what then became of them? A. Sent them in the finishing room.

Q. That is Mr. Cortese's department? A. Yes.

MISS ANN BUSH, recalled.

Direct Examination by Mr. Rosenkrans:

Q. I show you a writing or writings consisting of eight pages and ask you in whose handwriting those are, if you know? A. Mine.

Q. When were they made by you with reference to the dates that they bear? A. The date is written on the memorandum.

Q. May 8th, 1923? A. Yes, sir.

Q. And different dates, are they? A. Yes, sir.

Q. Will you say whether or not they were made by you in pursuance of your usual method of bookkeeping in accordance with the system then maintained by Cramer & King? A. Yes, sir.

Q. They were, were they? A. Yes, sir.

Q. What, in general terms, are these writings?

What are they about? Whose silk are they concerned with? A. With Piedmont Silk Company.

Q. How many pieces? A. Ten pieces, on that one memorandum.

Q. On the next? A. Thirty pieces on the next.

Q. On the next? A. Thirty pieces on the next. Twenty on the next. Five, ten, forty, twenty-five.

Q. Now, the department in which you made these memoranda is what department? A. Folding.

Q. Will you say whether or not that is the last step taken in the processing of goods in the mill of Cramer & King? A. They mark them.

Q. After they fold them? A. Yes.

Q. With that exception, then, they are ready to be delivered, are they, to the customer finished? A. Yes.

Mr. Rosenkrans—I will offer these memoranda.

By Mr. Prince:

Q. These yardages you have here—you did not measure those goods yourself, did you? A. No, sir.

Mr. Prince—I object to the admission of these papers in evidence excepting upon the same grounds that they are records of the plaintiff in this action, no proper foundation laid to the accuracy or correctness of the entries.

The Court—I will admit them.

(Papers marked Exhibit P-29.)

CHARLES CORNATO, recalled.

Direct Examination by Mr. Rosenkrans:

Q. You are connected with what department of Cramer & King? A. Shipping department.

Q. And that is the department from which the goods when finished go back to the customer? A. Yes, sir.

Q. You make records in that department? A. Yes, goods shipped today.

Q. Are the records actually mady by you? A. Yes, sir.

Q. In the course of the conduct of that department and under the system of bookkeeping which is practiced by Cramer & King? A. Yes, sir.

Q. I show you a writing dated May 8, 1923, and ask you in whose handwriting that is? A. It is mine.

Q. When was it made with reference to the date it bears? A. The 8th.

Q. Is that part of the record regularly kept by you? A. Yes, sir. Have a duplicate—trunk number 96.

Mr. Prince—No, no.

Q. Now, is there any item on that sheet that relates to the property of the Piedmont Silk Company? A. Yes, customer 32.

Mr. Rosenkrans—I offer it.

Mr. Prince—I object upon the same ground as I have objected to these other records, without needlessly repeating. There has been no proof of the accuracy of it. I con-

cede it is competent as a record, and that is all.

The Court—This man has not undertaken t o say whether that is correct or not.

The Witness—Yes, that is correct.

Q. What does this record show, in general terms? A. Customer 32, Piedmont Silk Company.

Q. I know, but—. A. That is a piece number, memorandum, to show the daily number that the customer received.

Q. Is this the record made when the goods go out to the mill? A. Yes.

Q. Do you know whether the goods referred to on this memorandum did go out of the mill on that day? A. Yes; it is trunk number 96, customer 32 —.

Mr. Prince—I object.

The Witness—Containing 40 pieces.

Mr. Rosenkrans—I offer it now.

Mr. Prince—I move to strike out the last answer, the contents of the paper.

The Court—I will deny it.

Cross Examination by Mr. Prince:

Q. Do you say these goods went out in trunks? A. Yes.

Q. Did you pack the goods in the trunks? A. Yes.

Q. You personally checked them off? A. Yes.

Q. Then when you personally checked them off you made your entry; is that correct? A. Yes.

Mr. Prince—All right.

The Court—I will admit it.

(Paper marked Exhibit P-30.)

The Court—Where were these goods shipped to, 96 pieces?

The Witness—To Piedmont Silk Company.

The Court—Shipped to them?

The Witness—Yes, sir. That is all the record we have.

ReDirect Examination by Mr. Rosenkrans:

Q. Now I show you another record dated May 16, 1923? A. Yes, sir.

Q. Another dated May 17, 1923? A. Yes, sir.

Q. In your own handwriting are those records? A. My own.

Q. When were they made with reference to the date May 16th and 17th? A. Same day. That is the date, the 17th, that trunk 137.

The Court—No; when were they made?

The Witness—The same day, May 17th.

Q. Will you say whether or not they show goods of the Piedmont Silk Company shipped out of your shipping department to them? A. Yes.

Q. On those dates? A. Yes, sir.

Q. Do you know whether they show accurately the number of pieces then shipped? A. Yes, sir.

Mr. Rosenkrans—I offer it.

Mr. Prince—Same objection.

The Court—Permit it.

(Papers marked Exhibit P-31 and P-32.)

Mr. Prince—How many pieces are these last, do you know?

Mr. Rosenkrans—I will find out.

Mr. Prince—Just let him tell us the number.

The Witness—35 pieces. May 16th, a trunk number 133. May 17th, trunk number 137, 41 pieces.

Mr. Prince—That is 176 pieces?

The Witness—It is all marked there.

Mr. Prince—Is that right?

10 The Witness—It is all on the record.

Mr. Prince—Is that correct?

The Court—96 first, 35 second, and 41 t hird.

The Witness—That was the trunk number.

Mr. Rosenkrans—How many is that?

The Court—172, isn't it?

Mr. Rosenkrans—That is all.

Mr. Prince—No cross examination.

20

GEORGE McGOWAN, recalled.

Direct Examination by Mr. Rosenkrans:

Q. In whose handwriting is this book? A. The book I cannot say. This sheet is my handwriting.

Q. Designating sheet dated what? A. 7th month, third day, twenty-three.

Q. What is this book? A. That is a delivery

30 sheet.

Q. Is there any item upon this sheet relating to the silk the property of Piedmont Silk Company? A. Yes, sir.

Q. What item? A. One trunk, number 151.

Q. Opposite that item appears the name Moran? A. Yes, sir.

Q. Did you see that written? A. No, sir.

Q. Where were these entries made by you on this page? A. In my shipping department, Cramer & King.

Q. You did not deliver these pieces? A. Yes, sir.

Q. Did you deliver one trunk to the Piedmont Silk Company on this date? A. Yes, sir.

Q. Is this your record of the deliveries made by you on that date? A. Yes, sir.

Q. Now, in whose handwriting is the page dated 6-11-23? A. Mine.

Q. Is there any item there that relates to the property of Piedmont Silk Company? A. Yes, sir.

Q. Which item? A. Three packages.

Q. Did you deliver three packages to the Piedmont Silk Company on that day? A. Yes, sir.

Q. On page date 7-10-23? A. Yes, sir.

Q. Is there any item relating to the property of the Piedmont Silk Company? A. I can't say what month it is. It is the 10th of 23, 7th.

Q. Is there any item there relating to the property of the Piedmont Silk Company? A. No, sir.

Q. No. Is that your handwriting? A. No, sir.

Q. Do you recognize the handwriting that appears on the page dated 7-11-23? A. Yes.

Q. Whose handwriting is it? A. Shipping clerk, Charlie Cornato.

Q. Was he also a man who delivered silk? A. No.

Q. From the mill to the customer? A. No, sir.

Q. Did you have this page on the 11th of July, 1923? A. Yes, sir.

Q. Where, if anywheres, did you take it to? A. Took it to New York.

Q. Can you say whether or not you delivered anything that day to the Piedmont Silk Company? A. Yes, sir.

Q. What did you deliver? A. Three packages.

Q. Do you know whether the items on these three pages are correct?

Mr. Prince—I object to that unless the witness shows he has some knowledge.

Q. Of your knowledge, as far as they relate to deliveries by you of goods to the Piedmont Silk Company?

Mr. Prince—I object to that, because that shows quantities and various other things that this witness has no knowledge of or has not been shown to have had knowledge.

Q. This shows containers only, the number of containers, nothing more? A. Yes, sir.

Mr. Rosenkrans—I offer it.

Cross Examination by Mr. Prince:

Q. Do you know what was in the containers? A. Silk.

Q. Did you ever check them yourself? A. Yes, sir.

Q. You checked them before they went into the containers? A. Not that container, but I checked silk.

Q. I am talking about these particular containers you are talking about, represented in these records.

A. I did not check them, no; but I seen them opened before they were closed.

Mr. Prince—I object upon the same ground as I have to the other records.

The Court—I will admit them only for the purpose of showing you kept books and accounts.

Mr. Rosenkrans—All right.

(Papers marked Exhibit P-33, 34, 35 and 36.)

MISS ANN BUSH, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Now, Miss Bush, I show you five sheets; in whose handwriting are they? A. My own.

Mr. Prince—These five other sheets, now?

Mr. Rosenkrans—Yes.

Q. When were they made with reference to the dates that they bear? A. The date that is written in the memorandum.

Q. What, in general, do they show?

Mr. Prince—I will concede on the record that these five sheets were made by this witness in the same manner in which she testified she made the other records similar to this.

Mr. Rosenkrans—I offer them.

Mr. Prince—I object upon the same ground I did before, your Honor. The yardage is

here, you know, which she knows nothing about. I do not object that they are records of the Cramer & King Company.

The Court—I will admit them.

Mr. Prince—For all purposes or only for that limited purpose?

The Court—I will admit them.

(Paper marked Exhibit P-37—five sheets.)

Q. How many pieces do these five sheets relate to? A. Twenty pieces on this memorandum; thirty —.

Q. On the next? A. Twenty-six.

Q. On the next? A. Fifty-two.

Q. On the next? A. Eight.

Mr. Prince—136?

The Court—136, as she read them off.

Q. Will you read them again?

Mr. Prince—I object to this.

The Court—Permit it.

The Witness—Twenty-six.

Q. Where is the 26? A. 16 and 10.

Q. All right, twenty-six. A. Fifty-two, eight, twenty, fifteen pieces.

The Court—The last time she said thirty. That makes it right.

Mr. Dunn—121.

Mr. Prince—Hadn't you better have each one of these marked?

No cross examination.

CHARLES CORNATO, recalled.

Direct Examination by Mr. Rosenkrans:

Q. I show you a writing, sheet number —.

Mr. Prince—I will concede the testimony as to these sheets will be the same as his testimony to the other similar sheets. You offer them in evidence now, after that concession?

Mr. Rosenkrans—Yes.

Mr. Prince—Same objection.

Q. What do they show? They are meaningless if not explained. A. Show the goods have been shipped to the customer.

Mr. Rosenkrans—I offer them.

Mr. Prince—I make my same objection.

The Court—I will permit it.

(Paper marked Exhibits P-38, 39, 40 and 41.)

Q. Now, Exhibit P-38 shows a shipment of how many pieces? A. Piedmont Silk Company, 20 pieces; trunk 151, customer 32, 20 pieces. That is the total pieces we shipped.

Mr. Prince—Why don't you ask him a general question now, how many pieces were in all?

Q. Do you know how many pieces? A. 20 pieces.

Q. Now, the next, Exhibit P-39, how many pieces

were shipped to the Piedmont Silk Company? A. Fifteen pieces.

Q. Exhibit P-40, how many pieces? A. Thirty-three. Twenty-six here, that is plain dye, and this is print, seven pieces; that is a total of thirty-two pieces altogether. Trunk 137.

Q. Exhibit P-41 shows how many pieces were shipped to the Piedmont Silk Company under date of June 11, 1923? A. Fourteen pieces.

Q. Making a total of what? A. I can't remember all these unless I figure it up.

Mr. Prince—The total is eighty-two.

Mr. Rosenkrans—He should have read on sheet number one fifty-two instead of thirty-two.

Mr. Prince—If it is on there offer it in evidence. What difference does it make? The jury will have to determine.

OTTO STAPFER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. The book that lies before you is what? A. That is a ledger, Cramer & King.

Q. In whose handwriting is it and by whom is it kept? A. By me.

Q. I call your attention to page 512 and ask you whether it contains any reference to the account of Piedmont Silk Company with Cramer & King? A. Yes.

Q. Did you make the entries on that page? A. Yes.

Q. What, in general terms, do those entries relate to? A. The date when the goods came in —.

Q. What goods? A. The crepe de chine.

Q. How many pieces?

Mr. Prince—I object to that.

The Court—I will wait until the book goes in.

Q. Were these entries made by you in this book in the regular course of your bookkeeping? A. Yes, sir.

Q. And in accordance with the system of keeping books in practice by Cramer & King? A. Yes, sir.

Mr. Rosenkrans—I offer it.

Cross Examination by Mr. Prince:

Q. What is this book, you say, Mr. Stapfer? A. Ledger of the goods which come in the place and go out again.

Q. Do you keep the ledger? A. Yes, myself.

The Court—Where is the information therein contained received from?

The Witness—From our order sheets, made by the office.

Mr. Prince—Well, I object to it upon the same ground as I have before, your Honor; there has been no proper foundation laid and no proof of the accuracy of the entries.

The Court—I will admit them.

(Page 512 of book marked Exhibit P-42.)

Q. Now, will you say whether or not this shows the whole history of this order of 500 pieces from the time it first came into the plant of Cramer & King?

Mr. Prince—I object to that. It is apparent from the testimony that this witness does not know the whole history, and a good part is on hearsay. The record speaks for itself.

Q. It is your record? A. Yes, sir.

Q. Kept by you? A. Yes, sir; it is.

Q. Covering the entire history of these 500 pieces? A. Yes.

Mr. Prince—I object to that.

The Court—Yes, that is leading, whether it covers the history. I will sustain the objection. The answer will be stricken out.

Q. Well, what part of the history of these 500 pieces does this record kept by you cover?

Mr. Prince—I object to that. It is the same question in another form.

The Court—The book speaks for itself.

Q. How many pieces are referred to on this record?

Mr. Prince—I object.

The Witness—500.

Mr. Prince—The book speaks for itself.

Q. Does this record show how many pieces

were delivered to Piedmont Silk Company? A. Yes.

Q. Of these 500 pieces?

Mr. Prince—I object and ask that the answer be stricken out.

The Court—Strike out the answer until I deal with it. There are two questions there. Let me hear the first question.

(Question repeated by the stenographer.)

The Court—I will permit it.

(Second question repeated by stenographer.)

The Court—He answered in the middle of the question.

Q. Does the record show how many of these 500 pieces were ultimately delivered to the Piedmont Silk Company?

Mr. Prince—I object. No proper foundation laid.

The Court—I will permit it.

Q. How many does it show were ultimately delivered to them? A. It does.

Q. How many does it show?

Mr. Prince—I object.

Q. How many does that show in the end were delivered to the Piedmont Silk Company? A. The record shows that.

(Question repeated by the stenographer.)

The Court—I will permit the question.

Q. It shows here where—

The Court—How many?

Q. How many? A. Each individual item.
Q. How many? A. Want me to read them off?

Mr. Prince—What is the total?
The Witness—I haven't got the total here.

Q. Can you get that off? A. 291?
Q. That is, it shows 291 were delivered directly by Cramer & King to Piedmont Silk Company?

Mr. Prince—I object to that and move to strike out the answer.
The Court—I will sustain the objection and strike it out.

Q. When you say it shows 291 were delivered, what do you mean?

Mr. Prince—I object. He means 291 were delivered. Why waste time about matters of this kind?
The Court—What do you mean, to whom it was delivered?
Mr. Rosenkrans—Yes, sir.
The Witness—To Piedmont.

Q. Now, does that show deliveries to anybody else of any part of these 500 pieces? A. No. Oh, you mean—yes, to Bamford; sure, right there.

Q. How many pieces does that show were delivered to Bamford? A. 500 right there.

Q. Did that show how many pieces were returned by Bamford to Cramer & King? A. 279, I think.

Q. Does that show how many of those 279 pieces that you got back from Bamford were delivered by your company to Piedmont Silk Company? A. Excuse me; I made a mistake. 379.

Q. 379. You mean 379 pieces were redelivered by Bamford Brothers to Cramer & King? A. To Cramer & King.

Mr. Prince—I object to what counsel says he means.

The Court—Sustain the objection. The answer will be stricken out.

Q. Now, out of these 379 pieces does this record show how many were delivered to Piedmont Silk Company? A. Yes.

Q. How many? A. 291.

Q. Does it say anything about the remaining 88 pieces? A. No, nothing. Just simply open.

Q. Where is it? A. Right there. From lot 2026, 88 pieces. That is the entry. This belongs with that other lot.

Q. Indicating the first two items on page 513? A. Yes.

Q. That should be marked on this as part of that lot? A. Yes.

Mr. Rosenkrans—I offer it.

Mr. Prince—I object to it.

The Court—I will permit it.

(Paper marked Exhibit P-43.)

Mr. Rosenkrans—That is all.

Mr. Prince—May I look at that?

The Witness—Right there. That is the lot in question.

Mr. Prince—I haven't asked you anything yet.

The Witness—I just showed you.

Mr. Prince—Do not volunteer.

Cross Examination by Mr. Prince:

Q. You point here in Plaintiff's Exhibit P-42 to the lot under date of March 22nd; is that correct? A. Yes.

Q. Now, the book is written in ink; isn't that correct? A. Yes, sir.

Q. There was a number here 380; was that correct? A. Yes.

Q. That is stricken out and over that in ink are written in ink 209; isn't that correct? A. Yes, sir.

Q. Did you make that change? A. I did.

Q. When did you make that change? A. Some time back.

Q. When? A. I don't remember when.

Q. Well, was it after July 5th? A. Might have been.

Q. No, no, but when was it? A. I don't remember when.

Q. Was it before July 2nd? A. Yes.

Q. It was before July 2nd? A. Yes.

Q. You are positive of that? A. Positive.

Q. What day did you make it on? A. I don't remember the date. It is quite a while ago.

Q. Well, what did the 308 indicate? A. That indicated the print order from this lot.

Q. You mean the number of pieces? A. Yes.

Q. 380 pieces, which you changed to 209 pieces; is that correct? A. Yes.

Q. Now, just read the exact words to me which show that if any particular merchandise was delivered to the Bamford Company. Just read the words which say that. A. April 17th, order 147, 500 pieces, 985-6/8 yards, on memorandum 65.

Q. Where do you see that on memorandum? A. Right here.

Q. Where did you say? Memorandum number, that is it? A. Yes.

Q. Right? A. Finished by Bamford Brothers. That was delivered to them.

Q. Please do not interpolate your own conclusions. Read the words to me. Finished by Bamford Brothers? A. Yes.

Q. Does it give the date when it was finished? A. April 17th.

Q. April 17th? That just shows the date, doesn't it? A. Yes.

Q. Is that correct? A. There is the meaning of it.

Q. And the heading is goods returned; isn't that correct? A. Yes.

Q. That is the heading. And under the heading number of pieces it says 500, doesn't it? A. Yes, sir.

Q. Does not say 379, does it? A. No.

Q. It says 500, isn't that correct? A. Yes.

Q. Now, on the other side, under the heading goods received, the entry you pointed out to me, that is received by whom, by your concern or by Bamford? A. By Cramer & King.

Q. There you changed the number 380 to 209; isn't that correct? A. Yes.

Q. Is that right? A. Yes. There is another entry underneath that.

Q. There is another entry underneath there? A. Yes.

Q. Underneath there you have corrected the order April 22, 1923, 170? A. Yes.

Q. April 24, 1923? A. Yes.

Q. 170, adding two together you get 379? A. Yes.

Q. Is that correct? A. Right.

Q. Those were received by Cramer & King? A. From Bamford.

Q. From Bamford? A. After, yes, sir.

Q. I didn't ask you for your own idea. I am asking you what the book shows. A. All right. 379 received by Cramer & King from Bamford.

Q. After you got back the 500; is that right? A. No.

Q. I thought you said— A. These were sent to Bamford Brothers, not to Cramer & King. I didn't say that.

Q. When did you put in the words corrected order? A. You just—

Q. Don't instruct me. You are not the manager now. Just answer the question. When did you put the words in corrected order, April 24, 1923? A. When we got the letter from Piedmont to correct the order, whenever that was.

Q. Was it then you made the change from 380 to 309? A. Yes, sir, sometime around that time.

Q. Well, then, on March 22nd you really got 380 pieces, didn't you? A. No; the entry is not

March 22nd. It is April 24th, this whole business.

Q. Isn't this date March 22nd? A. This is for this first order here.

Q. Is this entry March 22nd, where you originally had 380 pieces? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. And you actually received those at that time; isn't that right? A. 379, yes.

Q. Now, you actually got 380 pieces, according to your records, not what you say now. Look at your records here. A. Yes, sure.

Q. Doesn't your record show that on April 22, 1923, you received from the Bamford Company 380 pieces? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you actually got them at that time? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, on April 24, 1923, you changed that record to show that on April 24, 1923, you got 170 pieces, then you struck out the 380 pieces and put 209; is that correct? A. Yes, sir.

Q. Now, all that you have here are figures, aren't they? A. Yes.

Q. Nobody could understand these without your explanation of them; isn't that right? A. Yes; that is what it is there for.

Q. Is that correct? A. Yes, sir.

PHILIP EDHOLMES, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Edholmes, I think you said yesterday that you knew that 500 pieces of silk were sent to

Cramer & King to be processed in March, 1923? A. Yes, sir.

Q. Now, do you know of your own knowledge how many of those pieces were returned either by Cramer & King or by anybody else to your company? A. Why, Cramer & King returned 291 pieces to us, and Bamford Brothers returned 121.

Q. Making a total of pieces returned of how many? A. 412 pieces.

Q. 88 pieces that never came back? A. No, sir.

Q. Now, do you know the fair market value of those 88 pieces on or about March 3, 1923? That calls for a yes or no answer.

Mr. Prince—I object. The witness has not shown he has any qualifications. There has been no proper foundation laid.

The Court—He may answer this question yes or no, if he knows.

The Witness—Yes.

Q. Upon what is your knowledge based? A. Upon records and books.

Q. Well, what is your position with your firm or house? A. Assisting manager.

Q. Will you say whether or not you have any knowledge of the market prices of silks handled by your company?

Mr. Prince—I object to that; there has been no proper foundation laid.

The Court—I will permit the question.

The Witness—I do.

Q. Will you say whether you did have in July, 1923? A. Yes.

Mr. Prince—Same objection.
The Court—Permit it.

Q. How did you acquire that knowledge? A. From my experience.

Q. What has been your experience in the silk business, silk trade? A. In what respect?

Q. Manufactured goods, and with reference to their value when manufactured. A. Well, of course—

Mr. Prince—You, personally, he is talking about.
The Witness—It is based on the market value of silk.

Q. I am asking you about your personal experience in the silk business. A. I handle them all day.

Q. And have for how many years? A. Total of about six years.

Q. Do you keep in touch with the market value of manufactured goods such as these 500 pieces? A. Yes.

Q. What means do you take to keep in touch with the market value of them? A. Through the raw silk market.

Q. And more specifically, are there journals or papers published?

Mr. Prince—I object to that as leading and suggestive.
The Court—I will permit it.

The Witness—We get our daily quotations from our raw silk people.

Q. Is it your practice or isn't it to read those daily quotations? A. Yes, sir.

Q. From those sources or any other sources did you know on the 3rd day of July, 1923, what was the fair market value of these 88 pieces?

Mr. Prince—I object to "from those sources or any other sources."

Q. Well, from the sources you have mentioned. I confine it to the sources you mentioned.

The Court—That only requires a yes or no answer. I will permit it.

The Witness—Yes.

Q. What was it?

Mr. Prince—I object.

The Court—I do not think it has been shown yet that he is familiar with how the prices are fixed or anything else. He says he keeps familiar with the raw silk, but he hasn't shown what connection raw silk has with manufactured prices or if he sold any or bought any.

Q. What is the general nature of the business of your company?

Mr. Prince—I object to the general nature of the business of his company. The

question is what has the witness done, not what his corporation has done.

The Court—I will permit the question.

The Witness—We are manufacturers of silk, fabrics.

Q. That company buys silk in what state? A. Raw state.

Q. Manufacture it? A. Yes.

Q. Did you know in July, 1923, the value of goods manufactured by you within three or four months preceding that date, similar in kind and quality to these 500 pieces shipped by your company to Cramer & King? A. Yes, sir.

Mr. Prince—I object.

The Court—He has already said several times he knows.

Q. What is the source of your knowledge of those values? A. From our books.

Mr. Prince—He has said that from his books and records.

The Court—He says so. He answered the question.

Q. Do you know who makes the prices of manufactured goods?

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—I do.

Q. Now, how are they made?

New Jersey State Library

Mr. Prince—I object.

The Court—I will sustain the objection.

Q. Who makes them?

Mr. Prince—I object to that.

The Court—I will permit the question.

The Witness—Am I to state the party who makes the prices?

Q. Yes, in general, I mean, not in your place, but in general. A. On that cloth, particular cloth, Mr. Henry G. Fleitmann fixes the selling price. Is that the answer?

Q. That is with reference to goods manufactured by you? A. Yes.

Q. Now, I am speaking of goods generally of the same quality I mean as those manufactured by you. By whom is the price fixed at any given time?

Mr. Prince—I object to that, your Honor, up to the present time there has nothing been shown that this assistant office manager of Fleitmann & Company ever saw these prints, that he knows anything about these goods other than records that he may have in his office, and for him to come here and tell who fixes the prices of merchandise similar to this, when there is not any foundation laid for this, I say is highly inadmissible.

The Court—I do not think it makes any difference who fixes the prices.

Q. Do you buy or sell manufactured goods yourself? A. I sell manufactured.

Q. How do you learn at what price to offer them?

Mr. Prince—I object to that as immaterial.

The Court—It seems to me, Mr. Rosenkrans, we are going a good ways around to find out what information he had. You have not asked him yet whether he ever bought a yard of goods or ever sold a yard.

Mr. Rosenkrans—He says he sold.

The Court—He says the firm does.

The Witness—I do.

The Court—Proceed. Will you say whether or not you sell?

The Witness—I do sell.

Q. Goods manufactured by your firm? A. Yes.

Q. How long have you been selling them, such goods? A. About three and a half years.

Q. As a salesman of goods manufactured by your concern, do you know what the market value of the goods is that you offer for sale?

Mr. Prince—I object to that.

The Court—I think he has shown probable qualifications, but he has not yet shown whether he is familiar with the quality of these goods.

Q. Do you know what quality of goods these 88 pieces were?

Mr. Prince—I object to that form of question.

The Court—Permit the question.

The Witness—I do.

Q. What were they?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—It was a four thread, two ply, 80 pick, crepe de chine.

Q. What was their fair market value on July 3, 1923?

Mr. Prince—I object that there is no proper foundation laid, the witness has not been qualified, and in addition to that they must prove their loss from their loss from their books and accounts.

The Court—I think the test is the state of the alleged robbery in the condition in which these goods were at that time.

Mr. Rosenkrans—Then, I have to withdraw this witness for a moment.

The Court—Step aside.

MICHAEL CORTESE, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Cortese, I think you have said that on July 2nd, the day preceding this robbery, goods the property of the Piedmont Silk Company came from one department into your finishing department. A. Yes.

Q. How many rolls? I think you have already told us. A. There was eighteen rolls altogether.

Q. Of goods belonging to the Piedmont Silk Company? A. Not of the Piedmont. It was altogether.

Q. Did you examine the goods that belonged to the Piedmont Silk Company? A. What do you mean, examine?

Q. Look at them at all? A. Why, I looked at them on the tables, yes.

Q. Do you know in what condition they were?

Mr. Prince—I object to that. Merely looking on the table don't lay a foundation for a witness to testify as to their condition. The testimony is they were rolled up on rolls.

Q. Well, in what department, if you know, were they rolled on rolls? A. In the make-up department.

Q. Who is the head of that department? A. Ed Meima.

Q. I will withdraw you.

ED MEIMA, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Meima, did any goods the property of the Piedmont Silk Company go from your department to the finishing department on July 2nd? A. Yes, sir.

Q. In what state were the goods, I mean were

they on rolls or not? A. I delivered them to them on rolls.

Q. Before they are rolls in what state were they? A. I got them loose from the dye house, or when I got them back from the Bamford Brothers, why, then I rerolled them and they were in a perfect condition.

Mr. Prince—I move to strike it out.

The Court—I will permit it to stand.

Q. Were they in that condition on July 2? A. Yes.

Q. At the time that they were taken from your department to the finishing department? A. Yes.

No cross examination.

PHILIP EDHOLMES, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Now, Mr. Edholmes, will you tell us the fair market value of these 88 pieces on July 3, 1923?

Mr. Prince—I object to it, that there has not been a proper foundation laid, not the proper method of proof, and they must prove their loss from their books and accounts. In addition thereto, this witness has not shown any personal knowledge of this particular merchandise at the time they claim the goods were stolen, not shown he

has ever seen the merchandise, and he has not been properly qualified.

The Court—I think you will have to put it in the nature of a hypothetical question at this time. He did not see the goods.

Q. Now, assuming that 88 out of these 500 pieces left the mill of your company in March, 1923, and were delivered to Cramer & King to be processed, were in the same state as they came off your looms—were on July 3, 1923, in the same state as they were when they came off your looms; what would have been their fair market value—what was their fair market value on July 3, 1923?

Mr. Prince—I object to it on all the grounds urged to the last previous question and upon the additional ground that the supposititious question assumes a state of facts not in evidence.

The Court—The testimony shows they were not in the same state.

Mr. Rosenkrans—I am limiting the amount now. It would be worth more if the value had been increased by being processed.

Mr. Prince—They might be worth less.

Mr. Rosenkrans—I am asking him what they would be worth if they were laid in the mill of Cramer & King from March to July without being processed. What was the fair market value?

Mr. Prince—I object. In the first place, this witness has not qualified as an expert in that respect. All he has said he did was

for three and a half years he sold manufactured merchandise at prices fixed by Mr. Fleitmann, the head of his concern. Now, that is as far as he has ever gone. He has neither bought nor sold merchandise in the condition in which they are asking the question now. Now, this was merchandise which was in a different condition than he is asked to testify about. In addition to that, your Honor, the policy provides that they must prove their loss from their books and accounts, not by oral testimony of a witness. The evidence is not competent upon any theory.

The Court—I do not think he has shown qualifications to testify to that kind of goods. I will sustain the objection.

Q. Assuming that these 88 pieces, a part of a lot of 500, delivered by your company to Cramer & King in March, 1923, to be processed, had been dyed and finished and were on the 3rd day of March, after being dyed and finished, in a perfect condition, what was their fair market value upon that day?

Mr. Prince— I object.
The Court—I will permit it.
The Witness—$1.55.

Q. Per yard? A. Per yard.

Cross Examination by Mr. Prince:

Q. Now, are you with the Piedmont Silk Mills or with Fleitmann & Company? A. Piedmont

Silk Company—Fleitmann & Company are factors, commission house.

Q. But they still have employees, haven't they? A. Exactly.

Q. What is that? A. Surely.

Q. Yes. Now, all merchandise sold by the Piedmont Silk Mills the selling price is fixed by Mr. Fleitmann of Fleitmann & Company; isn't that right? A. Why, Mr. Fleitmann is the owner of Piedmont Silk Company; it is a private account of his own, it is his own account, exclusive of Fleitmann & Company.

Q. What do you mean? A. They are factors. They are the commission house for Piedmont.

Q. On every piece of merchandise sold by Piedmont Silk Company, Fleitmann & Company get a commission; that is correct? A. That is it.

Q. And Fleitmann & Company does the banking for Piedmont & Company? A. Exactly.

Q. That is what you mean by factor? A. Factor, commission, yes.

Q. And the commissions paid to Fleitmann & Company for their service to the Piedmont Company is added to the selling price of the merchandise sold by Piedmont? A. Yes.

Q. Is that correct? A. Yes.

Q. What is that commission? A. I couldn't tell you offhand.

Q. What is that? A. I couldn't tell you offhand.

Q. No idea? A. No, sir.

Q. Now, in taking the market price of this merchandise, did you state the selling prices at which you sold similar merchandise? A. The selling price.

Q. The selling price. A. Including commissions and discounts—shrinkage.

Q. And all other charges; is that correct? A. Shrinkage, yes.

Q. Now, that is not a price at which this merchandise could have been replaced by Piedmont Silk Company, is it? A. Be replaced in the raw or the finished state?

Q. No, in its finished state. A. I don't understand the way you phrase that.

Q. I mean this: If the Piedmont Company had bought the merchandise in the raw state and then had it processed—now, stop at that point—the price would not have been $1.55 a yard, it would have been less; isn't that correct? A. If it had bought the goods on the outside?

Q. Yes, as they ordinarily do?

Mr. Rosenkrans—I object.

The Witness—We don't buy any outside. We manufacture it.

Mr. Rosenkrans—I object on the ground it is immaterial under the terms of this policy. What this insurer is liable for is the actual cash value of the goods stolen at the date that it is stolen.

Mr. Prince—Well, since when does that become market price? I always thought cash value was replacement value.

Q. What did you intend to say, the price would have been less than $1.55 a yard; isn't that correct?

Mr. Rosenkrans—I object.

The Court—Which provision of the policy is that mentioned in?

Mr. Rosenkrans—Under "Company not liable"—first, it is under "Special Agreement, AB (1)."

The Court—I will permit the question.

Mr. Rosenkrans—Exception.

Q. Do you understand it now, Mr. Witness? A. Yes, but we do not buy, so it is very hard for me to state.

Q. Do you know what that value is, or don't you know? A. I couldn't tell you offhand, no, sir.

Q. What is that? A. I couldn't tell you offhand.

Q. That price would be less than $1.55 a yard, wouldn't it? A. It would be if you didn't buy from a commission house, I will say yes. But there is a yes or no to that; I could not answer that.

Q. You say that the selling price of this particular merchandise on July 2nd or 3rd, 1923, was $1.55 a yard; is that correct? A. I say that would be the price, $1.55.

Q. That was the price, not would be. A. $1.55 was the established price on that cloth around that time.

Q. Around that time? A. Yes, around July.

Q. No; we don't want to know around. A. Well, on that time.

Q. We want to know on July 3, 1923. Will you say that was the selling price on that day? A. Yes.

Q. Now, $1.55 included the commission for

Fleitmann & Company and all these other charges you have stated here, too? A. Exactly.

Q. That had been added to the price which had been paid for the merchandise in the raw state, plus completely processing the merchandise and returning it to you; is that correct? A. Yes; our selling price.

Q. That was your selling price? A. Yes.

Q. Now, had you ever bought in your experience any merchandise in the raw state and then had it processed? A. No, no,

Q. As a matter of fact, did you ever see any part of these 88 pieces? A. Why, yes.

Q. You, yourself? A. Of these 88 pieces?

Q. Yes. A. No, I never saw them.

Q. Ever see any part of the 500 pieces in question? A. I saw the whole lot as a whole before going to the dyer.

Q. What did you see? A. I handled the pieces myself.

Q. How many pieces did you handle? A. 500 pieces.

Q. You counted them yourself? A. I counted them myself.

Q. You counted 500 pieces yourself? A. Yes.

Q. That was part of your duty? A. That was—I assissted in that, but I did it.

Q. Now, I ask you whether you did it yourself? A. I did it.

Q. Who assisted you? A. Mr. Prentiss.

Q. Who was he? A. He is the manager.

Q. Did you personally count 500 pieces or did Mr. Prentiss count some of them? A. I personally counted them.

Q. What did he do? A. He assisted me to load up the trucks.

Q. You mean the two of you loaded up the trucks? A. Going down to our entry department.

Q. You mean you and the manager of your department put this merchandise on the trucks? A. Yes, sir; that is, hand trucks.

Q. What did you say your position was with this concern? A. Assisting manager.

Q. Assisting manager? A. Assisting manager.

Q. Of what particular department? A. Piedmont Silk Company.

Q. What particular department? A. Well, our New York office, our selling department.

Q. Your selling office? A. Yes.

Q. Where is that office? A. 356 Fourth Avenue.

Q. How many people are there employed there? A. In our department?

Q. Yes. A. At the present time?

Q. In New York where you work? A. At the present time?

Q. No, July, 1923? A. Altogether? You mean salesmen?

Q. Yes. Well, exclude the salesmen. You mean salesmen that go out on the road? A. Out on the road and New York City.

Q. No, exclude those. A. Just in the department, excluding the salesmen?

Q. Excluding?

The Court—Excluding the salesmen upon the road, he said.

The Witness—And New York?

Q. Yes. A. I have to think. There were five.

Q. How many of these five were under your supervision, any of them? A. Under my supervision?

Q. Yes. A. Why, the stenographer.

Q. Yes. A. And one of my assistants. He was on his vacation.

Q. Who else? A. Well, all were under me except the manager.

Q. All were under you and the manager? A. And Mr. Fleitmann, the owner.

Q. Now, when you said on your direct examination that this was four thread, two ply, 80 pick crepe de chine, that was from something you read in some records or books? A. No; that is not correct.

Q. Well, that is what you say in the raw state? A. Why, I have done both manufacturing and I have done—

Q. I didn't ask you that. I am asking you about these 500 pieces? A. I am talking about 500 on a similar cloth, very similar cloth.

Q. Not similar cloth. We are not talking about your general experience. Is that what you base your answers on your direct examination on, on similar cloth? A. No; on the very same cloth. We have the same cloth manufactured day in and day out.

Q. I am not talking about other cloths, sir. Is that what you based your direct testimony on, on other lots of the same kind of merchandise? A. Well, that is our standard construction on that cloth.

Q. I didn't ask you that. Please answer the question. A. Well, I will hear the question.

Q. We will get along much faster. A. Let me hear the question.

Q. That would be a good idea.

(Question repeated by the stenographer.)

Q. Now, when you said this was four thread, two ply, 88 pick, on what did you base your konwledge? A. Why, I dissected—

The Court—He wants to know whether you saw this silk yourself.

The Witness—Yes, I have seen the silk myself.

Q. Did you examine to determine whether there were four or more threads? A. Why, several times I have examined.

Q. No, I am talking about this particular 500 lot. A. I could not say that I did.

Q. Did you examine to see whether it was two ply, 80 picks? A. At times, yes.

Q. No, I am talking about this particular 500? A. No, I did not.

Q. All you did was to load it on the hand trucks? A. Yes.

Q. And did you count the number of pieces or did you get that from the records? A. I counted the number of pieces.

Q. That is it, you counted 500 pieces and just loaded it on the trucks? A. Yes.

Q. That is the last you saw of this merchandise, any of it? A. I saw some of it come back in the finished state, part of it.

Q. That is all you have ever seen about the merchandise; is that correct? A. Well, I did not see it at Cramer & King. After it left the house I didn't see any more of it, no.

Q. That is all you saw about the merchandise that you have described; is that correct? A. Why, yes.

Mr. Prince—Now, your Honor, I move to strike out the witness' answer where he has attempted to state the market value, upon the ground that it clearly appears that it was not the market value, that he had no knowledge of the merchandise, and that there has been no proper foundation laid, not within the terms and conditions of the policy of insurance.

The Court—What do you say, Mr. Rosenkrans, as to the quality of the merchandise?

Mr. Rosenkrans—I will ask the witness a question or two.

Redirect Examination by Mr. Rosenkrans:

Q. At the time these 500 pieces were being manufactured by the Piedmont Company, do you know whether they were manufacturing goods of any other quality or kind?

Mr. Prince—I object. That assumes they manufactured it. There is no testimony here they manufactured these 500 pieces. The testimony is they had 500 pieces in the raw and that it was sent to Cramer & King to be processed. Now, counsel assumes that was manufactured by this concern.

Mr. Rosenkrans—I understood they had.

Q. Were these 500 pieces manufactured or purchased? A. Manufactured.

Q. By Piedmont Silk Company? A. Yes.
Q. Where? A. Chambersburg, Pennsylvania.
Q. Now, at the time that they were manufacturing this lot of 500 pieces, were they manufacturing silk of any other sort or kind or quality? A. Yes.

Mr. Prince—I object to that unless this witness shows some knowledge.

The Court—Unless he shows personal knowledge.

Q. Could you tell in March, 1923, by a casual inspection of the goods whether this 500 piece lot was of the sort that you have described it here to be?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—Yes, I knew that they were the regular quality, 1204, 500 pieces.

Q. And in preparing for shipment at Cramer & King did you make such a casual inspection of it? A. Every piece.
Q. All right.

The Court—What is quality 1204; what does it mean?

The Witness—Crepe de chine. That is our quality number.

The Court—What about the other stuff, four ply, two thread, 80 pick?

The Witness—That is the construction of that quality.

Q. You can tell, generally speaking, the construction of the silk by a casual inspection of it?

Mr. Prince—I object. It is apparent to everybody that you cannot tell that.

The Court will take judicial notice of that. How can you tell by a casual inspection the number of threads?

The Court—Do not testify now. Proceed. I will allow the question.

The Witness—Upon examination.

Q. Did you make an examination of these 500 pieces or any one or more of them by which you could tell whether or not it was of that construction? A. Well, I did not examine the 500; I did not examine any particular piece of the 500. I could tell by hand that they were all of that one quality, the only quality made of that sort.

Mr. Prince—I move to strike it out.

The Court—Strike out the only quality made of that sort.

Q. Would you say that you could tell by handling it that it was of that general construction?

Mr. Prince—I object. He didn't say anything of the kind.

The Witness—Yes.

The Court—Sustain the objection. It is leading.

Q. How do you know that these 500 pieces were of the construction that you have indicated?

Mr. Prince—I object. He didn't say that he knew.

The Court—I will permit the question.

The Witness—Why, I handled each individual piece, and each individual piece has its own hand ticket; upon the hand ticket is marked the quality, and I examined each hand ticket on each piece and felt the quality of each individual piece.

Q. Now, were you at the time accustomed to handling goods and its construction? A. Yes.

Q. How often would you handle goods of the same construction? A. Every day.

Q. Over what period of time had you handled it? A. Ever since I became connected with the Piedmont.

Q. That is through a course of several years ago? A. Yes, sir.

Mr. Prince—That is three and a half years ago?

The Witness—Yes.

Q. How long had you been with the Piedmont Silk Company in March, 1923? A. About two years.

Mr. Prince—1923,—we are in 1925 now. You said three and a half years altogether.

The Witness—I said four years. Selling for three and a half.

Q. Since you began to be employed by them until March, 1923, you handled silk and its construction? A. Yes.

Q. With what frequency? A. Every day.

Q. When you say these 500 pieces were of a certain construction that you have described, is that statement based upon any experience that you acquired through the two years preceding that time during which you had handled silk of this construction? A. Yes.

Mr. Rosenkrans—Now, I think he is qualified.

Re-cross examination by Mr. Prince:

Q. You said that on this particular 500 pieces you looked on the tickets on the merchandise; is that correct? A. Yes.

Q. And that on the tickets it said lot 1204? A. Quality 1204.

Q. In order to determine the quality you had to look at the tickets; is that correct? A. Well, I wanted to see that the ticket—

Q. That is what you did, isn't it, looked at the ticket and saw the quality there? A. I first felt the quality and then looked at the ticket to see that the quality was marked correctly.

Q. You want us to understand that you felt each and every one of these 500 pieces of merchandise before you put it on these hand trucks? A. Exactly.

Q. Now, what did you mean a few moments ago when you said in order to determine the number of threads and the ply and the number of picks you had to make an examination of it? A. Yes.

Q. What do you mean by that? A. Dissection.

Q. What is that? A. Dissection.

Q. Dissection? A. Dissection.

Q. In other words, you take a piece of the merchandise and take it apart? A. Yes.

Q. And count the number of threads? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. You did not do that with any of these 500 pieces? A. No, I did not.

Q. Isn't that correct? A. That is correct.

Q. In order to determine the number of threads and the plys and picks it is necessary to make the dissection you just talked about, to do it accurately and correctly? A. To do it accurate and correctly, yes.

Mr. Prince—I press my motion.

The Court—Deny the motion.

JOSEPH PELEGRINI, sworn. (Recalled.)

Direct Examination by Mr. Rosenkrans:

Q. Mr. Pelegrini, I think that you said yesterday that you obtained for Cramer & King the Piedmont Silk Company as a customer? A. I did.

Q. About when? A. Why, about 1922. I couldn't say the exact month.

Q. You were representing the Cramer & King Company? A. I was.

Q. Who represented the Piedmont Silk Company? A. I did.

Q. The Piedmont Silk Company? A. I did.

Q. Who represented the Piedmont? A. Mr. Henry Fleitmann and Mr. Prentiss.

Q. Now, as a result of your conversation with those men at that time, will you say whether or not Piedmont Silk Company became your customer? A. Yes, sir.

Q. The customer of Cramer & King? A. Yes.

Q. Now, so far as you know, what relation had the subsequent shipment of goods by Piedmont Silk Company to Cramer & King to that conversation between you and these gentlemen?

Mr. Prince—I object to this as immaterial, irrelevant, and incompetent.

The Court—They said yesterday the agreement was in writing.

Mr. Prince—Just what he said.

Q. When you said yesterday, Mr. Pelegrini, that the agreement between the Piedmont Silk Company and Cramer & King was in writing, just precisely what did you mean?

Mr. Prince—I object to that explanation. what he meant.

The Court—I will permit it.

Mr. Prince—Yesterday or the day before, —I don't know when it was any more—one of those two days; the trial has gone along so long it is impossible for me to fix it,—he was asked whether the original arrangement between Cramer & King and the Piedmont Silk Company was in writing, and the witness said, "Yes." Now it is not for this witness to interpret a written agreement as to what it means.

Mr. Rsenkrans—I am quite sure this witness said no such thing.

The Court—Yes. I had it in my notes, the agreement was in writing.

Mr. Rosenkrans—The original agreement between Piedmont Silk Company and Cramer & King?

Mr. Prince—That is what he said.

Q. Do you wish to change that statement, if you made it?

Mr. Prince—I object.

The Court—He may change it if he wants to, I suppose. I will permit the question.

Q. Do you wish to change that statement, that the original agreement between Cramer & King and Piedmont Silk Company is in writing or was in writing, if you made any such statement? A. Yes.

Q. Well, was the original agreement in writing between Cramer & King and the Piedmont Silk Company?

Mr. Prince—I object to it.

The Court—I will permit it.

The Witness—No.

Q. Who made that original agreement? A. Mr. Henry Fleitmann & I.

Q. What was it?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—He gave me 500 pieces to be printed on five Egyptian designs.

Q. I am talking now about, not the order for 500 pieces, unless that was your first order, but I am speaking about the time when you first began to do business with the Piedmont Silk Company.
A. Oh,—
Q. Or if you had any conversation with reference to these 500 pieces, tell us about that.

Mr. Prince—I object.

The Witness—He gave me instructions to print 500 pieces.

Mr. Prince—The first question was whether the original agreement was in writing. Now he is asking something else. Do you withdraw the other question?

Mr. Rosenkrans—Yes, I will withdraw it.

(Recess.)

By Mr. Rosenkrans:

Q. What conversation did you have at any time or at the time the arrangement was made for the shipment of these 500 pieces to the Piedmont Silk Company and Cramer & King?

Mr. Prince—I object to that. The agreement was in writing.

The Court—Now he says it was not in writing.

Mr. Prince—I submit that is not the proper method of proving an arrangement, in any event. If the purpose of these questions is to show that there was some agreement to be liable in case of loss by burglary, and I dare say that is the purpose of this,

that is not the proper method of proving it, and that would not be binding in any event upon the insurance company.

The Court—I will permit the question.

The Witness—Why, there was a question asked me by Mr. Henry Fleitman as to whether we were insured against fire and theft, and I said, "Yes!" He then gave me the 500 pieces, or gave me instructions to print 500 pieces on five patterns, putting 100 pieces on each of the five patterns. I then gave him a price for the printing of same.

Cross Examination by Mr. Prince:

Q. Did he give you the order in writing? A. Why, he gave me the verbal order.

Q. Did he give you an order in writing after you had the first talk? A. No.

Q. No writing at all? A. No.

Q. There was never any writing; is that what you say now? A. Yes; there was writing.

Q. Well, where is the writing? A. Why, the orders were sent to Cramer & King Company for printing.

Q. The orders were in writing, then? A. Yes.

Q. These orders were in writing after you had this talk? A. Yes.

Mr. Prince—I call for the production of those writings.

Mr. Rosenkrans—We have no such order. There is not any such order. There was an invoice.

Mr. Prince—The witness says there was.

The Court—You are calling on counsel, and he says there is no such order.

Mr. Rosenkrans—The invoice, the original of which we asked them to produce.

Mr. Prince—The witness has stated these orders were reduced to writing after he had this talk. That is not what counsel says.

The Court—That is what counsel said when you called for the production. If you are calling on the witness, that is different.

Mr. Prince—All right.

Q. When did you last see these writings? A. Why, I saw the invoices which are—

Q. When did you last see these writings you have talked about? A. Why, sometime in March, 1923.

Q. Well, were they handed to you personally? A. No, sir.

Q. Where did you see them in March, 1923? A. At the office of Cramer & King Company.

Q. In whose custody were they at that time? A. Miss Miller's.

Q. Is that the Miss Miller who was in Court here this morning and testified? A. Yes.

Q. Is she in Court now? A. Yes.

Mr. Prince—I make a motion, your Honor, that this testimony be stricken out in which he says that Mr. Fleimann asked him whether they were insured against fire and theft, upon the ground that any oral talk is merged in a written contract.

The Court—I will deny the motion.

Re-direct Examination by Mr. Rosenkrans:

Q. You have used the term orders, and you have used the term invoices. Do you distinguish between the two?

Mr. Prince—I object.
The Witness—There is no distinction.
Mr. Prince—I object.
The Court—Permit it.
The Witness—Invoices are orders.

MISS ELIZABETH MILLER, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Miss Miller, have you seen the paper that I show you before? A. Yes, sir, I have.

Q. When did you first see it? A. That is on the ninth—

Q. When did you first see this order or this paper? A. June 8th or 9th.

Q. Do you know how it was received? A. In the regular way.

Q. Well, through mail or how? A. How? Through mail.

Q. In general terms, what is it? A. An order from Schwarzenbach & Huber Company.

Q. What did you do with it upon receiving it —file it? A. No, it was not filed.

Q. Well, where was it placed? A. In Mr. Van Hoff's. Wrote this out and then it was typed.

Mr. Prince—Who is Mr. Van Hoff?

Q. Who is Mr. Van Hoff? A. One of the clerks in that office.

Mr. Prince—Cramer & King?
The Witness—Yes.

Q. These attached brown papers with the typewriting and with figures in red ink, have you seen those before? A. Yes, sir.

Q. What are they? A. Those are invoices for the pieces.

Q. When were they received? A. Dates stamped on the invoice.

Q. June 12th, 1923? A. Yes.

Q. Will you say whether or not they were listed in the office of Cramer & King as part of their regular system of bookkeeping? A. Yes.

Q. And the conduct of their business? A. Yes.

Mr. Rosenkrans—I offer them.

(Mr. Prince examines papers.)

Mr. Rosenkrans—Now, the Rose Silk Company, have you the original papers?

Mr. Prince—Just one minute. See if I can read these words here. Are these the original papers you received from Schwarzenbach-Huber & Company in reference to the merchandise referred to therein?

The Witness—Yes.

Mr. Prince—Is this the first paper you received about this matter?

The Witness—Yes.

Mr. Prince—Any changes been made in them since you received them or any additions or substractions to them?

The Witness—Only this writing.

Mr. Prince—You mean the writing in red ink?

The Witness—Yes, and our order number.

Mr. Prince—And this red ink or additions; is that correct?

The Witness—Yes.

Mr. Prince—I object to them, excepting on the ground that they are not records of Cramer & King Company. There is no proof of the contents and no foundations to show these various amounts of merchandise were received and that this witness knows about it.

The Court—I will admit it.

(Paper marked Exhibit P-44.)

Q. I show you another paper entitled Mill Order 2555 and ask you in whose handwriting this is or who made it. A. Who typed it?

Q. Who typed it? A. I typed that order.

Q. Did you type it as part of your regular work as bookkeeper or clerk for Cramer & King in accordance with their system of keeping books? A. Yes.

Mr. Rosenkrans—I offer it

Q. Did you type it as of the date it bears? A. Yes.

Q. 6/13/23? A. The date of the order is the date it was typed.

Mr. Rosenkrans—I offer it.

Mr. Prince—Is this an exact copy of the original order?

The Witness—Yes.

Mr. Prince—In every respect?

The Witness—Yes, sir.

Mr. Prince—Where is the original?

The Witness—This is the original.

Mr. Prince—What is that?

The Witness—Unless I made any mistakes in typing it.

Mr. Prince—Plaintiff's Exhibit 44 is the original of this; is that correct?

The Witness—Yes, sir.

Mr. Prince—One you hold in your hand?

The Witness—Yes, sir.

Mr. Prince—I object to the duplication of it if she has got the original of it. What do you want a copy of it for?

The Court—What is the purpose of it?

Q. This paper headed Mill Order 2555, what is that paper? A. That is our copy of the order.

Q. Where was that placed? A. In our books.

Q. Which book? A. Our order book.

Q. Was the order book in which mill order 2555 is a part, kept by you in the course of your regular duties as clerk for Cramer & King and in accordance with their system of keeping books? A. Yes.

Mr. Rosenkrans—I offer it as a record and an account of Cramer & King relating to this customer.

Mr. Prince—One is a copy of the other. Are we going to encumber this record?

The Court—I will admit it.

(Paper marked Exhibit P-45.)

Q. Now, Exhibit P-44 and Exhibit P-45 relate to the goods of what customer? A. Customer number 6.

Q. Who was that? A. Schwarzenbach-Huber Company.

Q. Is that fact shown upon P-6 which was identified yesterday as the customers' list? A. Yes, sir.

Q. Where? A. Sixth one from the top.

Q. I show you paper dated 6/14/23 and ask you who typed that paper? A. I typed this paper.

Q. Whose goods does that relate to? A. Customer 29, Rose Silk Mills.

Q. Does the fact that the Rose Silk Company was listed on your customers' list, Exhibit P-6, as a customer number 29 appear upon that list? A. Yes, sir.

Q. Did you make this paper dated 6/14/23 on the date that it bears? A. Yes, sir.

Q. As part of the regular system of bookkeeping then maintained by Cramer & King? A. Yes, sir.

Q. What is this? A. That is our order.

Q. It was placed where? A. It was put in our books.

Q. Your order book? A. Yes.

Mr. Rosenkrans—I offer it.

Mr. Prince—May I have it? You made this copy from the original order you got from Schwarzenbach-Huber & Company?

The Witness—The Rose Silk Mills.

Mr. Prince—All right. My mistake. The Rose Silk Mills.

The Witness—Yes, sir.

Mr. Prince—Where is the original order?

The Witness—I don't know who has the original.

Mr. Prince—Have you got the original order of this, Mr. Rosenkrans?

Mr. Rosenkrans—No; we haven't got it.

Mr. Prince—When did you last see that original order?

The Witness—When I put it on file.

Mr. Prince—When was that?

The Witness—That would be right after the order was typed and checked off and put on file.

Mr. Rosenkrans—On what date?

Mr. Prince—The witness understands that without interpretation.

Mr. Rosenkrans—Maybe she can refresh her recollection.

Mr. Prince—You are not going to testify if I can help it.

By Mr. Prince:

Q. Miss Miller, the date is what I want. A. The date it was put on file?

Q. Yes? A. Well, immediately after checking up.

Q. No, the date. Give me the date from your recollection. A. Well, I saw that order.

Q. All right. You saw the order; now, could you say the date on the order? A. Yes.

Q. Tell me the date, then? A. That is 6/14.

Q. 6/14? A. Yes.

Q. That is how you remember the date? A. On that order, yes, sir.

Q. When did you last see that original order at

the place of business of Cramer & King; a few days ago? A. No, I have not.

Q. When did you last see it? A. I haven't seen it since I put it on file.

Q. And this paper which has been offered in evidence is an exact copy of the original order; isn't that correct? A. Yes, sir.

Mr. Prince—I object to that upon the same grounds as I have as to these other similar records, your Honor, not upon the ground that it is a record of Cramer & King Company, but there is no proof of its contents and no proper foundation laid.

The Court—I will permit it.

(Paper marked Exhibit P-46.)

By Mr. Rosenkrans:

Q. Now, did you make any other records at any time in any books kept by you for Cramer & King relating either to these goods of the Rose Silk Mills or of this Schwarzenbach-Huber Company? A. I don't understand the question.

(Question repeated by stenographer.)

A. There is lots of other records. There is the bills and the invoices. There is everything relating to it.

Q. I show you a paper dated July 10, 1923. Did you type that paper? A. Yes, sir.

Q. State whose goods that relates to. A. Rose Silk Mills.

Mr. Prince—I object to it. July 10th is

after the alleged occurrence. They must be records kept at the time of the alleged loss. The loss was July 2nd or 3rd. This certainly is not competent.

Mr. Rosenkrans—That is right. That is so. That is all.

Cross Examination by Mr. Prince:

Q. Now, you have told us about the Rose Silk Mills and you have told us about Schwarzenbach-Huber & Company; what about the Piedmont Silk Mills? Did you get an invoice from them the same as these invoices here from the other two concerns, or orders? A. Yes, sir.

Q. Where are those original orders? A. I don't know.

Q. When did you last look for them? A. Looked for them last summer for Mr. Lundgren.

Mr. Rosenkrans—I object. It has already been shown, both by this witness and by the secretary yesterday afternoon, that the original invoices from this particular customer were delivered into the hands of Mr. Erb after this burglary and have not been seen since.

Mr. Prince—Now that counsel has by his statement prompted the witness I will proceed.

Mr. Rosenkrans—I object to it on that ground.

Mr. Prince—You did not object before, but you made a statement so the witness could find out what you had in your mind. I object to that.

The Court—What is that?

Mr. Prince—I object to that procedure.

The Court—Both counsel should address their remarks to the Court.

Mr. Rosenkrans—I did address myself to the Court.

The Court—Mr. Prince's statement seemed to be to counsel.

Q. Did you make an exact copy of that original order? A. Yes; we had it here from our books, the copy in our book.

Q. Let me see it. Is this an exact copy of it, or is that the duplicate original of it? Look at it, please. A. This is a copy of the original order I received from our customer.

Q. Now, which customer was that? A. Number 32, the Piedmont Silk Company.

Q. Is that an exact copy of it? A. Yes, sir.

Q. And that constitutes what pages? A. I think we counted six or seven this morning.

Q. That is Plaintiff's Exhibit 14; is that correct? That is in evidence. Is that right?

The Court—Well, I do not suppose she is competent to tell.

Mr. Prince—I refer to it so marked.

Q. Did you ever see that paper before that I show you?

Mr. Rosenkrans—I object. That identical paper, I suppose?

Mr. Prince—May it please the Court, I must object to that.

The Court—Address your remarks to the Court.

Q. Do you understand it? A. I have never seen this paper before.

Q. Never saw that before in your life? A. No, sir.

Q. Never have? A. No, sir.

Q. Did you ever see the original of it? A. No, sir.

Q. Have you ever received other orders from Fleitmann and Company or from the Piedmont Silk Company? A. I can't remember that.

Q. What is that? A. I can't remember that.

Q. They were always on their billheads, weren't they, the orders you got from the Piedmont Silk Company? A. Always the Fleitmann's billheads, you mean?

Q. Yes. A. Yes.

Q. Just like the one I show you? A. Yes.

Q. Look at it please. That is correct, isn't it? A. As far as I recall it is correct.

Q. That is your best recollection? A. Yes.

Q. Your best recollection is that prior to July 2, 1923, to the first order you ever got from Piedmont Silk Company, they were sent to Cramer & King upon the billheads of the Piedmont Silk Company or on billheads like the billhead which I show you; correct?

Mr. Rosenkrans—I object on the ground that it has not been shown that this witness was in the employ of Cramer & King when they got their first order from this Piedmont Silk Company.

Q. How long have you been in the employ of Cramer & King? A. About seven years.

Q. All right. Will you answer the other question, please? A. As far as I remember, the invoices were like that.

Q. I want your best recollection. That is correct, isn't it? A. Yes.

Q. There are two of them here; both the same. Is that correct? A. The billheads are the same, yes.

Q. I do not mean the typewriting in it, I mean the printed part. A. Yes.

Mr. Prince—I ask that they be marked for identification, just the printed part on these billheads, two of them.

(Papers marked D-11 for identification, two papers.)

Re-direct Examination by Mr. Rosenkrans:

Q. How many pieces are enumerated upon D-11 for identification?

Mr. Prince—I object to that. I did not refer to the contents of that paper at all.

The Court—Only the printed matter.

Q. Now I show you a paper headed Fleitmann & Co., Inc., for account of Piedmont Silk Company, and ask you to compare it with the D-11 for identification, and after comparing it, say whether or not the printed part of D-11 for identification is a counterpart of all billheads received by Cramer & King from Piedmont Silk Company prior to July 3, 1923.

Mr. Prince—I object to that. There is not any proof in this record, your Honor, that this second paper which has not been marked in any way, shape, or form, was received by Cramer & King, prior to July 2, 1923.

Mr. Rosenkrans—No; I didn't say it was. I don't think it was. I am asking whether or not, upon the comparison of a certain paper which I show her with D-11, she finds occasion to change in any respect the testimony that she has just given to the effect that D-11 is a—the printed part of D-11—is a counterpart in all respects to all other invoices received by Cramer & King from this customer.

Mr. Prince—That is the very proposition, your Honor. Unless they show that this second paper was received prior to July 2, 1923, there is no basis for comparison.

The Court—He is asking her if, after seeing that, she still says that is correct, if she knows.

Mr. Prince—He assumes in his question that this paper was received before July 2, 1923, and there is no evidence that indicates that to be a fact.

The Court—That is for the witness to determine upon seeing that. I will permit the question. You may answer that.

The Witness—This is like my copy.

The Court—Referring to what?

The Witness—The memorandum I got for that order.

The Court—I move to strike it out as not responsive.

The Court—Deny the motion.

Q. In what respects were other invoices or some of them received from Piedmont Silk Company by Cramer & King different from D-11 for identification? A. Well, this one I don't know anything about at all. I haven't anything to do with this one.

The Court—Referring to what?

Q. Referring to D-11 for identification? A. This one here. I haven't anything to do with that one.

Q. No. Now I am asking you in what respects have other invoices received prior to July, 1923, by your company from the Piedmont people differed from D-11?

Mr. Prince—If he means to call for the contents of this other paper by phraseology, your Honor, I object to the question upon the ground that he cannot get in evidence the contents of a paper which is not in evidence.

The Court—I think that is a good ground, Mr. Rosenkrans.

Q. Now, will you state whether or not this paper dated or bearing the number 12-20811 was or was not, in respect to its printed part, a counterpart of other billheads or invoices received from Piedmont Silk Company prior to that date? A. I don't remember that.

Q. All right.

By Mr. Prince:

Q. The paper which Mr. Rosenkrans showed

you is Fleitmann & Company, Inc., letterhead, and the words Piedmont Silk Company, Inc., are put at the head of that with a rubber stamp; isn't that correct? A. Yes.

Q. The one which I showed you, which is D-11 for identification, has the Piedmont Silk Company, Inc., printed in it in the same style of printing as the rest of the printing matter in the billhead; isn't that correct? A. Yes.

EMIL THIRSTEIN, recalled.

Direct Examination by Mr. Rosenkrans:

Q. You work for whom? A. Schwarzenbach-Huber & Company.

Q. In what capacity? A. I am manager of the department of progress control. That is what we call it. That is the shifting of goods from one place to the other.

Q. Do you know whether your company shipped to the plaintiff goods in the spring of 1923 to be processed? A. Yes, sir.

Q. What goods? A. Well, all kinds of goods.

The Court—He went over it yesterday as to one date, if that is the one you are interested in,—June 11th.

Q. Under date of June 11th, the pieces were shipped by your company to the plaintiff?

Mr. Prince—If he knows.

The Witness—I don't know altogether.

Q. Well, do you know a part of the order? A. I do.

Q. What parts do you know about? A. I know a part of 50 pieces of crepe de chine.

Q. Do you know of your own knowledge how many of those 50 pieces were returned by Cramer & King? A. I do.

Q. How many? A. 43 were returned.

Q. Do you know the value of the 50 pieces that were shipped by your company to the plaintiff on June 11th?

Mr. Prince—I object.

The Court—Yes or no.

Q. Yes or no? A. I know the value per yard.

Q. Yes. Upon what is your knowledge of the value per yard based? A. By the instructions of the department ahead of me.

Q. Had you any other means of ascertaining the value of this silk? A. I could if I wanted to look it up.

Q. Well, have you any knowledge gained through your experience by which you can fix at any time the price of manufactured goods belonging to your company? A. Possibly, yes.

Q. Now, how long have you been connected with the silk trade? A. With the silk trade, thirty-three years.

Q. Have you bought or sold silk during that time? A. I have not.

Q. Your work has been what in the silk trade during that period of years? A. Taking charge of stocks.

Q. Do you keep account of the current prices of silk in your stock? A. No, we do not.

Q. You do not? A. No, I do not. We have access to all the—

Mr. Prince—No, no, you have answered.
The Court—You have answered.
Mr. Rosenkrans—That is all.

Cross Examination by Mr. Prince:

Q. These 50 pieces of crepe de chine, did you pack them up yourself? A. I did not.

Q. You did not see them go out of your place? A. I did not.

Q. All you know about it is what somebody else told you or some records that you may have looked up? A. No, sir; by my own order they were shipped out.

Q. Well, do you mean you gave instructions to ship them out? A. I gave instructions to have them packed.

Q. Then somebody told you that had been done? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. That is equally true of the 43 pieces that came back; you did not examine them when they came back? A. No, but I know they came back.

Q. Because some one of your employees told you so; is that right? Isn't that right, now, please? A. I was not told. The invoices from Cramer & King show that, 43 pieces.

Q. The invoice from Cramer & King Company, is that the only way you know? A. Yes.

Mr. Prince—I move to strike out his testimony in regard to the sending of the 50 pieces of crepe de chine to Cramer & Com-

pany, and the return of 43 pieces, on the ground it is hearsay.

Mr. Rosenkrans—As to 50 pieces, that is all proved by the evidence.

The Court—Strike it out. What do you say about the 43 being returned?

Mr. Rosenkrans—He says that is based upon, partly upon the invoice sent in by Cramer & King, showing that 47 pieces only were delivered, and partly upon information which he gets from his department.

Mr. Prince—There is no such testimony as the letter, but even if it was, it would merely be hearsay.

The Witness—I would like to correct that.

The Court—He says he would like to correct that.

The Witness—I know that the pieces came back, because I was told by the man that received the pieces that they were here when the invoice was presented to me.

Mr. Prince—Now I press my motion.

The Court—What do you say, Mr. Rosenkrans?

Mr. Rosenkrans—Well, now, I would like to ask a question first.

By Mr. Rosenkrans:

Q. About how long has your company dealt with Cramer & King? A. Approximately twenty-four years, twenty-five years.

Q. Could you say whether or not in the regular course of business between these two houses an invoice accompanied goods redelivered by Cramer & King after being processed?

Mr. Prince—I object to it as incompetent, irrelevant, and immaterial and hearsay.

The Court—What do you say about this, Mr. Rosenkrans? He says that he bases this upon the fact that Cramer & King sent him the invoice. Now, of course, there are two questions involved in this suit; first, is as to extent of the liability of Cramer & King to the alleged customer. Now, of course, they have to prove that. And the extent of the liability as well as that part of the case. What do you say about this being admissible upon the first point, as to the standing of its customer with Cramer & King?

Mr. Prince—Well, there seems to be some force to that. Your Honor has presented a proposition to me squarely, and I think I ought to be frank, even though it may hurt my side of the case. They have not as yet proved any liability so far as this concern is concerned, Schwarzenbach-Huber & Company, in any way, shape, or form.

The Court—I am assuming that they do connect it up, of course.

Mr. Prince—Well, if they connect up, then I think as between Cramer & King and Schwarzenbach-Huber & Co. that an invoice of Cramer & King to Schwarzenbach-Huber & Company would be binding upon Cramer & King.

The Court—That is the point.

Mr. Prince—I am inclined to agree with your Honor, but I think it should be ad-

mitted and limited strictly to that proposition, and only for that purpose.

The Court—Well, that is the point to which I directed your attention, as to general admission.

Mr. Prince—I think in that respect your Honor is correct, and I am in error.

The Court—What have you to say about that, Mr. Rosenkrans? As to how it is binding upon the defendant company? As to the question suggested, I am inclined to think it is evidential as between Cramer & King and Schwarzenbach-Huber Company.

Mr. Prince—Of course, an invoice ought to be here. That would be the best evidence and not a statement of what the witness says.

Mr. Rosenkrans—You mean an invoice from Cramer & King?

Mr. Prince—To Schwarzenbach. That would be an admission against interest.

Mr. Rosenkrans—The 43 pieces, that would be including that. We will withdraw the witness for the present.

The Court—Well, I have to deal with this motion, I suppose. I will permit it to stand only on the relationship between Cramer & King and Schwarzenbach-Huber & Company, not to be considered by the jury as evidence binding upon the defendant.

Mr. Rosenkrans—One more question.

Q. What construction, if you have any knowledge of it, was these 20 pieces? A. Construction? No.

Mr. Prince—He has testified he did not see them.

The Court—Did you see it?

The Witness—I see thousands of pieces of that quality.

The Court—Did you see these pieces?

The Witness—No, not these particular pieces.

The Court—Strike it out.

OMAR CRAMER, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Where do you reside, Mr. Cramer? A. Glen Rock, New Jersey.

Q. With what business or house are you connected? A. Cramer & King Company.

Q. How long have you been connected with it? A. 1901.

Q. What position do you hold in it? A. As treasurer.

Q. How long have you held that position? A. Since 1901.

Q. Now, do you know Schwarzenbach-Huber Company? A. Yes.

Q. When did your acquaintance with it begin? A. About 1901 or 1902; about twenty-four or twenty-five years.

Q. Since 1901 have Cramer & King done business with Schwarzenbach-Huber & Company? A. Yes, sir.

Q. Continuously? A. Continuously.

Q. Now, will you say in answer to this question yes or no— A. Yes.

Q. Will you say whether or not at any time during that period you ever had any conversation with this company, Schwarzenbach-Huber & Company relating to your liability to obtain and maintain burglary insurance upon goods delivered by them to you to be processed?

Mr. Prince—I object.

Q. Yes or no? A. Yes.

The Court—Wait a minute. You see, he could not have a conversation with a corporation, Mr. Rosenkrans, in the first place, without dealing with any other question.

Q. Will you say whether or not at any time during the last twenty odd years you had any conversation with anyone representing Schwarzenbach-Huber & Company relating to an obligation on the part of Cramer & King to obtain and maintain a burglary insurance on goods shipped by that company to your company to be processed, against risk from burglary or theft?

Mr. Prince—I object to the question. In the first place it is leading and suggestive of the answer, and it has nothing to do with the issues in this case. We have in this case a written order.

The Court—I do not think it makes any difference whether he had a conversation agreeing to maintain burglary insurance.

Q. At any time during the period that you

have mentioned, Mr. Cramer, did you or did you not have any conversation with any representative of the Schwarzenbach-Huber & Company about burglary insurance?

Mr. Prince—I object to the question.
The Court—I will permit it.
The Witness—Yes.

Q. With whom was the conversation? A. With Mr. Thirstein.

Q. What position at the time did he hold with this house, if you know?

Mr. Prince—I object.
The Court—I will permit it.
The Witness—He gave the goods out, the silk out to the dyers and finishers and kept the books or these records.

Q. When was the conversation that you had with him? A. 1919 we took the burglary insurance out.

Mr. Prince—I object and move to strike it out.
The Court—Strike it out.

Q. What was the conversation that you had with this gentlemen that represented the other house? A. In January, 1919.

Q. Now, tell us what the conversation was; what you said and what he said.

Mr. Prince—I object to it as not competent or binding upon the insurance com-

pany; immaterial, irrelevant, and incompetent, and not having proper foundation, and calling for a conclusion.

The Court—I will permit it.

A. That conversation was as follows: There was quite some burglaries going on—

Mr. Prince—I object.

The Court—Tell us what the conversation was.

Mr. Prince—I move to strike it out.

The Court—Strike it out. What was the conversation?

The Witness—That we took burglar insurance out for all the goods which we have in our possession for protection.

Q. Who said that? A. I said that, without being asked.

Q. What did he say, if anything?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—It was satisfactory.

Q. I want you to recall as nearly as you can just what he did say in reply? A. "The arrangement is satisfactory."

Q. All right. Now, had you had burglary insurance to protect your customers prior to the date of that conversation?

Mr. Prince—I object to that.

Q. To protect this customer, Schwarzenbach-Huber & Company prior to that conversation?

Mr. Prince—I object.

The Court—What difference does that make?

The Witness—Yes.

The Court—Wait a moment. Do not answer when there is objection.

Mr. Rosenkrans—I am going to show that they acted upon the agreement then made.

The Court—He says he took it out.

Q. When did you take it out? A. December 11, 1919.

Q. Will you say whether or not you have maintained burglary insurance protecting your customers—for the protection of your customers—ever since that date?

Mr. Prince—I object.

The Court—I do not think it makes any difference. I sustain the objection.

Mr. Rosenkrans—All right.

Q. Now, you knew the Rose Silk Mills? A. Yes, sir.

Q. All right. That is all.

Cross Examination by Mr. Prince:

Q. You said on your direct examination that in January, 1919, you had a talk with Mr. Thirstein; is that correct? A. '19.

Q. What have you there in your hand, a paper

with some notes on it? A. No. It is a paper when we took the insurance out.

Q. I see. Suppose you just put that in your pocket, will you, please?

Mr. Rosenkrans—He is not obliged to do so.

The Court—He cannot look at it, of course.

Mr. Prince—I don't care whether he has it in his pocket or not, but I say he should not look at it.

Q. Now, had you been doing business with Schwarzenbach-Huber & Company before January, 1919? A. Yes.

Q. For how long a time before? For a long time before? A. Yes, sir.

Q. Now, you told Mr. Thirstein in January, 1919, without him asking you, that you were going to take out burglary insurance; is that correct? A. That must be 1920.

Q. 1920 that was? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. You told him in January, 1920, without him asking you anything about it that you were going to take out burglary insurance; is that correct? A. Yes, sir.

Q. He had not asked you to do that, had he? A. No.

Q. You took out burglary insurance, you say, on December 11, 1919? A. Yes.

Q. Is that correct? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. That is all.

Mr. Prince—I move to strike out the testimony of the witness, your Honor, in regard to his taking out of burglary insurance, upon the ground that there has been no fact proven to show any agreement with Schwarzenbach-Huber & Company to be liable in case merchandise was stolen or lost by burglary.

The Court—Well, I think I will let it stand. It does not show anything yet that I can see, but I cannot tell what the rest of the testimony will show, and I will let it stand for the present.

JOSEPH BUSH, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Bush, who are you employed by? A. Cramer & King.

Q. How long have you been in its employ? A. About eighteen years.

Q. What do you do for it? A. I represent them in New York City soliciting business.

Q. How long have you been doing that same work? A. About five years.

Q. Do you know one of its customers called the Rose Silk Mills? A. I do.

Q. Do you know who obtained that company as a customer for Cramer & King? A. Yes, sir.

Q. Who did? A. Myself.

Q. With whom representing the Rose Silk Mills did you talk at the time? A. Mr. Slifka.

Q. Do you know what office or position he held with the Rose Silk Mills at that time? A. He is one of the owners.

Q. Now, about when was the time that you first talked with him? A. Early part of 1922.
Q. Tell us what was said.

Mr. Prince—I object to it unless it is in relation to this alleged agreement.

The Court—I suppose you are trying to show some agreement with them. I will permit it.

The Witness—I went in there soliciting business, and they finally consented to give me a lot of goods to do for them, but before they sent the order out they asked me if they were protected from loss by burglary or fire. I told them yes. Then they sent us an order out for some goods.

Q. Now, can you tell us a little more in detail what you said and what the other man said? You have summarized it. Can you tell us? A. Well, Mr. Slifka asked me, were they protected from loss by burglary or fire.
Q. What did you say? A. I said, "Yes, sir."
Q. When did he ask you that question and when did you give that answer with reference to the time that he agreed to send you out an order; before or after? A. After he told me they gave me an order. Before he sent the order to the plant he asked me those questions, then he gave me an order.
Q. Have you any knowledge about that order from the Rose Silk Company or Mills dated June 14, 1923, 18 pieces? A. I don't remember the order, no, sir.

Cross Examination by Mr. Prince:

Q. What was the name of this man you talked about, Joseph what? A. Slifka.

Q. Slifkin? Was the Rose Silk Mills a corporation, do you know? A. I don't know if they are a corporation or not.

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

Q. You said Slifkin is one of the owners? A. There is two brothers and some other men.

Q. What he asked you was whether or not you had taken out a burglary insurance policy and fire insurance policy; is that correct? A. He didn't ask me if we took it out; they asked me if we was protected.

Q. Well, protected, did you mean whether you had taken out insurance? A. If we had it?

Q. If you had burglary insurance? A. Yes, burglary and fire.

Q. You said you had. A. Yes.

Q. That is all.

Mr. Prince—I move to strike out the testimony of the witness in reference to this protection by burglary and fire insurance on the ground that it does not show any agreement to protect the Rose Silk Company in that respect. I assume that is the entire evidence on that question.

The Court—I don't know. I cannot assume that yet. I have no right from foreclosing the plaintiff from producing other proof. I will deny the motion.

CHARLES McKINLEY, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Mr. McKinley, in the book kept by you which you have testified from heretofore, is there any entry made by you relating to an order of Schwarzenbach-Huber & Company for 20 pieces? A. Yes, sir.

Q. Will you find it?

The Court—That book in evidence, was it?

Mr. Rosenkrans—Yes; this particular page of it was, or pages.

The Witness—Yes; the customer placed the order 2555, 20 pieces.

Q. Was the entry under date of June 15, 1923, made by you in the regular course of your business? A. Yes, personally.

Mr. Prince—May I make a suggestion, to take out the various pages of your books and offer them, and agree that the witness will testify similarly as the testimony in regard to the other matters, and then you can offer it and the Court will rule and we can dispose of the matter and save about two hours?

Q. Now, in this book have you any entries relating to an order of 18 pieces from the Rose Silk Mills? A. Yes, sir.

Q. Will you find it?

The Court—The book is already in evidence, I understand.

Mr. Rosenkrans—I think only certain pages of it were marked.

The Court—You are offering different pages now?

Mr. Rosenkrans—Yes.

The Court—Let us see if we cannot shorten it up.

Mr. Rosenkrans—That is what I am doing now. I am dealing with the two remaining customers.

The Witness—Customer 29, order 5218, 18 pieces, June 21, 1923.

Mr. Prince—Why don't you offer those pages now? I will concede he will testify similarly as to those pages as he did in regard to the others.

Mr. Rosenkrans—I offer these pages in evidence.

Mr. Prince—I object to it on the same grounds as to the others.

The Court—I will admit them.

(Papers marked Exhibits P-47 and P-48.)

Q. Now, at any time did you anywheres make any entries besides these relating to these two orders, one of 20 and one of 18 pieces? A. Yes.

Q. Is that in some book other than this? A. Yes. It is in the carbon copy order sheet.

Q. Are these the entries that you refer to? A. Yes, sir.

Q. The one relating to the order of 20 pieces and the other the order for 18 pieces? A. Yes, sir.

Mr. Prince—I will concede he will testify as to this in the same manner that he did to the other similar papers.

Mr. Rosenkrans—I offer them.

Mr. Prince—I make the same objection.

The Court—Same ruling.

(Paper marked Exhibit P-49.)

Q. Now, does that complete the records that you kept respecting these two orders? A. Yes, sir.

No cross examination.

JOSEPH MEIMA, recalled.

Mr. Prince—I will concede he will testify as to these records the same as he did in regard to the other similar records.

Mr. Rosenkrans—Then, I offer them.

Mr. Prince—I make the same objection.

The Court—I will admit them.

Q. Point out which relates to those two orders, of the Rose Silk Mills. A. Customer 29, crepe de chine, black, 18 pieces. There is number 6, 2555 lot number, crepe de chine, tan, 10 pieces. 2555 for number 6, crepe de chine, 10 pieces of greig.

Mr. Rosenkrans—I offer them.

(Paper marked Exhibit P-50 and Exhibit P-51.)

Q. Did you ever make any other record at any time in respect to these lots of 18 and 20 pieces? A. For number 6, Schwarzenbach-Huber & Company?

Q. Yes, relating to this particular order. A. Make them after they are printed and washed.

Q. Did you make them? A. I make a record of that.

Q. And did you find it in this book of yours?

Mr. Prince—I make the same concession to these records, that he will testify as he did to the others.

The Witness—Here is one here.

Mr. Rosenkrans—I offer it.

Mr. Prince—Same objection.

The Court—Permit it.

(Paper marked Exhibit P-52.)

The Witness—2555 crepe de chine, 10 pieces of greig.

(Paper marked Exhibit P-52.)

The Court—If you are going to pick out a lot of them, let him pick them out down there. They can be marked a little later.

(Witness withdrawn.)

MISS ANN BUSH, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Are these records in your handwriting? A. Yes, sir.

Q. Entries made by you? A. Yes, sir.

Mr. Prince—I will make the same concession as to these records, your Honor.

Mr. Rosenkrans—I offer them.

Mr. Prince—Same objection.

The Court—They will be admitted.

(Papers marked Exhibit P-53 and P-54.)

Mr. Prince—I will make the same concession as to this paper.

Mr. Rosenkrans—All right, I offer it.

Mr. Prince—Same objection.

The Court—It will be permitted.

(Paper marked P-55.)

CHARLES CORNATO, recalled.

Mr. Prince—What do you want to prove by him?

Mr. Rosenkrans—The records in respect to these two customers.

Mr. Prince—I will make the same concession as to these further records that I did with the others.

Q. Will you find your records relating to these 18 or 20 pieces with reference to both houses? A. Yes.

Mr. Prince—I suggest this witness look for these accounts and then let us take another witness in the meantime.

The Court—If you have anything else we might as well go ahead.

The Witness—Customer 29.

Mr. Rosenkrans—I offer it.

Mr. Prince—Same objection.

The Court—Admit it.

Mr. Rosenkrans—That has already been marked Exhibit P-39.

Q. Can you find it? A. Customer 29.

Q. You take your books and we will get somebody else here. A. Customer number 6.

(Paper marked Exhibit P-56.)

The Witness—Customer number 6 again. You must have some more books with customer 29 in.

Q. You look through these books, will you, off the stand, not here. Take them back there, all of them. A. Here is customer number 6.

The Court—Take them in the side room.

Q. You pick them out. Not here. Take them in the side room there and pick them out and then come back when you are through.

(Witness withdrawn.)

JOSEPH SLIFKA, sworn.

Direct Examination by Mr. Rosenkrans:

Q. You are connected with what company? A. Rose Silk Mills.

Q. Have been for how long? A. Seven years.

Q. What are your duties? A. I am vice-president.

Q. What class of work do you perform besides? A. I am buyer and converting man.

Q. How long has your company done business with Cramer & King? A. Since 1922.

Q. Did you know who in your company arranged to do business with Cramer & King? A. I did.

Q. With what person representing Cramer & King was that arrangement made? A. Mr. Bush.

Q. Tell us what was said at the time by you and by him.

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—He solicited our business and when I was arranging to give him the first order I asked him whether he was fully covered by insurance against fire and theft, and he said he was, and then I proceeded and gave him the order.

Q. Will you say whether or not, acting on behalf of your company, you relied upon his assurance this his company was covered by insurance against fire and theft?

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—I did.

Q. You did rely? A. Yes.

Q. Now, do you know anything about an invoice or order sent by your company to this plaintiff company about the 14th day of June, 1923? A. Yes.

Q. What had you to do with that order, if anything? A. Well, I purchased the goods and gave the order for the dyeing of them.

Q. How many pieces of goods were there in that order? A. Eighteen.

Q. Do you know whether those 18 pieces of goods were delivered ? A. No, sir.

Q. Do you know whether they were sent from your place to be delivered?

Mr. Prince—I object. He says he doesn't know.

The Court—He is asking now whether he knows they were sent.

Q. I mean whether they were sent from your house to the house of Cramer & King?

Mr. Prince—I object. That means of your own knowledge, of course.

The Witness—They were not sent from my house, they were sent from a representative of my house.

Mr. Prince—I object and move to strike it out.

The Court—Strike it out.

Q. Do you know whether or not the Rose Silk Mills received from Cramer & King these 18 pieces?

Mr. Prince—I object to that. The witness can only testify from his own personal knowledge.

The Court—That is the only thing he can tell. I will permit it. Of your own knowledge.

The Witness—Not the entire lot.

Q. You mean they did not receive the entire lot? A. We did not receive the entire lot.

Q. How many didn't you receive? A. Nine pieces.

Q. What kind of goods were in this lot of 20 pieces?

Mr. Prince—I object to that unless it is shown he knows.

The Court—Haven't shown he ever saw them yet.

Q. Have you seen—had you ever seen these 20 pieces? A. Eighteen of them.

Q. Eighteen pieces.

Mr. Prince—You saw the 18 pieces?

The Witness—I saw the 18 pieces.

Q. What kind of goods were they? A. They were crepe de chine.

Q. Do you know what construction? A. Yes; they were two ply, three thread, 76 pick crepe.

Q. Do you know of your knowledge the market value of those 18 pieces? A. Yes, sir.

Q. Upon what is your knowledge based? A. Supply and demand.

Q. Well, do you watch the market? A. Yes, sir.

Q. What are the sources of your information as to the state of the market in respect to the price of this sort of goods? A. Well, we have the raw silk market and then we had the law of supply and demand that covers it.

Q. With reference to these two sources of knowledge, are you able from your experience to

determine the value of manufactured goods such as these 18 pieces? A. Yes, sir.

Q. You have been in the silk trade how long? A. Seven years.

Q. Now, will you tell us the fair market value of these 18 pieces on July 3, 1923?

Mr. Prince—I object to it. There has been no proper foundation laid.

The Court—I do not think he is qualified yet. It does not appear yet he ever bought or sold the articles or had anything to do with a yard of goods.

Q. Do you buy or sell goods? A. Yes.

Q. For how long? A. Seven years.

Q. Extensively? A. Well, I buy about two million dollars of merchandise a year.

Q. How much do you sell? A. Well, I personally do not sell. I supervise the selling.

Q. There are men selling under you? A. Yes.

Q. Who fixes the prices at which they are sold? A. I do.

Q. Now, on July 3, 1923, can you say what these 18 pieces were worth? Nine pieces were missing and were not there? A. Yes, sir.

Q. What these nine missing pieces were worth on July 3, 1923?

Mr. Prince—I object on the ground that the proper method of proving the loss of the plaintiff is by the books and accounts, and that this witness has not been properly qualified as to this particular merchandise; there is no evidence here that he ever saw these nine pieces in the condition in which

they were when it is claimed the merchandise was lost, and the witness has not been properly qualified; and incompetent, irrelevant and immaterial.

The Court—I will permit the question.

The Witness—A dollar a yard.

Q. How much? A. A dollar a yard.

Cross Examination by Mr. Prince:

Q. Was that the selling price? A. No, sir.

Q. What price was that? A. That was—our purchase price was lower than the market at the time.

Q. Naturally, the merchandise purchase was lower than the market? A. Replacement price for that merchandise would have been higher.

Q. You mean replacement price at the time you wanted to replace them? A. At the time of the loss. The goods were purchased two months prior to this loss.

Q. Did you personally see the pieces before they went to the plaintiff? A. I did.

Q. Where? A. At Charles Orleans and Joe Pikestein's place.

Q. How long before they went? A. Day before.

Q. You were not there when they were sent? A. No, sir.

Q. Never been out to the mill of Cramer & King in reference to this merchandise? A. No, sir.

Q. Never saw it out there? A. No, sir.

Q. Now, when the nine pieces came into your place did you see those nine pieces? A. Yes.

Q. Did you ever make an examination of the merchandise coming into your place? I do not mean just look at it. You cannot tell the number of threads and plys by just looking at merchandise, can you? A. You can approximately, but you cannot tell exactly.

Q. Yes; you can approximate it. Can you say whether it is three thread or four thread? A. That you can tell.

Q. By approximation? Never can be wrong about it? A. Not in that respect, not three or four thread.

Q. What about picks? A. That you could be wrong about.

Q. Materially? A. Could not be materially.

Q. You never examined the merchandise as to the number of picks, did you? A. Which merchandise?

Q. This particular merchandise? A. The nine pieces I got back?

Q. Yes. A. I never examined that in regard to picks, no.

Q. Of course, you have based your opinion upon the value upon the fact that they were two ply, three threads, and 76 picks; is that correct? A. Yes.

Q. Now, if there were more than 76 picks, then the value would be greater or less? A. Greater.

Q. What do the picks mean? A. Picks is the amount of thread per inch going across the piece of goods.

Q. The number of threads, what are they? A. Threads is counting the number of pieces of thread, yarn, per inch going from left to right on a piece of goods.

Q. The number of plys? A. Ply is the number of ends in the length of the goods, going lengthwise of the goods, called the warp.

Q. When you gave your opinion as to the value of this merchandise, you assumed that the merchandise was completely manufactured and processed; is that correct? A. No, sir, that is the price I gave you first in the raw state, the state I originally purchased it in.

Redirect Examination by Mr. Rosenkrans:

Q. If it was less than 76 picks would the price that you mentioned be less or more? A. Less.

Q. If it were above 76 picks it would be more? A. Above would be more.

Q. What is the lowest number of picks used in the construction of goods of this sort? A. There is no such thing.

Q. There is no such thing? A. There is no such thing.

Q. How far is the value affected by the number of picks in this class of goods? A. Well, each four picks is worth about two and a half cents, providing it is three thread or four thread, or rather, the ply is the same.

Mr. Rosenkrans—Well, there is one difficulty, if your Honor please,—here is a record which was marked in evidence with respect to a customer, a certain customer, but not in respect to the two customers that we have been dealing with this afternoon. If it is to be marked afresh, will it be marked now?

The Court—I don't understand.

Mr. Rosenkrans—Here is a book kept by

Cornato, and the identical page upon which appears a record relating to one of the two customers whose goods have been discussed this afternoon has already been marked for the Piedmont Silk Company. Now, the question is whether it is to be marked anew.

The Court—If it is in evidence I suppose it is there.

Mr. Rosenkrans—All right.

Mr. Prince—Once they are in evidence they are in evidence, that is all.

Mr. Rosenkrans—Yes.

FRANK LUNDGREN, recalled.

Direct Examination by Mr. Rosenkrans:

Q. Do not answer this question at first, at any rate, until the Court rules upon it. Do you know whether or not Cramer & King paid to the Piedmont Silk Company for the 88 pieces out of the lot of 500 which were not returned to them?

Mr. Prince—I object to it and ask for a mistrial.

The Court—The motion will be denied. I will deal with the question. I do not see that it has any point.

Mr. Rosenkrans—All right. I will withdraw the witness.

The Court—Anything else?

Mr. Rosenkrans—With the exception of the two New York witnesses, one from the Rose Silk Mills and the other from Schwarzenbach-Huber Company, we rest.

The Court—Well, why aren't they here now?

Mr. Rosenkrans—Well, we did not think we would be through.

The Court—Yesterday it was announced the defendant, even, was going to finish today.

Mr. Prince—I certainly expected to.

The Court—What is the nature of the testimony?

Mr. Rosenkrans—Both will be offered for the purpose of showing further we were engaged with both of these companies to maintain burglary insurance to protect goods while in our custody for processing against loss by robbery.

Mr. Prince—I do not propose to offer any evidence in contradiction of that fact—I mean directly. I haven't any such evidence.

The Court—I suppose it would do no harm, if we go any further, to hear their testimony. Well, with those two witnesses you rest?

Mr. Rosenkrans—Yes.

The Court—You may renew your application if they come. Proceed.

Mr. Prince—Renew what application?

The Court—Mr. Rosenkrans may renew his application to permit them to testify if they come while the trial continues.

Mr. Prince—In other words, the case for the plaintiff at the present time is rested?

The Court—Excepting those two.

DEFENDANT'S MOTION TO NON-SUIT

Mr. Prince—The defendant moves for a non-suit and for the dismissal of this action.

The Court—The only difficulty with your motion, as I see it, unless the plaintiff consents, is that you offered testimony in this case, and I suppose that precludes you from the motion for non-suit. But I suppose I might as well hear the subject matter now. The jury may be excused until tomorrow morning. (The jury retired.)

The Court—The rules require, Mr. Prince, that you shall state the grounds of your motion first, and then the argument afterwards is not taken down by the stenographer.

Mr. Prince—I wanted to say on that one question, your Honor, that the evidence admitted was admitted by consent. Now, I had understood that under the rules here that where evidence was admitted by consent the defendant was not precluded from making the motion. Of course, I don't know anything about it. The defendant moves for a non-suit upon these grounds: That the plaintiff has failed to show under the terms and conditions of the policy that there were visible marks of a forcible entry into the premises at the place of entry, as is required by the policy of insurance.

Upon the further ground that it clearly appears from the evidence of the plaintiff itself that it was required by the express warranties in the policy that there should be two private watchmen employed excusively by the assured, and that they would be on duty within the premises at all times when the premises are not regularly open for business while the policy was in force, and that the two private watchmen just described in the

clause that I had read, will make hourly rounds and record the same on a watchman's clock or signal connected with an outside central station at least hourly. Upon the further ground that the policy expressly provides that the proof of loss shall be filed with the defendant company within sixty days of the discovery of the loss and it does not appear in evidence when the proof of loss was filed with the defendant company, but merely that it was filed.

The Court—I understood when the case came up, I asked you something about it and you said there was no question as to time, as I recall it.

Mr. Prince—If the Court understood that, I will adhere to it. That was not my understanding of the matter.

The Court—I might be mistaken.

Mr. Prince—I said there would be no question but that a proof of loss had to be filed.

The Court—There was some question came up.

Mr. Prince—No; the question that came up was as to the notice of the loss. That is a different thing entirely. As to that I said there would be no question but that we had received notice and made an investigation; but that had nothing to do with the proof of loss. That is another condition which requires it must be filed within sixty days.

The Court—All right.

Mr. Prince—Upon the further ground that the policy requires that the business conducted by the plaintiff was that of silk dyers, and that it clearly appears in evidence that the business was not one of silk dyers but of other business. There has been a clear breach of that warranty.

The policy further requires that books of account should be kept by the assured, and kept in such a

manner that the exact amount of the loss can be accurately determined therefrom by the defendant, and it affirmatively appears here that there were no books and accounts which were maintained from which it could be determined that any loss had occurred.

Upon the further ground that this defendant was only liable to the plaintiff if the plaintiff is liable to the owner of the merchandise; and it clearly appears that there was no liability of the plaintiff to the alleged owners of the merchandise.

Upon the further ground that it does not appear that there was any value to the merchandise which is claimed was lost.

Upon the further ground that the plaintiff has not shown that the loss, if any, was not affected by the assured, any associate in interest or servant or employee of the assured, either as principal or accessory, as is required under the special agreement. The plaintiff has not shown that the merchandise was taken from the inside of the premises by any person or persons who shall have made violent entry into the premises by actual force and violence when the premises were not open for business, and of which force and violence there shall be visible marks upon the premises at the place of such entry by tools, explosives, electricity, or chemicals.

Upon the further ground that it has not been shown any yardage of merchandise alleged to have been stolen, from which any damages at all can be computed, in fact, no competent evidence of damages has been adduced in this case.

That there has been no evidence of any cash value at the time of the alleged loss.

And generally that the plaintiff has failed to

make out a cause of action under the terms of the contract.

The Court—That is probably pretty general, I am afraid, to be of any avail.

Mr. Prince—Well, I think I have been rather specific.

The Court—You have eleven grounds now. That ought to be enough.

Mr. Prince—If none of them is any good, I do not think the last one is any good. Now, your Honor, suppose I argue first the one which I think was the most flagrant violation of the terms and conditions of the policy. (Argues.)

(Adjourned until March 26, 1925, ten A. M.)

Paterson, N. J., March 26, 1925.

Trial of the cause resumed at ten A. M.

The Court—Now, if you have these two witness here you may call them.

HENRY T. FLEITMANN, sworn.

Direct Examination by Mr. Rosenkrans:

Q. Mr. Fleitmann, where do you reside? A. Westbury, Nassau County, New York.

Q. Do you know the Piedmont Silk Company? A. Yes. I am at the present time a director of it.

Q. In the spring of 1923, what office, if any, did you hold in that company? A. President and treasurer.

Q. Do you know Mr. Pelegrini? A. Yes, sir.

Q. In the spring of 1922 did you have a conversation with Mr. Pelegrini? A. Yes.

Q. Do you know whether he represented Cramer & King in that conversation? A. Yes, sir.

Mr. Prince—I object to that.

The Court—I will permit it.

Q. Will you relate the conversation you then had with him?

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—Why, he approached me on the question of sending some silk belonging to the Piedmont Silk Company to Cramer & King to be dyed. We had several conversations on the subject, and among them I asked him whether they were entirely covered by insurance, fire and theft and that sort of thing, and responsible for the goods while they were out there in process.

Mr. Prince—I object and move to strike it out. We ought to have the conversation.

The Court—Yes, the exact conversation we want. Give us the exact conversation, not what you gathered from it.

Q. What did he say in answer to your inquiry? A. He told me they were entirely covered by insurance.

Q. What did you say? A. I told him that I would investigate the company further and would send him the goods if they were entirely covered by insurance.

Q. Then what did you do ultimately? A. Ultimately we shipped him approximately, I think, 500 pieces of merchandise to be printed.

Q. Now, will you say whether or not, as representing the Piedmont Silk Co., you relied upon this statement that Cramer & King were fully insured as against burglary and fire in respect to the goods of their customers?

Mr. Prince—I object.

The Court—I will sustain the objection to that question, because that is not exactly the language of the witness. You may ask him whether he relied on the statement made.

Q. Did you rely on the statement then made to you by Mr. Pelegrini in respect to Cramer & King being protected by insurance against fire and theft?

Mr. Prince—I object to that.

The Court—You may ask him if he relied on the statement made by Pelegrini.

Q. Did you rely on the statement made by Mr. Pelegrini?

Mr. Prince—I object to that.

The Court—I will permit it.

The Witness—I did.

Cross Examination by Mr. Prince:

Q. Now, Mr. Fleitmann, the Piedmont Silk Company belonged to the Fleitmann Co.; isn't that correct? A. No.

Q. Well, Fleitmann & Company were the factors, then; is that correct? A. Right.

Q. Fleitmann Company is a New York corporation? A. Yes, sir.

Q. The Piedmont Silk Company is a New York corporation? A. Yes, sir.

Q. And Fleitmann & Company is controlled by you and your brothers or your father; is that correct? A. It is a corporation.

Q. I know that, but the stock is owned by you and your brothers and your father; is that correct? A. I refuse to answer that. Do I have to answer that?

Q. You refuse to answer that?

The Court—What is the purpose of that?

Mr. Prince—I want to show the connection between these two companies, and I want to show the percentages that this company collected from its own subsidiary, on the question of the amount of damages.

Mr. Rosenkrans—I object to it as not being cross examination.

The Court—It is not cross examination. I will sustain the objection.

Mr. Prince—Your Honor, do I understand your rules to be here that you may only examine a witness on the subjects asked on direct examination?

The Court—Relating to the subjects, except in case of parties, then it is discretionary with the Court.

Mr. Prince—That rule differs materially from ours.

Q. Fleitmann & Company on all merchandise sold by the Piedmont Company collected a commission; isn't that right?

Mr. Rosenkrans—I object.
The Witness—Yes.
The Court—Sustain the objection.

Q. Now, when did you have this talk with Mr. Pelegrini? A. Well, it was early in the spring of 1923.

Q. Well, now, when? A. The exact date I couldn't tell you.

Q. What month? A. I should say it was between the latter part of February or the early part of March.

Q. Well, of 1923; is that correct? A. Yes.

Q. You said you had several conversations about that time? A. Yes.

Q. On different days? A. Yes.

Q. Well, you had been sending merchandise to Cramer & King for some years before that, had you not? A. Piedmont Silk Company?

Q. Yes. A. No.

Q. Oh, you didn't start to do business with Cramer & King until the spring of 1923; is that correct? A. I cannot remember any other business we had previous to that.

Q. What is that? A. I cannot remember ever having done business with Cramer & King previous to that time.

Q. You cannot? That is your best recollection, isn't it? A. To the best of my recollection we did not do any.

Q. How long were you connected with the

Piedmont Silk Company prior to the spring of 1923? A. Ever since its inception.

Q. We don't know that date; when was it, about? A. 1919.

Q. Now, where was this talk with Peligrini? A. In the sales room of Piedmont Silk Company.

Q. Do you know Mr. Peligrini very well? A. No.

Q. How often have you talked with him? A. I suppose I have talked to him approximately a half dozen times then, and later on also.

Q. He came to you to solicit business; is that correct? A. Yes.

Q. That is the first time you had given him any business; that is your recollection? A. To the best of my recollection.

Q. Now, how did you happen to come over here today? Were you subpoenaed? A. No.

Q. Who asked you to come over? A. I was asked by Cramer & King Company.

Q. Well, who? That is a corporation. What particular individual? A. To be very frank with you, I did not understand the name over the telephone. He simply represented himself of Cramer & Company.

Q. Somebody called you up yesterday or today? A. Yesterday.

Q. When yesterday? A. Yesterday evening.

Q. What time? A. Between six and eight last night.

Q. Six ond eight last night. That is the first intimation you had that you were to come over here to testify; is that correct? A. No; I would not say that.

Q. When was the first intimation? A. When this case first came up.

Q. When was that? A. I think about two weeks ago.

Q. You received a telephone message then; is that correct? A. No; we went over the situation with Mr. Cramer.

Q. Which Mr. Cramer? A. I don't know his first name. Sitting right over there with the glasses on.

Q. You mean Mr. Omar Cramer? A. I don't know his first name.

Q. Stand up, Mr. Cramer. This Mr. Cramer? A. Yes.

Q. That is Mr. Omar Cramer. Where was that talk? A. In the office of Fleitmann & Company in New York.

Q. He came over to talk to you; is that right? A. Yes, sir.

Q. And the subject of your testimony was discussed at that time? A. No.

Q. He just said he wanted you to come over and testify? A. No, I didn't say that.

Q. What is that? A. I didn't say that.

Q. I am asking you if that is the fact? A. No; he didn't ask me to come here to testify.

Q. Well, then, you didn't know at that time you were going to testify in this case. A. No; you asked me if I thought I might have to.

Q. Well, from the conversation you did have you gained the impression you were going to testify in this case, at that time? A. No.

Q. I see. Well, then, you didn't think at that time you were going to testify? A. I thought I might possibly be called on by Mr. Cramer and King.

Q. Then, the very first time that you really

knew you were going to testify was when the request was made to you on the telephone last night between six and eight o'clock to come over this morning to testify; is that correct? A. Quite correct.

Q. You did not receive a message any other time yesterday to come over? A. No.

Q. You had not been requested to come over here at all yesterday to testify, had you? A. I did not get any message to come over at any time.

Q. Did you have any talk on the telephone last night with anybody as to the subject of your testimony this morning? A. Yes.

Q. With the man that talked to you? A. With the man who talked to me, yes.

Q. You say you didn't get his name? A. No; I am not sure of it.

Q. Was it Mr. Lundgren? A. That might have been it.

Q. You know Mr. Lundgren, don't you? A. Not that I know of.

Q. Is Mr. Lundgren in Court? This gentleman standing up? A. I never saw him until this morning, to the best of my opinion.

Q. When did you see him this morning? A. I saw him walking up the street here.

Q. Where? A. Right out here somewheres.

Q. Where did you meet him? A. I have not met him. I saw him with Mr. Cramer.

Q. Did Mr. Cramer meet you at the depot or did you come by automobile? A. Mr. Cramer met me at the depot.

Q. Did you have a talk with Mr. Cramer and with Mr. Lundgren? A. Not with Mr. Lundgren.

Q. You had a talk with Mr. Cramer, did you? A. Yes.

Q. About the subject of your testimony to be given here? A. Yes.

Q. Did you have a talk with counsel for the plaintiff about it? A. Yes.

Q. Where was that? A. In his office around the corner here somewhere.

Q. Oh, Mr. Cramer took you to the office of his counsel? A. I presume it was his counsel.

Q. Which gentleman was it? A. The gentleman writing right here.

Q. Indicating Mr. Westerhoff? 10

Mr. Westerhoff—I will say he was in my office.

Mr. Prince—Maybe you will. We know now, whether you say it or not, Mr. Westerhoff.

Q. What time did you get here? A. I think it was just after nine o'clock, twenty minutes past nine, something like that. 20

Q. Now, can you be any more specific as to the date when you claim you had this first talk with Mr. Pelegrini? A. No, I could not be more specific.

Q. Do not remember the month? A. I wouldn't say whether it was the last of February or beginning of March; it was around that time.

Q. One or the other? A. Yes.

Q. He came over to you and said he wanted some merchandise from Piedmont to print and dye; is that correct? A. He solicited business in the regular way. 30

Q. Well, what does that mean? A. Well, a great many people walk in there soliciting dyeing or printing business.

Q. He came in there to get merchandise from you to print and dye? A. That is right.

Q. That is what he said to you, didn't he? A. Yes.

Q. Then you said to him, "Who do you represent?" Is that right? A. No; he gave me his card first with the name of Cramer & King on it.

Q. You knew Cramer & King before that time? A. I had heard of them as dyers.

Q. You are sure that your concern never gave them any business before that time? A. To the best of my recollection we did not.

Q. After he gave you his card and asked you for business then the next thing you said to Mr. Pelegrini, "Well, is Cramer & King covered by insurance?" Is that what you said? A. Yes.

Q. Those are about the words, aren't they, and the substance of them, at any rate; is that correct? A. Yes, sir.

Q. And he said to you, "Yes, sir," is that correct? A. Yes, sir.

Q. Then you said that you would investigate the company; is that what you said? A. Yes.

Q. What company, Cramer & King or the insurance company, which did you refer to? A. Cramer & King.

Q. Cramer & King? A. Yes.

Q. Then you investigated Cramer & King, did you? A. Yes, as to their moral responsibility.

Q. I didn't ask you as to what. You investigated them? A. Yes.

Q. Then you gave him the business? A. Yes.

Q. Well, that is the substance of what took place, isn't it? A. Yes.

Q. That is all.

Mr. Rosenkrans—We rest.

Mr. Prince—I move to strike out the testimony of this witness on the question of the talk with Mr. Pelegrini, on the ground that it is not any evidence of any contract or arrangement to render Cramer & King liable.

The Court—I will deny the motion.

The Court—Now, there is one other item on the motion for non-suit, about the proof of loss not being filed in sixty days. What do you say about that?

Mr. Rosenkrans—I understood counsel to say when we called for the production of the proof of loss that it had been timely served, and on that account we forebore to expressly prove it was within the 60 days. If there is any question about it we ask leave to prove the time of service of the proof of loss. I feel sure it is on the record.

Mr. Prince—If you had omitted that last statement you would have been better off as far as I am concerned, because there is not anything on the record as to that. However. I do not think it is necessary in the interests of the defendant to take advantage of that proposition. From what your Honor said yesterday, you had likewise gained some impression that I had said that I did not raise any point.

The Court—Well, when you spoke about another matter I said I might be mistaken about it.

Mr. Prince—Yes. However, so as to re-

move that, your Honor, I won't insist upon that point, so we will deem that the proof of loss was served within sixty days.

The Court—All right. Then we will proceed with this motion.

Mr. Prince—As far as the evidence is concerned, is the evidence here this morning going to go into the record physically before my motion?

The Court—Yes.

Mr. Prince—So, I am in the position as if I made my motion now instead of yesterday?

The Court—Yes.

Mr. Prince—Now, your Honor, I will take up the next point which I urge. (Argues.)

The Court—I do not think I can legally dispose of this motion except by consent of the plaintiff, as long as the postal cards are in on the part of the defendant.

Mr. Prince—Your Honor, I have an authority on that question which makes it absolutely discretionary with the Court, a New Jersey case. At least I am so advised. I have not seen it myself, and I want to be careful before I make a statement to the Court.

Mr. Rosenkrans—I think that we ought to agree—we have been here for a week now—that the Court may dispose of the motion notwithstanding the offering in evidence of the postal cards by the defendant, because it is not reasonable to anticipate, so far as I can see, that the evidence to be offered by the defendant would change the situation in respect to these three or four vital matters.

The Court—I will dispose of it. In this matter the defendant has moved for a non-suit upon eleven distinct grounds.

In my judgment, it is only necessary for the Court to dispose of two of those grounds namely, the fourth and the sixth.

The fourth ground is that the warranty was broken by reason of the fact that the policy in paragraph 4 of the warranty provides that the business conducted by the assured on the premises was that of silk dyers; (figure 5). "No other business is conducted on the premises except as herein stated. No exceptions."

The defendant contending that that warranty was broken by reason of the fact that the testimony discloses that the plaintiff conducted business upon the premises other than that of silk dyers.

In support of the plaintiff's contention, Mr. Pelegrini testified as follows: "Do you know what the term silk dyer covers according to the custom and usage of the silk trade? A. I do. Q. What does it cover? A. It covers dyeing, finishing, and printing." Which was the business shown by the testimony to have been conducted by the plaintiff on the premises.

In the case of Stewart vs. Scudder, found in 24 New Jersey Law, page 96, on page 106, Justice Elmer, speaking for that Court, relating to customs, says that usage cannot be proved by isolated instances, but must be so certain, uniform, and notorious, that it must be presumed to have been under-

stood by the parties as entering into and constituting a part of the contract.

In the Supreme Court of Massachusetts, in the case of Mooney vs. Howard Insurance Company, 138 Massachusetts, 375, the point was there discussed by Chief Justice Morton, speaking for the Supreme Court of that State. It was an insurance case, and the plaintiff introduced testimony to enlarge the ordinary meaning of the words "rags and old metals," and the Court approved of the charge of the Trial Court, which was that the plaintiff must prove that the alleged usage was known to the defendant, and that they would be warranted in finding that it was known to the defendant, if they found upon all the evi dence that there was such a usage or custom, and that it was well defined, universal, uniform, of long continuance.

In this case the record seems to be devoid of any testimony which would support those qualifications or necessary elements of the custom. Hence, it is apparent that to be binding upon the defendant, that custom must have been known to it.

The sixth ground is that the policy provides under special agreement, paragraph 5, that the company shall not be liable for loss or for damage to merchandise unless the assured is liable to the owner thereof for such loss or damage as is covered hereby.

The best that can be said for the testimony on the part of the plaintiff as to its

customers, it being admitted that the plaintiff is not the owner of the property, is that it discloses statements by the representatives of the plaintiff, some made on requests of the customers and some not, that the plaintiff, Cramer & King, was covered by insurance, some specifying burglary. It seems to me that in view of that testimony there is no legal liability within the terms of the policy, whereby the plaintiff, Cramer & King Company, was legally liable to its customers, for whom it was at the best a bailee.

This policy, of course, contains many provisions and probably presents a difficult case for proof on the part of the plaintiff, but the function of the Court is not to rewrite the contract which the parties entered into. That is their business.

I might say in passing that it appears to the Court that counsel for the plaintiff have presented the very best case that could be presented with the testimony in hand, and I think have done their very best in this case, in view of the great difficulties presented by the terms of the policy.

For the reasons which I have outlined, without attempting to deal with the other nine grounds presented, whether they are good grounds or not, the motion for nonsuit will be granted.

Mr. Rosenkrans—Your Honor will allow me an exception.

The Court—Yes.

(The Jury was discharged by the Court.)

EXHIBITS

EXHIBIT P-1.

Burglary Policy
National Surety Company of New York.
Wm. B. Joyce, President.
Home Office: 115 Broadway.
Policy No. 5548088.
Name of Assured: Cramer & King.
Amount $50,000.00 Premium $550.38.
Expires April 9th, 1924.
Please read your policy.
W. E. Parkinson, 89 Maiden Lane, N. Y. C.

National Surety Company

No. 5548088		$50,000.00
Burglary	World's Largest Surety Company	Policy
115 Broadway		New York

In consideration of Five Hundred Fifty & 38/100 Dollars ($550.38) premium and of the statements in the schedule hereinafter contained, which statements the assured makes on the acceptance of this policy and warrants to be true, The National Surety Company, hereinafter called the Company, does hereby agree to indemnify Cramer & King of Paterson, County of Passaic, State of New Jersey, hereinafter called the Assured, in the Total sum of Fifty Thousand and 00/100 Dollars ($50,000.00) and no more, for the term of Twelve months, beginning on the 9th day of April, 1923, at noon, and ending on the 9th day of April, 1924, at noon, Standard Time, subject to the hereinafter special and general agreements, terms and conditions which are to

be construed as co-ordinate conditions and precedent to any recovery under this policy.

GENERAL AGREEMENTS

Company Not Liable

1. The Company shall not be liable:—(a) For loss or damage in excess of the actual cash value at the date of the loss of the property taken or damaged. (b) For loss of or damage to premises unless owned by the Assured. (c) For loss upon plate glass or damage thereto. (d) For loss from or contributed to by:—Explosives, except only when used by burglars or robbers; Fire, Water; Invasion, Insurection, Riot or War; The act of any civil, military or usurping power; The action of the elements. (e) For loss of Money, Negotiable Securities, Express and Postal Money Orders, Bonds, Debentures, Demand and Time Drafts and Promissory Notes unless same are specifically included in the schedule of this policy and only as stated therein; and these only when they are evidences of debt negotiable by any holder thereof; and as respects which when so negotiated the Assured has no recourse against the innocent holder; nor unless immediately after the robbery the Assured shall have taken all proper and reasonable means to stop payment of the same.

Immediate Notice of Loss

2. The Assured upon discovery of any loss for which claim will be made upon the Company under this policy shall give immediate notice thereof by telegraph to the Home Office of the Company in New York City, or to the Geenral Agent who has countersigned this policy, briefly stating par-

ticulars and probable amount of loss (both telegraphic messages at the Company's expense), and shall also give immediate notice thereof to the Company's local authorized Agent and the public authorities having jurisdiction. The Assured shall also forward to the Home Office of the Company full written details of the nature of the loss.

Particulars of Loss

3. In the event of a claim for loss or damage arising under this policy the same shall be made forthwith in writing duly subscribed by the Assured and sworn to in a manner required by the Proof of Loss Form in use by the Company. The said Loss Form will be delivered to the Assured upon demand, but the delivery of the said Loss Form shall not be held to be a waiver of any provisions or condition of this policy or any forfeiture thereof nor shall any act taken in connection with the investigation of any claim be considered as any such waiver.

Adjustment of Loss

4. The Company and its representatives shall have the right and opportunity to inspect the premises of the Assured at such times as it may deem needful, and the Assured shall in substantiation of his claim and to facilitate the adjustment thereof produce whenever requested any and all books, papers and vouchers bearing in any way upon the claim made, and shall submit himself and associates in interest and his household and employes to examination and interrogation by the Company's representatives, under oath, if required, and subscribe the same, and shall pro-

duce such other evidence as may be reasonably required to substantiate the claim and such reasonable adjournments of the said examinations as the Company may desire shall be allowed, and any alleged loss, in connection with which the Assured shall refuse to comply with this provision shall not be held to constitute a cause of action against the Company under this policy. The Company if it so elects, shall have the entire charge of the prosecution of the offenders, and the Assured shall give to the Company all reasonable assistance (not pecuniary) in legal proceedings or for recovery of the insured property.

Fraud and Assignment

5. This policy shall be void and thereupon cease and determine if the conditions or circumstances of the risk are changed without the written consent of the Company endorsed hereon; or if the Assured attempts in any way to defraud the Company, or if the policy is assigned without the written consent of the Company duly executed on the part of the Company, or if the property insured hereunder be or become incumbered by a chattel mortgage or bill of sale.

Other Insurance

6. If the Assured, or any other party interested, carry a policy of another insurer, covering in whole or in part upon property insured by this policy he shall not be entitled to recover from the Company a larger proportion of the amount of the loss than the sum hereby insured bears to the whole amount of the valid and collectible insurance.

Exhibit P-1

Payment of Loss and Subrogation

7. Any loss of which satisfactory proof has been given to the Company shall be payable immediately upon the submission of such proof, and all sums which from time to time may be paid or expended by way of indemnity to the Assured under this policy shall be accounted in diminution of the sum insured. No suit shall be brought under this policy until ninety days after the particulars of the loss as required herein have been furnished to the Company nor at all, unless commenced within twelve months after the date of the alleged loss. In case of loss under this policy the Company shall be subrogated to all claims or rights of the Assured in respect to such loss against any other party or parties to the extent of the Company's loss and the Assured shall execute any and all papers required to secure the Company such claims or rights.

Reinstatement and Recovery

8. The company may repair any damage to property or premises and it may replace any damaged or stolen article with one of like quality and value, instead of paying for the same in money. When so replaced, the damaged or stolen article shall belong to the Company, but the Assured shall be entitled to it upon payment to the Company of the cost of its replacement or the amount paid in money on account of its loss. If the Assured has returned to him or recovers any article for loss of which he has been indemnified, he shall report its recovery to the Company, and shall either repay to the Company the amount of its loss thereon, or forward the article to the Company at its Home office.

Exhibit P-1

Cancellation

9. This policy may be cancelled at any time by written notice served upon the assured by a representative of the Company or mailed to the Assured at the address of the said premises. In either case the Assured shall be entitled to receive the unearned premium computed pro rata. The Assured may require the cancellation of the policy at any time and the Company shall retain in such case the earned premium computed as customary short rates. The check of the Company or its Agents for the unearned premium mailed to the address of the Assured herein given shall be a sufficient tender of payment.

Policy Conditions and Renewals

10. No Agent has authority to change this policy or waive any of its provisions, nor shall any notice to the Agent or knowledge of his or any other person be held to effect a waiver or change in this contract or in any part of it. Whenever the written consent of the Company is required by the terms of this policy, an endorsement expressing same must be added hereto, signed by some Executive Officer of the Company, or Manager of Burglary Insurance Department, and no change whatever in this policy or waiver of any of its provisions shall be valid unless an endorsement is added hereto executed in the same manner. Any attachment (or rider) to this policy, extending or limiting the insurance hereunder, shall be subject to all stipulations and provisions of such attachment (or rider) and to those herein contained, not conflicting with the special terms of such attachment (or rider) and shall be

equally as binding upon the Company and the Assured as if incorporated herein.

In Witness Whereof the National Surety Company, of New York, has caused this Policy to be duly executed at its Home Office, in the City of New York, by its President and Secretary, but the same shall not be binding upon the Company until countersigned by the duly authorized agent or representative of the Company at Jersey City, N. J.

Countersigned by P. C. Willis, Authorized Agent.

Wm. B. Joyce, President.

Attest: Herbert J. Hewitt, Secretary.

General Agreement No. 4 is hereby eliminated and superseded by Special Agreement B as follows:

B. Affirmative proof of loss or damage under oath on forms provided by the Company must be furnished to the Company at its Home Office in New York City, N. Y., within sixty days from the date of the discovery of such loss or damage. Such proof of loss or damage shall contain a complete inventory of all merchandise stolen or damaged, stating the original cost, the actual cash value thereof at the time of the loss, and the amount of loss thereon; a statement in detail of the damage done to the merchandise and premises covered thereby; a statement defining the interest of the Assured in the merchandise for which indemnity is claimed; a statement containing evidence of the commission of a burglary, as aforesaid, to which the loss or damage was due and of the time of its occurrence; a statement in detail of other concurrent or similar insurance, if any, on the merchandise insured and of the

purposes for which and the persons by whom the premises described herein were occupied at the time of the loss. The Assured, upon request of the Company, shall also furnish a complete inventory of all merchandise not stolen or damaged stating the original cost and the actual cash value and quantity thereof. The Assured upon request of the Company shall render every assistance in his power to facilitate the investigation and adjustment of any claim, exhibiting for that purpose at such reasonable place as may be designated by the Company any and all books, papers, and vouchers bearing in any way upon the claim made and submitting himself and his associates in interest and also, so far as he is able, his employees and members of his household to examination and interrogation by any representative of the Company under oath if required.

C. The insurance granted by this policy applies specifically on merchandise usual to the business of the Assured as described under Statement 4 of the Schedule, manufactured, unmanufactured, and in process of manufacture, and the total liability of the Company under this Policy is limited to the sum of Fifty thousand and 00/100 Dollars ($50,000.00) and the premium for this Policy is Five Hundred fifty & 38/100 Dollars ($550.38).

Schedule

The following statements, numbers 1 to 12 inclusive, are hereby made a part of this Policy and are warranted by the Assured to be true.

1. Name of the Assured is Cramer & King.
2. Location of building containing the premi-

ses is 10th Ave. & E. 33rd St., Paterson, New Jersey.

3. The portion of the building occupied solely by the Assured in conducting his business is Entire.

4. The business conducted by the Assured in the premises is that of Silk Dyers.

5. No other business is conducted in the premises, except as herein stated. No exceptions.

6. As respects the application of the Average Clause contained in Condition 2, Eighty Per Centum (80%) of the actual cash value of all merchandise hereby insured shall in no event be considered more than $20,000.00.

7. A burglar alarm system is now maintained, and will be tested and left duly connected at the close of each business day while this Policy is in force. Such alarm system protects: (a) With traps all inaccessible windows and with screens, all accessible windows (except stationary show windows), and all doors, transoms, skylights and other openings leading from the premises, and also protects all ceilings and floors not constructed of concrete, and all hall and partition walls, enclosing the premises. The name of such burglar alarm system is * * * and the system is connected with an outside central station * * * * (b) All accessible windows (except stationary show windows) and all doors, transoms, skylights and other openings leading from the premises. The name of such burglar alarm system is * * * and the system is connected with an outside central station, or with an alarm gong on the outside of the premises which is operated in conjunction with the watch service of a regularly incorporated Company * * * *.

Exhibit P-1

8. Two private watchmen employed exclusively by the Assured will be on duty within the premises at all times when the premises are not regularly open for business while this Policy is in force. Yes.

9. Two private watchmen described in Item 8 will make hourly rounds and record same on a watchman's clock, or will signal an outside central station at least hourly. Yes, central station hourly.

10. The Assured has no other Burglary, Theft or Robbery Insurance, except as herein stated: No exceptions.

11. The Assured has not sustained any loss or damage nor received indemnity for any loss or damage by burglary, theft or robbery within the last five years, except as herein stated. No exceptions.

12. No burglary, theft or robbery insurance applied for or carried by the Assured has ever been declined or cancelled, except as herein stated: No exceptions.

Not valid unless attached to and forming part of Burglary Insurance Policy No. 5548088 of the National Surety Company of New York, and countersigned by P. C. Willis, Authorized Agent. rbp.

Loss by Burglary

A. For All Loss by Burglary of merchandise usual to the Assured's business, as described in the Schedule hereof, and furniture and fixtures, from within the premises as hereinafter defined, occasioned by any person or persons who shall have made felonious entry into the premises by actual force and violence when the premises are

not open for business, of which force and violence there shall be visible marks made upon the premises at the place of such entry by tools, explosives electricity or chemicals; and

Damage by Burglary

B. For All Damage (except by fire) to such merchandise, furniture, fixtures and premises, caused by such burglary or attempt thereat.

CONDITIONS

Premises

1. "Premises" as used in this Policy shall be limited to that portion of the interior of the building designated in the Schedule and actually occupied by the Assured for the purposes hereinafter set forth, but shall exclude (a) show cases and/or show windows not opening directly into the interior of the premises; (b) public entrances, halls and stairways.

80% Average Clause

2. The Company shall not be liable for a greater proportion of any loss of or damage to the merchandise hereby insured, than the sum hereby insured bears to Eighty Per Centum (80%) of the actual cash value of all such merchandise (excluding jewelry, precious and semi-precious stones, watches, necklaces, and articles containing one or more gems, and pledged goods) contained in the premises at the time of such loss or damage occurs; but as respects the application of the foregoing, Eighty Per Centum (80%) of such actual cash value shall in no event be considered as more than the amount stated in Statement 6 of the Schedule.

Exhibit P-1

SPECIAL AGREEMENTS

A. The Company shall not be liable:—(1) For loss of or damage to premises, furniture or fixtures unless such property is owned by the Assured or the Assured as tenant is liable for such loss or damage; (2) For loss or damage, if the Assured, any associate in interest or servant or employee of the Assured, is implicated as principal or accessory in effecting or attempting to effect the burglary; (3) For loss or damage, if the premises are occupied for any purpose other than that stated in the Schedule; (4) Unless books and accounts are kept by the Assured and are kept in such manner that the exact amount of the loss can be accurately determined therefrom by the Company; (5) For loss of or damage to merchandise unless it belongs to the Assured or is held by him in trust or on commission or sold but not removed from the premises, or unless the Assured is liable to the owner thereof for such loss or damage as is covered hereby; (6) For loss or damage to merchandise, furniture or fixtures encumbered by chattel mortgage; (7) For loss of or damage to merchandise not usually carried in the line of business described in Statement No. 4 of the Schedule; (8) For loss of or damage to any necklace or any one article of jewelry or any one article containing one or more gems, or any one watch or precious or semi-precious stone, in excess of $50.00; (9) For loss of or damage to merchandise held by the Assured as a pledge or as collateral for advances or loans, in excess of the amount advanced or loaned on such merchandise by the Assured, plus the interest actually accrued thereon at legal rates, but not in excess of the specific limits provided in item (8) of the Special Agreements.

EXHIBIT P-3.

This form is furnished at the request of the Assured and in accordance with the terms of Paragraph 3 of the General Agreement of the Policy.

Proof of. Loss

National Surety Company

Home Office: 115 Broadway, New York

To National Surety Company,

By your Policy of Insurance No. B5548088 issued at your New York Agency, countersigned by Mr. Willis Agent, dated the Ninth day of April A. D., 1923, and expiring the Ninth day of April 1924 at 12 o'clock noon, you insured Cramer and King Company. The Subscriber, hereinafter called the Assured, against Loss by Burglary and to the amount of $50,000 according to the terms and conditions thereof and the following attachments thereto, namely: Two private watchmen reporting to central station hourly.

II. The total amount of Burglary or Theft Insurance held by the Assured at the time of the loss, whether valid or not, excluding the above-mentioned Policy, was in the National Surety Co. Company under its Policy No. 5,548,088, $50,000 and in the None Company under its Policy No. None, $ None, and no more. Full copies of such policies and endorsements are hereto annexed, or will be furnished on demand. There is specific insurance on Plate Glass in the None Company; under its Policy No. None.

III. The property insured belonged at the time of the burglary, hereinafter mentioned, to see below and no other person has any interest therein, except as follows: and there was no as-

signment, transfer or incumbrance, or change of ownership, of the property, insured, nor change of occupancy of the premises of the Assured since the issue of said policy, except as follows. Of the property insured there is held in trust or on commission, the following, of which the names of the owners, marks and numbers and the insurance, if any, held by the owners and consignors, are: Piedmont Silk Co., Rose Silk Mills, Schwarzenbach-Huber Co., who hold fire insurance only.

IV. The building in which the Burglary hereinafter referred to occurred was occupied by us for the following purposes, to wit: Silk Dyeing Printing and Finishing and no person occupied any part of the premises insured or of the building, except as follows. The premises were unoccupied up to the time of the discovery of the burglary or theft (state time in hours, days and months) for_____.

V. On the Second to third day of July, 1923, at about between 5 P. M. and 7 A. M., a Burglary or Theft occurred in the building known as No. 2-28 East 33rd St. Cor. 10th Ave, in the City or Town of Paterson, County of Passaic and State of New Jersey, by which property insured under said Policy was stolen to the amount of . . . . Dollars ($_____), as set forth in this statement, and the several schedules and papers hereto annexed, which the Assured declares to be a just, true and faithful account of our loss.

VI. Occurrence of the Burglary or Theft was first known to us about 8 A. M. o'clock M. of the Third day of July, 1923 and we notified the Company at its Home Office in New York to Miss Ackerman by Telephone and Telegraph on the

Third day of July, 1923. We also notified the nearest local police authorities at their office in Paterson, N. J., Washington St., on the Third day of July, 1923 and further declare that the said robbery did not originate by any act, design or procurement on our part, or in consequence of any collusion, fraud or evil practice done or suffered by us and that nothing has been done by or with our privity or consent to violate the conditions of the insurance.

VII. The manner in which the robbery was committed and the names of all persons known or suspected to have been implicated therein, are as follows: (Affidavits of employees and members of the household of the Assured will be furnished on demand): Entry made to lower finishing room thru window and goods probably carried away by wagon or truck.

The visible evidence of the Burglary consists of Forcible tearing away of screen mesh from window. We hereby declare that we have never before suffered loss or damage by Burglary, Theft or Larceny, nor received indemnity therefor except as follows:

Nothing material to a knowledge of the facts of the loss for which claim is made has been suppressed, withheld or misrepresented herein.

Any other information that may be required will be furnished on demand and be considered a part of these proofs. It is expressly understood and agreed that in furnishing this "Proof of Loss" blank to the Assured or the making up of any proofs by any Agent of the Company or by any Adjuster, the Company does not waive any of its rights under the said Policy.

Cramer and King Co.

Exhibit P-3

We have carefully read the foregoing statement and warrant it to be full, complete and true.

Omer Cramer, Treas.

Frank J. Lundgren, Sec'y.

Arthur E. Cramer, Pres.

N. B.—"Proof of Loss" must be signed individually by all members of a Firm, and by all parties insured in a dwelling, who claim indemnity.

State of New Jersey.

County of Passaic.

On this 22nd day of August A. D., 1923, personally appeared before me, the undersigned, a Notary Public in and for the said County and state, the above named Omer Cramer, Arthur E. Cramer, Frank J. Lundgren to me known, and who subscribed the same in my presence, and made oath that the foregoing statement and each and all of the schedules and papers hereunto annexed are full and true, and without reservation.

Ackerman G. Oatman, Notary Public, N. J.

Post Office Address, Colt Bldg., Paterson, N. J.

(Seal)

SCHEDULE OF ARTICLES STOLEN

Description of Property Stolen (Itemize)	Actual cost to Assured	Allowance for depreciation in style value, shop-wear, or wear and tear of goods to the amount of	Net actual cash value at time of Robbery	Assured Claims Indemnity under the Policy to the extent of
88 Pieces No. 1204 See attached list for Piedmont Silk Co.	8074.68	None	8074.68	8074.68
Rose Silk Mills Dye order No. 30 Pcs. No. 2565-57-2 Yds. 1387-98 1386-68-2 1385-84 1382-78-2 1376-123-2 1380-79-2 1381-61-2 1389-72-2 9 pcs. 721-6 Yards @ 1.00	721.75		721.75	721.75
Schwarzenbach Huber Co. Pcs. No. 109063—63-5 Yds. Quality 25015 Print order No. 3451. 6—59 8—61-6 9—63-6 70—61-6 1—57-1 2—63-4 7 Pcs. 430-4 Yards @ 1.64	706.02		706.02	706.02
CRAMER AND KING COMPANY For labor applied to above pieces as per attached invoice	1931.61		1931.61	1931.61
				11434.06

Exhibit P-3

National Surety Company
To CRAMER & KING CO., Dr.
Printers, Dyers and Finishers of Textile Fabrics
Telephone Lambert 2600-2601

P. O. Box 1934.

Main Office
Paterson, N. J.

New York Office
460 Fourth Avenue
Room 801
Tel. 8534 Md. Sq.

Terms: Net

All Goods Are Insured Against Loss by Fire—Not Responsible for Reprint or Redye Gods

Sheet No., Pcs., Yards, Order Qual., Design, Colors, Descrip. of Goods

For labor applied to goods stolen from our plant:

Rose Silk Mills		
721-6/8 Yards @ 6c per yard	43.31	
Less 2c per yard for Finishing	14.44	
		28.87
Piedmont Silk Co.	2912.18	
5294-7/8 Yards @ 5½c per yard		
Less 2c per yard for Finishing	1058.97	
		1853.21
Schwarzenbach Huber Co.		
430½ Yards @ 15c Plus 10%	64.58	
	6.46	
	58.14	
Less 2c per yard for finishing	8.61	
		49.53
		1931.61

Statement

New York, Oct. 9, 1923.

M.....Cramer and King Co.....

To Rose Silk Mills, Dr.
Broad Silks

Terms,..... 43 East 29th Street

For Discount not allowed		
3% on April bills	$113.15	
3% on Mar. bills	162.73	
	$275.88	
May 8th	13.75	
9th	906.49	
July 10	36.82	
		$1232.94
$53.00 June 25th Credit—53 yds. short @ $1.00		
92.03 July 5 Credit		
145.03		145.03
		1087.91
2% on May bill 957.06		19.14
		1068.77
Less Adjustments		721.75
		$ 347.02

Exhibit P-3

P. O. Box 31
West Hoboken, N. J., July 24th, 1923.

Copy
M Cramer & King Co.,
Paterson, N. J.

To The Schwarzenbach Huber Co., Dr.

Print order 3451	39" Crepe de chine 25015				
Pc. No. 19063	63.5				
66	59.-				
68	61.6				
69	63.6				
70	61.6				
71	57.1				
72	63.4	430.4 yds.	@	1.64	$ 706.02

Goods stolen at your plant.

Exhibit P-3

If this bill is not found to be correct in all respects Fleitmann & Co., Inc., must be notified at once, as no change of prices or terms will be allowed at time of settlement. All claims for imperfection or Deficiency must be made to Fleitmann & Co., Inc., within 5 days after receipt of Goods.
This account is owned by and Payable only to Fleitmann & Co., Inc., in New York Bankable Funds.

To Fleitmann & Co., Inc., Dr.
356 Fourth Avenue, New York

For Goods Purchased from
Piedmont Silk Co., Inc.
M Cramer & King Co.
33rd St. & 10th Ave.
New York City

No. 12/40285 New York: July 17th,/23
Goods Shipped at Your Risk Per Terms: 7% 10 Days
Deliverd 88 Pieces

Crepe De	Chine	No. 1204			
72834	399	60.6	926	150	59.4
73287	99	60.2	519	269	59
241	82	59.5	72525	279-2	61
230	83	60.2	527	280	59.6
232	91	57.6	153	282	60.2
289	94	58.4	139	283	60
72929	101	60.2	147	284	59.4
959	102	59.2	148	285	50.4
169	103	61.6	801	287	50.4
956	107	60.6	152	289	59.6
957	109	58	140	290	60.2
186	110	60	063	292	60.2
198	112	59.4	051	297	59.4
776	121	55.2	809	299	60.2
954	124	60.2	066	301	65
199	130	59.6	048	312	59.2
175	133	59.2	806	313	60.2
190	135	66.6	050	314	59.4
763	136	60.4	047	316	59.4
214	138	71.2	952	317	64.2
931	140	59.6	202	318	60.4
922	142	60	912	321	60.6
206	143	60	171	323	59.6
181	144	53	192	325-2	80
916	146	60	168	327	59
921	147	59.6	202	331	48.2
913	148	59.4	195	333	60
917	149	55.4	71971	336	60.2

CONTINUED

Prices Subject to Change Without Notice.

Exhibit P-3

If this bill is not found to be correct in all respects Fleitmann & Co., Inc., must be notified at once, as no change of prices or terms will be allowed at time of settlement. All claims for imperfection or Deficiency must be made to Fleitmann & Co., Inc., within 5 days after Receipt of Goods.
This account is owned by and Payable only to Fleitmann & Co., Inc., in New York Bankable Funds.

To Fleitmann & Co., Inc., Dr.
356 Fourth Avenue, New York

For Goods Purchased from
Piedmont Silk Co., Inc.
M Cramer & King Co.
33rd St. & 10th Ave.
New York City

No. 12/40285 New York: July 17th,/23
Goods Shipped at Your Risk Per Terms: 7% 10 Days
Deliverd 88 Pieces
Forwarded

Crepe De	Chine	No. 1204		71453	411	60.4
71976	338	58.2		431	415	60.6
72231	341	60		450	416	60.2
282	342	60.2		422	417	57.6
240	344	59.4		434	422	59.4
228	347	60.2		419	424	57.2
245	349	62		71421	426	60
233	351	60.2		426	428	59.2
285	353	61		441	429	59.6
846	354	59.6		446	433	66.6
283	356	59		417	434	60.4
239	357	63		72469	435	60
836	358	59.2		132	445	57.6
833	359	59.4		73071	474	61.4
278	361	60.2		089	476	60
845	362	60.4				5294.7
878	363	60	Yds.			
841	364	57.2	1.52½			8074.68

Exhibits P-4A, P-4B

All Claims Must Be Made Within Ten Days

Paterson, N. J., August 22nd, 1923.

M.....National Surety Co.

To CRAMER & KING Co., Dr.

Printers, Dyers and Finishers of Textile Fabrics

Telephone Lambert 2600-2601

P. O. Box 1934

Main Office
Paterson, N. J.
This Bill for Labor Only
Terms: Net

New York Office
460 Fourth Avenue
Room 801
Tel. 8534 Md. Sq.

All Goods are Insured Against Loss by Fire—Not Responsible for Reprint or Redye Goods

Sheet No., Pcs., Yards, Order, Qual., Design, Colors, Descrip. of Goods

For labor applied to goods stolen from our plant

Rose Silk Mills		
721-6/8 Yards @ 6c per yard	43.31	
Less 2c per yard for Finishing	14.44	
		28.87
Piedmont Silk Co.		
5294-7/8 Yards @ 5½c per yard	2912.18	
Less 2c per yard for Finishing	1058.97	
		1853.21
Schwarzenbach Huber Co.		
430½ Yards @ 15c Plus 10%	64.58	
	6.46	
	58.14	
Less 2c per yard for finishing	8.61	
		49.53
		1931.61

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the Federal Child Labor Act of September 1, 1916.

EXHIBIT P-4A

32 2026 200

EXHIBIT P-4B

32 2026 300

EXHIBIT P-6

CUSTOMER LIST

1	Amalgamated Silk Corp	295	Fifth Ave.	Lex. 1290
2	Standard Weaving Co.	107	West 25th St.	Wat. 3753
3	Magee Laflin Mfg. Co.	57	Leonard St.	Franklin 2049
4	Bernard Semel	90	Grand St.	Canal 3700
5	A. H. Eastmond	358	Fourth Ave.	Mad. Sq. 9800
6	Schwarzenbach Huber Co	470	Fourth Ave.	Caladonia 7600
7	Bear Mill Mfg. Co.	120	Franklin St.	Franklin 3585
8	Fidelity Textile Mills	239	Fourth Ave.	Gram. 1946
9	Blum Textile Corp.	212	Church St.	Whitehl. 15615
10	E. H. Berhens & Co.	58	Leonard St.	Frank. 0215
11	Leon Michael & Co.	109-111	Worth St.	Frank. 2271
12	Waumbek Mfg. Co.	114	East 25th St.	Mad. Sq. 3672
13	M. H. Feinberg Co.	334	Fourth Ave.	Mad. Sq. 1670
14	H. Mendes & Co.	56	Leonard St.	Walker 0440
15	Denzel and Nathan	15	East 26th St.	Mad. Sq. 3672
16	Neuman & Smit	18	West 16th St.	Stvst. 5598
17	Max Kaufman & Co., Inc.	45	Leonard St.	
18	J. R. Simon & Co.	352	Fourth Ave.	Mad. Sq. 9930
19	B. Edmond David	354	Fourth Ave.	Mad. Sq. 5704
20	Carl Schoen Silk Corp.	260	Fourth Ave.	Ashland 7160
21	Joseph Wein	470	Fourth Ave.	
22	Shehli Silk Works	104	East 23rd St.	Mad. Sq. 9062
23	Brunswick Harris	345	Broadway	Franklin 1334
24	Samuel Lux	44	East 23rd St.	Gram. 1283
25	Leo M. Hoffman & Son	225	Fourth Ave.	Stvst. 1153
26	Max Fischell	230	Fifth Ave.	
27	A. Jacobs & Son	32	Walker St.	
28	Gallia Silk Mills	117	Madison Ave.	Mad. Sq. 8850
29	Rose Silk Mills	455	Fourth Ave.	Cal. 8280
30	Eagle Mills	54	East 11th St.	
31	M. C. Meister	404	Fourth Ave.	
32	Piedmont Silk Co.	356	Fourth Ave.	Mad. Sq. 10200
33	Louis Livingson			
34	Heller Bros.			
35	M Lowenstein & Sons, Inc.	40	West 23rd St.	Gram. 4000
36	Cohn Hall Marx Co.	93	Franklin St.	Frank. 4800
37	M. H. Oppenheimer Co.	88	Franklin St.	Frank. 1280
38	Martin L. Cohn Co.	424	Fourth Ave.	Mad. Sq. 10180
39	Edward Bloom	354	Fourth Ave.	Mad. Sq. 7300
40	Chas. Kalmanowitz	303	Fourth Ave.	Gram. 5240
41	Charles Schoolhouse	248	Fourth Ave.	Stvst. 8830
42	S. R. W. Textile	67	Worth St.	Frank. 3240
43	Sterling Cotton Mills	261	W. 35th St.	Watkins 0210
44	J. V. Farwell	43	White St.	Frank. 1774
45	Blackstone Textile Co.	390	Fourth Ave.	Mad. Sq. 8960
46	A. Rosen Silk Corp.	115	East 23rd St.	Gram. 3800
47	Simbler and Tonner	20	East 30th St.	
48	Russell and Fellman	391	Fourth Ave.	Mad. Sq. 7300
49	Alexander and Strasbourger	73	Worth St.	Franklin 3397
50	S. T. Palay & Co.	83	Worth St.	Franklin 2487

Exhibit P-6

51	Frank & Bauer	449	Broadway	Canal 0932
52	Max Rothstein	208	Fifth Ave.	Mad. Sq. 9438
53	Davidson and Tartikoff	448	Fourth Ave.	Mad. Sq. 2935
54	Weeks and Sawyer	63	Leonard St.	Frank. 4398-99
55	Seekened Silk Co.	33	East 33rd St.	Ashland 1788
56	Herman Kahn	314	East 23rd St.	Gram. 1350
57	Lambert Silk Co.	31	East 27th St.	Mad. Sq. 5090
58	Chapaul Co.	32	West 25th St.	Chelsea 6231
59	Stern and Stern	79	Fifth Ave.	Stvst. 5540
60	Edwin E. Berliner	85	Leonard St.	Frank. 2055
61	Louis Seigbert & Bro.	900	Broadway	Stvst. 8760
62	J. A. Migel	1	Madison Ave.	Asland 1788
63	Haslin Mills	39	Worth St.	Franklin 1976
64	S. Tenenbaum Sons & Co.	24	West 31st St.	Longacre 2418
65	Harris Coat House	142	West 31st St.	Longacre 2662
66	Wohl-South Co.	150	Fifth Ave.	Chelsea 5503
67	Feldman & Jacobson	354	Fourth Ave.	
68	American Wholesale Cor.	Baltimore, Md.		
69	Marvlo Mills	35	Fifth Ave.	
70	Robt. Rosenthal Co.	471	Fourth Ave.	Mad. Sq. 0458
71	Brookfield Linen Co.	98	Franklin St.	Franklin 2126
72	Charles Brown & Co.	32	East 31st St.	Mad. Sq. 5640
73	T. J. Mitchell	127	Madison Ave.	Mad. Sq. 0453
74	Miller Frank Co.	352	Fourth Ave.	Mad. Sq. 3821
75	Bonotaux Textile Co.	356	Fourth Ave.	Mad. Sq. 10200
76	Stern & Ballhausen	353	Fourth Ave.	
77	Bernard Lustig	80	Madison Ave.	
78	Helier & Long	78	Worth St.	
79	Wm. Alsberg & Co., Inc.	826	Broadway	
80	Fried Mendelson & Co.	221	Fourth Ave.	Stvst. 7680
81	Hydeman & Lassner	105-107	Fifth Ave.	
82	The Milton Co.	Providence, R. I.		
83				
84				
85				
86	N. S. Akeley & Co.	223	W. Jackson Blvd.	Chicago, Ill.
87	Longdon Textile Co.	354	Fourth Ave.	
88	Supreme Silk Corp.	1123	Broadway	Watkins 0812
89	Goldy Bros.	354	Fourth Ave.	Mad. Sq. 7300
90	Eisenstaedt Bros. Co.	320	So. Franklin St.	Chicago
91	Charles Scheffres & Co.	433	Broadway	Canal 6562
92	Ellis & Lamb	45	E. 17th St.	
93	M. Asher & Co., Inc.	102	Madison St.	
94	Rosenbaum & Lipner	49	W. 23rd St.	
95	J. I. Gumport & Sons, Inc.	708	Broadway	
96	Brown & Longbotham, Inc.	377	Broadway	
97	Dave Rubinger & Bros., Inc.	2	E. 32nd St.	Lexington 3226
98	Arcola Silk Co.	71	Warren St., Paterson	Sherwood 5636
99	Bedford Mills, Inc.	82	Leonard St.	Frank. 0897
100	Clarence Whitman & Son	354	Fourth Ave.	Mad. Sq. 0370
101	John Hood & Co., Inc.	104	Franklin St.	Frank. 1306
102	Oberman & Co.	288	Fourth Ave.	Ashland 2200
103	Gotham Textile Co.	329	Fourth Ave.	Mad. Sq. 7988

Exhibit P-6

104	Wechsler-Barber Silk Co.	171 Madison Ave.	Ashland 6115
105	Giant Silk Mfg. Co.	159 Madison Ave.	Cal. 4450
106	Ely & Walker Dry Goods Co.	St. Louis, Mo.	
107	Loeb & Schoenfield	27 W. 23rd St.	
108			
109	The Palmer Bros. Co.	395 Broadway	Canal 1022
110	I. Harris & Bros., Inc.	126 Fifth Ave.	Chelsea 8711
111	A. L. Reid & Co.	14 E. 25th St.	
112	Susquehanna Silk Mills	149 Madison Ave.	Caledonia 4400
113			
114			
115			
116			
117			
118			
119			
120			
121			
122			
123			
124	Oscar Riess	114 East 23rd St.	Gram. 4327
125			
126	Krone & Jacobson	354 Fourth Ave.	Mad. Sq. 7300
127			
128	Tenafly Silk Co.	30 E. 20th St.	

EXHIBIT P-7

New Jersey Supreme Court

Passaic County

Cramer & King Co., a corporation, Plaintiff, vs. National Surety Co., a corporation, Defendant.	Action at Law

NOTICE

You are hereby notified to produce at the trial of the issue joined in the above stated cause any and all letters written by plaintiff to said defendant between the dates of April 1, 1923 and January 1, 1924; also any and all proofs of loss on burglary insurance policy issued by the said defendant to the said plaintiff; also any and all statements showing the list of goods and the value thereof stolen from the premises of the plaintiff herein; also any and all statements, affidavits or other writings sent to defendant by plaintiff between the dates of April 9, 1923, and January 8, 1924, and any and all other papers, writings, maps, and drawings sent to said defendant between the two last mentioned dates by the said plaintiff; also any and all watchmen's records and reports sent you between said last mentioned dates; also any and all telegrams and other writings sent by plaintiff to the defendant between said period.

Exhibit P-7

On failure to do so, we will use secondary evidence to prove same.

Freeman & Westerhoff,
Attorneys of Plaintiff.

Dated January 31, 1925.

To

Michael Dunn, Esq.,
Attorney of Defendant,
or
To whom it may concern.

Service of the within notice is hereby acknowledged this 31st day of January, 1925.

Michael Dunn,
Attorney of Defendant.

Exhibits P-8, P-9, P-10, P-11, P-12

EXHIBIT P-8

32	2026	60	39	Crepe De Chine	Harvest	40
					Black	50
32	2026	60	39	Crepe De Chine	Navy	15

EXHIBIT P-9

32	2026	60	39	Crepe De Chine	Henna	30

EXHIBIT P-10

32	2026	60	39	Crepe De Chine	Blue	100
					Grey	110

EXHIBIT P-11

32	2026	60	39	Crepe De Chine	Bobolink	110

EXHIBIT P-12

32	2026	60	39	Crepe De Chine	White	45

EXHIBIT P-13

Memorandum of Shipment
From CRAMER& KING CO.,
Paterson, N. J., Apr. 17th, 1923

To Fleitman & Co.,
For Acct. of Piedmont Silk Co.

Memo No. 6539 Sheet No. 1
Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article
39″ Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
White	S1001	73365	1	57 2	White	S1001	73187	26	59
		54	2	59 2			321	27	59 4
		64	3	60			62	28	60 6
		58	4	60 6			04	29	59
		57	5	58 4			2	30	58 6
		63	6	60 2			18	31	57 2
		59	7	59 6			186	32	59 6
		300	8	56 2			311	33	60
		60	9	58 2			17	34	58
		296	10	58 4			184	35	60
		7	11	60			315	36	59 6
		9	12	57 2			200	37	59 4
		361	13	59 6			188	38	54 4
		298	14	61 6			98	39	59 2
		313	15	59 6			95	40	60
		308	16	60			85	41	58 2
		6	17	59 4			91	42	58 6
		5	18	60 2			77	43	59 4
		7	19	57 2			6	44	58 2
		14	20	61 6			202	45	59
		01	21	60 4					
		9	22	58 6			20 Pieces		1178-6 Yards
		19	23	59 2					
		6	24	55 6					
		10	25	59 4					

25 pieces 1479-6 Yards
Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING Co.,
Paterson, N. J., April 17th, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo No. 6539 Sheet No. 2

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article
39″ Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
White	S1001	73189	46	62 4	White	S1001	73210	72	60 4
		72	47	60 4			234	73	61 6
		5	48	59 2			227	74	60 2
		82	49	59 4			15	75	60 2
		96	50	59 2			6	76	61 6
		78	51	61			24	77	60 6
		9	52	57 4			13	78	61 6
		90	53	60 6			4	79	59
		1	54	57 6			23	80	57
		7	55	55 6			18	81	59 4
		3	56	59			41	82	59 5
		80	57	59 4			30	83	60 2
		211	58	60 2			19	84	59 2
		183	59	59 6			22	85	59 6
		70	60	58 2			33	86	57 6
		201	61	60 6			5	87	60 2
		192	62	60 2			1	88	58 6
		212	63	59 4			26	89	59 4
		66	64	62 2			38	90	60
		9	65	59 2			2	91	57 6
		199	66	60 2			6	92	58 2
		207	67	59 2			29	93	60 2
		4	68	60 4			89	94	58 4
		8	69	59 2			5	95	62
		194	70	60			39	96	60 6
		217	71	59 4			42	97	57 6
		26 Pieces		1551-2 Yards			26 Pieces		1552-7 Yards

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., Apr. 17th, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 3

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39" Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Grey		73237	98	58 2	Grey		72954	124	60 2
		87	99	60 2			204	125	58
		8	100	59 2			200	126	61 2
		72929	101	60 2			762	127	59 2
		59	102	59 2			170	128	60 4
		169	103	61 6			80	129	59 4
		773	104	59 6			99	130	59 6
		962	105	60			254	131	59 4
		51	106	57 2			179	132	59 2
		6	107	60 6			5	133	59 2
		210	108	62			6	134	60 2
		957	109	58			90	135	66 6
		186	110	60			763	136	60 4
		928	111	60 2			009	137	60
		198	112	59 4			214	138	71 2
		89	113	56			208	139	59 6
		257	114	58			921	140	59 6
		38	115	61 6			207	141	60 6
		771	116	76 2			922	142	60
		194	17	56 6			206	143	60
		88	18	59 2			181	144	53
		767	119	60			212	145	59 2
		9	120	58			916	146	60
		76	121	55 2			921	147	59 6
		211	122	59 2			13	148	59 4
		183	123	59 4			17	149	55 4
		26 Pieces		1556-4 Yards			26 Pcs.		1562-4 Yards

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17th, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 4

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39″ Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Grey		72926	150	59 4	Bobolink	03833	72296	176	59 4
		779	151	61 2			553	177	59 2
		915	152	59 4			4	178	58 4
		907	153	59			9	179	59 2
		19	154	64			612	180	59 2
		908	155	60 2			405	181	59 4
		10	156	61			590	182	60 4
Bobolink	03833	9	157	57			606	183	59 1
		14	158	59 2			560	184	57 2
		25	159	59 4			92	185	59 6
		3	160	58 2			72	186	58
		60	161	59 6			3	187	59
		766	162	60 4			96	188	60 2
		255	163	59 6			555	189	57 6
		761	164	58 2			615	190	59 2
		75	165	57			556	191	57 4
		70	166	59 4			2	192	64
		2	167	60			564	193	61
		8	168	59 6			5	194	58 2
		258	169	60 2			2	195	59 6
		777	170	54 4			86	196	42 4
		251	171	60 6			580	197	58 4
		861	172	60 2			57	198	59 4
		246	173	59 6			610	199	61 2
		320	174	59 6			568	200	59 6
		19	175	59 2			75	201	60 4

26 Pieces 1547-4 Yards 26 Pcs. 1523-7 Yards

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 5

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39"

Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Bobolink	03833	72625	202	60 6	Bobolink	03833	72357	228	60
		08	203	59			76	229	59 6
		593	204	60 2			530	230	60
		609	205	58 6			20	231	59
		597	206	60 4			362	232	59 4
		611	207	61 4			51	233	59 4
		13	208	74 4			44	234	63
		413	209	62 4			518	235	60 4
		607	210	61 4			349	236	59 2
		598	211	60 2			522	237	59 6
		591	212	69 2			60	238	60
		5	213	61			17	239	59 6
		603	214	59 2			66	240	60
		4	215	59 2			77	241	60
		684	216	60 2			76	242	60 2
		1	217	61			4	243	58 6
		404	218	59 4			16	244	57 2
		399	219	59 6			297	245	60
		395	220	60			305	246	60
		13	221	52 2			16	247	59 6
		70	222	58			06	248	57 4
		09	223	59			86	249	60 2
		52	224	62			300	250	59 6
		61	225	60			72	251	59 6
		9	226	59 2			53	252	62 2
		295	227	61 6			01	253	60
		26 Pieces		1581 Yards			26 Pcs.		1555-4 Yards

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 6

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39"
Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.
Bobolink	03833	72377	254	59
		23	255	59 2
		81	256	60
		3	257	60 4
		73	258	61
		8	259	60 2
		67	260	60
		42	261	60 2
		55	262	60
		75	263	60
		50	264	57 2
		79	265	59 2
Pharoah Blue		40	266	59
	06607	531	267	59 6
		368	268	59 6
		511	269	60
		358	270	59 4
		519	271	59
		21	272	60 6
		88	273	61
		529	274	60 2
		87	275	61 2
		71	276	59 6
		8	277	60
		348	278	60 2
		525	279	61

26 Pcs. 1558 Yards

Color	Comb.	Piece No.	Mill No.	Yds.
Pharoah Blue		72527	280	59 6
	06607	150	281	60
		3	282	60 2
		39	283	60
		47	284	59 4
		8	285	60 4
		790	286	60
		801	287	60 4
		143	288	59 6
		52	289	59 6
		40	290	60 2
		810	291	60
		063	292	60 2
		800	293	62 6
		067	294	59 2
		782	295	58
		071	296	58 4
		51	297	59 4
		76	298	60 4
		809	299	60 2
		068	300	60 6
		6	301	65
		72	302	61 2
		44	303	58
		934	304	59
		58	305	58 4

26 Pcs. 1561.6 Yards

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 7

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39"
Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Pharoah Blue		72953	306	60	Pharoah Blue		72205	332	59 6
	06607	11	307	59 2		06607	195	333	60
		057	308	58			71967	334	60
		172	309	58 6			3	335	60 2
		955	310	59 2			71	336	60 2
		654	311	59 6			4	337	59 2
		48	312	59 2			6	338	58 2
		806	313	60 2			66	339	58 6
		050	314	59 4			80	340	57 4
		43	315	59 2			72231	341	60
		7	316	59 4			82	342	60 2
		952	317	64 2			47	343	61 6
		202	318	61 4			72240	344	59 4
		197	319	60 2			30	354	61 2
		6	320	68 6			88	346	59 6
		912	321	60 6			28	347	60 2
		182	322	59 6			59	348	36
		71	323	59 6			45	349	62
		87	324	61			995	350	60 2
		92	325	80			233	351	61 2
		209	326	60			89	352	60 4
		168	327	59			5	353	61
		213	328	59 4			846	354	59 6
		201	329	60 4			249	355	60
		193	330	60 6			83	356	59
		203	331	48 2			39	357	63
26 Pcs.		1576-6 Yards.			26 Pcs.		1539-4 Yards.		

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 8

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39"
Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Pharoah	06607	72836	358	59 2	Harvest	01436	72843	384	60
Blue		3	359	59 4			86	385	59 2
		229	360	59 2			71	386	60 6
		78	361	60 2			66	387	56 2
		845	362	60 4			70	388	60 2
		78	363	60			30	389	61 4
		41	364	57 2			60	390	61
		38	365	60 2			7	391	59 2
Harvest	01436	31	366	59 6			62	392	60 6
		9	367	58 2			76	393	58 4
		277	368	59 4			80	394	59
		842	369	60			93	395	60 6
		7	370	59 2			85	396	59 4
		26	371	61 2			77	397	57 6
		9	372	60 2			4	398	59 6
		8	373	56 6			34	399	60 6
		75	374	59 2			232	400	57 6
		44	375	60 6			71358	401	82
		8	376	57 4			269	402	61
		40	377	59 6			443	403	58 2
		84	378	61 2			365	404	59 6
		64	379	62 6			7	405	60 4
		72	380	64					
		58	381	59 2					
		65	382	57					
		73	383	60 2					

22 Pcs. 1334-2 Yards.

26 Pcs. 1553 Yards.

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitmann and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 9

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39″

Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.
Henna Wallflower	04294	71366	406	56 4
		435	407	61 6
		9	408	59 2
		29	409	59
		33	410	58
		53	411	60 4
		36	412	59 6
		44	413	60 6
		7	414	60
		31	415	60 6
		50	416	60 2
		22	417	57 6
		37	418	58 2
		42	419	60 4
		24	420	56 4
		45	421	60 4
		34	422	59 4
		38	423	57 6
		19	424	57 2
		28	425	50 2
		1	426	60
		5	427	60 2
		6	428	59 2
		41	429	59 6
		14	430	64
Henna Wallflower	04294	71432	431	59 2
		40	432	69 2
		6	433	66 6
		17	434	60 4
		72469	435	60
		78	436	58 6
		60	437	60 2
		71549	438	61 6
		37	439	61 6
		72142	440	59 6
		4	441	60 6
		36	442	58 2
		41	443	59 2
		51	444	59 2
		32	445	57 6
		55	446	60 2
		298	447	59 2
		303	448	60 6
		294	449	59 2
		356	450	57

25 Pcs. 1477 Yards.

20 Pcs. 1209-6 Yards

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibits P-13

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., April 17, 1923

To Fleitman and Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6539 Sheet No. 10

Cust. Order 147. Mill No. 2026. Qual. No. 1204. Article 39″
Crepe De Chine

Color	Comb.	Piece No.	Mill No.	Yds.		Color	Comb.	Piece No.	Mill No.	Yds.	
Black		72318	451	60	2	Black		73089	476	60	
		73010	452	58	6			68	477	59	
		9	453	60	2			88	478	60	
		8	454	58				2	479	60	
		7	455	58	4			74	480	59	4
		1	456	59				66	481	60	
		6	457	59	2			76	482	59	6
		5	428	60				80	483	60	4
		91	459	58	6			78	484	58	6
		4	460	61				92	485	60	
		72889	461	60	2			86	486	60	2
		97	462	60	4			69	487	57	6
		1	463	59	2			81	488	55	4
		8	464	59	6			79	489	59	6
		87	465	61	2			83	490	59	4
		2	466	66	2			93	491	61	
		94	467	57				72	492	60	
		5	468	54	6			85	493	60	
		6	469	61				77	494	58	2
		81	470	60	6			90	495	58	
		8	471	60	2			84	496	61	
		73087	472	62	6			71377	497	61	
		70	473	60	2			87	498	59	
		1	474	61	4			405	499	60	
		5	475	60				395	500	58	4
25 Pcs.		1499	2	Yards.		25 Pcs.		1487		Yards.	

Delivered to Bamford Bros. Silk Mfg. Co.,
Cliff St. & Belmont Ave., Paterson, N. J.

Exhibit P-14

EXHIBIT P-14

Date 3|19|23
Print Cust. No. 32
Pcs. 500
Total Yds. 29949-5
Mill Order 2026
Cust. Order 147
Quality 1204
Width 39″
Pcs. 45
Special Rush Rush Rush

Article—Crepe de Chine
Colors—White S 1001
110 Grey
110 Bobolink O 3833
100 Blue Pharaoh 0 6607
40 Harvest 0 1436
30 Henna Wall Flower 0 4294
15 Navy S 6975
50 Black

				73187	26	59
73365	1	57-2	White	321	27	59-4
354	2	59-2		362	28	60-6
364	3	60		304	29	59
358	4	60-6		302	30	58-6
357	5	58-4		318	31	57-2
363	6	60-2		186	32	59-6
359	7	59-6		311	33	60
300	8	56-2		317	34	58
360	9	58-2		184	35	60
296	10	58-4		315	36	59-6
297	11	60		200	37	59-4
299	12	57-2		188	38	54-4
361	13	59-6		198	39	59-2
298	14	61-6		195	40	60
313	15	59-6		185	41	58-2
308	16	60		181	42	58-6
306	17	59-4		177	43	59-4
305	18	60-2		176	44	58-2
307	19	57-2		202	45	59
314	20	61-6			Grey	
301	21	60-4		189	46	62-4
309	22	58-6		172	47	60-4
319	23	59-2		175	48	59-2
316	24	55-6		182	49	59-4
310	25	59-4		196	50	59-2

EXHIBIT P-15

Grey

73178	51	61	73226	89	59-4
179	52	57-4	238	90	60
190	53	60-6	232	91	57-6
191	54	57-6	236	92	58-2
197	55	55-6	229	93	60-2
193	56	59	289	94	58-4
180	57	59-4	285	95	62
211	58	60-2	239	96	60-6
183	59	59-6	242	97	57-6
170	60	58-2	237	98	58-2
201	61	60-6	287	99	60-2
192	62	60-2	288	100	59-2
212	63	59-4	72929	101	60-2
206	64	62-2	959	102	59-2
209	65	59-2	169	103	61-6
199	66	60-2	773	104	59-6
207	67	59-2	962	105	60
204	68	60-4	951	106	57-2
208	69	59-2	956	107	60-6
194	70	60	210	108	62
217	71	59-4	957	109	58
210	72	60-4	186	110	60
234	73	61-6	928	111	60-2
227	74	60-2	198	112	59-4
215	75	60-2	189	113	56
216	76	61-6	257	114	58
224	77	60-6	238	115	61-6
213	78	61-6	771	116	76-2
214	79	59	194	117	56-6
223	80	57	188	118	59-2
218	81	59-4	767	119	60
241	82	59-5	769	120	58
230	83	60-2	776	121	55-2
219	84	59-2	211	122	59-2
222	85	59-6	183	123	59-4
233	86	57-6	954	124	60-2
235	87	60-2	204	125	58
231	88	58-6	200	126	61-2

EXHIBIT P-16

72762	127	59-2	922	142	60
170	128	60-5	206	143	60
180	129	59-4	181	144	53
199	130	59-6	212	145	59-2
254	131	59-4	916	146	60
179	132	59-2	921	147	59-6
175	133	59-2	913	148	59-4
176	134	60-2	917	149	55-4
190	135	66-6	926	150	59-4
763	136	60-4	779	151	61-2
009	137	60	915	152	59-4
214	138	71-2	907	153	59
208	139	59-6	919	154	64
931	140	59-6	908	155	60-2
207	141	60-6			

Bobolink

910	156	61	612	180	59-2
909	157	57	405	181	59-4
914	158	59-2	590	182	60-4
925	159	59-4	606	183	59-1
923	160	58-2	560	184	57-2
960	161	59-6	592	185	59-6
766	162	60-4	572	186	58
255	163	59-6	573	187	59
761	164	58-2	596	188	60-2
72775	165	57	555	189	57-6
770	166	59-4	615	190	59-2
772	167	60	556	191	57-4
778	168	59-6	552	192	59-2
258	169	60-2	564	193	61
777	170	54-4	565	194	58-2
251	171	60-6	562	195	59-6
861	172	60-2	586	196	42-4
246	173	59-6	580	197	58-4
320	174	59-6	557	198	59-4
319	175	59-2	610	199	61-2
296	176	59-4	568	200	59-6
553	177	59-2	575	201	60-4
554	178	58-4	625	202	60-6
559	179	59-2			

EXHIBIT P-17

72608	203	59	518	235	60-4
593	204	60-2	349	236	59-2
609	205	58-6	522	237	59-6
597	206	60-4	560	238	60
611	207	61-4	517	239	59-6
613	208	74-4	566	240	60
413	209	62-4	72577	241	60
607	210	61-4	576	242	60-2
598	211	60-2	574	243	58-6
591	212	59-2	516	244	57-2
595	213	61	297	245	60
603	214	59-2	305	246	60
604	215	59-2	316	247	59-6
684	216	60-2	306	248	57-4
601	217	61	384	249	60-2
404	218	59-4	300	250	59-6
399	219	59-6	372	251	59-6
395	220	60	353	252	62-2
313	221	62-2	301	253	60
370	222	58	377	254	59
309	223	59	323	255	59-2
352	224	62	381	256	60
361	225	60	383	257	60-4
369	226	59-2	373	258	61
295	227	61-6	378	259	60-2
357	228	60	367	260	60
376	229	59-6	342	261	60-2
530	230	60	355	262	60
520	231	59	375	263	60
362	232	59-4	350	264	57-2
351	233	59-4	379	265	59-2
344	234	63			

Blue

340	266	59	521	272	60-6
531	267	59-6	588	273	61
368	268	59-6	529	274	60-2
511	269	60	587	275	61-2
358	270	59-4	571	276	59-6
519	271	59	578	277	60
			348	278	60-2

EXHIBIT P-18

Blue

72525	279	61	72952	317	64-2
527	280	59-6	202	318	61-4
150	281	60	197	319	60-2
153	282	60-2	196	320	68-6
139	283	60	912	321	60-6
147	284	59-4	182	322	59-6
148	285	60-4	171	323	59-6
790	286	60	187	324	61
801	287	60-4	192	325	80
143	288	59-6	209	326	60
152	289	59-6	168	327	59
140	290	60-2	213	328	59-4
810	291	60	201	329	60-4
063	292	60-2	193	330	60-6
800	293	62-6	203	331	48-2
067	294	59-2	205	332	59-6
782	295	58	195	333	60
071	296	58-4	71967	334	60
051	297	59-4	963	335	60-2
076	298	60-4	971	336	60-2
809	299	60-2	974	337	59-2
068	300	60-6	976	338	58-2
066	301	65	966	339	58-6
072	302	61-2	980	340	57-4
044	303	58	72231	341	60
934	304	59	282	342	60-2
958	305	58-4	247	343	61-6
953	306	60	240	344	59-4
911	307	59-2	230	345	61-2
057	308	58	288	346	59-6
172	309	58-6	228	347	60-2
955	310	59-2	259	348	36
054	311	59-6	245	349	62
048	312	59-2	995	350	60-2
806	313	60-2	233	351	61-2
050	314	59-4	289	352	60-4
043	315	59-2	285	353	61
047	316	59-4	846	354	59-6

EXHIBIT P-19

72249	355	60	278	361	60-2
283	356	59	845	362	60-4
239	357	63	878	363	60
836	358	59-2	841	364	57-2
833	359	59-4	838	365	60-2
229	360	59-2			
		Harvest			
831	366	59-6	871	386	60-6
839	367	58-2	866	387	56-2
277	368	59-4	870	388	60-2
842	369	60	830	389	61-4
847	370	59-2	860	390	61
826	371	61-2	867	391	59-2
829	372	60-2	862	392	60-6
828	373	56-6	72876	393	58-4
875	374	59-2	880	394	59
844	375	60-6	893	395	60-6
848	376	57-4	885	396	59-4
840	377	59-6	877	397	57-6
884	378	61-2	874	398	59-6
864	379	62-6	834	399	60-6
872	380	64	232	400	57-6
858	381	59-2	71358	401	82
865	382	57	269	402	61
873	383	60-2	443	403	58-2
843	384	60	365	404	59-6
886	385	59-2	367	405	60-4
		Henna			
366	406	56-4	442	419	60-4
435	407	61-6	424	420	56-4
439	408	59-2	445	421	60-4
429	409	59	434	422	59-4
433	410	58	438	423	57-6
453	411	60-4	419	424	57-2
436	412	59-6	428	425	50-2
444	413	60-6	421	426	60
447	414	60	425	427	60-2
431	415	60-6	426	428	59-2
450	416	60-2	441	429	59-6
422	417	57-6	414	430	64
437	418	58-2			

EXHIBIT P-20

71432	431	59-2	417	434	60-4
440	432	69-2	72469	435	60
446	433	66-6			
		Navy			
478	436	58-6	72896	469	61
460	437	60-2	881	470	60-6
71549	438	61-6	888	471	60-2
537	439	61-6	73087	472	62-6
72142	440	59-6	070	473	60-2
144	441	60-6	071	474	61-4
136	442	58-2	075	475	60
141	443	59-2	089	476	60
151	444	59-2	068	477	59
132	445	57-6	088	478	60
155	446	60-2	082	479	60
298	447	59-2	074	480	59-4
303	448	60-6	066	481	60
294	449	59-2	076	482	59-6
356	450	57	080	483	60-4
318	451	60-2	078	484	58-6
73010	452	58-6	092	485	60
019	543	60-2	086	486	60-2
18	454	58	069	487	57-6
17	455	58-4	081	488	55-4
11	456	59	079	489	59-6
6	457	59-2	083	490	59-4
5	458	60	093	491	61
91	459	58-6	072	492	60
94	460	61	085	493	60
72889	461	60-2	077	494	58-2
897	462	60-4	090	495	58
891	463	59-2	084	496	61
898	464	59-6	71377	497	61
887	465	61-2	387	498	59
882	466	66-2	405	499	60
894	467	57	395	500	58-4
895	468	54-6			

Exhibit P-23

EXHIBIT P-23

CORRECTED ORDER
Date 4|24|23
Print Cust. No. 32
Mill Order 2062
Cust. Order 161
Goods Came Dyed on Beam from Bamford Bros.
PUT IN WORK AT ONCE
6 Beams Grey
11 " Bobolink
3 " Grey
2 " Henna
3 " Harvest
2 " Navy
4 " Black
10 " Pharoh Blue
170 Pcs. 39" 1204 Crepe de Chine Prd.

Pattern 100 (40) Pcs.
10 Pcs. Grey
10 Pcs. Blue
10 Pcs. Bobolink
5 Pcs. Black
5 Pcs. Navy

Pattern 200 (40 Pcs.)
10 Pcs. Grey
10 Pcs. Blue
5 Pcs. Harvest
10 Pcs. Bobolink
5 Pcs. Black

Pattern 300 (25) Pcs.
5 Pcs. Grey
5 Pcs. Blue
5 Pcs. Henna
5 Pcs. Bobolink
5 Pcs. Black

Pattern 400 (25) Pcs.
5 Pcs. Grey
5 Pcs. Blue
5 Pcs. Henna
5 Pcs. Bobolink
5 Pcs. Black

Pattern 500 (40) Pcs.
10 Pcs. Grey
10 Pcs. Blue
5 Pcs. Harvest
10 Pcs. Bobolink
5 Pcs. Black

Exhibits P-24, P-25, P-26, P-27, P-28

EXHIBIT P-24

Cust. No.	Lot No.	Design	Article	Color	Pcs.
32	2062	400	Crepe de Chine	Various	25

EXHIBIT P-25

Marked by and crossed off by court steno.

EXHIBIT P-26

Cust. No.	Lot No.	Design	Article	Color	Pcs.
32	2062	500	Crepe de Chine	Blue	5
				Black	5
				Grey	10

EXHIBIT P-27

Cust. No.	Lot No.	Design	Article	Color	Pcs.
32	2062	300	Crepe de Chine	Henna	5
				Bobolink	5
32	2062	200	Crepe de Chine	Grey	10

EXHIBIT P-28

Cust. No.	Lot No.	Design	Article	Color	Pcs.
32	2062	200	Crepe de Chine	Blue	10
				Grey	5
				Black	10
				Navy	5
				Bobolink	10
32	2062	200	Crepe de Chine	Black	5
				Bobolink	5
32	2062	200	Crepe de Chine	Blue	10
				Grey	10
				Harvest	5

Exhibit P-29

EXHIBIT P-29

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., June 7, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.

Memo. No. 7465 Sheet No. 2

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Bobolink		72351	233	56 2
		530	230	58 6
		569	238	58 6
		517	239	59 1
		353	252	60 3
		301	253	59 7
		283	257	59 3
		257	198	59 3

8 Pcs. 471-7 Yards.

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 8, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6929 Sheet No. 1

Cust. Print Order 161. Mill No. 2062. Qual. No. 1204. Patt. 100. Article 39″ Crepe de Chine. From Lot No. Mill 2026.

Color	Comb.	Piece No.	Mill No.	Yds.
Blue		72511	269	59
		21	272	61 3
		782	295	59 4
		196	320	57
		82	322	58 4
		209	326	59
		1	329	58 6
		5	332	59 2
		30	345	60 2
		59	348	34 6

10 Pcs. 567-3 Yards.

Exhibit P-29

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., July 9, 1923

For Acct. of Piedmont Silk Co.

Memo. No. 7952

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39" Crepe de Chine.

15 Pes. 884-7 Yards.

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., June 5, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.

Memo. No. 7457

Cust. Order 161. Mill No. 2062. Qual. No. 1204. 400. Article 39" Crepe de Chine. From Cust. Lot No. 147. Mill Lot No. 2026.

Color	Comb.	Piece No.	Mill No.	Yds.			Piece No.	Mill No.	Yds.	
Grey		73180	57	58	6		5	421	59	2
		72204	125	56	7	Bobolink	0	432	67	6
		7	141	59			72761	164	57	2
		915	152	58	6		78	168	58	2
		07	153	60			7	170	56	3
Blue		361	225	78	4		251	171	57	4
		42	261	58	4	Black	559	179	61	2
		076	298	59			882	466	57	4
		911	307	55			8	471	58	6
		054	311	57	4		73090	495	58	6
Henna		71435	407	60	3		71377	497	59	
		9	408	58	4		87	498	58	3
		44	413	58	6					

25 Pes. 1489-4 Yards.

Exhibit P-29

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 17, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.
Memo. No. 7127
Cust Print Order 161. Mill No. 2062. Qual. No. 1204. Patt. 500.
Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Grey		73179	52	56 7
		206	64	61 2
		219	84	55 1
		222	85	58 4
		236	92	57 5
		229	93	59 6
		72188	118	59 4
		183	123	58 1
		200	126	60
		224	131	56 3
Bobolink		925	159	58 1
		554	178	59 7
		590	182	58 2
		572	186	56 2
		593	204	58 3
		591	212	57 7
		595	213	58 1
		404	218	57 7
		577	241	58 2
		379	265	56 6
Harvest		187	324	57 6
		71980	340	55
		72840	377	57
		844	375	60
		830	379	59 3
25 Pcs.				1450 Yards.

Color	Comb.	Piece No.	Mill No.	Yds.
Blue		72358	270	58 6
		588	273	59 4
		529	274	59 3
		587	275	60 4
		071	296	59 3
		955	310	58 1
		197	319	58 4
		172	309	59 3
		213	328	57 3
		995	350	59 5
Black		73010	452	57 4
		11	456	59
		5	458	59 6
		72891	413	58 3
		895	468	54 4
15 Pcs.				877-5 Yards.

Exhibit P-29

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 8, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.

Memo. No. 6929 Sheet No. 2

Cust. Print Order 161. Mill No. 2062. Qual. No. 1204. Patt. 100.

Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Grey		73189	46	58 6
		172	47	60
		178	51	58 6
		194	70	57 4
		216	76	59
		213	78	58
		233	86	55 6
		231	88	57 2
		72176	134	57 5
		779	151	60
		910	156	60 3
		255	163	57
		775	165	54 6
		405	181	57 3
		625	202	59
		603	214	58
		598	211	58 3
		369	226	58 5
		362	232	56 3
		516	244	55 5

20 Pcs. 1158-1 Yards.

Color	Comb.	Piece No.	Mill No.	Yds.
Navy		72142	440	56
		144	441	58 4
		141	443	57
		303	448	56 6
		294	449	58 1
		898	464	59
		887	465	61 1
		73070	473	59 3
		088	478	60 1
		71395	500	57 5

10 Pcs. 583-5 Yards.

Exhibit P-29

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., June 22, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.
Memo. No. 7727
Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39″ Crepe de Chine.
Sheet No. 1.

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Blk.		71429	409	58 7	Navy		72478	436	57 3
		72318	451	58 3			460	437	59 1
		73018	454	56 7			71549	458	59 7
		73017	455	57 5			37	459	59 4
		72889	461	59			136	442	55 6
		356	450	56 4			72151	444	57 6
		896	469	59 2			5	446	59
		73087	472	59 4			298	447	58 1
		76	482	58 3			73069	487	55 4
		80	483	58 5			79	489	58
		78	484	57 3					
		93	491	59 3		10 Pcs.			580 Yards.
		84	496	58 5					
		71387	498	57 6					
		405	499	59 1					
		73083	490	58 2					

16 Pcs. 933-4 Yards.

Exhibit P-29

Memorandum of Shipment
From CRAMER & KING CO.,

Memo. No. 8223. Paterson, N. J., July 30, 1923

To Fleitman & Co.

For Acct. of Piedmont Silk Co.

Cust. Dye Order 161. Mill No. 2062. Qual. No. 1204. Article 39" Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Harvest		72525	279	59 7
		192	325	58 4
		277	368	57 5
		831	366	57 2
		842	369	58 2
		847	370	58 1
		826	371	59 3
		829	372	58 7
		828	373	55
		872	380	61 3
		858	381	57 2
		865	382	55
		873	383	59
		860	390	58 6
		867	391	57 2
		876	393	56
		834	399	59
		232	400	55 6
		71443	403	52 7
		365	404	57 4
	20 Pcs.			1152-5 Yards.

Exhibits P-30, P-31, P-32, P-33

EXHIBIT P-30

Trunk No.	Cust. No.	No. of Pcs.	Memo. No.	Sheet No.
96	32	10	6929	1
		30	6930	

EXHIBIT P-31

Trunk No.	Cust. No.	No. of Pcs.	Memo. No.	Sheet No.
133	32	10	7102	
		20	7100	1
		5	7100	2

EXHIBIT P-32

Trunk No.	Cust. No.	No. of Pcs.	Memo. No.	Sheet No.
137	32	40	7127	
		1	1738A	

EXHIBIT P-33

Date	Article	Consignee	Signature
7/31/23	1 Trk. 166	Piedmont Silk Co.	Moran

EXHIBIT P-34

From Fleitmann & Co., Inc, 356 Fourth Avenue, New York, March 13th/23. No. 12/22337. Cramer & King, Paterson, New Jersey. 100 Pieces Silks. Four (4) Trunks, No. 136-167, 186-204. Signed McGowan. 4 trunks.

EXHIBIT P-35

Date	Article	Consignee	Signature
6/11/23	3 Pkgs 7531A		
	B		
	C	Piedmont Silk Co.	Moran (3)

EXHIBIT P-36

Date	Article	Consignee	Signature
7/11/23	3 Pkgs 7952	Piedmont Silk Co.	Moran (3)

12/20811 New York, March 5th/23

Delivered by Fleitmann & Co., Inc., to Cramer & King, Paterson, New Jersey, (400 Pieces Silks) Trunks, Value $36,000. Eleven (11) Trunks.

No. 98—35 pcs., No. 138—35 pcs., No. 179—45 pcs., No. 178—50 pcs., No. 130—35 pcs., No. 191—30 pcs., No. 100—35 pcs., No. 126—35 pcs., No. 187—30 pcs., No. 95—35 pcs., No. 128—35 pcs. Signed, Turner, 11 trunks.

Exhibit P-37

EXHIBIT P-37

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., June 3, 1923

To Fleitman & Co.
For Acct. of Piedmont Silk Co.

Memo. No. 7465 Sheet 1

Cust. Dye Order 147. Mill No. 2026. Qual. No. 1204. Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.	Color	Comb.	Piece No.	Mill No.	Yds.
Bobolink	03833	72909	157	56 7	Bobolink	03833	72522	237	59 6
		23	160	57 4			66	240	60 2
		60	161	60 2			76	242	59 2
		766	102	60			4	243	58 6
		70	166	58 6			349	236	58 1
		861	172	58 7			05	246	60 1
		320	174	58 6			72	251	59 1
		19	175	57 6			3	258	61
		296	176	58 4			8	259	59
		612	180	58 2			67	260	59 6
		06	183	58 4			75	263	60
		560	184	55			596	188	57 5
		92	185	59 4			56	191	58 7
		73	187	55 1			65	194	60
		615	190	58 1			2	195	59 6
		586	196	42 1			75	201	60 5
		608	203	58 2			601	217	61 2
		9	205	58 4			309	223	59
		597	206	60			295	227	51 5
		684	216	59 5			376	229	60
		555	189	52 6			520	231	58
		395	220	60 6			597	245	60 4
		13	221	60			316	247	57 6
		52	224	61			23	255	59 5
		7	228	60 1			81	256	57 2
		518	235	59 7			55	262	60 6
		26 Pcs.		1504-6 Yards.			26 Pcs.		1537-6 Yards.

Exhibit P-37

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 16, 1923

Memo. No. 7102
To Fleitman & Co.
For Acct. of Piedmont Silk Co.
Cust. Print Order 161. Mill No. 2062. Qual. No. 1204. Patt. 200.
Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Grey		73197	55	55
		211	58	59
		170	60	55 4
		210	72	59 2
		951	106	56
		28	111	60
		238	115	59 3
		11	122	58 7
		72919	154	61 6
		14	158	58 1

10 Pcs. 582-7 Yards.

Exhibit P-37

Memorandum of Shipment
From CRAMER & KING CO.,

Memo. No. 6930 Paterson, N. J., May 8, 1923

To Fleitman & Co.

For Acct. of Piedmont Silk Co.

Cust. Print Order 161. Mill No. 2062. Qual. No. 1204. Pat. 200.

Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.		Color	Comb.	Piece No.	Mill No.	Yds.	
Blue		72810	271	58	2	Blk.		72881	470	59	3
		067	294	58	1			73075	475	59	6
		934	304	56				68	477	58	6
		043	315	57	5			81	288	49	3
		193	330	58	5			77	494	56	2
		71963	335	58							
		74	337	58			5 Pes.			283-4	Yards.
		66	339	57	7						
		72247	343	59	1						
		87	352	58	6						
Bobolink		772	167	58	6						
		246	173	57	3						
		553	177	57	4						
		64	193	58	7						
		611	207	60							
		3	208	72	2						
		04	215	57							
		399	219	55	4						
		77	254	57	4						
		50	264	57	4						
Harvest		843	384	59							
		86	385	57	7						
		66	387	55	5						
		70	388	59	6						
		71367	405	59	3						
	25 Pes.			1463-7	Yards.						

Exhibit P-37

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 16, 1923

Memo No. 7100 Sheet No. 2
To Fleitman & Co.
For Acct. of Piedmont Silk Co.
Cust. Print Order 161. Mill No. 2062. Qual. No. 1204. Patt. 300.
Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.
Grey		73217	71	58 1
		214	79	58
		242	97	55 3
		72762	127	58 2
		72009	137	59

5 Pcs. 288-7 Yards.

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., May 16, 1923

Memo No. 7100 Sheet No. 1
To Fleitman & Co.
For Acct. of Piedmont Silk Co.
Cust. Print Order 161. Mill No. 2062. Qual. No. 1294. Pat. 300.
Article 39 Crepe de Chine. From Cust. Lot No. 147. Mill Lot No. 2026.

Color	Comb.	Piece No.	Mill No.	Yds.				
					Henna	306	248	60
Blue		72571	276	59 2		84	249	58 6
		790	286	59 4		300	250	56 3
		044	303	56 2		424	420	52 4
		958	305	57 4		8	425	48 6
		057	308	55 6	Black	73016	457	57 6
Bobolink		767	119	56 2		91	459	57 6
		9	120	57 4				9 4
		258	169	58 6		4	460	49 3
		552	192	57 4		72894	467	55 6
		607	210	59 4		73072	492	60

20 Pcs. 1144-2 Yards.

Exhibits P-38, P-39, P-40, P-41, P42

EXHIBIT P-38

Trunk	Cust.	No. of Pcs.	Memo.	Sheet
151	32	20	8223	

EXHIBIT P-39

3 Pkgs.	32	15	7952	

EXHIBIT P-40

139	32	23	7727	1
		7	7695A	

EXHIBIT P-41

2 Pkgs.	32	8	7465	2
1 Pgk.	32	6	7531A	

EXHIBIT P-42

Fleitman & Co. Inc.

1923—No. 32—Dept. Piedmont Silk Co.

Mch.	2	1204	39	1769	142	15	895-4	Crepe	D C.
	9	1204	"	1903	146	84	5137	"	"
	19	1204	"	2026	147	500	29949-5	"	"

Cust. Lot 161
380 Pcs.

22 1204 " 2062 161 209 Plaindye

Corrected order Apr. 24-23—170 Pc. from Lot 2026

15	April	10	152	15	865-1	6425
84	Mch	30	146	84	4788-2	6150
	April	17	147	500	29885-6	6539
	May	8	161	40	3309-1	6929
	"		161	30	1747-3	6930
	"	6	161	25	1433-1	7110
	"	16	161	10	582-7	7102
	"	17	161	40	2377-5	7127
	Jne	5	161	25	1489-4	7457

Notation in margin of page

Plain dye Finish by Bamford Bros. Yds. Memo

June 22	147	26	Pcs	1513-4	7727
July 30th	161	20	"	1152-5	8223
July 9th	147	15	"	884-7	7952

147 121 Sent direct by Bamford Bros.

EXHIBIT P-43

1923 Pcs.
June 39" From Lot 2026 C.D.C. 5344|147 54 Stolen July 3rd 1923
34 " " " "
July 2nd. 1204 39" 2727 Ref. letter 18 C.D.C. Jul 16 Ref. 18 Pcs.
1 Aug. 8 1

1045-1 8059A
27-4 8338

No. 32

Pcs.	Memo
60	7465
40	6929
30	6930
25	7100
10	7102
40	7127
25	7457
26	7727
20	8223
15	7952

291 Pcs
121 " Del. by Bamford Bros. direct

412 Pcs.
88 " Stolen July 3rd 1923

500 Pcs.

EXHIBIT P-44

SCHWARZENBACH HUBER CO.
470-478 Fourth Ave.
New York

Date, June 7th, 1923.

Print Order No. 3451

To Messrs. Cramer and King Co.
Paterson, N. J.

Quantity	Design	Width	Article	Quality
20 Pcs. 60 Yds.	2266	39"	Crepe De Chine	25015

Ground	Shade	Amount	Half Pcs.	Full Pcs.
Grey		10 Pcs.	No. 1 to 10	
Tan		10 Pcs.	11 to 20	

20 Pcs.

20 Pcs. 39" Qual 25015 C. D. Prd. 1242-3 Yds.
Goods to be delivered from West Hoboken Mill.

Exhibit P-44

The Schwarzenbach Huber Co.
West Hoboken, N. J.

Dyer's Sheet
Date of Invoice—June 11th, 1923 Dye order..... Sheet No. 5072
Goods shipped in case 35916 Pieces 10

Cramer and King Co.,
Paterson, N. J.

Invoice Number 6052 Dept. 11

Qual.	Inch	Comm	Price No.	Dye	Yards	
25015	38½	29088	451091	24080	62 7	Tan
			076	81	64 7	
			194	82	62	
		c29164	458613	83	59 7	
		29169	459402	84	63 1	
		29082	450190	85	66 2	
25015L		c28971	440687	86	66 6	
25015		c90030½	724789	87	58 7	
		c90032½	725148	88	59 6	
		29169	459444	89	61 7	
					626 2	
					616 1	
					1242 3	Yds.
25015	38½	90035	725884	63	63 5	Grey
			956	64	61 5	
			941	65	61 2	
			821	66	59	Sheet No. 5061
			851	67	62 6	
			836	68	61 6	Invoice No.5869
		90029	724528	69	63 6	
			596	70	61 6	
			522	71	57 1	
			482	72	63 4	
					616 1	Yards

Exhibits P-45, P-46

EXHIBIT P-45

Date 6|13|23
Print Cust. No. 6
Total Yds. 1242-3
Mill Order 2555
Cust. Order 3451
10 Pcs Grey
10 Pcs Tan
Case No. 6016

Quality 25015
Design 2266
Width 39"
Pcs. 20
Article—Crepe De Chine

19063	1	63-5	24080	11	62-7
4	2	61-5	1	12	64-7
5	3	61-2	2	13	62
6	4	59	3	14	59-7
7	5	62-6	4	15	63-1
8	6	61-6	5	16	66-2
9	7	63-6	6	17	66-6
70	8	61-6	7	18	58-7
1	9	57-1	8	19	59-6
2	10	63-4	9	20	61-7

EXHIBIT P-46

Date 6|14|23
Dye Cust. No. 29
Pcs. 18
Total Yds. 1222-6
Colors—Plain Black
Goods from Charles Orleans
Plain Black

2580	1	50-4
2565	2	57-2
2531a	3	39-5

Goods from Fegelstein Silk Co.

1387	4	98
1386	5	68-2
1384	6	78-5
1388	7	66-7
1385	8	84
1382	9	78-2
1383	10	72-2
1375	11	77-3
1379	12	81-4
1376	13	123-2
1377	14	77
1380	15	79-2
1381	16	61-2
1378	17	67-2
1389	18	72-2

Exhibits P-47, P-48, P-49

EXHIBIT P-47

Cust. No.		Pcs.
6	2555	20

EXHIBIT P-48

29	5313	18

EXHIBIT P-49

Date 5|29|23 — Quality 1204
Dye Cust. No. 32 — Width 39″
Pcs. 18 — Pcs. 18
Mill Order 5184 — Article—Crepe De Chine
Cust. Order 208 — Colors—Black

18 Pieces to be re-dyed Black, same as sample enclosed, as agreed with Mr. Cramer.

71329	58-1	71471	56-2
71331	54-4	71351	54-4
71333	58-6	71359	57-4
71328	60	71732	28-6
71735	57-5	71716	56-6
71741	58	71735	56-4
71588	58-1	71349	57-4
71335	53-5	71949	55-2
71736	58-2	71339	57-6

May 21, 1923.

Date 6|13|23 — Mill Order 2555
Print Cust. No. 6 — Cust. Order 3451

20 Pcs. 39″ Qual. 25015 Crepe De Chine Prd. Yds. 1242-3

Pattern 2266 — 10 Pcs Grey
Case No. 6612 — 10 Pcs Tan

19063	1	63-5	24080	11	62-7
4	2	61-5	1	12	64-7
5	3	61-2	2	13	62
6	4	59	3	14	59-7
7	5	62-2	4	15	63-1
8	6	61-6	5	16	66-2
9	7	63-6	6	17	66-6
70	8	61-6	7	18	58-7
1	9	57-1	8	19	59-6
2	10	63-4	9	20	61-7

June 15, 1923.

Exhibits P-50, P-51, P-53

20 Pcs. 39" Qual. 25015 Crepe de Chine Prd. Yds. 1242-3
Pattern 2266
10 Pcs. Grey
10 Pcs. Tan
Case No. 6012

Grey			Tan		
19063	1	63-5	24080	11	62-7
4	2	61-5	1	12	64-7
5	3	61-2	2	13	62
6	4	59	3	14	59-7
7	5	62-6	4	15	63-1
8	6	61-6	5	16	66-2
9	7	63-6	6	17	66-6
70	8	61-6	7	18	58-7
1	9	57-1	8	19	59-6
2	10	63-4	9	20	61-7

EXHIBIT P-50

Cust No.	Order	Yds	Width	Article	Color	Pcs.
6	2555	60	39	Crepe De Chine	Grey	10

EXHIBIT P-51

29	5313	60	39	Crepe De Chine	Black	18
6	2555	60	39	Crepe De Chine	Tan	10

EXHIBIT P-53

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., July 10th, 1923

Memo No. 7983A
To Rose Silk Mills
Cust. Print Order 30. Mill No. 5313. Article 39" Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.				
Plain		2565	2	57 2		1376	13	123 2
Black		1387	4	98		1380	15	79 2
		1386	5	68 2		1381	16	61 2
		1385	8	84		1389	18	72 2
		1382	9	78 2				
					9 Pieces			721-6 Yards

Goods from Charles Orleans.
Goods from Fegelstein Silk Co. These goods have been stolen.
BALANCE

Exhibits P-54, P-55, P-56

EXHIBIT P-54

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J. July 10, 1923

Memo. No. 7983 To Rose Silk Mills

Cust. Order 30. Mill No. 5313. Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.					
Plain		2580	1	49	4	1383	10	70	2
Black		2531	A3	55	5	1375	11	76	
		1384	6	76	6	1377	14	76	
		1388	7	66	2	1378	17	63	6
						8 Pcs.		534-1	Yards

Goods from Charles Orleans.
Goods from Fegelstein Silk Co.

EXHIBIT P-55

Memorandum of Shipment
From CRAMER & KING CO.,
Paterson, N. J., July 9, 1923

Memo. No. 7959
To Schwarzenbach Huber Co.

Cust. Order 3451. Mill No. 2555. Qual. No. 25015. 2266. Article 39″ Crepe de Chine.

Color	Comb.	Piece No.	Mill No.	Yds.					
Tan		24080	11	60			7	18	57
		1	12	55	Grey		8	19	58
		2	13	55	4		9	20	60
		3	14	58		19064	2	61	
		4	15	60	4		5	3	60
		5	16	63			7	5	62
		6	17	65		13 Pcs.		775	Yards.
						O. K. Bill			

EXHIBIT P-56

Trunk No.	Cust No.	No of Pcs	Memo No.	Sheet No.
101	6	40	7957	

EXHIBIT D-3

4 D 3 K

July 2-3/23

Box Nos.	315	611	326	254	124	341	222	312	552	244	626	74	442	334	351	311	332	354
5.	59																	
6.		0		3	4	5	7	8		2	1		6	11	1	5	9	
7.	650	50		52	53	54	57	56	705	4	651	708	655	58	703		659	
8.	752	52		53	54	55	58	56	59	50	53	801	755	58	57		801	
9.	850	50		51	52	53	55	54	909	8	851	911	854	55	907		856	
10.	10	10		9	9	8	6	5	3	2	9	4	7	6	1		5	
11.	6	6		4	3	2	0	1059	57	56	164	1058	1102	1	1055		1100	
12.	1159	59		58	57	56	54	53	51	50	58	52	56	55	49		53	
1.	1252	52		56	57	58	100	1259	105	104	1256	106	1258	100	3	7	1	
2.	42	42		43	44	45	47	46	50	49	43	51	45	47	48		48	
3.	25	25		26	27		29	28	32	31	26	33		29	30		30	
4.	0	0		1	2	3	8	7	11	10	1	6	5	8	10		9	
5.	454	56		58	59	500	454	501	457	56	57	59	500	4	455	58	502	
6.																		59
7.																		

Duplicate copy as requested by telephone.

Paterson Burglar Alarm & Messenger Co.
Phones Lambert 3220 & 5892

Paterson, N. J., 10 P. M., July 5, 1923.
Cramer & King,
East 33 St.
Paterson, N. J.

EXHIBIT D-4

24 D 4 C 1 July 2-3/23

Box Nos.	315	611	356	254	124	341	222	312	552	244	626	74	442	334	351	311	332	354
5.	59																	
6.	1	0		3	4	5	7	8	4	2	1		6	11	1	5	9	
7.	650	50		52	53	54	57	56	705	4	651	708	655	58	703		659	
8.	752	52		53	54	55	58	56	59	58	53	801	755	58	57		801	
9.	850	50		51	51	53	55	54	909	908	851	911	854	55	907		856	
10.	10	10		9	9	8	6	5	3	2	9	4	7	6	1		5	
11.	6	6		4	3	2	0	1059	57	56	1104	1058	1102	1	1055		1100	
12.	1159	59		58	57	56	54	53	51	50	58	52	56	55	49		53	
1.	1252	52		56	57	58	100	1259	65	4	1256	106	1258	100	3	7	1	
2.	42	42		43	44	45	47	46	50	49	43	51	45	47	48		48	
3.	25	25		26	27		29	28	32	31	26	33		29	30		30	
4.	0	0		1	2	3	8	7	11	10	1	6	5	8	10		9	
5.	454	56		58	59	500	454	501	457	56	57	59	500	4	455	58	502	
6.																		29
7.																		

Paterson, N. J., 10 P. M., July 5, 1923.

Cramer & King,
East 33 St.
Paterson, N. J.

Paterson Burglar Alarm & Messenger Co.
Phones Lambert 3220 & 5892

Box Nos.	313	611	356	254	124	341	222	312	552	244	626	74	442	334	351	311	332	354
5.	59																	
6.		0		3	4	5	7	8	4	2	1		6	11	1	5	9	
7.	650	50		52	53	54	57	56	705	4	651	708	655	58	703		659	
8.	752	52		53	54	55	58	56	59	58	53	801	755	758	57		801	
9.	850	50		51	52	53	55	54	909	8	851	911	854	55	907		856	
10.	10	10		9	9	8	6	5	3	2	9	4	7	6	1		5	
11.	6	6		4	3	2	0	1059	57	56	1104	1058	1102	1	1055		1100	
12.	1159	59		58	57	56	54	53	51	50	58	52	56	55	49		53	
1.	1254	52		56	57	58	100	1259	105	4	1056	106	1258	100	3	7	1	
2.	42	42		43	44	45	47	46	50	49	43	51	45	47	48		48	
3.	25	25		26	27		29	28	32	31	26	33		29	30		30	
4.	0	0		1	2	3	8	7	11	10	1	6	5	8	10		3	
5.	454	56		58	59	5	454	501	457	56	57	59	500	4	455	58		
6.																		
7.																		

Duplicate copy as requested by telephone.

Paterson Burglar Alarm & Messenger Co.
Phones Lambert 3220 & 5892

Paterson, N. J., 11 A. M., July 4, 1923.

Cramer & King,
East 33 St.
Paterson, N. J.

NEW JERSEY SUPREME COURT

Cramer & King Company, a corporation,
Plaintiff,
vs.
National Surety Company, of New York, a corporation,
Defendant.

JUDGMENT

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendant recover of the plaintiff its costs, which have been taxed at the sum of thirty-nine dollars and ten cents.

Judgment entered Apr. 2, 1925.

Wm. S. Gummere,
C. J.

A true copy, Edward J. Kelleher, Clerk.

Notice of Appeal

(Filed July 23, 1925.)

NEW JERSEY SUPREME COURT

Cramer & King Company, a corporation,
Plaintiff-Appellant,
vs.
National Surety Company of New York, a corporation,
Defendant-Respondent.
} Action at Law

NOTICE OF APPEAL

To Michael Dunn, attorney of Defendant-Respondent.

Take notice that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. The trial court, upon the trial of the cause, granted defendant's motion for a non-suit, over the objection of the plaintiff.

2. The following question was overruled: (to the witness, Joseph A. Pelegrini) "Do you know of your own knowledge whether there is any usage or custom in the silk dyeing trade which is concerned with the liability or non-liability of a silk dyer to its customers for the loss of merchandise of the customers in its custody for processing, where the loss results from burglary."

Harris J. Westerhoff,
Rosenkrans & Rosenkrans,
Attorneys of Appellants.

Service of the within notice is hereby acknowledged this 22nd day of July, A. D., 1925.

Michael Dunn,
Attorney of Respondent.

20 MAY.T.1926

New Jersey Court of Errors and Appeals

Cramer & King Company, Plaintiff-Appellant, against National Surety Company, Defendant-Appellee.	Action at Law On Appeal from Supreme Court

Brief on behalf of National Surety Co.

DEFENDANT-APPELLEE

Michael Dunn,
Arthur C. Dunn,
Leon M. Prince (of the New York Bar) attorneys.

This appeal is from a judgment of non-suit.

The action was brought upon defendant's policy of burglary insurance.

Numerous grounds for non-suit were urged but we shall consider those only which have been considered by the plaintiff-appellant in its brief, and in the order in which they are there presented.

All of the points presented by plaintiff rest upon certain terms and provisions of the policy. In the policy it is provided that the "special and general agreements, terms and conditions" therein contained were "to be constituted as co-ordinate con-

New Jersey State Library

ditions and **precedent** to any recovery under this policy'', (case, p. 512, ls. 34-35; p. 513, ls. 1-2) and so far as the schedule was concerned, all of the statements therein contained were expressly ''**warranted by the assured to be true**'' (case, p. 519, l. 32).

Therefore **all** of the provisions of the policy which will be considered in the subsequent points of this brief were, by the parties themselves, specifically contracted to be express warranties, compliance with which constituted a condition precedent to the right of the plaintiff to recover.

A.

THE COURT WAS CORRECT IN DECIDING THAT PLAINTIFF COMMITTED A BREACH OF WARRANTY, BY REASON OF THE FACT THAT THE POLICY IN PARAGRAPH 4 OF THE WARRANTY PROVIDED THAT THE BUSINESS CONDUCTED BY PLAINTIFF ON THE PREMISES WAS THAT OF SILK DYERS—"NO OTHER BUSINESS IS CONDUCTED ON THE PREMISES EXCEPT AS HEREIN STATED. NO EXCEPTIONS"; WHEREAS THE PLAINTIFF IN FACT CONDUCTED ON SAID PREMISES THE BUSINESS OF DYEING, FINISHING AND PRINTING.

Defendant's policy covered plaintiff only in the business of "silk dyers" (Case, p. 520, lines 6-7).

The policy further provided (case, p. 520, ls. 8-9): ''**No other business is conducted in the premises except as herein stated. No exceptions.**''

The provisions that the plaintiff's business was that of "silk **dyers**" and that "**no other business**" was conducted in the premises except as so stated, constituted, as above set forth, express warranties and conditions precedent to plaintiff's right to recover.

Admittedly, plaintiff was engaged not only in the business of silk **dyeing,** but silk **finishing** and **printing** as well.

At pages 3 and 4 of its brief, the plaintiff therefore claims that it established a custom and usage of the silk trade, under which the term "silk **dyers**" included dyeing, **finishing and printing.**

The plaintiff's entire reliance for support of that contention is centered upon one item of testimony, which plaintiff has excerpted on page 4 of its brief, which purported to be the conclusion of the witness that the term "silk dyer", according to the custom and usage of the silk dyeing trade, "**covered**" dyeing, finishing and printing.

Then follows an elaborate array of cases which relate to the right to introduce evidence of a custom or usage. With those cases the defendant has no quarrel. The plaintiff's difficulty is not, at the present juncture, with the right to introduce evidence of usage or custom, inasmuch as the evidence has been admitted.

The plaintiff's difficulty is that the evidence, though admitted and forming part of the record,

falls far short of the requirements of the law to **establish** the custom which plaintiff now claims was existent.

The very case of Steward vs. Scudder, 24 N. J. L., 96, quoted by plaintiff in its brief, demonstrates the correctness of the trial court's decision. In that case the Court said at page 100:

> "Such a usage, to be available, must be **established, known, certain, uniform, reasonable** and not contrary to law. (2 Greenl. Ev. Sec. 251).
>
> The evidence produced on the trial of the usage set up by the plaintiffs in the case now before us was certainly **not very definite.** The clerk says, 'it is customary to render the bill, and then wait three or four days; on cash sales, money is considered payable in three or four days. It is the custom of commission merchants to allow three, four or five days before calling for the money.' Mr. Nevius, another witness, who had been in the business in New York forty years and upwards, says: 'As far as my experience goes, cash sales embrace from three to seven days, and such is the custom there. Articles vary a little; wheat and corn average three or four days; flour seven or eight—seven at the least'."

At page 103, the justice said:

> "I am clear in the opinion that the evidence in the case before us shows **no** such

fixed, definite and universal usage as ought to be held binding on the defendant....."

Judge Haines, in an independent opinion, said, at page 105:

"But those general customs which form so important a part of the Common Law and the general custom of merchants and which may be said to prevail **everywhere,** are clearly to be distinguished from the **particular** usages of trade, which are applicable **only** to **certain particular** kinds of business, and sometimes only in certain particular places. The latter are to be understood as referring to a special usage, to be established by evidence, while the former are to be collected not from evidence **in pias,** but from deceptious legal principles and analogies which are presumed to be possessed by the court. (Citing authorities.)

But to vary the ordinary meaning of plain words, the evidence of usage must be **clear** and **irresistable.**

Usage cannot be proved by isolated instances, but must be so certain, uniform and notorious that it must be presumed to have been understood by the parties as entering into and constituting a part of the contract."

The evidence in the case at bar on which plaintiff now relies, fall far short of these standards and requirements.

An examination of the record will develop that the evidence was of no higher a character and no wider a scope than that adduced in the Steward case, supra. As a matter of fact it was not even as broad, nor as definite as the evidence in the Steward case. In the case at bar the witness simply purported to say that the term "silk dyer". "**covered,**"—as the question put it—"covered" dyeing, finishing and printing, according to the custom and usage of the trade. He did not state, as was attempted in the Steward case, what was the customary practice; he did not state that persons, known only as dyers, also did finishing and printing work, or that it was customary for them to do so. His testimony was significantly barren of any suggestion of a **fact** on which could be based the **conclusion** which, after all, was all that he stated, that the word "dyer" "**covered**" dyeing, finishing and printing.

Had the witness testified that all or a large portion of the concerns which were known only as dyers, were also habitually engaged in the business of finishing and printing, then there **might** have been some **facts** on which to base the legal **conclusion** for which plaintiff now contends, that a fixed, definite, certain, uniform and notorious usage had been established. But there was no such evidence, there were no such **facts** established, and hence the requirements of the decisions were not fulfilled.

The language of the Court in Runyan vs. Central Railroad Company, 64 N. J. L. 67, is most

pertinent. In that case, the plaintiff attempted to show that it was the custom of the passengers on defendant's railroad to carry small packages of merchandise into the cars, in derogation of the common law contract of carriage.

But, Lippincott, J. said at page 76:

> "There does not appear in the case any evidence touching the existence of such a general usage, either so general that the acquiescence of the defendant could be presumed, nor any **facts** of acquiescence on the part of its officers, agents or servants, and nothing to show any actual knowledge on their part. Of this class of evidence the case is entirely barren. There are **no facts and circumstances** which would in the slightest tend to show any knowledge on the part of the defendant company or its agents. **Such evidence is quite material when the establishment of a usage is insisted upon.**"

At pages 77-78, the Court said:

> "The usage to be made a part of this contract of carriage must be established by plain and explicit evidence. (Steward v. Scudder, 4 Zab. 96, 101.) In the case of Re Schooner Reside, 2 Sumn. 567, Justice Story says: 'I own myself no friend to the almost indiscriminate habit of late years of setting up usages or customs in almost all kinds of business and trade to control, vary or annul the general liabilities of parties

under the common Law, as well as under the commercial Law. It has long appeared to me that there is no small danger in admitting such loose and inconclusive usages or customs, often unknown to the parties and always liable to great misunderstanding and misinterpretings and abuses to outweigh the well-known and well settled principles of law, and I rejoice to find that of late years the Courts of Law, both in England and America, have been disposed to narrow the limits and operation of such usages and customs, and to discountenance any further extenstion of them.'

Usage cannot be proved by isolated instances, but must be so **certain, uniform and notorious** that it must be presumed to have been understood by the parties as entering into and constituting a part of the contract. (Citing authorities.)

Whatever the usage or practice which will control, or however long a time existed, the **prcof** of it must be **clear** and **explicit** and it must be and is to be clearly distinguished from mere acts of accommodation. Many things are done in the course of trade by way of favor which cannot be held to constitute usage entering into contracts of the parties. The fact that such acts have constantly been done, not in obedience to duty or contract but as a matter of form, cannot compel their contradiction. (Citing authorities.)

They must be of such generality and publicity in the line of business that the par-

ties sought to be held would be presumed to have knowledge and acquiescence."

None of these tests or requirements are met by the very meagre evidence which plaintiff offered here in support of this, its present contention.

A point vital to the disposition of this case and which seems to have been overlooked by plaintiff is that the witness Pelegrini, who was supposed to testify to this alleged custom, was engaged in business, **not in Paterson,** but at **Homestead,** New Jersey (Case, p. 203, ls. 21-23).

For aught that appears, the custom to which he was to testify was a custom in vogue in **Homestead,** but **not** in **Paterson.** Certainly, the plaintiff cannot contend that the defendant was to be bound by a custom (if it in reality existed at all), which was not in vogue in the locality where defendant's assured was situated, but which was in vogue, if at all, in another locality. There isn't the least suggestion that this alleged custom existed in any particular place, or, to become more specific, that it existed in **Paterson,** where this plaintiff was located.

At pages 12 and 13 of its brief, the plaintiff criticizes the Trial Court's adoption of the case of Mooney vs. Howard Insurance Company, 138 Mass. 375, as basis for the decision rendered. The plaintiff says that the quotation at page 510 of the record from the Mooney case sustains plaintiff's position.

Examining the language of the Trial Court in the case at bar, as it appears at page 510 of the record, we find that it very clearly supports, not the plaintiff's position, but the Trial Court's position in directing a non-suit. True, the language of the Court was to the effect that a finding would be warranted that a custom was known to the defendant if upon all the evidence it was shown that the usage or custom was well-defined, universal and of long continuance.

But there was no such showing here. There wasn't a single word to the effect that this alleged custom was so well defined that the defendant ought to have known about it. How could defendant, an insurance company, be bound by a custom of the silk trade which wasn't sufficiently well-defined to become generally known and yet there wasn't a word to establish that this alleged custom was well-defined or of long continuance.

What was there in the case at bar to bring the testimony on which the plaintiff now relies within the requirements of this opinion? Certainly not the **conclusion** of the witness that the term "silk dyer", "**covered**"—as the question termed it—dyeing, finishing and printing. There was simply a bare **conclusion.** But there was nothing else.

The plaintiff cannot point its finger to a single statement of **fact** from which **anyone**—court, jury, counsel, parties, or anyone else—could glean the least intimation that this so-called "custom and usage" was well-defined, was universal, was uniform, was of long continuance, was notorious—in-

deed there isn't anything by way of evidence of a **fact,** as distinguished from a **conclusion,** to show that it even existed.

As we said before, there was nothing to show that concerns who were known as dyers only—there was nothing to show that such concerns also did finishing and printing. There were no **facts** at all upon which, if believed, the **conclusion** now argued for by plaintiff and testified to **might** have followed.

Besides, even if there were such facts appearing, a usage cannot override the plain and unambiguous language of a contract.

Thus, in Rogers v. Rodrock Co., 120 Atl., 1, Bergen, J., for a unanimous Court said:

> "The Appellant next argues that it was error to refuse defendant's offered proof that it was a trade custom to limit the amount of material, required to be furnished by a specific contract, to the quantity of material necessary to complete the building which the contractor was erecting. In other words that a clear and unambiguous contract is subject to be modified by a trade custom in a particular locality. **This was properly excluded.** The contract in express terms required the delivery of a given number of bricks at a fixed price, and **'where there is a contract, either by parol or in writing, its terms must fix the rights**

> **of parties, and it cannot be contradicted by proof of usage or custom.'** (Schenck v. Griffin, 38 N. J. Law, 462.)"

In American Lithographic Co. vs. Commercial Insurance Company, 81 N. J. L. 271, the syllabus is as follows:

> "1. Where the language of a contract can be interpreted in its ordinary sense without avoiding the contract, it will be prima facie interpreted in that sense.
>
> 2. It may be shown, however, that the language was intended by the parties to have a technical meaning and what that meaning was.
>
> 3. In such case, the burden of showing that there was a technical meaning, and what it was, is on the party asserting it."

The limitation in the policy of insurance to the business of silk "dyers" was important, for the reason that silk after it is dyed, would not be as valuable as silk which had been not only dyed, but finished and printed as well.

Consequently defendant would be taking a larger risk if it covered merchandise which had ben finished and printed as well as dyed.

The non-suit for this breach of warranty alone, was correctly directed.

B.

THE COURT CORRECTLY DECIDED THAT THE TESTIMONY IN THE CASE DISCLOSED NO LEGAL LIABILITY ON THE PART OF PLAINTIFF TO ITS CUSTOMERS FOR LOSS OF THEIR MERCHANDISE, AND THAT CONSEQUENTLY THERE WAS NO LEGAL LIABILITY ON THE PART OF DEFENDANT TO PLAINTIFF.

The non-suit was granted on the further ground that plaintiff was not, as required by the policy, under any liability for the burglary of the merchandise in question.

The burden of the plaintiff's argument, at page 14 of its brief, is that the defendant knew that plaintiff handled merchandise belonging to others and that the policy was given to cover the loss by burglary of merchandise belonging to plaintiff's customers, which was held in trust for them.

The question was and is and must always be, what did plaintiff and defendant intend?

Fundamentally the law is that a bailee is **not** liable for merchandise entrusted to his care if it is stolen from him without his negligence.

See **Brady v. Franklin Motor Car Co.**, 42 N. J. L. J. 16.

Now the policy in the case at bar did not un-

dertake to insure all merchandise in plaintiff's possession.

Even in its bill of complaint, the plaintiff very definitely selected the theory on which it intended to proceed.

In the 3rd paragraph it stated in substance that it had in its possession certain merchandise usual to its business, which belonged to it, or was "held in trust or on commission by it, **for which it was liable to the respective owners thereof for loss by burglary**" (Case, p. 2, Ins. 1-3).

In furtherance of that theory, plaintiff alleged in paragraph 5th of its complaint that there was stolen by burglary merchandise in its possession which was "held by it in trust **AND for which it was then liable to the respective owners thereof for loss by burglary**" (Case, p. 2, ls. 26-28).

The use of the conjunction "**and**" in both the 4th and 5th paragraphs of the complaint indicated clearly that the plaintiff's theory was that the merchandise involved here was merchandise which was not only held in trust, but for which it was liable to the respective owners thereof for loss by burglary. That was the only theory advanced by the plaintiff at the trial.

In other words, the merchandise for whose value it sought a recovery here was merchandise which it not only held, as it now claims, in trust, but was merchandise for which also it was liable to the respective owners thereof for loss by burglary.

Such were the allegations of the complaint.

In Jordan vs. Reed, 71 Atl. 280, Green, J., writing for this Court said at page 283:

> "Nevertheless to-day it is sound law and sound reason that there must be not **variance** to the prejudice of the adverse party between the case **declared upon** and the case **proven**, and that **recovery must be secundum allegate et probata** (citing authorities)."

Seeking to depart now from the theory as alleged in its bill of complaint and applied at the trial, seeking now to recover on an entirely different basis than that presented by its pleading, the plaintiff **now** contendts that it is entitled to recover because it held this merchandise "in trust." But its complaint said not only that it held the property in trust but, using the word **"and", also** charged that plaintiff was liable to the respective owners of the merchandise here involved, for loss thereof by burglary.

And upon the trial of this action, the plaintiff did not make the least attempt to establish that it held this merchandise "in trust", but **did** endeavor to establish that it was liable to the respective owners thereof for loss by burglary. Needless to say, in that effort plaintiff dismally failed. Here again plaintiff's evidence was insufficient as a matter of law to establish the conclusion for which it now argues.

At page 15 of its brief, plaintiff charges the defendant with an attempt to evade its obligation under the policy.

The fact of the matter is that plaintiff now seeks to hold the defendant upon a theory which is not only untenable, but which plaintiff never even intimated or suggested either in its complaint or at any time during the trial—not even on the argument of the motion for a non-suit.

The theory now presented is presented for the first time on this appeal.

The plaintiff then takes up at pages 15 and 16 of its brief the statement of the Court upon granting the non-suit, and plaintiff claims that the Court's statement and position were erroneous.

Under the theory of plaintiff's pleadings and proof—and no other theory was suggested at any time during the trial—the question for determination was whether the plaintiff was liable to the owners of the merchandise here involved for loss by burglary.

And that question was correctly decided by the Trial Court when he said that the best that could be said for the testimony on the part of plaintiff as to its customers, was that plaintiff's representatives made statements that the plaintiff was covered by insurance. (Case, page 510, lines 30 et seq., page 511, lines 1-7.)

But a statement that a party is "covered" by insurance does not import that that party thereby contracts to undertake a liability which the law has never imposed upon it. What we mean is this: As above stated, a bailee is not responsible for the value of merchandise if it was stolen from him without any negligence on his part. If a bailee is to become liable for the loss of the merchandise by burglary, he can become so only if he undertakes to become so liable. But in that connection, the mere statemnt that he is "covered" by insurance, even if he mentions the word "burglary"—that mere statement does not carry with it an agreement on the bailee's part that he will be liable to the owner of the merchandise in the event that the merchandise is lost by burglary. The most that can be said, as the Trial Court pointed out, was that a representation was made that the plaintiff was "covered"by insurance; but that was far from constituting an agreement that the plaintiff assumed or accepted liability to its customers for the loss of their merchandise by burglary.

In its argument under this point, the plaintiff adroitly overlooks the theory advanced in its complaint, advanced in its testimony and advanced on the trial—a theory from which no departure was taken prior to this appeal—that the merchandise involved here was merchandise for which the plaintiff was responsible to the owner for loss by burglary.

Plaintiff's brief is replete with authorities which declare the bailee's right to take out insur-

ance. We admit that. We do not question that the plaintiff had the **right** to take out insurance.

What we do question is that the insurance which plaintiff took out did not cover the situation with which plaintiff is confronted, and that the facts established upon the trial did not sustain the theory on which according to its complaint, plaintiff brought this action.

At page 24 of its brief, plaintiff says that all the clauses of the policy must be read together.

That is exactly what has been done. Indeed they have been read together precisely as the plaintiff presented them in its complaint and in its proof, and after so reading them together it is clear that plaintiff has failed to establish the cause of action pleaded. We may therefore confidently assert that plaintiff's contention at page 25 of its brief is entirely without foundation wherein it charges that the Trial Judge gave effect to only **some** of the words of the policy and not to **all.**

A great part of plaintiff's brief is devoted to extracts from the testimony with respect to this insurance.

This Court will scan it in vain for anything other than evidence that plaintiff stated that it carried insurance. This Court will scan it in vain for the least intimation or suggestion that the plaintiff **agreed** or **undertook** or promised or sug-

gested that it would be **liable** to the owners of the merchandise if it were lost by burglary. That was what plaintiff would have to show before it could be held liable to the owners for the loss of the merchandise by burglary.

Without such an agreement or undertaking on plaintiff's part, it could be under no liability to its customers.

At page 32 of its brief plaintiff quotes from Corpus Juris, to the effect that a bailee is liable for loss resulting from breach of its contract to keep the property in a particular manner or at a particular place, or to use it only for a particular purpose or for a specified extent and the like. That is the law. But what are the **facts**? Do the **facts** in the case at bar show any such agreement, which would bring the situation within the law which plaintiff now quotes? Obviously not. Indeed they show no agreement of any kind at all between defendant and its customers.

But if we take the view most favorable to plaintiff, and, in so doing, if we assume that plaintiff did agree that it would carry insurance against loss by burglary (and that is the most that could possibly be spelled out of the evidence in its aspect most favorable to plaintiff), what does it amount to? The breach of that agreement, if it in reality was made, would entitled plaintiff's customers to recover only the damages occasioned by that breach and those damages would be only the premium which it would have cost plaintiff's customers themselves to obtain the insurance.

Because obviously, if a man agrees to obtain insurance and does not obtain it, all that his promisee would lose if the promisee himself would have to obtain the insurance would be the cost of procuring it.

But the breach of such an agreement to carry insurance,—of course remembering that we are only assuming that that was the agreement—the breach of that agreement would not create a liability on the part of the assured to the owner of the merchandise such as the policy contemplated in the particular provision under consideration. What the policy contemplated, when it was stated (Case, p. 523, ls. 20-21) that "unless the assured is liable to the owner thereof for such loss or damage as is covered hereby", was, that the assured, the plaintiff, would have to be under **obligation,** under **liability,** under an **agreement** to pay the owner of the merchandise in the event that it was shown that such merchandise had been taken from assured's possession as a result of a burglary.

NO SUCH LIABILITY, AGREEMENT, PROMISE OR UNDERSTANDING EXISTED OR WAS SHOWN TO EXIST HERE.

Plaintiff also quotes law to the effect that a bailee may enlarge his legal responsibility. That is true, but the facts of this case are that this bailee did **not** enlarge its legal responsibility, and that is the difficulty with the plaintiff's case. It did not agree that it would be liable for the burglary of this merchandise. It merely represented

that it was covered by insurance. And to the extent that its own labor on the merchandise was involved, that representation was true.

What is said at page 34 of plaintiff's brief concerning the customers' reliance upon Cramer & King to carry insurance and about Cramer & King's purpose of protecting itself and its customers is entirely beside the point. What its customers intended and what the plaintiff intended is of no importance. The sole question is what did they **do**? And what they **did** or rather what they did **not** do, has been correctly solved by the Trial Judge.

C.

DEFENDANT'S GROUND TO NON-SUIT, "THAT THE PLAINTIFF HAS FAILED TO SHOW UNDER THE TERMS AND CONDITIONS OF THE POLICY THAT THERE WERE VISIBLE MARKS OF A FORCIBLE ENTRY INTO THE PREMISES AT THE PLACE OF ENTRY AS IS REQUIRED BY THE POLICY OF INSURANCE," WAS SUPPORTED BY THE EVIDENCE IN THIS CASE.

Under defendant's policy, defendant was liable only for loss by a "felonious entry into the premises by actual force and violence * * * of which force and violence there shall be visible marks made upon the premises at the place of such entry * * *." (Case, page 522, lines 1-4.)

Under Rosenthal v. American Bonding Co., 207 N. Y., 162, it was held in the New York Court of Appeals that "the insurer had a perfect right, if it saw fit, to require proof even of so-called **evidentiary** facts as an indispensable basis for recovery."

This case presents the very serious question as to whether there was any burglary at all, or, to be more precise, whether there was in reality any "felonious **entry into** the plaintiff's premises. Defendant contends there was **no** such burglary at all.

Immediately after this alleged loss was reported, the defendant caused an investigation to be made and in the course of that investigation various written statements were prepared at plaintiff's office by plaintiff's secretary, the witness Lundgren. One of the statements was by a man named Cortese, an employee of the plaintiff.

Cortese's statement, in referring to the window from which the screen is now claimed to have been pulled aside, stated explicitly **"that the dust had not been brushed or scraped from the window-sill,"** and **"that it was barely possible for a man to enter without removing some of the dust from the ledge,"** and that he, the witness, **"did not notice any marks on the window that would indicate force on the window,"** (Case, p. 66, ls. 20-26).

That statement was typewritten by Lundgren and he, as Secretary of the Company, intended

that it should present the version of Cortese respecting the alleged loss (Case, pp. 67-68).

Now it is obvious that burglars breaking in through a window and being obliged to pass over the window ledge, **could not physically do so** without disturbing or rather brushing or scraping the dust from the window sill. And that is one very strong indication that there was **no** breaking into the premises.

But Lundgren's testimony furnishes still a further indication, that there was **no** break into the premises, and that is that this window, when it was discovered the following morning, stood out at the bottom, about **three** to **six inches only** (p. 81, ls. 30 et seq.), and at the top it was leaning against the window frame (p. 28, ls. 1-10). **How could burglars get in or get out of a place through a space which was only from three to six inches in width?** And further than that, is it conceivable that burglars would stop to take the trouble to place the window back in position if and after they had broken into a place? We may well assume that if they broke into the place, they would be more interested in getting out with merchandise than in replacing the window through which they had effected entry.

It therefore follows, almost axiomatically, that there was **no** burglary or felonious **breaking into** the premises of this plaintiff.

The testimony also showed that Herbert White was the night watchman and that he had a very

ferocious dog which accompanied him on his rounds (Case, p. 41, lines 20 et seq.; p. 42, lines 1-10).

White himself admitted that if there had been any burglar in those premises the night that this alleged burglary was claimed to have occurred, that dog would have gone for him and bitten him; that there was nothing the matter with his sight, there was nothing the matter with his sense of smell (Case, p. 107, lns. 10 et seq.) and it appeared that the dog hadn't seen nor heard a soul that entire night.

The floors in this building were of wood and nobody was heard walking through them up to the time that White made his last round (Case, p. 101, lns. 10 et seq.).

When White went out on the following morning **he left the gate unlocked** (Case, p. 109, lns. 10 et seq.) and the witness Both, when he arrived, **found the gate open** (Case, p. 237, lns. 20 et seq.).

Nothing was shown to have been broken or marked on the gate.

And another important point is, that the police sergeant, on whose testimony plaintiff lays such great stress, **said absolutely nothing in his written report about finding any marks on the premises** (Case, p. 160, l. 30), **said nothing in his written report as to whether or not the screen outside one of the windows was fastened with staples (Case, p. 164, l. 23) and admitted that he couldn't**

recall whether any of the panes in the glass were broken or not (Case, p. 180, lns. 32 et seq.), but said nothing in his report of it, **WHICH HE WOULD HAVE DONE IF THEY HAD BEEN BROKEN** (Case, p. 181, lns. 1 et seq.).

We may rest content that if there had been any marks of force or violence, and if they had been there when this alleged loss occurred **he would, as he said, have mentioned them in his report** (Case, page 181). His omission to do so, as above set forth, clearly indicates that **they did not exist.**

It is also to be remembered that he had been over the ground, during the week previous to the trial, with one of plaintiff's attorneys (Case, p. 164, lns. 3 et seq.) and had been accompanied by the police officer Kepler (Case, pp. 190-191), who knew the plaintiff's attorney well enough to call him by his first name (Case, p. 191, lns. 8-10).

With the rear gate to this place left unlocked, with the report of the police sergeant absolutely silent as to any breaks, with a sensitive and ferocious bull-dog on the premises who apparently neither saw nor heard any strangers, and with the watchman himself admitting that he saw and heard none and that the particular screen alluded to was not off nor the window open when he made his last rounds (Case, pp. 118, ln. 5; 119, ln. 25), the defendant's position that there were no visible marks of a forcible entry was well taken, and a non-suit could have been directed on this ground.

D.

DEFENDANT'S GROUND TO NON-SUIT, "THAT THE PLAINTIFF HAS NOT SHOWN THAT THE LOSS, IF ANY, WAS NOT EFFECTED BY THE ASSURED, ANY ASSOCIATE IN INTEREST OR SERVANT OR EMPLOYEE OF THE ASSURED, EITHER AS PRINCIPAL OR ACCESSORY, AS IS REQUIRED UNDER THE SPECIAL AGREEMENT" (Case, page 496, lines 15-19) WAS SUPPORTED BY THE FACTS, AND BY ALL REASONABLE INFERENCES THAT CAN BE DRAWN FROM THOSE FACTS.

This point is involved in a consideration of the facts referred to under Point C, supra, so that no special mention need be made in regard thereto, except to observe that as there were no visible marks of force and violence the alleged loss must have been the result of an "inside job."

E.

THE GROUND OF APPEAL, "THAT THE POLICY EXPRESSLY PROVIDES THAT THE PROOF OF LOSS SHALL BE FILED WITH THE DEFENDANT COMPANY WITHIN SIXTY DAYS OF THE DISCOVERY OF THE LOSS AND IT DOES NOT APPEAR IN EVIDENCE WHEN THE PROOF OF LOSS WAS FILED WITH THE DEFENDANT COMPANY, BUT MERELY THAT IT WAS FILED," WAS ABANDONED BY DEFENDANT AT THE TRIAL.

F.

DEFENDANT'S GROUND TO NON-SUIT, "THAT IT DOES NOT APPEAR THAT THERE IS ANY VALUE TO THE MERCHANDISE THAT IS CLAIMED WAS LOST," "THAT IT HAS NOT BEEN SHOWN ANY YARDAGE OF MERCHANDISE ALLEGED TO HAVE BEEN STOLEN, FROM WHICH DAMAGES AT ALL CAN BE COMPUTED, IN FACT, NO COMPETENT EVIDENCE OF DAMAGES HAS BEEN ADDUCED IN THE CASE," "AND THAT THERE HAS BEEN NO EVIDENCE OF ANY CASH VALUE AT THE TIME OF THE ALLEGED LOSS" ARE SUPPORTED BY THE EVIDENCE IN THE CASE.

The difficulty with the plaintiff's argument is that it overlooks a vital defect in plaintiff's proof.

The policy provided in part (Case, p. 523, lns. 12-17):

> "The Company shall not be liable:— * * * Unless books and accounts are kept by the Assured and are kept in such manner that the exact amount of the loss can be accurately determined therefrom by the Company."

A very explicit exposition of what this requirement demands is found in **Harris** vs. **General Accident, Fire & Life Assurance Corporation**, 187 N. Y. Supp. 291, where the Court said at page 293:

"While the law does not require at all times strict compliance with the provisions and special agreements contained in policies of insurance, but is content with a fair and reasonable compliance (**Leiman vs. Metropolitan Surety Co.** (Sup.) 111 N. Y. Supp. 536), it does at all times require some compliance. **The provision must be given reasonable interpretation consistent with its design to protect the insurer against fraudulent and excessive claims. The defendant for its protection inserted in the policy in question a provision that imposed certain duties upon the plaintiffs. They were not compelled to maintain any** special system of bookkeeping; no specified books or accounts were required; **the requirement was simply that the books plaintiffs did keep and the accounts which they did have, whether invoices, bills, receipts, inventories, or any other kind of documents, should make possible upon examination by the defendant a definitely intelligible showing of the loss sustained.** It was provided that the actual determination be made 'therefrom', namely, **the books and accounts. In other words, the insurance company was not forced to rely on the statements of the plaintiffs or of any other person for the amount of the loss, nor was it forced to rely on their recollection, knowledge, or memory of the stock, but could examine the books and accounts.**"

See also: Weinstein vs. Globe Indemnity Company, 277 Pa. 388.

Gorsen vs. Aetna Accident and Liability Co.; Jan. Term 1925, Nos. 273 and 274. (C.P. No. 5, Phila. Co., June Term, 1921, Nos. 1776 and 1777).

It is admitted on page 54 of the plaintiff's brief in the case at bar, that plaintiff's books and accounts did **not** recite the **value** of the merchandise involved.

It is contended by plaintiff that under the authorities a substantial compliance with the policy requirement for books and accounts is sufficient.

But plaintiff loses sight of the fact that a substantial compliance does not mean merely a reference to a certain number of **articles** or a certain number of **yards**, for the reason that this particular provision, as the Court said in the Harris case "must be given reasonable interpretation consistent with its design to protect the insurer against fraudulent and excessive claims" and that "the books plaintiffs did keep and the accounts which they did have * * * should make possible upon examination by the defendant a **definitely intelligible** showing of the loss sustained," and for the reason that "the Insurance Company was **not** forced to rely on the **statements** of the plaintiffs or of any person for the **amount** of the loss, nor was it forced to rely on their **recollection, knowledge or memory** of the stock, **but could examine the books and accounts.**"

Plaintiff in its argument has entirely overlooked the fact that the evidence of **value**, presented from the **lips** of its witnesses, directly **violated** this policy provision as it has been interpreted by the Courts.

Apart from the fact that the witnesses in several instances testified to merely their **general** knowledge of values of similar merchandise, **without being able to specifically identify the merchandise involved in this case,** apart from that fact, it must be apparent that oral testimony, even if it be limited to the matter of value only, is in direct conflict with the decisions above stated.

Thus it is clear that oral testimony will directly **thwart** the purpose of the provision **"to protect the insurer against fraudulent and excessive claims."** While the written documents containing the piece numbers and yardages may protect the insurer from a fraudulent and excessive claim as to **yardage,** nevertheless oral testimony as to **value** lays the Company open to the grossest possible exaggeration as to **value** in which the particular witness may desire to indulge; and from such exaggeration the insurer has absolutely no protection. The only protection which can be afforded the insurer is to **insist** that **all** proof, of **value** as well as of **quantities must** appear in **books and records.**

It is clear also that oral testimony contrary to the decisions above quoted, would require and would force the Company to rely on the statements

of those who are presented concerning "the **amount** of the loss" and their "**memory** of the stock."

Consequently, the defendant was correct in its ground to non-suit that there was no competent evidence as to value.

G.

THE COURT PROPERLY OVERRULED THE FOLLOWING QUESTION PROPOUNDED TO WITNESS, PELLEGRINI—"DO YOU KNOW OF YOUR OWN KNOWLEDGE WHETHER THERE IS ANY USAGE OR CUSTOM IN THE SILK DYEING TRADE WHICH IS CONCERNED WITH THE LIABILITY OR NON-LIABILITY OF A SILK DYER TO ITS CUSTOMERS FOR THE LOSS OF MERCHANDISE OF ITS CUSTOMERS IN ITS CUSTODY FOR PROCESSING, WHERE THE LOSS RESULTS FROM BURGLARY?"

Without repeating it, the entire argument which we have presented under Point A, supra, is applicable here.

But there are further considerations.

The question which the Court overruled and of which plaintiff now complains, clearly, obviously and patently called for the **opinion** of the witness as to a question of liability, as to question of **law.**

Now the witness was not asked to state what the **facts** were, he was not asked to state what was customarily done in this particular industry in the case of a loss, he was not asked to state what custom or habit was usually pursued in a case of this character (and even such evidence would have been improper)—but he was asked to state what the usage or custom was with respect to **liability** in case of a loss by burglary, clearly the **conclusion** of the witness.

In Overman vs. Hoboken City Bank, 30 N. J. L. 61, the binding force of a rule or usage employed by certain "clearing house" banks was before the Court. The Chief Justice, said, at page 63:

> "Such an association can have **no** power to make usages or rules to bind those who are **not parties to its organization.** Its rules and usages, if not in conflict with law, may, by the implication of tacit adoption in the contracts of members, bind **them** in the same way that a general usage in trade may bind those who deal with reference to it, and are therefore held impliedly to adopt it.
>
> **But those who are not bound by such usages, and have not contracted with reference to them, have no right to avail themselves of them to create an obligation against those who are parties to their adoption, and bound by them inter sese only.**"

That case, coupled with those already cited in Point A, supra, and with the improper form of plaintiff's question, should effectually dispose of plaintiff's argument.

H.

THE SECOND GROUND FOR NON-SUIT, NAMELY, THE REQUIREMENT IN THE POLICY THAT THERE SHOULD BE TWO PRIVATE WATCHMEN ON DUTY WITHIN THE PREMISES AT ALL TIMES WHEN THE PREMISES WERE NOT REGULARLY OPEN FOR BUSINESS, AND THAT SAID WATCHMEN SHOULD MAKE HOURLY ROUNDS AND RECORD THE SAME ON A WATCHMAN'S CLOCK OR SIGNAL CONNECTED WITH AN OUTSIDE CENTRAL STATION AT LEAST HOURLY, (State of Case, page 494, last five lines and page 495, first five lines) FURNISHED ABUNDANT JUSTIFICATION FOR THE NON-SUIT.

It is stated in the plaintiff's brief that the Court did not non-suit upon this ground.

It might well have done so, however.

The policy provided (Case, p. 521, lns. 1-40):

> "Two private watchmen employed exclusively by the Assured will be on duty within the premises at all times when the premises are not regularly open for business while this Policy is in force. Yes.

> Two private watchmen described in Item 8 will make hourly rounds and record same on a watchman's clock, or will signal an outside central station at least hourly. Yes, central station hourly."

The provisions, as shown in the preliminary statement of facts, were by the policy constituted **express warranties,** compliance with which was a **condition precedent** to plaintiff's right to recover.

The importance of this provision and the necessity for its observance can best be appreciated by a consideration of the numerous authorities applicable to similar situations.

In Smith vs. Fidelty & Deposit Company of Maryland, 120 Atl. 322, this Court had before it for consideration, the following provision:

> "(5) 'An armed watchman with no other duties is employed within the said premises when not open for the transaction of business, who registers on a watchman's clock' (Yes or No, and if so, state how often) 'who signals a central station as per endorsement'."

These blanks were not filled out, except the last, which was filed out "as per endorsement." The endorsement was:

> "For and in consideration of the premium it is hereby understood and agreed that the protection described at the following loca-

> tions will be maintained during the policy period in so far as in the control of the assured."

The assured had had no watchman whatsoever for three weeks previous to the burglary and in consequence suffered a direction of a verdict for the defendant, which was sustaind in this Court.

Mr. Justice Black, writing the opinion, said at page 323:

> "The object and purpose of the policy was burglary insurance. The policy by its terms provided that an armed watchman was to be employed within the premises. It is conceded that a provision for the employment of an armed watchman was material to, if not an assential part of, the risk (Axe vs. Fidelity etc. Co. of N. Y. 239 Pa. 569, 86 Atl. 1095, 46 L. R. A. (U. S.) 574), and that a failure to comply therewith prevents a recovery on the policy (id.) except for the words in the instrument, viz.: 'The protection * * * will be maintained during the policy period insofar as is in the control of the assured'."

This Court there stated that those particular words related simply to an emergency, such as illness, or the reasonable delay which would ensue in replacing the watchman if he left plaintiff's employ, but the Justice said further:

> "But if the contention of the appellant is sound, viz., the absence of the night watchman for three weeks does not nullify the policy, then he could be absent for three months and so on indefinitely. The mere statement shows the fallacy of any such construction, because it entirely ignores or nullifies the fifth clause, providing for an armed watchman, which is a part of the insurer's protection provided for in its risk, on which the rate of the premiums was determined."

In First National Bank vs. Insurance Company of North America, 50 N. Y. 45, there was a warranty that a watchman would be kept on the premises during the night and at all times when the mill was not in operation, or the workmen not present. On the day previous to the fire, the Sheriff levied an execution against the assured, excluded its employes and locked up the building, leaving the Deputy Sheriff and one of the trustees of the assured in the office of the Company some distance from the mill. It was claimed that they should be regarded as watchmen, within the meaning of the policy.

Mr. Justice Grover, writing for a unanimous Court said however at pages 48-49:

> "But the testimony failed to show that they were such, or even so regarded themselves. That shows that they looked through the building twice in the evening, the last time about eleven o'clock, and then went in-

to the office, laid down and dozed until about four o'clock, when the deputy sheriff turned over and discovered the mill in flames, the fire being so extensive as to render all attempts to save the building and property hopeless. **It is clear that these persons never undertook with the assured to act as watchmen, and consequently incurred no liability to it for negligence in the performance of the duties of such employment.** In case of a recovery in the action, the defendant would have no right by subrogation to any remedy against them upon that ground. **This shows that they were not watchmen within the meaning of the warranty.** The evidence shows a pretty clear case of negligence in the performance, had they undertaken that duty. The sheriff remained to protect himself from liability incurred by the levy. This made him liable in case the property was stolen, but not for its destruction by fire. What Comstock staid for, the case does not disclose. It does not appear that he did **not** remain as watchman. That is sufficient in this case."

This case has been cited and followed with approval in Carson v. Jersey City Insurance Company, 43 N. J. L. 300, at page 303.

In Billet vs. Penn. Fire Insurance Company, 129 Atl. 209, plaintiff insured her auto with defendant. She later equipped it with a locking device and obtained a reduction in premium in consider-

ation of her promise that that device would be employed whenever the car was left unattended. However, the car was left unattended but unlocked because the key to the device had been broken, and while so left it was stolen.

The Trial Court submitted to the jury the question whether the plaintiff had used due diligence in maintaining the device and locking the car when unattended. After adverting to her admitted failure to lock the car when unattended, Katzenbach, J., writing the opinion of this Court, said at page 210:

> "This testimony, it seems to us, discloses a **violation** of the contract of the insured to maintain the efficiency of the locking device. No explanation of the plaintiff's nonaction was given. **In fact none could be given** *** Under these facts, we think it was **error** to leave the question of the plaintiff's diligence to the **jury.** It was a **court** question, **not** a **jury** question *** **The facts being uncontroverted, the issue became one of law for the decision of the court. The trial court should, in our opinion, have directed a verdict for the defendant.**"

Nor is it sufficient to comply with this warranty for only part of the time.

Sonneborn v. Insurance Co., 44 N. J. L., was an action on a policy of fire insurance which contained the following provision:

> "It is hereby understood and agreed that the said premises are not to be used as a hotel or boarding house, and that they are not to be left unoccupied any portion of the year."

Plaintiff was non-suited because of the alleged breach of this stipulation as to occupancy.

Green, J., writing the opinion of the court, said, at page 222:

> "According to well settled rules of construction laid down in all the modern text books and repeatedly recognized and enforced in our own courts, the written agreement in this policy as to the use and occupation of the premises containing the insured property, must be construed as an **express promissory warranty** on the part of the plaintiff, in the nature of a **condition precedent. An actual and literal compliance with this condition and warranty is essential to the plaintiff's right of recovery.** (Citing authorities)."

The Court held that the non-suit was rightly granted and affirmed the judgment of the court below.

In Dimick v. Metropolitan Life Ins. Co., 67 N. J. L. 367, Collin, J., said at pages 372 to 373:

> "It is first contended for the defendant that warranties are not conditions. There

is sometimes a distinction signified by the use of one or the other of those terms, for a warranty is often a merely collateral contract; but there is no such distinction within the purview of this statute as applied to policies of insurance. In American Popular Life Ins. Co. v. Day, 10 Vroom, 89, in our court of last resort, warranties and conditions in such instruments are treated as synonymous terms, as indeed they are. In Sonneborn v. Manufacturers Ins. Co., 15 Vroom 220, 222, it was declared in the same court that a **promissory warranty had the nature of a condition precedent.** That every inducing statement, made a warranty by a policy of life insurance, shall be true is plainly a condition precedent to the insurer's liability under such policy. In Eddy St. Iron Foundry v. Hampden & Ins. Co., 8 Fed. Cas. 300, Mr. Justice Clifford said that in the law of insurance 'a warranty is a stipulation forming a part of the contract and is construed as a condition,' and in Hearn v. Equitable Safety Insurance Co., 11 Id. 965, he re-affirmed that doctrine. In the International Bank v. Insurance Co., 95 U. S., 673, in the United States Supreme Court Mr. Justice Harlan said that warrantee, 'the exact truth of statements in an application for insurance became a condition precedent to any binding contract'."

The effect of these authorities is that plaintiff had to comply with this warranty and had to do

so "**at all times when the premises were (sic) not regularly open for business while this policy is in force.**" (Case, p. 521, ls. 1-10.)

Now what were the facts in the case at bar?

Admittedly, whether there was only one or whether there are two watchmen, **they ceased performing services as such at SIX in the morning** (Case, p. 84, lns. 300 et seq.; p. 85, lns. 1-3).

There are two phases of this case, both of which constituted a breach of this warranty.

The one phase, the one discussed by plaintiff in its brief, related to the question whether there were maintained two watchmen, until the premises were "not regularly open for business." That is, whether the watchmen remained and acted as such up to the time the premises were "regularly open for business." Defendant contend that they were **not.**

The only employees who arrived at plaintiff's business at 6 A. M. were those who answered to the description of firemen or helpers of firemen. **None** of them did any work with respect to the merchandise to be processed in plaintiff's premises.

The witness Chessare simply turned the steam on the tubs (Case, p. 136, ln. 10), but did no actual work, that is, no dyeing or finishing (Case, p. 136, lns. 30 et seq.).

The witness Bie would put oil on the engine and steam in the box (Case, p. 140, lns. 28-30), but when he was asked on cross-examination what time he went to work he said that he would start at **10** o'clock in the morning (Case, p. 141, lns. 20-25).

Guerica at the time of the alleged loss worked in the dye house (Case, p. 142, ln. 10), **bringing coal into the boiler-room** (Case, p. 142, ln. 20; p. 142, lns. 32 et seq.) **and bringing ashes out** (Case, p. 143, lns. 1-5).

The witness Comalong was simply a fireman (Case, p. 143, ln. 19), getting up steam for the people to work (Case, p. 144, lns. 20 et seq.).

Gabriel Both was only a fireman who made no rounds but took care of the fires (Case, p. 55, lns. 20-23; p. 92, lns. 8-11).

Now obviously, these premises were **not** "open for business" and "business" was **not** being conducted at **six** o'clock in the morning.

The business of this assured, as defined in the policy, was that of "silk **dyers**" (Case, p. 520, lns. 6-7).

Silk **dyeing**, therefore, was plaintiff's business, and it also did **finishing** and **printing**.

Making fires in boilers was not a part of plaintiff's business. Making fires in boilers was **pre-**

paration to enable plaintiff to **perform** its business, but it was not "regularly open for business" (and by "business" was meant that which was stated in the policy, namely, that of "**silk dyers**") until some work relating to **dyeing** or relating to **finishing** and **printing**, in which plaintiff was also engaged, was being performel.

This policy did not relieve plaintiff from having watchmen while it was **preparing** for business. It only relieved from having them while plaintiff was "regularly open for business."

Suppose that for three or four days plaintiff laid off its help, that is the dyers and finishers, but kept up the fires for convenience sake, would plaintiff claim that it was "regularly open for business"? **Certainly not.** What was meant was that there would be numerous working people there, engaged in the "business" of the firm, and who in the course of that business had custody of the merchandise, so that the danger of burglary thereof would be negligible.

Now the purpose of this provision in the policy was not merely to have somebody in the premises who was attending to the fires.

If someone in the premises attending to fires was all that defendant wanted, there would have been no need for the very explicit provision as to the watchmen making rounds, as set forth in the policy (Case, p. 521, lns. 1-10).

There was a man there all night, as night fireman, to wit, Fenmore (Case, p. 16, lns. 17-23; p. 74, lns. 25-28; p. 85, lns. 35-37; p. 86, ln. 1; p. 89, lns. 25-27).

It was not firemen whom defendant wanted in the building. What the defendant wanted, as it provided in the policy (Case, p. 521, lns. 6-10), **were "two private watchmen" who would make "hourly rounds and *** signal an outside central station at least hourly."**

Admittedly no watchman made any rounds at **six** o'clock in the morning (Case, p. 97, lns. 30 et seq.) the last round being made at **five** o'clock (Case, p. 97, lns. 30 et seq.; p. 98, lns. 1-5).

So that at **six** o'clock there were **no** rounds made and at **six** o'clock the only difference in the situation was that instead of there being **one** fireman there were **several** men in charge of fires.

But the vital point is that premises were **not** "regularly open for business" at **six** o'clock.

The time-keeper was never there at six (Case, p. 102, lns. 10-34). **That proved conclusively that no business was being "regularly" conducted that early.**

If the premises were regularly open for business at SIX o'clock, we may rest assured a time-keeper would have been there at that time.

The reason the defendant wanted watchmen in the premises was that there would be men there whose duty it would be to make **rounds**, and **not only make rounds but also to listen for noises indicating the presence of strangers.**

Obviously men engaged in working up fires and working up steam not only made **no** rounds at all but would be so engrossed in their work that they would pay no attention to strangers and in fact could not hear strangers because no doubt of the hissing of steam and roaring of the furnaces in the process of working up of steam.

Consequently after **five** o'clock in the morning there were no rounds made and after **six** o'clock in the morning there were **no watchmen** in the building, and concededly the hours during which the real business of the plaintiff was operated never commenced until **7:20** A. M. (Case, p. 39, lns. 18-20; p. 46, lns. 20-22; p. 47, lns. 23-26.)

Most of this information was contained in a statement which was made on July 11th, 1923 (a week after the alleged loss) and which had been prepared in the plaintiff's office by Lundgren, the Secretary of the plaintiff, (Case, p. 46, ln. 35; p. 47, lns. 1-10).

And to emphasize the fact that the real operations of the plant **never** commenced until **long after 6 A. M.**, was the assertion contained in that statement which was made shortly after the occurrence of the alleged loss, that the **foreman** oc-

casionally arrived at 7 o'clock "to **prepare** work by 7:20 **A. M.**" (Case, p. 55, lns. 1-2.)

All of the work that was done before **6** o'clock in the morning was simply to make things in readiness for the employees arriving later (Case, p. 82, lns. 30 et seq.).

Consequently, there was a clear breach of warranty, first in that **no** rounds were made **after five** o'clock in the morning, and secondly, in that there was **no watchman at all in the premises after six o'clock, although the premises were not regularly open for business until 7 o'clock, or indeed 7:20 A. M.**

But there is another aspect in the case in which there was a clear breach, and that was that even during the night, and concededly while the premises were "**not regularly open for business**" at all, there were **no two watchmen.**

It was claimed that **White** and **Fenmore** were the two watchmen.

As a matter of fact only White was.

Fenmore was the night **fireman** and was repeatedly referred to as such right through the testimony.

Thus the witness Lundgren stated that in addition to Fenmore's duties as night watchman, he was also night **fireman** (Case, p. 16, lns. 20-23; p. 74, lns. 26-29).

He was **listed** as a night **fireman** (Case, p. 51, lns. 20-21; p. 75, lns. 1-5).

Lundgren's written statement was that Gabriel Both **relieved** Fenmore (Case, p. 55, lines 4-5), **not making rounds but attending to raising steam** (Case, p. 55, lines 5 et seq.), and Both was admittedly a **fireman** (Case, p. 92, lines 8-11).

Herbert **White**, the night watchman, testified that during the night, the night **fireman worked** with him (Case, p. 85, lns. 35-36), his name being **Fenmore** (Case, p. 86, ln. 1), and it was repeated that his work was that of **fire**man, **firing** the furnace (Case, p. 86, lns. 10-20).

The witness Both testified that when he came on in the morning he would "meet **Fenmore**, the night **fireman**" (Case, p. 236, lns. 4-5).

Now, under the case of First National Bank vs. Insurance Company of North America, 50 N. Y. 45, which as aforestated was followed in this State in Carson vs. Jersey City Insurance Company (43 N. J. L., 300, 303), the Deputy Sheriff and a Trustee of the assured, where held not to be **watch**men, because they never undertook to act as watchmen.

The same is true here of Fenmore.

He never was a **watch**man, he wasn't **listed** in the assured's books as a watchman and he wasn't **termed** a watchman by any of the other employees

of the assured. He was distinctly and distinctively referred to as "the night fireman" and there was no proof that he performed the duties of a watchman, except that White, who was the watchman, said that he would visit with Fenmore in the boiler-house (Case, p. 89, lns. 27-29), that he sometimes started from the boiler-house (Case, p. 90, lns. 1-2) and that he would see Fenmore start from the boiler-house and go around to the back of the building (Case, p. 90, lns. 3-8) and would hear him coming back down the stairs to the boiler room (Case, p. 90, lns. 10 et seq.).

But the watchmen's duties were not limited to making rounds and signalling. Their duties were also to pay heed to anything indicative of the presence of strangers in the building; and for that purpose there were not two but only one watchman in the building during all the hours of the night. Certainly Fenmore, giving attention to the boilers and to the fires, which during the day required five men to attend to, would find scant time to give heed during the night to anything but those boilers and fires, and even if we assume that he had made those rounds hourly, rounds which at most consumed only fifteen or twenty minutes each (Case, p. 94, lns. 22-29), for the rest of the time in between those rounds he would be able to give no thought and no attention to the presence of strangers in the building, while White, who was a night watchman only and who did nothing else than watch the premises, would be able to be on the lookout for strangers even in between the making of the rounds.

Consequently, in both these respects, namely, that there were **no** rounds made after **five** o'clock, that there was nobody in the premises answering to the description of watchmen after **six**, although the premises only opened for business after **seven** in the morning, and for the further reason that even during the night there was only **one** instead of **two** watchmen, there was a clear breach of warranty demanding the non-suit which was directed.

So far as the testimony of the witness McMahon was concerned, his evidence demonstrated that on many occasions no signals were received from plaintiff's premises (Case, p. 285, lns. 11-30; p. 286, lns. 1-13; p. 288, lns. 29-34; p. 289, lns. 1-11). In that respect also this requirement of the policy was violated.

It is therefore respectfully submitted that the judgment of non-suit was sustained by the lack of evidence, is sustained by the law and should be affirmed with costs.

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Defendant-Appellee.

20 MAY.T.1926

New Jersey Court of Errors and Appeals

Cramer & King Company, Plaintiff-Appellant, vs. National Surety Company, Defendant-Appellee.	Action at Law On appeal from the Supreme Court

BRIEF IN BEHALF OF CRAMER & KING COMPANY

Harris J. Westerhoff,
Rosenkrans & Rosenkrans,
Attys.

This is an appeal from a judgment of non-suit. The cause was tried at the Passaic Circuit, and at the close of plaintiff's case the attorneys for defendant moved for a non-suit upon several grounds (case, pages 494-495-496). The court, in passing upon the motion for non-suit only considered two of the grounds (case, pages 509-510-511).

In our argument we will first deal with the grounds of non-suit upon which the court granted the motion and afterwards the other grounds pressed by the attorneys for the defendant; and we will last discuss the ruling of the court excluding certain evidence, which we insist was erroneously excluded (case, page 207, l. 14 and so forth.)

The notice and grounds of appeal appear on page 582 of case; the first ground covering the respec-

tive reasons for non-suit and the second ground covering the erroneous exclusion of testimony.

The plaintiff is a corporation of the State of New Jersey engaged in the business of dyeing, finishing and printing silks and satins, commonly known as the silkdyeing business. From the very nature of its business the merchandise handled by it belonged to its customers, and its own personal property consisted for the most part of office furniture, mill machinery (fixtures) and the materials which it used in processing the merchandise sent to it by customers. On April 9, 1923, it received from defendant a policy of insurance, insuring it against loss or damage by burglary in the total sum of $50,000.00, of and to all merchandise usual to its said business, in its possession, upon its premises, either owned by it, or held by it in trust or on commission. On July 3, 1923, and while said policy was in force merchandise usual to its said business, in its possession and upon its premises was lost by burglary, and the object of this suit was to recover under said policy of insurance said loss by burglary. The said loss by burglary amounted to $11.434.06, and the merchandise lost was held by plaintiff in trust for processing for certain of its customers as will in this brief hereafter appear. The defendant has raised so many grounds in its motion to non-suit, a discussion of which will necessarily lead into the details of the case, that we have confined our opening remarks to a brief outline of plaintiff's case. The pleadings appear in case, Pages 1-9, inclusive; and the motions for non-suit fully cover the special defences raised in defendant's pleading.

A.

THE COURT ERRONEOUSLY DECIDED THAT PLAINTIFF COMMITTED A BREACH OF WARRANTY BY REASON OF THE FACT THAT THE POLICY IN PARAGRAPH 4 OF THE WARRANTY PROVIDED THAT THE BUSINESS CONDUCTED BY PLAINTIFF ON THE PREMISES WAS THAT OF SILK DYERS —"NO OTHER BUSINESS IS CONDUCTED ON THE PREMISES EXCEPT AS HEREIN STATED. NO EXCEPTIONS"; WHEREAS THE PLAINTIFF IN FACT CONDUCTED ON SAID PREMISES THE BUSINESS OF DYEING, FINISHING AND PRINTING.

The Court's decision on this matter, and his reasons for the same, appear on page 509 of Case, lines 7 &c., and 510.

The term "silk dyeing" by the usage and custom of the trade covers dyeing, finishing and printing.

At the close of the plaintiff's case, the uncontroverted testimony was that by the custom and usage of the silk trade the term "silk dyeing" covers dyeing, finishing and printing.

Joseph A. Pelegrini, a witness called on behalf of plaintiff, testified that he had been connected with the silk dyeing business for twenty-two years in connection with the dyeing, finishing, printing, color mixing and chemistry of said business, and that while working for plaintiffs he was both an inside and outside man (Case, page 206, lines 20, &c.). He had previously testified that he had been em-

ployed by plaintiff for four years (leaving them in September, 1924) as supervisor and solicitor (Case, page 203, lines 30 &c.). He further testified that, other than his employment with plaintiff, he had come in contact with the silk dyeing trade on the outside for four full years (Case, page 206, lines 28, &c.).

He was then interrogated as follows:

> Q. Now, Mr. Pelegrini, do you ***know*** what the term "silk dyer" covers, according to the custom and usage of the silk dyeing trade? A. I ***do.***
>
> Q. What does it cover? A. It ***covers dyeing, finishing and printing.***

(Case, bottom of page 206 and page 207.)

Evidently both the Court and the attorney for defendant considered the witness duly qualified to testify to the said custom and usage of the silk dyeing trade; for the Court permitted Pelegrini to answer the question after Pelegrini had testified that he knew; and the objection to the question by counsel for the defendant was on the ground that the question was immaterial, irrelevant and was an attempt to vary the terms of a written contract and that there was no custom pleaded and it had nothing to do with the issues, and that the insurance policy contained an express warranty that the business conducted by the assured in the premises is that of silk dyers. (Case, top of page 207). These objections to the question raised by defendant's attorney must have been considered by him of little import; for the Court permitted the question and the attorney for defendant took no exception to the Court's ruling. ***The attorney for the defendant***

thereby waived the objections he made. Furthermore, the attorney for the defendant did not even cross examine the witness upon his qualifications to testify concerning said custom and usage.

From the following law, it is evident, that, it was for the Court to say whether the witness was qualified to testify regarding the said usage and custom (the Court said he was qualified); that it was proper to admit the parole evidence to show the said usage and custom; and that by the said usage and custom of the silk dyeing trade, the defendant was presumed to have known and to have understood the term "silk dyer" to have covered dyeing, printing and finishing, and is presumed to have acted and contracted when it executed its policy of insurance to plaintiff, in the light of such knowledge, and to have, in law, included all the words dyeing, finishing and printing in its contract of insurance.

It is for the Court to decide whether the witness is qualified to testify regarding the alleged usage. Citing Barrie vs. Quimby, 206 Mass. 259; ***A. J. Towers Co. vs. Southern Pacific Co., 184 Mass., 472; Hess vs. Shurtlef, 74 N. H., 114, 17 Corpus Juris, 525.***

Parole evidence may be introduced to show that certain words used in a written contract have a special meaning given to them by usage. ***Daniel vs. Papas, 220 Pac. 355.***

While words in a contract relating to ordinary transactions of life are to be construed according to their plain, ordinary and popular meaning, ***yet if, in reference to the subject matter of the contract, particular words and expressions have by usage acquired a meaning different from their plain, ordinary and popular meaning, the parties using those words in such a contact must be taken to have used them in their peculiar sense, and that sense may be fixed by parole evidence. The evidence is not incompetent because the words are in their ordinary meaning unambiguous, for the principle of admission is that words perfectly unamibguous in their ordinary meaning are used by the parties in a different sense. Customs & Usages, 17 C. J., 498, p. 61. Common words and terms.***

Defendant employed plaintiff by a ***written*** contract to construct a school building partly of reinforced concrete. The specifications which formed part of the contract, provided with respect to the reinforcing bars, that "all shear members must be ***rigidly attached*** to the main tension member." Dispute arising as to the precise character of bar called for by the specifications, and the plaintiff refusing to furnish the bars demanded by the defendant, the latter undertook to rescind the contract for non-performance by plaintiff, and the plaintiff sued for damages on the ground that it had been prevented from the com-

pleting the work by the wrongful act of the defendant.

Held, that on the trial of such suit, ***it was error*** to exclude testimony that the phrase "rigidly attached" ***had a peculiar meaning in the concrete construction trade, and if so, what that meaning was. Calumet Const. Co. vs. Board of Education. 78 N. J. L., 676.***

It is competent for an insured to prove that by the usage of the trade "rags" and "old metal" had acquired a broader significance than is commonly intended. Mooney vs. Howard Ins. Co., 138 Mass., 375.

It is settled that insurance companies are bound to inform themselves of the usages of the particular business insured, ***and that there is a conclusive presumption of their knowledge of such usages.*** * * Underwriters insuring by certain words are presumed to know and to contract with reference to the mercantile meaning of the words in the particular trade. Such meaning may be local, but must be in force among persons engaged in the trade.

17 Corpus Juris, Page 465; Customs and Usages; paragraph 27, Insurance.

Insurers are assumed to know the usages of trade, and when they use a term having a limited meaning in the trade, and in a policy to one engaged in that trade, or in a business closely connected with it, both

parties must be assumed to have understood the term in the sense in which the trade usually understand it.

Wall vs. Howard Ins. Co., 14 Barber 383, 387.

The parties are presumed to make their agreements in accordance with the customs of their business. And the general rule that one engaged in a particular business is presumed to contract with reference to the well known usages of that particular business may perhaps be extended beyond this statement, for it must include the incidents of that business. Thus a fire insurance company insuring a manufacturing establishment must be presumed to be familiar with the usages and practices of that trade and with the use of terms employed in that trade.

17 Corpus Juris, page 484; paragraph 47, Fire Insurance.

It has been constantly adjudicated that all usages which are so well established and also well known as that parties engaged in the trade to which the usage relates are presumed to have contracted in relation thereto, ***become as much the part of a policy as if written therein in terms.*** * * * Insurers, says the Connecticut Supreme Court, ***"are presumed to act and contract in reference to known and general usage, and to submit to it, and such general usage may***

be well enough said to become a part of all their contracts."

Joyce on Insurance; Second Edition; paragraph 198, Usage; How Far a Part of policy.

Underwriters are bound to inform themselves and to know the general usages of the trade in which they insure, for it is presumed that the custom of merchants is known to them, and the insurer and insured must be supposed to be fully apprised and conversant of a notorious usage, as to the course of a voyage, ***and to know the nature and peculiar circumstances of that branch of trade to which the policy relates,*** and that whether it is recently established or not. The insurers are also presumed to know the customs of the place where they do business, and are assumed in law to know them. ***It is also presumed that a person dealing in a particular market has knowledge of its customs in relation to his transaction therein. So they are presumed to be acquainted with the nature and peculiar circumstances of the branch of the trade to which the risk relates * * *.***

Joyce on Insurance; Second Edition; paragraph 239, Presumption as to knowledge of usage.

Evidence of usage or custom in any particular business or trade is admissible to explain either a parole or written contract, but not to contradict the express

> terms of the contract. ***It may show that terms in any particular business or trade have acquired a meaning different from their ordinary acceptation, but for this the evidence must be plain and explicit.***
>
> ***Steward and Metler vs. Scudder, 24 N. J. L., page 96.***

This last citation is from the case quoted from by the Court in his reasoning on the motion to non-suit, on page 509 of the Case.

In his reasoning, the Court says "that usage cannot be proved ***by isolated instances*** but must be so certain, uniform and notorious that it must be presumed to have been understood by the parties as entering into and constituting a part of the contract."

The Court in his reasoning evidently confused the quantity of evidence with the quality of evidence. It is true that plaintiff swore only one witness as to the custom and usage of the silk trade; but it is untrue that that witness testified to isolated instances only.

Under the modern practice, it is well settled that a usage or custom may be proven and established by one witness.

> In a few early decisions the doctrine was advanced with more or less positiveness that one witness was not enough to establish the existence of a usage. ***But it is now well settled, that a usage, being a matter of fact, may be proven as any other fact, and may be established by one witness if his means of knowledge is adequate and his***

testimony is full, satisfactory and uncontradicted.

17 Corpus Juris, page 524; paragrah 92, Customs and Usages.

Citing among other cases:

Robinson vs. U. S., 13 Wall, 363.

Greenwich Ins. Co. vs. Waterman, 54 Fed. 839.

Barclay vs. Kennedy, 2 F. Cas., No. 976.

York vs. Wister, 3 F. Cas. No. 18, 141.

Smith vs. Rice, 56 Ala., 417.

Bessell vs. Ryan, 23 Ill., 566.

Jones vs. Herrick, 141 Iowa.

Barrie vs. Quimby, 206 Mass., 259.

Cohea vs. Hunt, 10 Miss., 227.

Goodhall vs. New England F. Ins. Co., 25 N. H., 169.

Beardsley, Inc. vs. American Fidelity Co., 98 N. Y. Misc., 642, 163 N. Y. S., 210.

Adams vs. Pittsburgh Ins. Co., 76 Pa., 411.

Hehmerson vs. Cole, 28 S. C., 321.

Southwest Virginia Mineral Land Co. vs. Chase, 95 Va., 50.

In the case at bar, plaintiff's witness testified that he had been connected with the silk dyeing business for twenty-two years, in the capacities of dyeing, finishing and printing, color mixing and chemistry, and that of those twenty-two years, he had worked for plaintiff four years in the capacity of supervisor and solicitor of business. No one questioned his competency or his knowledge in general of the silk dyeing trade. From the testimony it is evident that he had knowledge

of the silk dyeing trade, in all its branches, namely, dyeing, finishing and printing, and had knowledge of the custom and usage of the silk dyeing trade. From his knowledge and experience, this witness testified from no isolated instance or instances. The question put to him was most general and comprehensive. He was asked "do you know what the term ***silk dyer*** covers, according to the custom and usage of the silk dyeing trade." He answered "I do," and upon further questioning testified that the term ***silk dyer*** covers according to the custom and usage of the silk dyeing trade, ***"dyeing, finishing and printing."***

This testimony on his part was given from his general knowledge of twenty-two years in the silk dyeing business. We cannot conceive of a more general or comprehensive manner in which to introduce the evidence.

Furthermore, in the case of Steward and Metler vs. Scudder, from which the Court cited in his reasoning above referred to, the usage therein mentioned was controverted by defendant and his witnesses, and "the Court in that case properly (see page 106 of the opinion of Justice Haines) left it to the jury to determine, upon the evidence, whether such a custom did exist."

The other case cited by the Court below in his reasoning, on page 510 of Case is that of Mooney vs. Howard Insurance Company, 138 Mass. 375. That case, to quote the words of the trial Court says "that the plaintiff must prove that the alleged usage was known to defendant, ***and that they would be warranted in finding that it was***

known to defendant, if they found upon all the evidence that there was such a usage or custom, and that it was well defined, universal, uniform and of long continuance." The above quotation further bears out our position that at the close of the plaintiff's case, the jury would have been warranted in finding that the usage in question was known to defendant, ***and the Court had no right to non-suit the plaintiff.***

The plaintiff's witness had testified from his general experience of twenty-two years in the silk dyeing business what the term "silk dyer" in the usage and custom of the trade covered; and from the nature of the witness' experience and his long years of experience in the silk dyeing business, the jury would have been justified in finding that the custom and usage to which the witness had testified, was well defined, universal, uniform and of long continuance. We can find no case which requires the plaintiff's attorney, in order to establish a particular custom or usage, to put the words "well defined, universal, uniform and of long continuance" in the witness' mouth.

B.

THE COURT ERRONEOUSLY DECIDED THAT THE TESTIMONY IN THE CASE DISCLOSED NO LEGAL LIABILITY ON THE PART OF PLAINTIFF TO ITS CUSTOMERS FOR LOSS OF THEIR MERCHANDISE AND THAT CONSEQUENTLY THERE WAS NO LEGAL LIABILITY ON THE PART OF DEFENDANT TO PLAINTIFF.

The Court's decision in this matter, and his rea-

sons for the same appear on page 510 of Case, lines 21, &c., and on page 511. (Motion for nonsuit.)

In arguing this matter it must be borne in mind that the defendant was fully aware at the time it executed its policy of insurance to plaintiff that plaintiff, from the very nature of its business, handled and worked upon merchandise belonging to others, with which it was entrusted.

The policy expressly states that "the insurance granted by this policy ***applies specifically on merchandise usual to the business of the assured, manufactured, unmanufactured, and in process of manufacture,*** and the total liability of the company under this policy is limited to the sum of $50,000.00, and the premium for this policy is $550.38." (See Exhibit P-1, Case, page 519, paragraph C.)

The policy expressly insured plaintiff ***"for all loss by burglary of merchandise usual to the assured's business,*** and furniture and fixtures from within the premises" * * * and "for all damage (except by fire) ***to such merchandise,*** furniture, fixtures and premises, caused by such burglary or attempt thereat." (Exhibit P-1, Case, page 521, under caption "Loss by Burglary," and on page 522 under caption "Damage by Burglary.")

From the nature of the assured's business and the above language of the policy, it is obvious that the $50,000.00 insurance was given by defendant to plaintiff and accepted by plaintiff from defendant to cover principally the loss by burglary of merchandise belonging to plaintiff's customers and held in trust for them.

For no sane person would contemplate that a burglar would break into a silk-dyeing plant and steal therefrom the unwieldly, almost valueless office furniture and fettered fixtures and leave untouched the wealth of easily handled silk merchandise; nor would any sane person contemplate placing $50,000.00 insurance against loss by burglary on the office furniture in his silk-dyeing plant and on his fixtures. In all probability the premium of $550.38 would more than exceed the value of his office furniture, and a burglar would have the whole city on his heels before he had succeeded in ripping loose the fixtures.

But what is the attitude of the insurance company in the case at bar?

It admits insuring the merchandise of plaintiff's customers; it admits receiving the $550.38 premium for its insurance, but insists that it is not liable to plaintiff under its policy, because "it is only liable to plaintiff, if plaintiff is liable to the owners of the merchandise and it clearly appears that there was no liability of plaintiff to the owners of the merchandise." (See defendant's motion to non-suit, Case, page 496, lines 6, &c.)

It seeks through this mode of argument to evade its plain duty under its policy of insurance to plaintiff.

The Court in considering this ground for non-suit, erroneously accepted the view of the attorney for the defendant, and granted the non-suit.

The Court said "The sixth ground is that the policy provides under special agreement, paragraph 5, ***that the company shall not be liable for***

loss or damage to merchandise unless the assured is liable to the owner thereof for such loss or damage as is covered hereby. The best that can be said for the testimony on the part of the plaintiff as to its customers, it being admitted that the plaintiff is not the owner of the property, is that it discloses statements by the representatives of the plaintiff, some made on the request of the customers and some not, that the plaintiff, Cramer & King, was covered by insurance, some specifying burglary. ***It seems to be that in view of that testimony there is no legal liability within the terms of the policy, whereby the plaintiff, Cramer & King Company, was legally liable to its customers, for whom it was at the best a bailor."*** (Case, page 510, lines 27, &c., and page 511—motion to non-suit.)

The error in the position taken by the Court is two-fold: (1) It does not consider all the terms under special agreements, clause 5, and (2) it does not fully grasp the full significance of the testimony produced by plaintiff in respect to its liability to its customers.

(1) ***Clause 5 of special agreement is as follows:*** The company shall not be liable—"For loss of or damage to merchandise unless it belongs to the assured ***or is held by him in trust or on commission*** or sold but not removed from the premises, or unless the assured is liable to the owner thereof for such loss or damage as is covered hereby."

In considering the motion for non-suit, the ***Court dealt with clause 5 as if it contained only the following words:—The company shall not be***

liable—"For loss of or damage to merchandise, unless it belongs to the assured, or unless the assured is liable to the owners thereof for such loss as is covered hereby," and as if the policy did not "apply specifically on merchandise usual to the business of the assured, manufactured, unmanufactured and in process of manufacture."

Such construction by the Court utterly disregards the words *"or is held by him in trust or on commission or sold but not removed from the premises," and utterly disregards the purpose of the policy.*

The words "or *is held by him in trust or on commission"* clearly place liability in the case at bar upon the defendant.

> An insurance upon goods *held in trust or on commission covers goods held by the assured on storage,* for which he is to *receive a compensation.* * * * The phrase *"held in trust"* must be understood in a *mercantile sense* and not in a strictly legal sense, and the words "held by them in trust" will extend to and cover property held exclusively in trust for railroad companies, who have an insurable interest in such goods. * * * *The clause "in trust or on commission" covers cloth sent the insured to be manufactured into clothing.* Again, *a policy issued to a carriage maker, who also does repairing, covering all vehicles, either his own or held by him in trust, or on commission, or in storage for repairs, will cover a carriage belonging to a customer, which has been delivered to the in-*

sured to be repaired and sold for the customer's account. * * * So goods entrusted to a warehouseman for keeping are covered under the words "merchandise held in trust." ***And the same is true of the words "in trust or on commission," even though one is not bound to insure the same, and without regard to the fact whether the insured had a lien thereon or not for storage.***

Joyce on Insurance, Second Edition, paragraph 1727, under caption "goods, wares and merchandise in trust or on consignment;" and the numerous cases therein cited.

It is well established that ***a bailee or agent holding property for the purpose of repair or of sale*** may insure it against loss or damage by fire ***for the protection of his special interest and that of the owner, and that this insurance may be taken in the name of such possessor, and in case of loss the avails of the policy may be applied in satisfaction of his claim against the property, and, if there is an amount above such claim, he holds it for the owner. Strohm vs. Hartford Fire Ins. Co., 33 Wis., 648, Waring vs. Indemnity Fire Ins. Co., 45 N. Y. 606, Home Ins. Co. vs. Baltimore Warehouse Co., 93 U. S. 527, Stilwell vs. Staples, 19 N. Y. 401, Snow vs. Carr, 61 Ala. 363.*** Such insurance has commonly been supported upon the grounds ***that a person having a special interest in property for which he is responsible*** to the owner

may protect himself in this manner, and, should he be unable to restore the property through loss by fire, he will thereby be assured of rendering its value to the owner to the extent of the indemnity. One of the requisites of such contracts is that it must appear from the contract that the owner was within the contemplation of the parties when they made the contracts. This does not mean that each party must be ascertained when the policy issued, ***for it is presumed that the parties intended that the insurance provided for in the policy, shall enure to the benefit of every person who assumes the relationship to the assured covered in the contracts,*** whenever a loss occurs to the property covered by its terms. This presumption that every person assuming the specified relationship was within the intention of the terms of the policy is binding upon the insurer as well as the assured and cannot be varied or contradicted unless there be shown that there was an understanding between the owner, the party effecting the insurance and the insurer that the owner's interest was not to be included. * * * ***Stillwell vs. Staples, 19 N. Y., 401; Bassett vs. Hughes, 43 Wis., 319; Waring vs. Indemnity Fire Ins. Co., 45 N. Y. 606. Quoting from Johnson vs. Charles Abresch Co. Opinion by Justice Siebaker. Wisconsin Supreme Court, 68 L. R. A., page 934, 938.***

It seems needless to remark that a silk dyer holds the merchandise of his customers in trust and has a special interest in such merchandise for the work which he does upon it. It seems also needless to remark that the defendant when it issued its policy of insurance to plaintiff knew that the silk covered and to be covered by the policy belonged to plaintiff's customers, and that both plaintiff and defendant presumed that the insurance provided for in the policy should enure to the benefit of persons who assumed the relationship of silk dyeing customers of the plaintiff.

Not only does the contract of insurance in the light of the merchandise insured and the business of the insured clearly hold the defendant responsible for the loss by burglary of the goods of plaintiff's customers, but there is nothing in clause 5 of the special agreement to change such responsibility.

The words appearing last in Clause 5, viz., "or unless the assured is liable to the owner thereof for such loss or damage as is covered hereby" *do not limit and control the words "in trust or on commission,"* or the words in the policy "that this policy *specifically applies* on merchandise *usual* to the business of the assured."

> (a) The language of a policy must be construed with reference to the subject matter and the nature of the property to which it is applied, and with a view to the objects and intentions of the parties *as the same may be gathered from the whole instrument. Allegre v. Maryland Ins. Co., 2 Gill. & T. (Md.) 136; De Graff vs. Queens*

Ins. Co., 38 Minn., 501; Ripley vs. Aetna Ins. Co., 30 N. Y., 136; 17 Earl of Halsbury's Law of England, 342.

(b) *The whole of clause 5 may well be construed to mean,* that the company shall not be liable for loss or damgae to merchandise, unless the merchandise *belongs* to the assured, or is *held by him in trust or on commission or sold but not removed from the premises,* or *for loss or damage to merchandise, otherwise in assured's possession unless the* assured is liable to the owner thereof for such loss or damage as is covered thereby.

In the case of *Snyder vs. Insurance Co. 59 N. J. L. Page 544, 549, Opinion by Justice Depue,* the court said: "There was a kerosene oil-stove in the shed which was on the premises. The oil-stove was used for cooking. The fire broke out in close proximity to the stove. The lamp in the stove was then burning, but the fire was not caused by an explosion. The policy contains a provision that it should be void if "there be kept, used or allowed on the above-described premises, naphtha or petroleum or any of its products of equal or greater inflammability than kerosene oil of legal standard *(which last may be used for lights only,* provided the oil be drawn and the lamps be trimmed and filled solely by daylight)."

The only legal standard for petroleum or any of its products is that specified by the act of 1883. That act provides that "only

such product of petroleum as will not flash at a less temperature or flash-test than one hundred degrees Fahrenheit, may be sold for lighting or illuminating purposes, except when the same is to be used in street lamps or open-air receptacles or in gas machines, in which case (as to petroleum or kerosene) there shall be plainly marked on the barrel, can or vessel in which the same is sold, &c., the words, 'Not for inside lights'." Gen. Stat., p. 2454. No standard is prescribed by this statute except for lighting or illuminating purposes —"inside lights." ***In fact, the kerosene oil used in the kerosene stove was of the standard of one hundred and fifty degrees Fahrenheit flash-test, which is above the standard mentioned in the statute.***

The contention is that the policy, by force of the above provision, was avoided by the use of kerosene otherwise than in lamps for illuminating purposes. The result of this contention depends upon the construction and effect of the clause of the policy above set out. ***It is a settled rule in the construction of contracts of insurance that policies of insurance will be liberally construed to uphold the contract, and conditions contained in them which create forfeitures will be construed most strongly against the insurer and will never be extended beyond the strict words of the policy. Carson v. Jersey City Insurance Co., supra. In Stone's Administrators v. United States Casualty Co., 5 Vroom 371, 375,*** Chief Justice Beasley

said: *"A qualification of the agreement so restrictive of the rights of the party insured ought not to be admitted unless the terms of the endorsement will bear no other rational interpretation. If the terms used are imperfect, it is the fault of the defendants. It is their contract, and the construction of it must be most strongly against them." The principal member of this clause, "if there be kept, used or allowed on the above-described premises. * * * petroleum or any of its products of equal or greater inflammability than kerosene oil of legal standard," is not broken by the use made of kerosene in this instance. The defence rests upon* the other member of the sentence which is enclosed in brackets, viz., *"which last (i. e., kerosene oil of legal standard) may be used for lights only,* provided the oil be drawn and the lamps be trimmed and filled solely by daylight." *This member of the sentence imports a regulation of the use of kerosene oil when used for lighting purposes, and the words used are capable of a construction which would give to it no other effect. If the insurer intended to prohibit the use of kerosene for any other purpose than for lights it would have been easy to so express the prohibition in its policies.* Policies of insurance against fire are taken out by all clases of persons, educated and uneducated, and no rule of law is more salutary than that conditions in these instruments, expressed in terms ambiguous and capable of

misleading, shall not be allowed to avoid the contract. ***The member of the sentence within the brackets, to say the least, is confusing and ambiguous when taken in connection with the words which precede it, and should not be allowed to make void this policy under the circumstances of this case."***

(c) Furthermore, if the last provision of Clause 5, is to qualify the provisions that precede it, it must qualify all of said provisions, ***because they are all grouped together (not even separated by commas).*** If it is intended to limit and control what precedes, it must limit and control every part of what precedes it.

If the last provision of Clause 5, qualifies all the preceeding ones, then it will lead to an absurdity; for the policy then will not even cover ***the merchandise belonging to the assured,*** unless the assured is liable to the owner (himself) for such loss or damage as is covered thereby.

The construction of policies of insurance must not be that which would lead to an absurdity, but must be reasonable with the reference to the risk and subject matter, and purposes of the entire contract, so as not to defeat the intention of the parties, ***and if one interpretation of the contract of insurance capable of two interpretations would lead to an absurd conclusion, looking to the other provisions of the contract and its general scope and object, such interpretation must be abandoned and that***

adopted which will be more consistent with reason and probability.

Joyce on Insurance (Second Edition). Para. 211. Construction must be reasonable.

(d) The construction placed upon Clause 5, by the trial Judge is contrary to the settled policy of the law, that a contract of insurance should be given effect if possible. His construction defeats the entire purpose of the contract.

An insurance policy will be given a construction which would defeat the entire purpose of the contract by enabling the insurer to defeat any recovery thereon.

Rogers v. Aetna Ins. Co. of Hartford. 95 Fed., 103. (U. S. C. C. A. N. Y.)

The whole policy with all its provisions, words and parts would be construed together as one entire contract, and such meaning should be given thereto as to carry out and effectuate to the fullest extent the intention of the parties, no portion should receive such a construction as will defeat the obvious intent, and the construction should be liberal rather than critical or technical, for technical constructions are not favored. ***The contract should be given effect, if possible, rather than made void, for only a stern legal necessity will warrant a construction that would nullify the policy or defeat a recovery if the contract is susceptible of a meaning which will permit one.***

Joyce on Insurance. Second Edition. Para. 212. Contract should be given effect if possible.

In the case at bar, as above pointed out, all the provisions of Clause 5, may be so construed that the contract of insurance can be given effect; and there is no stern legal necessity warranting a construction that will nullify the policy or defeat a recovery thereunder.

(2) ***The position taken by the trial Judge does not fully grasp the significance of the testimony produced by the plaintiff in respect to its liability to its customers.*** (Our second point under contention B.)

We contend that under the evidence and the law the plaintiff was liable to its customers for the loss by burglary of their merchandise.

Plaintiff's customers, whose silk was stolen, were Piedmont Silk Company, Rose Silk Mills and The Schwarzenbach-Huber Co.

Two of these customers before delivering silk to plaintiff for dyeing and processing inquired of plaintiff whether it was fully covered by insurance, fire and theft, and relied upon plaintiff's statement that it was fully insured as against burglary and fire in respect to the goods of its customers, and sent plaintiff their merchandise to be processed relying upon plaintiff's said statement.

As to Piedmont Silk Company.

Witness, Henry T. Fleitmann, testified that in the Spring of 1923 he was president and treasurer

of Piedmont Silk Company, and is at the present time a director of said company, that in said Spring, he had a conversation with Mr. Pelegrini, who represented plaintiff. (Case, page 497.)

Q. Will you relate the conversation you then had with him?

Witness—Why, he approached me on the question of sending some silk belonging to the Piedmont Silk Company to Cramer and King to be dyed. We had several conversations on the subject, ***and among them I asked him whether they were entirely covered by insurance, fire and theft and that sort of things, and responsible for the goods while out there in process.***

Q. What did he say in answer to your inquiry? A. ***He told me that they were entirely covered by insurance.***

Q. What did you say? A. I told him that I would investigate the company further ***and would send him the goods if they were entirely covered by insurance.***

Q. Then what did you do ultimately? A. ***Ultimately we shipped him approximately, I think, 500 pieces of merchandise to be printed.***

Q. Now, will you say whether or not, as representing the Piedmont Silk Company you relied upon this statement that Cramer and King were fully insured as against burglary and fire in respect to the goods of their customers?

Mr. Prince—I object.

The Court—I will sustain the objection to that question, because that is not ex-

actly the language of the witness. You may ask him whether he relied upon the statement made.

Q. Did you rely upon the statement then made to you by Pelegrini in respect to Cramer and King being protected by insurance against fire and theft?

Mr. Prince—I object to that.

The Court—You may ask him if he relied upon the statement made by Pelegrini.

Q. Did you rely upon the statment made by Pelegrini?

Mr. Prince—I object.

The Court—I will permit it.

The Witness—***I did.***

(Case, pages 498-499.)

Mr. Pelegrini, who had already testified that he had for four years been employed by the plaintiff (leaving them in September, 1924) as ***supervisor and solicitor,*** case, page 203, lines 30 etc., corroborates the above testimony of Mr. Fleitmann. Case, page 448-449.

Q. What conversation did you have at any time or at the time the arrangement was made for the shipment of these 500 pieces of the Piedmont Silk Company to Cramer and King? * * * A. Why, there was a question asked me by Mr. Henry Fleitmann as to whether we ***were insured against fire and theft,*** and I said, "yes." He then gave me 500 pieces, or gave me instructions to put 500 pieces on five patterns, putting 100 pieces on each of the 5 patterns. I then

gave him a price for the printing of the same.

The Piedmont Silk Company order is designated as "number 32," and is plaintiff's exhibit 14. Testimony of Miss Miller, pages 458 & 459, and exhibit, page 550, which show "Print, Cust. No. 32," "dated 3/19/23." Part of these 500 pieces were lost by burglary and are dealt with under another point in this brief.

As to Rose Silk Mills.

Joseph Bush, testified that he had been employed by Cramer & King for 14 years, and had been employed by them in New York City soliciting business for last 5 years, that he knew Cramer & King customers Rose Silk Mills, and had obtained that customer for them, doing business with Mr. Slifka, one of the owners of the Rose Silk Mills. (Case, page 476.)

Q. Now when was the time that you first talked with him? A. Early part of 1922.

Mr. Prince—I object to it unless it is in relation to this alleged agreement.

The Court—I suppose you are trying to show some agreement with them. I will permit it.

The Witness—I went in there soliciting business, and they finally consented to give me a lot of goods to do for them, ***but before they sent the order out they asked me if they were protected from burglary or loss by fire. I told them yes. Then they sent us an order for some goods.***

Q. Now, can you tell us a little more in detail what you said and what the other man said? Can you tell us? A. Well, Mr. Slifka asked me, were ***they protected from loss by burglary or fire.***

Q. What did you say? A. I said, "yes, sir."

Q. When did he ask you that question and when did you give that answer with reference to the time that he agreed to send you out an order, before or after? A. ***After he told me they*** gave me an order. ***Before he sent the order to the plant he asked me those questions, then he gave me an order.***

Q. Have you any knowledge about the order from the Rose Silk Company or Mills dated June 14, 1923, 18 pieces? A. I don't remember the order, no, sir.

The 18 pieces referred to in the last question are connected up by other testimony in the case, and are dealt with elsewhere in this brief. It was part of the mechandise lost by burglary.

As to Schwarzenbach-Huber Company.

Omar Cramer testified, that he is the treasurer of Cramer & King Company, that in January 1919—there were quite some burglaries going on all that time—he told Schwarzenbach-Huber Company that Cramer & King took out burglary insurance for all the goods which they had in their possession for protection, and that Schwarzenbach-Huber Company said ***"the arrangement was satisfactory."***

(Case, pages 472 & 473.)

He further says on cross-examination that he told Schwarzenbach-Huber Company through their representative Mr. Thirstein, that Cramer & King had taken out the burglary insurance, without Mr. Thirstein's asking him anything about taking it out. (Case, page 475.)

The situation in regard to Schwarzenbach-Huber Company is somewhat different from that in regard to the other two customers; ***for in the case of the other two customers,*** they shipped no goods to plaintiff until they ***learned from plaintiff that their goods would be fully protected by fire and burglary insurance and shipped their goods relying upon such protection.***

The goods lost by the last named customer by burglary are likewise dealt with elsewhere in this brief.

From the above evidence, it would seem to us that the plaintiff would have to respond in damages to its said three customers for the loss by burglary of their respective merchandise.

Suppose that the Piedmont Silk Company had brought suit against the plaintiff for the loss of its 500 pieces of merchandise by burglary, and suppose that at the trial of that suit the uncontradicted evidence was, as in the case at bar, (1) that before Piedmont Silk Company delivered the merchandise to Cramer & King for dyeing, it asked Cramer & King, whether they were entirely covered by insurance, fire and theft, and responsible for the goods while out there in process, (2) that Cramer and King answered that they were entirely covered by insurance, (3) that relying upon the statement of Cramer & King, to the effect that they were fully insured as

against burglary and fire in respect to the goods of their customers, Piedmont Silk Company sent to Cramer & King the 500 pieces of merchandise to be dyed, and (4) that while said merchandise was in the possession of Cramer & King in the process of manufacture it, or some of it, was lost by burglary, it would seem to us that it would be a clear case of liability in favor of Piedmont Silk Company and against Cramer and King.

Of course, this is the test of the liability, of Cramer & King to Piedmont Silk Company in the case at bar.

> The bailee is liable for loss resulting from breach of his contract to keep the property in a particular manner or at a particular place, or to use it only for a particular purpose, or to a specified extent, or in a particular manner, or to return it at a particular time, ***or other special stipulation in regard to the property, without regard to whether he has been negligent.***
>
> ***6 Corpus Juris, 1111; Bailments, under Caption Breach of Contract.***

> A bailee ***may enlarge his legal responsibility*** by contract ***express or fairly implied.***
>
> ***6 Corpus Juris, page 111, Bailments: Para. 43; Extension of Liability.***

> An implied contract that the property shall be at the risk of the bailee is equivalent to an express contract.
>
> ***Thomas vs. Cummisky, 108 Pa. 354.***

> Either the bailor or the bailee may insure the subject matter of the bailment for the joint benefit of both parties. ***And if the bailee has undertaken, either expressly or through an established course of dealing, to insure the property, he is presumptively required to insure it for its full value.***
>
> ***6 Corpus Juris, page 1113; para. 45.***

> A bailee may enlarge his legal responsibility by contract, express or implied, and render himself liable for the loss or destruction of the goods committed to his care; the bailment or compensation to be received therefor being a sufficient consideration for such an undertaking.
>
> ***Sturm v. Boker, 150 U. S., 312.***

Again, suppose that Rose Silk Mills had brought suit against Cramer & King for the loss of its merchandise by burglary, and that the evidence in that case was the same as in the case at bar, namely, that Rose Silk Mills were solicited by Cramer & King to give Cramer & King business, that before giving Cramer & King any merchandise to be worked upon, Rose Silk Mills asked Cramer & King, if they were protected from burglary or loss by fire, that Cramer & King answered "yes," and that Rose Silk Mills then gave Cramer & King silk to be dyed, and that said silk was lost by burglary, it would seem to us that this would also create a clear case of liability in favor of Rose Silk Mills and against Cramer & King.

The only difference between this case and the case of Piedmont Silk Company against Cramer & King would be, that there is no express testimony that Rose Silk Mills relied upon the representation of Cramer & King, that they were fully protected by fire and burglary insurance.

However, the jury might fairly imply that Rose Silk Mills relied upon such representation; for if Rose Silk Company did not rely upon such representation, why should they ask Cramer & King, whether they were fully protected by fire and burglary insurance, and why did they not place an order with Cramer & King, before they were satisfied that Cramer & King carried such insurance?

Furthermore, in considering the legal responsibilities of Cramer & King to all three of its customers, whose merchandise was lost by burglary, it must be borne constantly in mind, that Cramer & King took out insurance in the defendant company for the very purpose of protecting itself and its customers.

This fact not only applies to the first two customers, but is of special importance in the case of the customer Schwartzenbach-Huber Company.

As regards to the Schwartzenbach-Huber Company, the evidence is that Cramer & King told that company, without being asked, that Cramer & King had taken out burglary insurance for all the goods which they had in their possession for protection, and that Mr. Thirstein, of that company, replied "the arrangement was satisfactory."

As above pointed out, Cramer & King did have

insurance with the defendant company for the protection of the merchandise usual to the course of its business, and "It is well established that a bailee or agent holding property for the purpose of repair or of sale may insure it against loss or damage by fire for the protection of his special interest and that of the owner, and that this insurance may be taken in the name of such possessor, ***and in the case of loss the avails of the policy may be applied in the satisfaction of his claim against the property, and, if there is an amount above such claim, he holds it for the owner." (Johnston vs. Charles Abresch Co., heretofore cited in this brief.)***

In order to get around this last principle of law, applying especially to the merchandise of the Schwartzenbach-Huber Company, the defendant insurance company, in the case at bar is forced into this position:—It has to admit as a matter of fact, that Cramer and King holding merchandise, as bailee, for the purpose of processing said merchandise, did insure said merchandise in defendant company against loss or damage by burglary for the protection of the special interest in said merchandise of Cramer and King and for the protection of the interest of the owner: It has to admit, as a matter of law, that Cramer and King had a right to obtain from defendant such insurance, and that the insurance, as a matter of law could be taken in the name of Cramer & King; it has to admit further, as a matter of law, that in the case of loss, the avails of the policy may be applied in the satisfaction of Cramer & King's claim against the property, and, if there is an amount about such

claim, Cramer & King must respond for such amount to the owner. The defendant company in order to avoid liability, must argue, in effect, that it is true that Cramer & King, in case of loss is responsible to its customer for the avails of the policy, after Cramer & King has deducted the amount due it for its special interest in the merchandise, but that the defendant company by refusing in the case of loss, to pay to Cramer & King the avails of the policy, may circumvent the above principle of law in taking the position that Cramer & King is only responsible to its customer for the avails of the policy, and that, if Cramer & King is denied recovery under the policy, it is relieved of responsibility to its customer. In other words, the defendant insurance company denies that plaintiff is responsible to the customer for the avails of the policy and uses such denial to avoid the policy as between plaintiff and defendant. In other words it attempts to put the cart before the horse and have the cart pull the horse.

This fallacious position taken by the insurance company overlooks the principle of law heretofore cited from 6 Corpus Juris, page 1113, par. 45, ***that either the bailor or the bailee may insure the subject matter of the bailment for the joint benefit of both parties, and that, if the bailee has undertaken to insure the property, he is presumptively required to insure even to its full value.***

Of course, if the insurance company was avoiding liability under its policy, on account of misrepresentation or fraud on the part of the plain-

tiff, or because plaintiff had proven no loss under the policy, or for any reason other than that Cramer & King was not liable to its customers, then this argument would not apply; but the insurance company in the point we are arguing is seeking to avoid liability under the policy, on the ground that the plaintiff is not legally responsible to its customer.

> A motion for non-suit admits the truth of plaintiff's evidence, and of every inference of fact that can be legitimately drawn therefrom. ***Hayward v. North Jersey St. Ry. Co. 74 N. J. L., 678; Kaufman v. Buch, 69 N. J. L., 645.***

Under the evidence and law, above quoted, we respectfully submit, that it was for the jury to decide whether or not Cramer & King was responsible to its three said customers, or some of them, for the loss of their merchandise by the burglary; and that the trial judge in granting the motion for non-suit overlooked the fact that the plaintiff had enlarged his legal responsibility to his said three customers by its representation to said customers and by its causing burglary insurance to be taken out for the benefit of itself and its said customers' merchandise.

C.

DEFENDANT'S GROUND TO NON-SUIT, "THAT THE PLAINTIFF HAS FAILED TO SHOW UNDER THE TERMS AND CONDITIONS OF THE POLICY THAT THERE WERE VISIBLE MARKS OF A FORCIBLE ENTRY INTO THE PREMISES AT THE PLACE OF ENTRY AS IS REQUIRED BY THE POLICY OF INSURANCE," IS CONTRARY TO THE EVIDENCE IN THE CASE.

This takes up defendant's first ground to non-suit (case, page 494, l. 21 so forth).

What is the evidence in the case?

Witness Lundgren, who had worked for Cramer & King since Oct. 1910, and was the secretary of the corporation and a bookkeeper and did general office work, testified that there was a loss of merchandise in the finishing room in the basement of the main building on this morning of July 3, 1923; that the window on the south side of the rear in that room was unfastened and was standing on the sill; that on July 2, 1923, this window was covered with a half inch wire mesh affixed to the window by molding; that on the morning of July 3, 1923, he examined ***the exterior of that window*** and found that the screen had been torn and had been removed from the lower left hand corner of the window and had been pulled away from the frame and bent upward and outward and that about 6 feet of molding holding the screen had been removed, that the

wire screen had been torn away for about 2 feet along the base of the sill and about 3½ feet along the side of the window, that there were loose staples lying on the outside of the window sill, the one end of which had paint on them and the pointed ends of which were unpainted and had particles of wood clinging to the points and that there were holes in the sashes of the window the diameter of the staples. (Case, page 20, lines 11 and so forth and pages 21-28 inclusive.)

Witness Stapfer, the Superintendent of Cramer & King, testified that on July 2, 1923, at about 4 o'clock in the afternoon he looked at the window in question, while he was in the finishing room, and that at that time both the window and and the ***heavy*** wire screen covering it were in place, the window glass was unbroken, that the screen was fastened by a molding running along the frame of the window, and that at that time the molding was intact, and that he had examined the window because that was a part of his duties to examine all windows. (Case, pages 120-124.)

Witness Sergeant Lord, connected with the police department of the City of Paterson, testified that about 9 o'clock in the morning of July 3, 1923, he visited the plant of Cramer & King and examined the basement finishing room, that when he got there ***he went on the outside*** and examined the window in question, that the wire mesh on the window had been loosened on the bottom and pulled up for about three feet, that the wire mesh had been ripped out from the lower

left hand corner for about 3 feet along the side and from 1½ to 2 feet along the bottom that ***there was a mark on the bottom of the sash, where the screen was ripped off,*** that there were staples lying on the ground, that some of the molding was off and was lying along by the window on the outside, ***there was a piece broken off*** of the window frame probably 6 or 7 inches long, a ***fresh break*** (case, pages 144-157).

Witness Kepler, a Sergeant of Paterson Police department, testified that he examined the window casement or frame both from the inside and outside, that the screen on the outside of the window had been pulled up from the left from the bottom for about 2½ feet along the side and about 18 inches along the bottom, that the molding had been pulled off on the left side and lay in the yard, ***that there was a mark there,*** that loose staples were lying on the outside of the window sill, that there were holes there where the staples had been, that the staples fitted in the holes. (Case, pages 181-189 inclusive.)

Witness Pelegrini, testified that on July 3, 1923, there was not the same amount of goods in the finishing room as on July 2, 1923, that on July 3, 1923, about 8:30 A. M. he examined the finishing room and especially the rear window, right close to the door entering the yard, ***that the door was partly open,*** that the bar which fastened the door was standing along side of the door, that he examined the said window on both the inside and outside, that the first thing he saw was the loose molding, and that the wire mesh was pulled

from the left hand corner about between 15 and 18 inches from the bottom and approximately 2½ feet from the side on the left hand corner, that he saw some staples on the window sill partly painted and partly not, that the loose molding belonged on the left hand side of the window frame, that the molding was ***scratched or marred at the bottom and also about 18 inches from the top,*** that part of the wood from the molding had been tampered with, and that the scratches were ***new,*** that the loose staples and the holes in the window frame corresponded in size. (Case, pages 215-225 inclusive.)

Witness Cortese, testified that among his other duties he had charge of the basement finishing room on July 2, 1923, that in the afternoon of that day about 4:35, after all the men he had working under him in that room had left through the back door, leading from the basement finishing room to the rear of the Kramer & King plant, he shut the door and put in the wooden bar that fastened it shut, that on the morning of July 3, 1923, he arrived at the plant at 7:05, and later went into the finishing room and found goods missing, and told Mr. Pelegrini and Mr. Cramer that goods were missing, that on July 2, 1923, when he left the plant, the window nearest the door in the finishing room was locked, the screen was up, fastened and everything else, that on the morning of July 3, 1923, he went on the outside of the finishing room and saw that the window frame—the window pane, it hung down, there was a space as big as this here board, and the window stood there and the screen was pulled

from the bottom over to one side, he should judge about 2 feet, that the molding which was on the screen the day before was standing against the wall of the building and he ***saw pieces of molding lying around.*** (Case, pages 238-250 inclusive.)

Witness Clark, testified that he worked for Cramer & King as a carpenter, that the molding on the morning after the robbery was off the window and the wire pulled off as a triangle (page 301-302), that he replaced the wire screen and molding, and several weeks later removed the molding and the screen to the same extent to which they had been removed on the night of July 2, 1923, to find out whether he could get through the opening so made and remove the window from the outside, and found out that he could and did it. (Case, pages 303-304.)

Witness Mero, testified that he worked under Cortese in the finishing room, that on July 2, 1923, before leaving work, he locked the window in question, put the catch on the top and put in two nails, one nail on each side of the window; that he did this about 4:25 P. M., that he got to work on July 3, 1923 about 7:20 A. M., and later examined the window in question and found it lying at an angle on the window sill. (Case, pages 269-273 inclusive.)

The foregoing evidence fully refutes the ground for non-suit.

Another ground for non-suit, viz., "that the

plaintiff has not shown that the merchandise was taken from the inside of the premises by a person or persons who shall have made violent entry into the premises by actual force and violence, when the premises were not open for business and of which force and violence there were visible marks upon the premises at the place of such entry by tools, explosives, electricity or chemicals" (case, page 496, lines 20-27), is so like unto the ground last above considered, that it seems needless to quote further from the testimony to refute it.

From the testimony above recited (to say nothing of other testimony in the case) there can be no question but that the finishing room of plaintiff's plant was entered into from the outside of the plant with violence and actual force, that such entry was made some time between the late afternoon of July 2, 1923, when the window and door of the finishing room were locked and fastened upon plaintiff's employees quitting work, and the time of the return of the employees to work on the morning of July 3, 1923, and that merchandise was stolen. It is ridiculous for defendant to contend, that because the person or persons who broke into the plant, were not ***seen*** stealing the merchandise, that consequently they did not steal it.

D.

DEFENDANT'S GROUND TO NON-SUIT, "THAT THE PLAINTIFF HAS NOT SHOWN THAT THE LOSS, IF ANY, WAS NOT AFFECTED BY THE ASSURED, ANY ASSOCIATE IN INTEREST OR SERVANT OR EMPLOYEE OF THE ASSURED, EITHER AS PRINCIPAL OR ACCESSORY, AS IS REQUIRED UNDER THE SPECIAL AGREEMENT," (Case, page 496, lines 15-19) ***IS CONTRARY TO THE FACTS, TO ALL REASONABLE INFERENCES THAT CAN BE DRAWN FROM THOSE FACTS, AND TO THE REQUIREMENTS OF PROOF ON THE PART OF THE PLAINTIFF, AS REQUIRED EITHER BY LAW OR THE INSURANCE POLICY.***

Plaintiff's plant was broken into outside of business hours and merchandise stolen. The burglary occurred at a time when plaintiff's employees were not at work. ***The burglary was accomplished in the usual way by breaking and entering. There is nothing in the case to throw even a suspicion upon the assured or any of its employees. The facts present a normal case of burglary.***

Does defendant contend that it was incumbent on plaintiff to prove an alibi for each of its officers, stockholders, agents and employees, two hundred in number (Case, pages 12 and 13), or that each of the above mentioned persons should have taken the stand and testified that they had not committed the burglary?

Furthermore, the special agreement referred to

reads "that the company shall not be liable, if the assured, or any associate in interest or servant or employee of the assured, is ***implicated*** as principal or accessory in effecting or attempting to effect the burglary." (Case, page 523.)

To avail itself of this defense and ***avoid liability*** on this ground it was incumbent upon the defendant to show that such person or persons were implicated.

E.

THE GROUND OF APPEAL, "THAT THE POLICY EXPRESSLY PROVIDES THAT THE PROOF OF LOSS SHALL BE FILED WITH THE DEFENDANT COMPANY WITHIN SIXTY DAYS OF THE DISCOVERY OF THE LOSS AND IT DOES NOT APPEAR IN EVIDENCE WHEN THE PROOF OF LOSS WAS FILED WITH THE DEFENDANT COMPANY, BUT MERELY THAT IT WAS FILED," IS CONTRARY TO THE FACTS AND WAS ABANDONED BY DEFENDANT AT THE TRIAL.

As to the filing of the proof of loss within time, see case, page 77, lines 15, etc.

As to the abandonment of the ground to nonsuit, see case, page 507, lines 10, etc., and top of page 508.

F.

DEFENDANT'S GROUNDS TO NON-SUIT, "THAT IT DOES NOT APPEAR THAT THERE IS ANY VALUE TO THE MERCHANDISE THAT IS CLAIMED WAS LOST," "THAT IT HAS NOT BEEN SHOWN ANY YARDAGE OF MERCHANDISE ALLEGED TO HAVE BEEN STOLEN, FROM WHICH DAMAGES AT ALL CAN BE COMPUTED, IN FACT, NO COMPETENT EVIDENCE OF DAMAGES HAS BEEN ADDUCED IN THE CASE," "AND THAT THERE HAS BEEN NO EVIDENCE OF ANY CASH VALUE AT THE TIME OF THE ALLEGED LOSS" ARE CONTRARY TO THE EVIDENCE IN THE CASE.

There was ample evidence to go to the jury on these points; and the matters are so closely connected that we will discuss them together.

By the terms of the policy plaintiff is required to show the actual cash value of the merchandise at the time of the loss. See Exhibit P-1, P-2, case, page 522.

The actual cash value of all merchandise lost was firmly established by the evidence.

Philip Edholmes, Assistant Manager of Piedmont Silk Co. (Case, page 315, lines 1-10) testifies that of five hundred pieces delivered to plaintiff, only four hundred twelve were returned, making a loss of eighty eight pieces (Case, page 421, last two lines, and page 422, lines 1-10); that the actual market prices of the merchandise so lost on July 3, 1923, was $1.55 a

yard (Case, page 432, lines 18-30, and particularly page 435, lines 21-33).

Exhibits P-8, P-9, P-10, P-11 and P-12, from books of Cramer & King Co. (Case, page 539) show the entire five hundred pieces of merchandise, above referred to, received from Piedmont Silk Co. These exhibits show that each of the pieces contain sixty yards.

Exhibit P-37 (Case, 567), containing five sheets (Case, page 410), shows that between May 8th and June 3rd, 1923, inclusive, Cramer & King Co. delivered to Fleitman & Co. for the account of Piedmont Silk Co. a total of one hundred seventeen pieces.

Exhibit P-29 (Case, page 559), eight pages, (Case, page 401-402), shows that between May 8th and July 30, 1923, Cramer & King Co. further delivered to Fleitman & Co. on account of the Piedmont Silk Co. one hundred seventy four pieces. These two exhibits show that Cramer & King Co. delivered direct to Fleitman & Co. for the account of Piedmont Silk Co. two hundred ninety one pieces.

Furthermore on April 17, 1923, the whole five hundred pieces of Piedmont Silk Co. were delivered to Bamford Brothers, by Cramer & King Co. to assist Cramer & King Co. in processing; (Exhibit P-13), and of these five hundred pieces Bamford Brothers returned to Cramer & King Co. three hundred seventy nine pieces and shipped direct to Piedmont Silk Co. the balance of one

hundred twenty one pieces. See testimony of Otto Stapfer, Case, page 417, and Exhibit P-43, Case, page 572.

Furthermore, the books of memorandum of Cramer & King Co. in regard to these deliveries are corroborated by the testimony of Mr. Edholmes, who was the Assistant Manager of Piedmont Silk Co., as heretofore pointed out, and he states in his evidence (Case, bottom of page 421 and 422), that of said five hundred pieces two hundred ninety one were returned to Piedmont Silk Co. by Cramer & King Co. direct, and one hundred twenty one by Bamford Brothers, making a total of four hundred twelve pieces, that the eighty-eight pieces never came back, referring to the eighty-eight pieces that were stolen.

We have before shown that the eighty eight pieces averaged sixty yards to the piece, making a total of five thousand two hundred eighty yards, and we have further shown that the actual cash value of this merchandise per yard was $1.55, making a total actual cash value Eight thousand one hundred eighty four dollars. Figuring on the above basis of eighty eight pieces with an actual yardage of sixty yards per piece, making five thousand two hundred eighty yards, is a little less than the actual yardage lost or stolen according to Exhibit P-3, (Case, pages 531 and 532) which puts that yardage at five thousand two hundred ninety four and seven tenths, and taking that yardage as a basis and computing the loss on that yardage at $1.55 the actual loss would have been Eight thousand two hundred six dol-

lars and seventy eight cents, instead of eight thousand one hundred eighty four dollars.

In presenting the measure of damages of the Piedmont Silk Co. to the jury we naturally would not have taken the average yardage per piece, but the actual yardage; but regardless of which we took, there would have been absolute proof before the jury that the loss was either eight thousand one hundred eighty four dollars or eight thousand two hundred six dollars and seventy eight cents, and it is ridiculous for the defendant to say that no loss was proven in the case of Piedmont Silk Co. In presenting the case of the Piedmont Silk Co. as to the actual loss of their merchandise, we have not quoted in full from the testimony, as the introduction and evidence of the various exhibits, covers pages of the testimony, and in writing the brief we would in many instances almost have to rewrite the state of the case; which would be useless repetition.

As to the yardage and value of the merchandise stolen belonging to Rose Silk Mills:

Joseph Slipka, who was vice president, buyer and supervisor of selling of the Rose Silk Mills (Case, page 484 etc. and page 488, lines 18-19), testifies that nine pieces were not returned out of eighteen shipped, that the value on July 3, 1923, of the pieces so lost was one dollar a yard (Case, page 489).

Witness, Elizabeth Miller, one of the bookkeepers of Cramer & King Co. testified on page

457 of testimony, in respect to Exhibit P-46, and the same was offered in evidence and marked Exhibit P-46, and appears on page 574 of Case. This exhibit shows that on June 14, 1923, the Rose Silk Mills delivered to Cramer & King Co. to be finished, from its customer, Fegelstein Silk Co., fifteen pieces, and from its customer, Charles Orleans, three pieces, making a total of eighteen pieces. This exhibit also shows the numbers of the pieces and yardage.

Exhibit P-48, page 575 of Case, also shows these eighteen pieces. Exhibit P-54, shows that five hundred thirty four and one tenth yards were returned by Cramer & King Co. to Rose Silk Mills. Exhibit P-53, page 576 of Case, shows the yardage of nine pieces unreturned seven hundred twenty one and six tenths yards. The testimony heretofore mentioned in regard to the value of this silk at the time of the loss showed one dollar a yard, making a total loss of $721.75, which is the amount entered in the proof of loss. This amount is that which under the evidence the jury would have had. As pointed out in regard to the Piedmont Silk Co. we have not taken up, page by page, the testimony in regards to these exhibits, as it would require quoting from many pages of the state of the case.

As to the yardage and value of the merchandise lost of Schwartzenbach-Huber Co.:

Exhibit P-47, marked in evidence on page 480 of Case, and appearing on page 575 of Case, shows twenty pieces received by Cramer & King Co. from the last mentioned company. Exhibit P-47

shows that the Cramer & King Co. number for these twenty pieces was 2555 and exhibit P-49 (Case, page 575) shows that this mill order, No. 2555 was received on June 13, 1923, and shows in detail the twenty pieces and their yardage. This exhibit was offered in evidence on page 481 of Case. Of these twenty pieces, thirteen were returned and the balance of seven pieces stolen. The memorandum of the returning by Cramer & King Co. of the thirteen pieces appears in Exhibit P-55, page 577 of Case, and this exhibit was offered in evidence on page 483 of Case. In dealing with this case and summing up to the jury and presenting the measure of damages, the loss of yardage would have been computed by us by taking the two exhibits, and checking up the numbers received and the numbers returned and then computing the yardage on the numbers not returned, but stolen. The seven pieces not returned have a yardage of four hundred thirty four and four tenth yards. The original order for these twenty pieces appears on page 572 of Case, Exhibit P-44 and was put in evidence on page 453 of Case. The estimated price on these seven pieces per yard were shown as one dollar and sixty four cents, and appears at that price in the proof of loss. Taking the total yardage of four hundred and thirty four and four tenths at one dollar and sixty four cents, makes a total loss of the Schwartzenbach-Huber Co. merchandise amounting to Seven hundred six dollars and two cents.

Plaintiff kept a book of orders (Case, page 380, 381, 382 and 383, lines 1-15), which was ad-

mitted as exhibits P-14 to 20 inclusive (Case, pages 550-556), and these show, among other things, the number of pieces received by plaintiff from its customers, the yardage in each piece and precisely the nature of the work to be done by plaintiff thereon. Exhibit P-23 is a corrected order from customer 32 (Case, pages 398 and 399). A record was kept of the pieces of goods which were washed before they were printed, with piece numbers and yardages (Case, pages 400 and 401); and these are Exhibits P-24 to P-28, inclusive, (Case, page 558). Finally, in the folding department, the goods are measured up and marked, and are then ready for re-delivery to plaintiff's customers (Case, page 401, last 2 lines and page 402); and the record of these things is found in Exhibit P-29 (Case, pages 555 to 564, inclusive). The shipping department then takes charge of them; and there records are kept of the goods returned to the customers (Case, pages 403, 404, 405 and 406); and the records there made were admitted as Exhibits P-30 to P-43, inclusive (Case, pages 555 and 556).

Under this system, the merchandise received from plaintiff's customers, a part of which was stolen by the burglary of July 2-3, is identified and traced from the time it was received by plaintiff to be processed, through the various departments of the plant, including the finishing room; and there is shown thereby what portion of it was folded and marked and shipped out to the customers. The exact yardages lost by the theft is accordingly ascertainable by any competent bookkeeper. Of course, Cramer & King Co. had a right to keep the books of account

in their own manner, and to give their customer mill numbers, in order to protect themselves from unfair competition, also from having their employees know who their customers were, and like all other dyeing establishments not only for this reason, but also for convenience, had their mill numbers to put upon the goods, and so designated them in their books. Their method of keeping books was fully explained to the defendant company, with their explanation, as to whom the numbers referred, the books of account were so kept by Cramer & King Co. that the exact amount of loss could be accurately determined therefrom by the insurance company.

In his grounds to non-suit, defendant's attorney, at bottom of page 495 and top of page 496 of Case, states that "it affirmatively appears that there were no books of account which were maintained from which it could be determined that any loss had occurred." This ground for non-suit is contradicted by the evidence in the Case.

In 9 Corpus Juris, page 1098, paragraph 8, it is laid down as a principle of law that "A provision or ***'Mercantile Rider'*** that the company shall not be liable if the books and accounts of the insured are not so kept that the actual loss may be accurately determined therefrom constitutes a material provision of the policy, ***but a substantial compliance therewith is sufficient.*** To the same effect also are Lenzner vs. Surety Co., 204 N. Y. S., 796; Horwitz vs. Fidelity Co. (Wash.) 164 p. 77; Bruner Co. vs. Fidelity 200

N. Y. S. 546; and Olson vs. Casualty Co. (Minn.) 183 N. W. 826.

In ascertaining the amount of loss, there is no complaint made by the defendant company, that they did not have full access to all of plaintiff's books of account and records, and there was no complaint made that Cramer & King Co. did not afford the insurance company whatever assistance they requested. The real trouble with the insurance company in this case, is not with the books of account and records of the plaintiff company, but is that they desire to avoid liability, as appears by the numerous grounds to non-suit, heretofore dealt with.

Naturally the books and accounts of plaintiff did not contain the values of the respective goods of its customers; for it was engaged only in the silk dyeing business, and like all silk dyers, had no reason to value the merchandise, when sent to it for processing. Its business was to process the goods as requested and return the same to them. Its books and accounts did contain the quantity and quality of its customers' goods, showed just what work was done on those goods and the yardage of the goods and its nature and quality, and from plaintiff's books and accounts the value of the merchandise stolen was easily ascertainable by inquiring the true market value of the goods stolen per yard and multiply that value by the number of yards, as shown by its books and records.

> In burglary insurance, the books of account are for the purpose of determining the amount of loss and to protect insurer against an excessive claim, and the law does not require a strict, but only fair and reasonable compliance with the strict letter of the policy.
>
> ***Leiman vs. Metropolitan Surety Co., 111 N. Y. S., 536.***

In conclusion on this point, we repeat that the books and accounts of plaintiff were sufficient for the purpose of determining the amount of the loss and to protect the insurer against an excessive claim.

G.

THE COURT ERRONEOUSLY OVERRULED THE FOLLOWING QUESTION PROPOUNDED TO WITNESS, PELLEGRINI—"DO YOU KNOW OF YOUR OWN KNOWLEDGE WHETHER THERE IS ANY USAGE OR CUSTOM IN THE SILK DYEING TRADE WHICH IS CONCERNED WITH THE LIABILITY OR NONLIABILITY OF A SILK DYER TO ITS CUSTOMERS FOR THE LOSS OF MERCHANDISE OF ITS CUSTOMERS IN ITS CUSTODY FOR PROCESSING, WHERE THE LOSS RESULTS FROM BURGLARY?"

This is our second general ground of appeal. (Case, page 582.)

The question, the ruling thereon and the exception appear on page 207 of Case.

The Court over-ruled the question as not being material.

The purpose of the question was to lay the foundation to show that the usage or custom was to hold the dyer responsible. That evidence was most material, competent and relevant.

The witness had qualified to answer the question, as heretofore pointed out in this brief under argument "A"; and as further shown in this brief under argument "B", one of the questions which the jury had to consider in deciding the case was, that if any of the three customers had sued plaintiff for the loss of their merchandise, whether there was sufficient evidence in the case to hold plaintiff legally responsible to them.

To place such responsibility the line of questions introduced by the above introductory question was most important and proper.

> In respect to contracts parol evidence is often received on the ground that the parties have not stated the contract in all its details, but only those which were necessary to be stated by specific agreement; ***and that there has been left to implication those incidents which a uniform usage would annex, and according to which the parties must be understood to contract, unless they expressly exclude them.*** It is on this principle that, in a great number and variety of cases in England and in this country parol evidence has been admitted of local or general usages of trade and commerce to ascertain the true meaning of written contracts. ***Jones on Evidence, Second Edi-***

tion, page 576, para. 457. Usages of trade. It has frequently been found necessary to prove some usage which added to the contract of principal and agent some incident of term not expressed therein. Contracts by agents for their principals are frequently mere memoranda in which only a few of the details are expressed. In such cases the usages or customs governing the trade must necessarily be proved by parol. ***Idem, page 577, para. 458.*** Same—Principal and agent.

H.

THE SECOND GROUND FOR NON-SUIT, NAMELY, THE REQUIREMENT IN THE POLICY THAT THERE SHOULD BE TWO PRIVATE WATCHMEN ON DUTY WITHIN THE PREMISES AT ALL TIMES WHEN THE PREMISES WERE NOT REGULARLY OPEN FOR BUSINESS, AND THAT SAID WATCHMEN SHOULD MAKE HOURLY ROUNDS AND RECORD THE SAME ON A WATCHMAN'S CLOCK OR SIGNAL CONNECTED WITH AN OUTSIDE CENTRAL STATION AT LEAST HOURLY, (State of Case, page 494, last 5 lines and page 495, first 5 lines) ***FURNISHES NO JUSTIFICATION FOR THE NON-SUIT.***

The Court did not non-suit upon this ground. The provisions of the policy, to which the motion was directed, are found in the "Schedule" thereof, Sections 8 and 9 (State of Case, page 521, lines 1-10), and read as follows:

8. Two private watchmen employed exclusively by the Assured will be on duty within the premises at all times when the premises are not regularly open for business while this Policy is in force. Yes.

9. Two private watchmen described in Item 8 will make hourly rounds and record same on a watchman's clock, or will signal **an outside central station at least hourly.** Yes. Central station hourly.

The claim on the part of the defendant was that the premises were not regularly open for business until 7 A. M., whereas the two private watchmen withdrew from the premises at 6 A. M.

We insist that the premises were regularly open for business, within the meaning of said Section 8, at 6 A. M.

Plaintiff employed two night watchmen, White and Fenmore (the latter dying before the trial). (Case, page 84, lines 8-20; page 85, last 2 lines; page 86, lines 1-30 and page 87, lines 1-9.) Both made hourly rounds, beginning at 6 P. M., and ending with the final round at 5 A. M. (Case, pages 87, 89 and 90.)

White testified that before he left the premises at 6 A. M., he always saw therein five employees of the plaintiff, whom he names and whose duties or positions he describes (Case, page 92, lines 1 to bottom and page 93, lines 1-20.) His last round on the morning of July 3, he made, in accordance with his unfailing custom, at 5 A. M. Case, page 97, lines 29 to bottom and page 98, lines 1-5.)

All these employees testified for plaintiff.

John Chessare, who worked in the boil off,

commenced work at 6 A. M. (Case, page 132 and 133); and his duties were to "get the tubs ready, get the steam ready and some piece ready" (Case, page 134, lines 7-12 and page 136 and 137).

Paul Bie, who operated the Whiz machine in the dye house, and oiled the engine and put steam in the boxes, arrived and began work at 6 A. M. (Case, pages 139 and 140.)

Carlos Guarico, who worked in the boiler room at the time of the alleged robbery, likewise commenced work at 6 A. M. (Case, page 142); and saw, when he began his duties, "the people in the boiler room, one man in the dye house, and one man at the strip and the watchmen. He did all day long what he began to do at 6 A. M. (Case, page 142, last 4 lines, and page 143, lines 1-10.)

Guiseppi Comalong, who got up the steam, always got to work at 6 A. M. (Case, pages 143 and 144.)

Gabriel Both, a day fireman, started work for plaintiff at 6 A. M. also (Case, page 235), and when he arrived, he always met Fenmore and White (Case, page 236).

Each of these five men declare that they saw the other four every morning upon plaintiff's premises at 6 A. M.; and all say that they began their work at that hour, not only on the morning of July 3, 1923, (the alleged robbery occurring either in the night of July 2nd., or the early

morning hours of July 3rd) but for years before. ***The commencement of work by these five employees at 6 A. M. was a part of the fixed, settled and unvarying routine of business.***

> It has long been determined with an almost unvarying unanimity that insurance contracts when susceptible to more than one interpretation shall be construed in favor of the assured. This rule is imperative and undoubted, since to hold otherwise, without an absolute necessity therefor, would tend to subvert the very objects and purposes of insurance, which is that of indemnity to the assured in case of loss, or the payment of money on the happening of a contingency, and this indemnity should be effectuated rather than defeated. * * * So the questions and answers in an application which is attached to the certificate and expressly made a part of the contract, are to be construed most strongly against insurer. ***Joyce on Insurance, para. 221.***
>
> The rule contra proferentum applies to * * answers in application to questions prepared by insurer; a burglary insurance contract * *. ***Idem., para. 222a.***
>
> "In the construction of" burglary insurance "policies, the general principle that contracts of insurance will be liberally construed in favor of the insured is applied." ***46 L. R. A. (N. S.) 562,*** head note.

A court will ***seek*** a construction of a

> forfeiture clause in a policy which will sustain it, even though a construction which will defeat it is reasonably deducible from the terms or words used to express it. ***Hampton vs. Hartford Ins. Co., 65 N. J. L., 267.***

In the light of the rule last stated, let us examine the words "when the premises are not regularly open for business."

"Regularly" means according to rule, methodically, with uniformity. The evidence is that these five employees daily, according to fixed habit and settled routine, commenced work in plaintiff's plant at 6 A. M. The premises were "open," therefore, "regularly" at 6 A. M.

It was also then regularly open for "business." For what business must it be open under this clause? For plaintiff's business in all its operations and branches or departments? The draftsman of this provision has not said so. For business even with the outside world. No language is used which confines the mind to that view; and if such had been the author's intention, he could readily have expressed it in unmistakeable terms.

If open for its own business, and for some division or part of that business—preliminary, it may be, preparatory, subordinate, inconsiderate even—the requirement is met, if open for such purpose day after day.

It does not undertake to say that the machinery of the premises must be in full operation, or to prescribe the number or the proportion of the employees who should be there.

This construction is not only possible, but

reasonable. When some operatives are regularly at work on the premises, burglars are not likely to enter it. The full man force is not required to be there, because the insurer is not interested in thefts by employees. Against such thefts it has not insured.

Two private watchmen made hourly rounds and signaled an outside central station hourly.

The evidence is that they had these instructions (Case, page 17, lines 10-19 and page 18, lines 20-24). During the period in which the policy was effective, plaintiff had on its premises, an electric signal system, connected with Paterson Burglar Alarm & Messenger Company; and on the night of July 2-3, 1923, and theretofore, eighteen boxes on its premises were so connected (Case, page 17, lines 30 to bottom and page 18, lines 1-15). The watchman, White, punched twelve boxes hourly (Case, page 37, lines 10-20). The other watchman died before the trial (Case, page 16, 9-16); but that he likewise made hourly rounds and signaled hourly to the outside central station, was proved by the employees of the burglar alarm company.

The records of the burglar alarm company, for a period covering the period in question were destroyed by John J. Ritchie in the fall of 1923 upon his taking over the management (Case, pages 297 and 298).

Oral evidence was accordingly admitted to show that both watchmen signaled hourly, as required.

White, the living watchman, saw Fenmore, the deceased watchman, seven or eight times a night

(Case, page 87, lines 1-9) and says that Fenmore made his rounds in the back parts of the building, and signaled the outside station (Case, page 86, lines 1 to bottom). White saw Fenmore start out upon the latter's rounds (Case, page 89, lines 6-24 and page 90, lines 3-9). On the night of July 2-3, White saw Fenmore about seven or eight times (Case, page 90, lines 25 to bottom). The premises had eighteen or twenty rooms, and White made his rounds in twelve (Case, page 97). He left the premises at 6 A. M., and the last round was made about 5 A. M., and that is true of Fenmore also (Case, page 97, lines 28 to bottom and page 98, lines 1-6).

Patrick J. McMahon testified that during April and July, inclusive, 1923, he was night clerk of Paterson Burglar Alarm & Messenger Company, and that his hours ran from 6 P. M. to 7 or 8 A. M. (Case, page 278, lines 1-10 and page 280, lines 1-11.) The premises of plaintiff were connected with the burglar alarm system, during this period, and was in operation. (Case, page 278, lines 9-11 and page 279, lines 25 to bottom.) In describing the burglar alarm system, he says that there were boxes, each bearing a number, in plaintiff's premises, and the central office of which he was in charge was signalled from plaintiff's mill by inserting a key in the boxes; and that when that was done, the fact would be registered on a tape in the burglar alarm office, resembling a stock ticker (Case, page 278, lines 15 to bottom); and that it was the witness' duty to record the times such signals came in, and he was supplied with a regular form for the purpose,

and that it was also his duty to mail out reports on the following day of the signals which had come in from the mill during the night, so that the customers of the system could see that their watchmen were performing their duty (Case, page 279, lines 1-25). He testified that he received signals from plaintiff's premises nightly from 6 P. M. until 5 A. M., inclusive, from eighteen or twenty boxes, and that the same came in hourly during those hours (Case, page 272, last 5 lines and page 283, lines 1-10).

Cards showing the number of boxes from which signals were sent to headquarters on the night of July 2-3, with the respective hours was offered by defendant (Case, page 53, lines 24 to bottom and page 54), as Exhibits D-3, D-4 and D-5 (Case, page 578-580).

There was, therefore, abundant evidence of compliance by plaintiff with the requirement that the two watchmen should signal an outside station hourly.

We respectfully submit that the judgment for non-suit was contrary to the evidence, was contrary to the law and was contrary to the settled policy of the courts that contracts of insurance will be liberally construed in favor of the insured so as to prevent forfeiture.

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