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NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY SS.

[SEAL]

The State of New Jersey to
the Chief Justice and other
Justices of our Supreme Court 10
of Judicature.

Greeting : Forasmuch as in the record and proceed-
ings, and also in the giving of judgment in a certain plaint,
which was in our Supreme Court of Judicature before
you, between the State of New Jersey, plaintiff, and
Max Goldstein, defendant, manifest error hath intervened
to the great damage of said defendant, as it is said ; we
being willing that the error, if any there be, should in
due manner be corrected, and full and speedy justice 20
done to the parties aforesaid in this behalf, do command
you that if judgment be thereupon given and affirmed,
then you distinctly and openly send, under your seal,
the record and proceedings aforesaid, with all things
touching the same, to our Judges of our Court of Errors
and Appeals in the last resort in all causes at Trenton, on
the twenty-fourth of March instant, together with this
writ, that the record and proceedings aforesaid being in-
spected, we may cause to be further done thereupon for
correcting that error, what of right and according to the 30
law and custom of the State of New Jersey, ought to be
done.

Witness, our Chancellor and President Judge of our
said Court of Errors and Appeals, at Trenton aforesaid,
the sixth day of March, A. D. 1906.

S. D. DICKINSON,
Clerk.

JOHN M. MILLS,
Attorney.

RETURN.

The answer of William S. Gummere, Chief Justice within named.

20 The record and proceedings of the plaint whereof mention is within named, with all things touching the same, to the court of Errors and Appeals in the last resort in all causes within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed as I am within commanded.

WILLIAM S. GUMMERE,
Chief Justice.

Filed March 12, 1906.

S. D. DICKINSON,
Clerk.

STATEMENT OF CASE.

NEW JERSEY ss.

The State of New Jersey to
 Alfred Elmer Mills, Esq.,
 Judge of the Court of Quarter
 Session of the County of Mor-
 ris, at Morristown, in and for
 the County of Morris of the
 term of October in the year
 of our Lord one thousand
 nine hundred and four.

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[SEAL]

Because the record and process and also in the giving of judgment upon a certain indictment against Max Goldstein, late of the Borough of Butler, in the County of Morris and State of New Jersey, for committing notorious acts of public indecency, grossly scandalous and tending to debauch the morals and manners of the people by unlawfully, wickedly and lewdly exhibiting and exposing his private parts to the view of one Eva Brannin and all other persons then and there being, pro ut the said indictment whereof before you he hath been indicted and is thereof convicted by a certain jury of the County taken between the State of New Jersey and the said Max Goldstein

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as is said manifest error hath intervened to the great damage of the said Max Goldstein as from his complaint we have received information, we being willing in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done him, the said Max Goldstein, commands you that if judgment be thereon given then that you distinctly and openingly send under your seal the record and proceedings aforesaid with all things touching the same to our Justice of our Supreme Court of the State of New Jersey, to be held at Trenton, on the Sixteenth day of December, next, and this writ, that the record and proceedings aforesaid be inspected, we may therefore cause to be done thereupon for correcting that error, what of right and according to the laws and customs of the State of New Jersey, ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esq.,
Chief Justice of our Supreme Court at Trenton aforesaid, this twenty-eighth day of November in the year of Our Lord One thousand nine hundred and four.

WM. RIKER, JR.,
Clerk.

JOHN M. MILLS,
Attorney

The answer of Alfred Elmer Mills, Esquire, Judge of the Court of Quarter Sessions of the County of Morris within named, the record and proceedings and complaint, whereof mention is within named, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at Trenton, at the day and year within contained in a certain schedule to this writ annexed as I am commanded.

SEAL

ALFRED ELMER MILLS,
Judge, &c.

IN TESTIMONY WHEREOF, I, DANIEL S. VOORHEES, Clerk of the Court of Quarter Sessions of the County of Morris, in the State of New Jersey, have hereunto subscribed my name and affixed the seal of said Court the fifteenth day of December, nineteen hundred and four.

[SEAL]

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DANIEL S. VOORHEES,
Clerk.

STATE OF NEW JERSEY, }
COUNTY OF MORRIS, }

To Wit:

Be it remembered, that at a Court of Oyer and Terminer, holden at Morristown, and in said County of Morris, on the second Tuesday in October, in the year of our Lord nineteen hundred and four, by the Honorable Abram Q. Garretson, one of the Justices of the of the Supreme Court of Judicature of the State of New Jersey, and Alfred Elmer Mills, Esquire, Judge of the Court of Common Pleas in and for the said County of Morris, by the oath of Jacob W. Welsh, Ernest W. Shonenberger, Thomas Capstick, Albert R. Richards, Nathaniel Clark, U. E. Throp, Isaac Van Ness, William B. Benedict, William J. Meeker, Horace E. Francisco, Levi Tallman, Orlando N. Bowen, Edward Littlejohn, John W. Lindabury, Samuel Blanchard, Frank H. Fairchild, John G. Taylor, Andrew M. Ryan, Louis A. Waters, James A. Lyon, George L. Clark, James P. Cannatta, and William McKinnon, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

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MORRIS COUNTY, to wit: The Grand Inquest for the State of New Jersey in and for the body of the County of Morris, upon their oath present that Max Goldstein, late of the Borough of Butler, in the County of Morris aforesaid, on the twenty-ninth day of August, in the year of our Lord one thousand nine hundred and three with force and arms at the Borough aforesaid, in the County aforesaid and within the jurisdiction of this Court, did, in the store of said Max Goldstein, a place open to the public, and into and out of which people were constantly going and passing, commit notorious acts of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, by then and there unlawfully, wickedly and lewdly, exhibiting and exposing his private parts to the view of one Eva Brannin and all other persons then and there being and passing, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And at a Court of Quarter Sessions, holden at the Court House in Morristown, in and for the County of Morris, on the eighteenth day of October, in the year of our Lord one thousand nine hundred and four, before the Honorable Alfred Elmer Mills, according to the form of the statute in such case made and provided received the indictments presented by the grand jury, and afterwards, that is to say, at the said Court of Quarter Sessions, holden at Morristown aforesaid, in and for the County of Morris aforesaid, on the eighteenth day of October, in the year of our Lord one thousand nine hundred and four, before the Honorable Alfred Elmer Mills, Judge of said Court of Quarter Sessions, the said Max Goldstein, being publicly called, cometh in his proper person and forwith being demanded concerning the premises in said indictment above specified and charged upon him, and being asked in what manner he will acquit himself thereof, says he is

not guilty thereof and of this he puts himself upon the country and Charles A. Rathbun, Prosecutor for the said County of Morris, who prosecutes for the State in this behalf, doth the like. Therefore let a jury thereupon here come on the eighteenth day of November in the year of our Lord one thousand nine hundred and four, before the said Court of Quarter Sessions above mentioned, of free and lawful men of the County of Morris aforesaid, by whom the truth of the matter may be better known and who are not akin to the said Max Goldstein, to recognize upon their oaths whether the said Max Goldstein be guilty in manner and form as he stands charged in the indictment aforesaid above specified or not guilty because as well the said Charles A. Rathbun, Prosecutor as aforesaid, who prosecutes for the State of New Jersey in this behalf, as the said Max Goldstein, have put themselves upon the said jury. At which said Court of Quarter Sessions, holden at Morristown, in and for the County of Morris, on the eighteenth day of November, in the year of our Lord one thousand nine hundred and four, before the Honorable Alfred Elmer Mills, Judge of said Court of Quarter Sessions, according to the form of the statute in such case made and provided, came as well the said Max Goldstein as Charles A. Rathbun, who prosecute as aforesaid, and the Jurors of the said Jury, by the Sheriff of the County of Morris aforesaid, for this purpose duly impaneled and returned, to wit: Charles Minard, William H. Howell, C. Frank Oliver, Elias Horton, Samuel Rouse, Joseph DeGroot, Theodore F. Crane, William N. Chamberlain, Hiram E. Dilley, Aaron D. Stephens, Joseph Force and Peter Hopler, who, being elected, tried and sworn to speak the truth of and concerning the premises, upon their oaths, say, that they find the said Max Goldstein guilty in manner and form as he stands charged in said indictment, so say they all. And afterwards, at the same term last mentioned of said Court of Quarter Sessions, to wit, on the twenty-eighth day of November in the year of

our Lord one thousand nine hundred and four, came
 as well the said Max Goldstein as the said Charles A.
 Rathbun, who prosecutes as aforesaid, whereupon it is
 demanded of the said Max Goldstein if he hath or
 knoweth anything to say wherefore the said Court
 here ought not upon the premises and verdict afore-
 said, to proceed to judgment and execution against
 10 him, who nothing further saith unless as he before had
 said. Whereupon all and singular the premises being
 seen by the said Court here fully understood it is con-
 sidered by the Court here that the said Max Goldstein
 be confined in the Common Jail of the said County of
 Morris for the space of one month and pay a fine of
 one hundred dollars and that he stand further com-
 mitted to the custody of the Sheriff until the fine and
 costs are paid.

20 Judgment signed the twenty-eighth day of Novem-
 ber, in the year of our Lord one thousand nine hundred
 and four.

ALFRED ELMER MILLS,
Judge, &c.

STATE OF NEW JERSEY, }
 COUNTY OF MORRIS, } ss:

30 I, DANIEL, S. VOORHEES, Clerk of the Court
 of Oyer and Terminer, holden in and for the County
 of Morris in the State of New Jersey, do hereby certify
 that the foregoing is a true and correct copy of the
 Judgment Roll in the case of the State of New Jersey
 vs. Max Goldstein, as fully as the same remains of
 record in my office.

IN TESTIMONY WHEREOF, I have hereunto
 set my hand and affixed the
 seal of said Court, at Morris-

[SEAL]

town, this fifteenth day of
December, A. D., nineteen
hundred and four.

DANIEL S. VOORHEES,
Clerk.

MORRIS COUNTY.

THE STATE
vs.
GOLDSTEIN.

}

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Transcript of shorthand notes of the evidence, &c.,
taken on the trial of the above stated case at the Morris
County Court House, Morristown, N. J., on the 18th
and 21st days of November, 1904, before the Hon.
Alfred Elmer Mills, presiding, and a jury.

CHARLES A. KNIGHT,
Official Stenographer, Newark, N. J.

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MORRIS COUNTY.

STATE
vs.
MAX GOLDSTEIN.

}

Lewdness.

BEFORE MILLS, J., and a Jury.

APPEARANCES:

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CHARLES A. RATHBUN, Esq., Prosecutor of the
Pleas.

JOHN M. MILLS, Esq., and W. W. CUTLER, Esq.,
Counsel for Defendant.

MR. CUTLER: At this time I want
to make a formal objection to the in-

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dictment in this case, and move to quash the indictment, as the indictment in this case does not allege that this was a public place, but simply refers to it as the store of Max Goldstein, and it simply refers in the indictment to the lewdly exhibiting of the private parts, and it seems to me that the indictment does not allege a crime under the statute, and I would ask the Court to quash the indictment.

THE COURT: The motion is denied.

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS,
Judge, &c. (ss)

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EVA BRENNIN, called and sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION, by Mr. Rathbun:

Q. Where do you live?

A. In Bloomingdale; it is Smith Mills, in Passaic County.

Q. Did you ever live at Butler ?

A. No, sir.

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Q. How long have you lived where you now live?

A. About seven years.

Q. How old are you?

A. 15 years old.

Q. Do you know Max Goldstein, the defendant?

A. Yes, sir.

A. Yes, sir.

Q. Do you know what his business is?

A. Yes, sir.

Q. What is it?

- A. He keeps a grocery store in Butler.
 Q. Do you know how long he has been in business?
 A. I don't.
 Q. Where does he carry on business?
 A. It is by the railroad crossing in Butler.
 Q. Have you ever been to his store ?
 A. Yes, sir.
 Q. Did you ever see him do anything out of the way? 10

MR. CUTLER: I object. Where and when was it?

- Q. When was this?
 A. In August.
 Q. What year? This year or last?
 A. Last year, a year ago this last August.
 Q. August, 1903?
 A. Yes, sir.
 Q. Where was he? 20
 A. In the front part of the store.
 Q. Where were you?
 A. I was in the store,—I was sent there.
 Q. By your mother?
 A. No, sir.
 Q. You were sent there to purchase something?
 A. Yes, sir.
 Q. Do you recollect what things you went for?
 A. I went for a box of gold dust and a cake of soap and a broom.
 Q. Did you get the things? 30
 A. Yes, sir.
 Q. Did you pay him for them?
 A. Yes, sir.
 Q. What occurred then?
 A. Then he exposed his nakedness.
 Q. Where was he?
 A. He was behind the counter when I went in.
 Q. And where did he get the things from?
 A. I don't remember where he got the things from.

he got them from out of the store while I was in there, in that room.

Q. At different places in the store?

A. Yes, sir.

Q. When you went in did you notice anything out of the way?

A. Yes, sir.

10 Q. When you went in?

A. Yes, sir.

Q. What else happened, tell us the whole thing?

A. Well, when I went in there, I happened to notice he was behind there and he exposed his nakedness, and then I told him what I wanted, and he got the things for me, what I wanted, and I went to pay him, and I gave him the money and he went behind the cashier, the register, and got the change and instead of giving it to me behind the cashier, he fetched it out in the room where I was.

20 Q. What else happened, if anything?

A. Then when he gave me the change, he clasped hold of my hand, and I merely jerked my hand away and went out of the store and went home.

Q. Did you make any report to your mother?

A. I did not live with my mother, I was staying with my aunt.

Q. What is your aunt's name?

A. Mrs. Romain.

Q. Did you at any time report it to your mother?

30 A. Well, I don't remember of telling her; I might have told her when I went home, but I don't remember telling her.

CROSS-EXAMINATION, by Mr. Cutler:

Q. Miss Brennin, how long have you lived with your aunt?

A. She is not keeping house now; I don't live with her any more.

Q. You were living with her in August, 1903?

A. Yes, sir.

Q. And for how long prior to August, 1903, had you been living with her?

A. That I don't know; I didn't stay with her long, I went to work at Pompton.

Q. Cannot you tell us how long it was before this occurrence, that you went to live with your aunt?

A. It was the same day we moved there that I went to the store.

Q. Do you know what day it was that you went to the store?

A. No, sir; I don't.

Q. How long did you live with your aunt, before you went to Pompton?

A. I don't know how long it was that I lived there, that I cannot remember.

Q. Do you know when you went to live at Pompton?

A. No, sir; I don't.

Q. And who did you go to live with at Pompton?

A. I didn't with anybody; I went to work for Mrs. Abbot.

Q. In what capacity,—what were you doing?

A. I went to work at housework for her.

Q. And how long did you live at Mrs. Abbot's?

A. I worked there three weeks.

Q. And then where did you go?

A. I went back to mother's.

Q. And do you know when it was you went back to your mother's?

A. No, sir; I only went there three weeks and then went home to my mother, at Passaic County, at Smith Mills.

Q. How long did you stay at your mother's?

A. That I don't know; I don't just exactly keep track of it.

Q. And from your mother's where did you go?

A. I don't know whether I went to work in any place after that; I don't remember.

Q. Where are you living now?

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A. With my mother.

Q. Cannot you tell us whether or not you have worked at any place since you left Mrs. Abbot?

A. Yes, sir; I worked for Mr. Ralph.

Q. Where does he live?

A. Up to the Inntake Hotel.

Q. Did you work for anybody else since?

10 A. No, sir.

Q. How long did you work for Mr. Ralph?

A. Only a week and one day.

Q. Had you ever worked out before you went to live with your aunt?

A. Yes, sir.

Q. Where?

A. I had worked to Mrs. Abbot's before.

Q. Where?

A. Up to Riverdale.

Q. Did you ever work any where else before that?

20 A. Yes, in the Hard Rubber Mill, in Butler.

Q. And where had you lived when you worked in the Hard Rubber Mill?

A. With my mother.

Q. And where was she living then?

A. At the same place she lives now, where I said.

Q. That is Smith Mills?

A. Yes, sir.

Q. And how far is Smith Mills from Butler?

A. I don't know exactly, I guess a mile and a half as far as I know from where we live.

30 Q. When did you leave school?

A. I don't remember when I left school; I have not went to school for a long time.

Q. Where did you go to school?

A. Up to the Apshehaw School house; that is above where we live; it is only about ten minutes walk from our house.

Q. In an opposite direction or is it nearer Butler to your house?

A. It is above my place where we live.

Q. Further away from Butler?

A. It is only ten minutes walk from my mother's house to the school-house.

Q. Is it nearer from the school house to Butler or from your house to Butler?

A. From our house to Butler.

Q. You went to live with your aunt in Butler sometime in August, 1903?

A. Yes, sir.

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Q. And on that day you went to the store of Mr. Goldstein, to buy some things?

A. Yes, sir.

Q. And that was the first day you had ever lived in Butler?

A. It is the first I ever went to live there; I had been there before.

Q. And where you acquainted with Mr. Goldstein?

A. Yes, sir.

Q. For how long?

20

A. I always traded to the clothing store, ever since that has been there, but I have not been in the grocery store many times.

Q. Did Mr. Goldstein keep a clothing store as well?

A. His brother keeps a clothing store, and he keeps a grocery.

Q. Max Goldstein has nothing to do with the clothing store?

A. I don't know whether he has or not.

Q. Had you ever been in Max Goldstein's store before?

30

A. Yes, sir.

Q. When?

A. That I don't know, when I have been in; only I know that I went there and that I saw what I said I saw.

Q. I want to know, whether you had ever been in Max Goldstein's store before this day that you refer to?

A. Yes.

Q. When?

A. I don't know, I had been there lots of times for things, but I don't know when.

Q. For whom did you go?

A. Certain people sent me.

Q. What people sent you?

A. Well, I don't keep track of them, that I don't know.

10 Q. You had been living up there before with your mother, or aunt?

A. Very seldom she sent me there, she traded with grandfather.

Q. Were you sent there before this day in August?

A. I went for other people, but I don't keep track of people that I went for.

Q. Where had your aunt been living when you went with her?

A. She had been living no place, when she sent me to the store on the hill.

20 Q. How was it that you had gone to this store before, for your aunt?

A. Well, she used to send me to the store when she lived with her mother.

Q. And where was that?

A. Right by Smith Mills.

Q. And then you came clear down from Smith Mills to Goldstein's store, sometimes?

A. Yes, sir.

30 Q. Then on this August when you saw him in his store, you just had a speaking acquaintance with him?

A. Yes, sir.

Q. Can you tell me what time of day it was, when you went to the store?

A. I don't remember what time of day it was; I think in the morning, as far as I can remember.

Q. Just try to think, won't you please; have you any idea?

A. No, sir; I went in there in August, and it was in the morning, I think, when I went there. I won't

be sure of it, but I am pretty sure, because that is when we moved.

Q. You say it was the day your aunt moved to Butler?

A. Yes, sir.

Q. Where did she move from?

A. From her mother's, down to Butler.

Q. And did you start from your mother's, or from your aunt's? 10

A. I started—

Q. On that morning to go to the place where your aunt was moving to; did you start from your mother's or aunt's?

A. From my mother's.

Q. And did you go directly to your aunt's mother's, or directly to your aunt's place in Butler?

A. To the place where she was going to move; I was not going to the house, but she went one way and crossed the hill to the place, and I went over to the store. 20

Q. Now can you tell me what time you started from your home that morning?

A. I can't.

Q. After breakfast?

A. Yes, sir.

Q. Can you give us any idea how long after breakfast?

A. After the furniture went, my aunt and I walked down; I don't know what time it was.

Q. And was the furniture loaded up after breakfast? 30

A. They loaded it up as soon as the men got there after breakfast to take it.

Q. And have you any idea how long it took to load the furniture?

A. No, sir.

Q. Have you any idea how long it took you to walk from your aunt's place to Butler?

A. No, sir.

Q. And you have no idea then, what time of the morning it was that you arrived at the store?

A. No, sir.

Q. You say the store of Max Goldstein was near the railroad?

A. The railroad crossing.

Q. It is the store where he now occupies?

10 A. Yes, sir.

Q. Had he kept that store previous to this time?

A. What do you mean?

Q. Had he been in that same store?

A. He had been in that store before, before I went there.

Q. Hadn't he had a store in a different part of the town?

A. Yes, sir.

Q. Do you know when it was that he had moved to this store?

20 A. No, I don't.

Q. Can you tell me what day of the week it was that you went there?

A. No, sir; I cannot.

Q. Now, let us see, you went to the store and got there some time before noon?

A. Yes, sir.

Q. When you arrived at the store was there any customers there?

A. No, sir.

Q. Were there any clerks in the store?

30 A. Only him,—only Mr. Goldstein.

Q. And where was Mr. Goldstein?

A. Behind the counter when I went in.

Q. Is there more than one counter in that store?

A. Yes, there is a small counter, that runs across that way, but I am not positive (indicating).

Q. As you enter the store, on which side of the door is the counter to which you refer, where he stood?

A. The counter runs that way, and behind the counter Mr. Goldstein stood.

Q. As you enter the store, is it on the right or left hand?

A. On my right hand side going in.

Q. How deep is the store?

A. I don't know.

Q. How high was the counter?

A. I am not sure; I did not measure it.

Q. Just stand up and tell the jury just about how high it was? 10

A. I don't know how high the counter was; I never went in there and measured the counter.

Q. Was it as high as this table?

A. I don't know, I never took any account of it; it might be higher than the table.

Q. Was it as high as this where I am holding my hand (illustrating)?

A. No, sir; it was not.

Q. Was it as high as my waist?

A. Oh, my, I told you I didn't know how high the counter was. 20

Q. And how wide was the counter?

A. That I don't know either,—if I knew I would tell.

Q. You have some idea, as wide as this table?

A. It might be wider; I told you I didn't know.

Q. How much space was there between the counters that were there and the shelves behind the counter,—is there a large space, or much space between the shelves and the counter?

A. That I don't know; I have no idea. 30

Q. You haven't an idea at all?

A. No, sir.

Q. How near to the door was Goldstein standing, when you came into the store?

A. Well, he was down to the other end of the counter, behind the counter when I went in.

Q. And how far, clear to the end of the counter?

A. Not clear to the end—it was down by it though.

Q. About how far from the door, was he?

A. Quite a little ways; the counter is quite a large counter.

Q. Was it a distance from here across the room?

A. No, sir.

Q. Half the distance?

A. It might be that long or longer; I don't know, I won't say anything that I don't know.

10 Q. Well, now Miss Brennin, as you came into the store, you say you saw something; what did you see?

A. That I don't know, I told you he exposed his nakedness.

Q. Was he exposing his person when you first entered the store?

A. No, it was exposed when I saw it.

Q. Then I understand that when you entered the store his person was exposed?

A. Yes, sir.

20 Q. I don't understand you to say that he unbuttoned his clothing after you came in the store?

A. No, sir.

Q. It was all unbuttoned when you came in?

A. Yes, sir.

Q. Can you tell me how Mr. Goldstein was dressed?

A. He had a long linen duster on, a long light coat that he always wore in the store.

Q. And how far did that duster come down toward the ground?

A. Pretty near down to the ground.

30 Q. And what color clothes did he have on under that?

A. I didn't take no notice of his clothes.

Q. Do you know whether they were dark or light ones?

A. No, sir, I don't.

Q. Did you notice whether he had on a coat?

A. All I noticed was the long coat; I didn't take any notice of any other clothes he had.

Q. Did you notice whether he had on a vest?

A. No, sir; I didn't.

Q. How far had you got in the store before you saw that Mr. Goldstein's person was exposed?

A. I was by the counter asking for what I went after.

Q. And then did you look over the counter?

A. I happened to glance over the counter and I saw what I told you?

Q. Was his linen duster open?

10

A. Yes, sir.

Q. Did he have on a pair of pants?

A. Of course.

Q. Can you tell what the color of the pants was?

A. I told you I didn't take no notice of the pants or the clothes he had on.

Q. Had you asked him for these things before you saw that his person was exposed?

A. Yes, sir.

Q. Had he gotten them for you before you saw that his person was exposed?

20

A. No, sir.

Q. Had he attempted to get them for you before you saw that his person was exposed?

A. When I saw the exposed nakedness, it was when I was asking for the things.

Q. Had you finished asking for the things before you saw it?

A. I saw it when I was asking for them.

Q. What did you do?

A. What did I do, I went in and asked for what I wanted. I didn't do anything, just told him what I wanted and he got them, and I got my change and I went home, and that is all I know.

30

Q. Didn't you immediately turn and go out of the store when you saw him in that condition?

A. I did not.

Q. Why didn't you?

A. I didn't. If he had bothered me I would have gone out.

Q. You didn't think there was anything improper in that?

A. No, sir.

Q. Well, how long did he keep his person exposed?

A. It was when I left to go out of the store,—it was exposed yet.

Q. And was it exposed while he was going around the store and getting these things off the shelves?

10 A. Yes, sir, it was.

Q. Can you tell me where he got the box of gold dust from?

A. No, but he got them from the shelf; I didn't watch him when he ran around the store getting his things.

Q. Did you notice whether he had to go to the various parts of the store to get these goods?

A. I don't know where he went to get them, but he got them and I paid him for the things and went out.

20 Q. Did he come from behind the counter to get these goods?

A. I don't remember whether the things were behind or in front of the counter, but I paid him and went out and that is all I know.

Q. But you must recollect whether he came from behind the counter, or whether he got them from the shelves right back of the counter?

A. I said that I didn't notice whether he got them from behind the counter or where he got them from.

30 Q. Cannot you tell me, Miss Brennin, whether you saw him at any time before you paid him the money in the store, outside of the counter?

A. No, sir; I cannot.

Q. How long were you in that store?

A. Not long; I don't know about how long I was there, in there.

Q. And was he still behind the counter when you handed him the change?

A. Yes, sir; I handed him the change and he went behind the cashier to get it for me—

Q. About how much did the things amount to?

A. I don't remember what the things amounted to.

Q. Do you recollect whether you paid with a bill or with silver.

A. No, sir, I don't.

Q. Remember how much change he gave you back?

A. No, sir.

Q. Do you remember that he gave you any change? 10

A. Yes, sir.

Q. And where was the cashier, you say he went to some place to get change, where was that?

A. Behind the cashier.

Q. And is that at the end of the counter or in a different part of the store?

A. In a different part of the store,—it is in the same room but in a different part.

Q. Now, as I understand it, as you went in this counter was on your left hand side?

A. Yes, sir. 20

RECESS, was here taken, until 1:30 P. M.

AFTER RECESS.

EVA BRENNIN, resumed the stand.

FURTHER CROSS-EXAMINATION, by Mr. Cutler:

Q. I understood you to say that the counter, behind which Goldstein was standing, was on your left hand as you entered the store? 30

A. It was on the left hand side.

Q. And the cashier's desk or box that you spoke of, was that on the same side or the opposite side?

A. On the opposite side.

Q. And did he go from behind the counter to this cashier's box?

A. When I gave him the money and he went to get the change, he did.

Q. And was he still standing behind the counter, when you gave him the change, or money?

A. Yes, sir.

Q. How long was he in that cashier's box, before he came out?

10 A. Just long enough to get the change.

Q. Won't you tell me, please, what this cashier's box is, that you refer to?

A. It is a cashier behind there, where he had a register,—a regular cashier that most every shop keeper has.

Q. Was it a sort of box arrangement?

A. It was not a box.

Q. What was it?

A. A little room; I cannot explain just what it is, all I know it is a cashier place, where there is like a
20 little window where they give the money to the people out of it.

Q. Is it enclosed simply with a little place where you put the money in?

A. It is closed, I think there is a little place for him to go in and get the money.

Q. Is there a door where he goes in?

A. Yes, sir.

Q. And did he go in this door?

A. Yes, sir.

Q. And on which side of this box is the door?

30 A. Well, the door is on the side, just as you go in another room; the right hand side, and turn in to go into another room.

Q. The door was in the same position with reference to the cashier's box, as the front door was?

A. Well, this is what I mean. The cashier is placed here and where I stood is here and the door was that way (indicating).

Q. And where was the window, on which side?

A. In the front part of it.

Q. Facing the door?

A. Facing the counter.

Q. What is there on the side toward the front of the store, the street side of this cashier, anything?

A. I didn't take any notice of anything.

Q. And did you notice whether he had gone from behind the counter, to get either the broom or the soap, or the gold dust, before he gave you the change?

10

A. No, sir; he hadn't gone from behind the counter at all,—I gave him the change.

Q. Where did he get the broom from?

A. I didn't take any notice where he got it from.

Q. Was there any place for him to get the broom from behind the counter?

A. I didn't take any notice; there might be, you know.

Q. You were not paying very much attention to what he was doing, I presume?

20

A. No, sir.

Q. And do you know whether or not his parts were exposed when he went across the store?

A. No, sir.

Q. To the cashier's desk?

A. No, sir; I didn't notice.

Q. Did you notice whether his parts were exposed when he came out of the cashier's desk?

A. Yes, sir.

Q. Were they?

30

A. Yes, sir.

Q. And what did I understand you to say that he did when he came out of the cashier's desk?

A. He did what?

Q. What did he do?

A. When he gave me the money, when I went to get the money, he kind of clung to my hand, and I took my hand away, and went out of the store.

Q. What did he do?

A. He just merely took hold of my hand when he gave me the change, and I took my things and went out of the store.

Q. He caught hold of your hand,—did he squeeze it?

A. He did not; he handed me the change.

Q. Which hand did he hand you the change with?

10. A. I don't know which hand he gave me the change.

Q. How near the cashier's box were you when he handed you that change?

A. Right by the cashier.

Q. Then did you follow him from the counter on the left of the store over to the cashier's desk?

A. When he went over there, I went there to get my money; he didn't have far to go and he fetched it out to me.

Q. What did you say to him, if anything?

20. A. I didn't say anything only asked him for the things that I went for.

Q. Did he give you the things before he had gone into the cashier's desk?

A. Yes, sir.

Q. And before you had given him the change?

A. He got the things before I gave him the money.

Q. And had you taken them up in your arms or hand, or were they still on the counter before you?

A. I had the things in my arms waiting for my change.

30. Q. Can you tell how you held them while you waited there?

A. No, sir; I know I had them in my arms and hands.

Q. How big a broom was it, that you got?

A. Twenty-five cent broom.

Q. A long-handle broom?

A. Yes, sir.

Q. How much soap did you get?

A. One cake.

Q. And how much gold dust ?

A. One box.

Q. Were the broom and the package of gold dust and the soap, done up in one package?

A. No, sir; tey were not wrapped at all,—only the broom, part of the broom.

Q. Was the package of gold dust and the soap wrapped up at all?

A. No, sir.

10

Q. Then you had the two packages and your broom in your arms or hands when you gave the money?

A. Yes, sir.

Q. Did Mr. Goldstein say anything to you?

A. No, sir.

Q. What did you carry, a pocket-book?

A. No, sir; I didn't have any pocket-book.

Q. Where did you carry your money?

A. In my hands.

Q. You carried it in your hands when you came to the store ?

20

A. Yes, it was not much to carry.

Q. No, and you carried it away in your hands?

A. What change I had, I carried it.

Q. And there was some change?

A. Yes, sir.

Q. Now you say that when Mr. Goldstein came out of the box, the cashier's desk, his parts were still exposed?

A. Yes, sir.

Q. And he stepped up to you?

30

A. Yes, sir, when he gave me the money.

Q. Yes,—and how far away were you from that box, when he came out of it?

A. I was right by it.

Q. How far from it?

A. Only a little ways.

Q. About how far?

A. Only just a little ways from it, so that he could hand me the money and I could get out.

Q. Were you two feet way from it?

A. I didn't measure it; I don't know how far.

Q. Were you standing in front of the window or where?

A. I was by the window, I was not by the door.

Q. And he stepped around and handed you the change?

10 A. Yes, sir.

Q. And as soon as he had handed you the change, you left the store immediately?

A. Yes, sir.

Q. And where was Mr. Goldstein the last you saw him?

A. That day. Why he was in the store where he handed me the money, that was the last I saw him that day, then.

Q. Was he still standing there, or did he follow you to the door?

20 A. No, sir, he stood right where he gave me the change.

Q. And when you left his store, was he standing there with his person exposed?

A. I didn't turn to look, I went right out of the store.

Q. But when you did look at him and he handed you the change, you saw his person exposed?

A. Yes, sir.

30 Q. Why was it, that when you saw the condition in which the defendant was, you didn't immediately turn and leave the store?

A. Because I waited for my things; I didn't pay any attention to what I could see at all; I told him what things I wanted and he got them, and I paid him and I went out.

Q. And you didn't pay any attention to what you saw?

A. No, sir.

Q. Are you sure you saw what you say you did?

A. Yes, sir, I am sure I saw it; I saw it.

Q. Don't you think if you saw, what you say you saw, you would have immediately have left that store without getting your things?

A. I saw him expose his nakedness, and I saw him,—and I saw it, and he got the things and when he gave me the change I went out.

Q. Why didn't you leave the store just as soon as you saw him expose his person?

A. I don't know, only I didn't leave, that is all. 10

Q. Isn't it a fact, that you could not see a person standing behind that counter unless you leaned over the counter and looked behind it?

A. The counter?

Q. Was his pants unbuttoned?

A. Yes, sir.

Q. You looked at them?

A. You could easily see when I looked over there.

Q. He had this long coat on?

A. But his long coat was not buttoned. 20

Q. Didn't the coat hang down full in front?

A. It hung down but was not tight,—no, it was open.

Q. Well, you could not see then, whether his pants were unbuttoned or not?

A. Of course I could; his coat was not together,—it was apart like that (indicating).

Q. And when he stood behind the counter, with the counter up before him, how could you see behind there?

A. Well, because the counter was not so high, I stood there by the counter. 30

Q. Do you mean to say that the counter was so low, that you could see his private parts?

A. He didn't stand exactly by the counter, he was behind, but he was not right up by it.

Q. You mean to tell this Court and jury, that the counter was so low, that you could see his private parts above the counter?

A. Yes, sir, he stepped behind from the counter, and I could see from where I stood, over where he was, and I saw it.

Q. How near the counter did you stand?

A. Right by the counter.

Q. If you were standing right by the counter, and the counter was up as you say it was, how could you see his private parts unless you looked over the counter?

A. Yes, sir, I could.

Q. Then, I understand you to say, the counter was so low, that you could see his private parts without looking over the counter?

A. Yes, sir; I could see without looking over the counter; he stood away from the counter here behind.

Q. How far did he stand away from that counter?

A. Only a little ways; Oh, just a little ways and just so I could see. I don't know how far he was away from it.

Q. How much of his person was exposed?

A. Every bit of it.

Q. Were his pants pulled all apart wide?

A. I didn't notice where his pants was, only I saw what I did, I didn't notice him.

Q. Did he have on drawers?

A. How could I see his drawers if he had pants on?

Q. His pants being unbuttoned?

A. I didn't look to see if he had drawers on.

Q. He had on a shirt, I suppose?

A. Of course, I didn't look to see what he had on.

Q. Was that shirt drawn out?

A. No, I don't know where his shirt was; all I saw was his exposed nakedness, and I can't tell what I don't know.

Q. Could you tell whether he had on an undershirt?

A. How do I know whether he had on undershirt or a top one on?

Q. Are you sure that you saw what you say you did?

A. Yes, sir; I am sure I saw it.

Q. Didn't he stand with his hands the way I am now, pulling back this coat of his?

A. No, sir; his hands were in his pockets.

Q. And didn't he stand with his hands in his pockets and pulled it back?

A. I know that I could see. 10

Q. And were they in that condition or position when you came into the store?

A. Yes, sir.

Q. Did you see anybody else in the store?

A. No, sir.

Q. Did anybody come out when you went in?

A. No, sir, he was entirely alone.

Q. Did he make any effort to close his clothing up?

A. No, sir.

Q. When he took his hands out of his pockets, the coat went together? 20

A. I didn't notice whether it went together or not.

Q. He didn't have his hands in his pockets when he went over to get the change?

A. I didn't notice then, but he had them in his pockets when he stood behind the counter.

Q. He didn't have both hands in his pockets when he gave you the change?

A. No, sir.

Q. When he handed you the change, how did you come to look to see whether his person was exposed? 30

A. I only saw what I could see.

Q. Was his coat still held back?

A. It was open, I don't whether he was holding it open or not.

Q. Did you notice whether his pants were unbuttoned then?

A. His pants must have been unbuttoned, or I would not see what I did.

Q. And pulled back?

A. I didn't notice whether his pants were pulled back.

Q. Did you see any of his bare limb?

A. I didn't look for his limbs, but I saw his exposed nakedness.

Q. Did you see any of the leg bare?

A. I didn't see the leg at all.

10 Q. Was any of that exposed?

A. Not his legs at all, only his nakedness was exposed.

Q. Was there any of the abdomen exposed?

A. His nakedness was exposed, that is all.

Q. Did you see any of the abdomen exposed,—did you see any of the body exposed?

A. I did not.

Q. Was the stomach exposed?

A. His exposed nakedness was what I saw.

Q. You say you didn't see his bare legs?

20 A. I did not.

Q. Or his bare stomach?

A. I didn't see his bare stomach, I saw his exposed nakedness.

Q. Then, as I understand it, he simply had his person exposed?

A. Yes, sir.

Q. Now in regard to his pants, did he have more than one of the buttons unbuttoned?

A. I don't know that either, may be there was only one button on.

30 Q. Then you don't mean to say to this jury then, that you saw that his pants were unbuttoned?

A. Yes, sir; his pants were unbuttoned, I said they were, unbuttoned all the time.

Q. You mean to say that they were unbuttoned all the way down?

A. I don't know whether they were unbuttoned all the way down, but his pants were unbuttoned.

Q. And all you saw was his person exposed?

A. Yes, sir.

Q. And he was in the same condition when he came out of the box as when you saw him, behind the counter?

A. Yes, sir.

Q. Now, you of course, were not accustomed to seeing persons dressed in that manner?

A. Sir?

Q. I say you were not accustomed to seeing persons dressed in that manner? 10

A. No, I never seen anything like that before, until I saw what I did, and there was—not gentleman like of him, the way he was.

Q. Why didn't you immediately leave that store?

A. Because I didn't leave until I got my things that I went for, and then I went out, and not before.

Q. Weren't you shocked when you saw him in that condition?

A. No, sir, I was not.

Q. Did you say anything to him about his condition? 20

A. No, sir, I did not.

Q. Who did you first speak to about it?

A. My aunt is the first one I told, and there was a lady at the house, the same time I told her.

Q. Have you ever been in Mr. Goldstein's store since that?

A. Yes, sir.

Q. And you still go there, do you not?

A. I have not been there since I was over here before the jury, quite a while before that. 30

Q. How many times have you been to the store since this occurrence?

A. That I don't know.

Q. Many times?

A. Quite a good many times.

Q. When did you first speak to anybody, besides your aunt, about this affair?

A. I never thought of mentioning it to anybody but my aunt, and then it was spoken of by the children

and she simply said, I saw the same thing, and that is only what I said.

Q. That you had seen the same thing?

A. Yes, sir.

Q. I show you, Miss Brennin, a photograph of the interior of the store. Can you tell from that where Mr. Goldstein was standing, when you first saw him?

10 A. Yes, there is the cashier, that is where I stood, right there on the floor.

Q. Point it out to the jury?

A. Right in front of the window of the cashier (indicating).

Said photograph marked, for identification, D. 1.

Q. I show you, D. 1, for identification, and ask you to point out, if you can, where Mr. Goldstein was standing behind the counter, when you first came into that store?

20 A. (Witness indicating) The door comes in this way, and that comes right straight down, right over behind that counter, and Mr. Goldstein stood right over there, and I was there when he gave me the change.

Also photograph marked, for identification, D. 2.

Q. I show you Exhibit No. D. 2, and ask you, if you can tell where Mr. Goldstein was standing at the time you came into the store?

A. (Witness indicating).

Q. Do you recollect, Miss Brennin, whether or not, there was a cash register on the counter?

A. No, sir, I don't.

Q. You don't recollect?

A. No, sir.

Q. Do you recollect whether or not, he was near the end of the counter, toward the back of the store?

30

A. No, sir; I don't remember; all I remember was that he was behind the counter.

Q. Can you tell us, whether or not, he was nearer the end of the counter, or nearer the end toward the front door?

A. He was near the end of the counter.

Q. And how near to the end of the counter was he when you say you saw him expose his person?

A. Right when I went in, that is where I saw him exposed.

Q. And how near to the end of the counter?

A. He was a little ways back from the counter.

Q. Do you use intoxicating liquors?

10

MR. RATHBUN: I object to that.

THE COURT: You can attack her character as to truth and veracity, but I shall overrule the question, as to the fact of her using intoxicating liquors.

20

Defendant's counsel prayed exception.

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)
Judge, &c.

Q. Do you not use intoxicating liquors to such an extent as to become intoxicated?

30

Question objected to.

Objection sustained.

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)
Judge, &c.

Q. And were you discharged from the Rubber Works?

Objection to.

Objection sustained.

10 Exception allowed. Let it be sealed
and it is sealed accordingly.

ALFRED ELMER MILLS, (1s)
Judge, &c.

Q. Were you not discharged from the Rubber Works, on account of your intimacy with young men?

Objected to.

Objection sustained.

20 Exception allowed. Let it be sealed
and it is sealed accordingly.

ALFRED ELMER MILLS, (1s)
Judge, &c.

Q. Are you acquainted with Squire Roberts of Butler?

A. No, sir; I have never spoke to the young man in my life.

Q. Are you acquainted with John F. Sisco, a Justice of the Peace?

30 A. Yes, sir; I don't know whether he is a Justice of the Peace or not, but I am acquainted with him.

Q. Has not John F. Sisco called upon you, and told you if you didn't behave yourself in a different manner with young men that he would make a complaint and send you to the Reformatory?

Objected to.

Objection sustained.

Exception allowed. Let it be sealed
and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)
Judge, &c.

Q. Had you ever seen a man's nakedness before
that day?

Objected to. 10

Objection sustained.

Exception allowed. Let it be sealed
and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)
Judge, &c.

Q. How did you know that you saw this man's
Goldstein's, nakedness?

A. Because I seen it. 20

Q. And you are sure it was his private parts that
you saw?

A. I have told you a good many times that I saw
it, and I could see what I saw with my own eyes.

RE-DIRECT EXAMINATION:

Q. Did you think it proper for him to be exposed?

A. No, sir, I didn't.

Q. And so, when you answered the Counsel this
morning in regard to the propriety of this,—what did
you mean? 30

A. I didn't understand what that man meant.

RE-CROSS EXAMINATION:

Q. You have talked with the prosecutor since you
left the stand this morning?

A. He was over in that room.

Q. Do you mean to say that you haven't said a
word to him?

A. Nothing like that.

Q. You have been in and had a conversation with him since you came off the stand here?

A. No, sir.

Q. Hasn't he talked with you at all?

A. No, sir. I just asked what time it was and that was all I said to him.

10 Q. Who have you talked to about this since you were on the stand at dinner,—?

A. I don't think that I have; I have been with the people who I come with.

Q. Who?

A. Everybody.

Q. Who, tell us some of the people that you have talked with since you were on the stand?

A. Only Mrs. Campbell and Mrs. Cross: that is all the ones I have been with all day.

20 Q. And did you tell them what you were going to swear to?

A. No, sir; I didn't.

Q. And they didn't know, of course?

A. No, sir.

Q. Well, what did you say, what were you talking about the case?

A. There was one question that I didn't understand and they told me that I didn't understand what you meant when you said it.

Q. What was the question that you didn't understand?

30 A. Something that you said about,—I forget.

Q. What did they tell you to say?

A. They didn't tell me to say anything.

Q. What did they say I asked you?

A. Well, now, I don't know; I won't mention anything that I don't know.

Q. There was something that these witnesses thought you had not answered properly?

A. Yes, sir.

Q. Did they tell you what to say?

A. No, sir; they didn't.

RE-DIRECT EXAMINATION:

Q. That store has a glass door?

A. Yes, sir; part of it.

Q. Paneled doors?

A. Yes, sir; glass doors.

10

STATE RESTS.

FREDERICK A. TROWBRIDGE, called and sworn
for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. What is your occupation?

A. Merchant.

Q. Do you make a business of taking photographs?

A. Yes, sir, that is a part of my business.

Q. How long have you been in that business, or
how long since you have been taking photographs for
yourself? 20

A. Fifteen or sixteen years.

Q. Have you ever been over to Butler, Morris
County, New Jersey?

A. Yes, sir.

Q. Do you know Max Goldstein, the defendant in
the case?

A. I never met him until I went over to take the
pictures.

Q. I will show you a photograph of the place. I
will show you photograph marked D. 1, and ask you
what it is? 30

A. That is the interior of the grocery store, taken
from the front, just inside of the front door. The
store being quite shallow, and not very wide, it was
harder to get in any closer; and the camera is pointed
towards the back of the store.

Q. I show you photograph marked D. 2, and ask
you what that is?

A. That is the rear of the interior, taken from the back of the store, and one corner shows the counters, and the camera was pointed towards the cashier's desk, showing about a three-quarter section of the store.

Q. I show you another photograph and ask you what it is?

10 A. That is what I call the principal front of the store, towards the railroad track. There is another front, a shorter front that runs from there, but you cannot see the main store from that.

Q. This is the front of the store?

A. Not entirely, it is taken—the railroad track being on the left hand side of the picture as you are looking at it; these are the two main windows and the cashier's desk is right on the right as you enter.

Q. How near to the front of the store is the road?

A. I didn't make any measurements of that. I
20 should say the sidewalk is about eight feet wide.

Q. Where did the camera stand?

A. The camera stood right in the middle of the road at the time I took that.

Q. What is the name of the street?

A. The street that runs right across the railroad track; this is the road we come over from Boonton, and this side of the road goes on the other side of that track; it is only a little road. The main road of Butler running parallel to the store, runs down this way (indicating).

30 Q. As you look at the store from the side, it is parallel to the railroad?

A. It is parallel with the side of the store, and parallel with that is the main street of Butler. It is a street that runs in front of the store, and runs right by the bank. I have never been to Butler more than once or twice.

Said photograph offered in evidence
and marked Defendant's Exhibit 3.

Q. I show you another photograph, what is that?

A. This shows it better, just as I was trying to explain; that is on this side, and it runs this way, parallel, and I have taken a little more toward the railroad track; when it was taken I was directly in front and the centre of the store, and in that there I was right on a right angle, and that shows the side view of the store.

10

Q. And this shows the plate glass window on the left hand side of the store?

A. Yes, sir.

Said photograph offered in evidence
and marked Exhibit D 4.

Q. I show you another photograph, and ask you what it is?

A. Well, I took that to show a continuation of the front of the store. The main store is here, and this is the continuation of the old part.

20

Q. The older building is to the right of the store?

A. Further away from the railroad track. It connects to the main street and there is an entrance through that and the other store.

Said photograph offered in evidence
and marked Exhibit D 5.

Q. I show you another photograph, what is that?

A. That is taken directly in the rear of the store, showing the only window that looks towards the front of the store from the rear; through that window you can look in there and you can see the counter and some parts of the store; it is a small window.

30

Said photograph offered in evidence
marked Exhibit D 6.

Q. Now, Mr. Trowbridge, this window which you speak of, has a wooden blind thrown open, is that the

same window which you show in your photograph, marked Exhibit D 1, at the end of the counter?

A. That is the same window, right there (indicating).

MR. CUTLER: Show it to the jury, so that they can see it.

10

Q. I show you Exhibit D 1 again, and ask you if there is any entrance from that store into the store adjoining?

A. Yes, there is a doorway, right around here,—the other side of the cashier's desk, that comes out into the other store.

Q. The rear of the coffee-mill, that is in the rear of the picture, there is a door which goes into the other building?

A. Yes, sir; there is a door there.

20

Q. Did you make any measurements in the store, the day that you were up there?

A. Yes, sir, some.

Q. Are these memorandams which you made?

A. Yes, sir.

Q. Can you remember the figures without looking at the memorandum?

A. No, sir.

Q. Looking at those figures, will you tell us the width of the store which you have shown in Exhibits D 1 and 2?

30

A. I have simply the sectional measurements, showing the width of the windows and doors, like that; it is about sixteen feet away; I measured it and I took a rough measurement of the size of the window.

Q. How deep is the store?

A. The total depth from the front door to the back, not the little L, but the main store, is 36 feet deep.

Q. Can you tell us how large the plate glass are in the front of the main store?

A. Yes, sir; the one that shows towards the railroad track is 3 ft. 6 wide, by 6 feet high.

Q. And that is plate glass?

A. That is plate glass, yes, sir, on an angle with the railroad track.

Q. How large are the two front plate glass windows?

A. Four feet 10 wide by 6 feet high. 10

Q. How many are there?

A. There are three, two windows besides this one that I have just spoke of and that is shown in the pictures. There are double doors 5 feet wide and 7 feet high.

Q. How large is the plate glass of those doors?

A. I didn't measure that—about 3 feet of wood and the rest glass.

Q. Do you know how far it is from the sidewalk up to the lower part of the sash,—the front windows?

A. It was about, I could not say definitely, it is about 2 ft. 8, or 3 foot windows. 20

Q. The windows come down to about 2 ft. 8, from the floor?

A. Yes, sir.

Q. Did you measure the height of the counters in there?

A. No, sir, I didn't; I was behind them.

Q. About how high are they?

A. They are 3 ft. counters.

Q. You have worked in a store? 30

A. For several years.

Q. And you have counters in your own store?

A. Yes, sir.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. When did you take these photographs?

A. I didn't make any memorandum of the date,—three or four weeks ago, I should say. I have got the date in my books at the store.

MR. RATHBUN: I only wanted to know approximately; that is all.

NATHAN GOLDSTEIN, called and sworn for Defendant.

DIRECT-EXAMINATION, by Mr. Mills:

- 10 Q. Are you a brother of Max Goldstein's?
 A. Yes, sir.
 Q. Do you know where he conducts a grocery business, at Butler?
 A. Yes, sir; I do.
 Q. Do you work there?
 A. I did.
 Q. Did you work there during the week of August 29th, 1903?
 A. Yes, sir, I did.
 Q. When did he move in that place?
 20 A. The latter part of August.
 Q. And how many people were there helping you move?
 A. Oh, about three or four, or five.
 Q. Name some of them?
 A. Foster Hargreaves, Archie Whitmore.
 Q. Who else?
 A. Frank Keel.
 Q. Who else?
 A. There was three or four, or two or three; I
 30 can't just remember, there were quite a lot, and we went to go there to open up the store.
 Q. And that took you the most of that week?
 A. Well, I think we started and it took about the biggest part of the week.
 Q. What do you do in that store?
 A. I wait on customers and clean up the store some, the same as any clerk in any store.
 Q. Tell us the general routine?

A. Well, I go to the store a quarter of seven, probably seven o'clock, and the first thing I clean up there, and put some things outside for display; sweep the store sometimes and go out for orders, and wait on customer, and weigh up stock the same as any clerk in a grocery store.

Q. You go to the store about seven or half past?

A. About seven.

10

Q. What time do you go to dinner?

A. I have not got a regular time to go. I go for dinner when Max Goldstein comes back, and him and his wife always go for dinner, and then I go to dinner.

Q. When do you go to supper?

A. A little after six, or it is seven sometimes.

Q. When you go to dinner, who is in that store?

A. Mr. Goldstein and his wife and the clerk.

Q. When you go to supper, who is in the store?

A. His wife and himself, and the clerk.

Q. And where did he take his supper previous to moving in this place? 20

A. Further up the road. Up Main street.

Q. What road do you say his store is on?

A. It was on Main street.

Q. Is that road travelled frequently?

A. Main street?

Q. Yes; do you know where that is now?

A. A great many people pass; they don't pass there unless they have to get something, as this is the only store on that side of the street.

Q. Where does this road lead to? 30

A. If you follow it right up, it brings you to Boonton.

Q. What part of Butler do you call south of the Rubber Mill there,—over where the school is?

A. I am not sure, I think they call it Butler Heights, they have got some name.

Q. As a matter of fact, Butler is divided by the street, called Main street, part is on one side of Main street and part on the other?

A. Yes, sir.

Q. Is there more than one road running from Main street over to the southern part of Butler that crosses that street?

A. No, I think not.

Q. Don't you know whether there is a road there and don't people go to the schoolhouse that way?

10 A. That is a good many goes through the fence.

Q. There is a bank in Butler, and isn't that almost directly opposite this store?

A. Yes, sir; on the other side.

Q. And the Hard Rubber Works is almost directly opposite the store?

A. It is the same side the bank is on.

Q. What other building is close to the store, on the right, as you come into Butler?

A. Not one at all; that is the only store on the block. There was a barber shop; it was all in one building, and my brother had put in a barber shop
20 there on the corner of the same building.

Q. Well, in August, 1903, there was a barber shop connected with the store?

A. Yes, sir; it was William A. Widdey's.

Q. And there was only a partition of boards between that store of your brother's and the barber shop?

A. It was half of Max, or my other brother's; it is pretty near one thing.

Q. Did you go out and take orders in the morning?

30 A. Some mornings, I did.

Q. What time would you go?

A. Oh, I would start about nine o'clock.

Q. And get back, about what time?

A. About half past ten or eleven.

Q. Who was in the store while you were gone?

A. They would be in there working, and Mrs. Goldstein and Max.

Q. Is it the custom for Max to be in that store any time of the day alone?

A. No, sir.

Q. Does his wife work in that store, all the time?

A. Yes, sir, she does.

Q. And when does she go to dinner?

A. She goes when he goes.

Q. And when does she come back?

A. When he comes back.

Q. Where do you get dinner?

A. From home. They have their dinner with my mother.

Q. They don't eat by themselves?

A. No, sir, they have dinner with us.

Q. Is this store well lighted, so that people walking on the street could see back in there?

A. I don't think they could see in the store.

Q. Who owns the building from which Max moved?

A. Some party here in Morristown, by the name of Joseph Hinchman.

Q. How long did he conduct a store there?

A. I cannot just remember.

Q. Well, about?

A. Two years, probably more or less; I cannot just say.

Q. Do you know Eva Brennin?

A. I know her some, yes.

Q. Did you ever see her at the store?

A. Yes, sir.

Q. Often?

A. Yes, sir.

Q. Have you seen her in the store since August 19th, 1903?

A. Yes, sir.

Q. Did she ever say anything to you about your brother insulting her or anything?

A. No, sir.

Q. Did you ever hear her talk to your brother in that store?

A. I did not.

10

20

30

Q. But she would go in the store and trade off and on?

A. Oh, yes.

CROSS EXAMINATION, by Mr. Rathbun:

Q. You are out a good deal of the time taking orders, ain't you?

10 A. No, not such a great deal.

Q. You go as far as New Foundland, taking orders?

A. I used to go the first year we started business, but afterwards I gave it up, it didn't pay.

Q. How far did you go in 1903?

A. I don't remember.

Q. Wouldn't you go out and be gone all day, sometimes, taking orders in August, 1903?

A. No, sir; all those routes we gave up, as we had quite a big trade around.

20 Q. You do go out to take orders?

A. Yes, sir, some, not always.

Q. Every other day, don't you?

A. Sometimes.

Q. Where do you put up your orders?

A. In the store.

Q. Not in the annex?

A. No, the main part is done right there on the counter, that is where we put them up.

Q. What do you use the room between the barber shop and the main store for?

30 A. We keep that there for potatoes and feed and different things.

Q. Right in the centre of the store?

A. It is an entrance, but we don't use that.

Q. Now, isn't there a door out to the rear?

A. I think there is.

Q. Now, don't you load things from the rear?

A. Everything comes there through the front; it is hard to drive on the track and we have to drive in front.

Q. You say that there is a wooden partition between the barber shop and your brother's place, and that is the place where you keep your potatoes and things?

A. Yes, sir.

Q. Now, isn't it between that and the main store?

A. No, sir.

FOSTER HARGREAVES, called and sworn for 10
Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Where do you live?

A. Bloomingdale, Passaic County.

Q. Do you know Max Goldstein?

A. I do.

Q. Did you ever work for him?

A. I did.

Q. Did you work for him in 1903?

20

A. Yes, sir, the latter part of August.

Q. What were you doing?

A. I was helping him move.

Q. And you help them move from their store on Main street?

A. Yes, sir.

Q. About how long did it take you to move?

A. Well, pretty near a week.

Q. And who else was there helping you move?

A. Three or four other ones.

Q. Who was there in and about that store about 30
that time, was that new store left alone at any time during that week?

A. Not that I know of.

Q. I mean during the day. How many helped you move?

A. Three or four.

Q. All together?

A. All together.

Q. Who were they?

A. Archie Whitmore, Nathan Goldstein, Joe Keel and myself.

Q. Who, else, anybody else?

A. I won't say for sure.

Q. Where was Mrs. Goldstein and Max Goldstein?

A. They were most generally both together.

Q. Were they helping you move?

10 A. Sometimes.

Q. What were they doing when they were there?

A. That I cannot say.

Q. You know what I mean by the main store, I mean in his present store?

A. I do.

Q. Is that connected with another store?

A. It is.

Q. And is that other store connected with the street?

A. It is.

20 Q. I will show you a photograph, marked Exhibit D 5, and ask you if that represents the front of the store?

A. That is the front of the old store.

Q. Could anybody going into the old store, come around in the main store?

A. Yes, sir.

Q. By a door-way in the rear?

A. Yes, sir.

30 Q. And in putting up your orders you pass every one there continually, and you keep some weighing scales there?

A. We do.

Q. And there is a board partition?

A. That is all.

Q. There is nothing but a board partition between the old store and the barber shop?

A. That is all.

Q. And the customers coming in may go in the main store?

A. They can go in both the main and the old store.

Q. And connect right in together?

A. Right in the main store.

Q. They come through right back of that coffee grinder, do they?

A. They do.

Q. And that is some ways back to the rear of the store, isn't it?

A. It is, yes, sir.

Q. Cannot persons also come in the rear of the old store?

10

A. Yes, sir.

Q. From the outside?

A. Yes, sir.

Q. Do you take your orders out of the rear, or from the front of that old store?

A. From the front.

Q. And your barn is in the rear of the two stores?

A. It is.

CROSS EXAMINATION, by Mr. Rathbun:

20

Q. What is your general occupation?

A. A little bit of everything.

Q. You live on a farm?

A. I do.

Q. Did you provide a team for that work?

A. No.

Q. How do you fix the time when you were doing that work?

A. What is that?

Q. Helping Max Goldstein; how do you fix the time of his moving, and helping him?

30

A. In what way?

Q. You said the last week in August; how do you fix the time?

A. Well, I got work there and went to Passaic, and I quit working for him, probably a week after he moved into the building.

Q. And where did you work next?

A. I worked for a month after or so.

Q. Well, when, the first of September, August, or October, which month?

A. May be the last of November.

Q. The last of November?

A. Probably.

Q. Where did you next work?

10 A. Passaic.

Q. For whom did you work?

A. Reed & Barry's Print Works, at Passaic.

Q. Now, did you remove any articles in that store?

A. I did.

Q. And you were moving, going back and forth, between the two places?

A. Yes, sir.

Q. And you remained there a week after they moved?

A. I did.

20 Q. And what was your work during that last week?

A. I helped them move that is all, and getting orders.

Q. I mean after you completed the moving?

A. I had a route of my own.

Q. What was your route?

A. Butler, and I started at probably half past seven or eight and in the afternoon I made the delivery.

30 ARCHIE WHITMORE, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Where do you live?

A. Butler, New Jersey.

Q. Do you know Max Goldstein?

A. I do.

Q. Did you ever work for him in his store?

A. Yes, sir.

Q. When?

A. August, 1903.

Q. When they moved from the old place?

A. Yes, sir.

Q. How long did you work there?

A. About five weeks.

Q. Did you work there that fall until school opened?

A. Yes, sir. 10

Q. Were there a number of others helping you move?

A. Yes, sir.

Q. Did you ever see Max Goldstein alone in that store, that you remember?

A. Not as I remember.

Q. Was there or was there not always more than one in the store?

A. More than one.

Q. And what did you yourself do, mostly? 20

A. Doing up orders and sometimes taking out orders.

CROSS-EXAMINATION, by Mr. Ratthbun:

Q. How often did you take out orders?

A. If anybody came in after I was there I would take them out.

Q. Did you ever drive a wagon, or what time would you start in the morning to deliver?

A. At any time at all during the day.

Q. And you would come back most any time? 30

A. Yes, sir.

Q. Who ran the Pompton route?

A. Nathan.

Q. That is the one who was the first witness here on the stand?

A. Yes, sir.

Q. And how long would he be gone?

A. I don't just remember how long he was gone.

Q. Sometimes all day?

A. No, not all day.

Q. A good part of the day, wouldn't he?

A. Yes, sir.

ANTHONY ROACH, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

10

Q. Where do you live?

A. Passaic County.

Q. Do you know Max Goldstein?

A. Yes, sir.

Q. Did you ever work for him in his store at Butler?

A. Yes, sir.

Q. The store where he is located now?

A. Yes, sir.

Q. How long did you work there?

20

A. About a week for him.

Q. What were you doing?

A. Carpenter work.

Q. Did you work steadily there that week?

A. Yes, sir.

Q. Was that right away after he moved in?

A. Right after he moved in.

Q. And just as he was getting settled down?

A. Yes, sir.

Q. Did you ever see Max alone in that store?

A. I don't remember ever seeing him alone.

30

CROSS-EXAMINATION, by Mr. Rathbun:

Q. You were attending to your work, wasn't you?

A. Yes, sir.

Q. And you were in different parts of the store, wasn't you?

A. Yes, sir.

Q. And sometimes you were in the annex, that is the room that was on the right, as you go through the store?

A. I would be all through the store.

Q. And, of course, while you were in one room, you would not know what was going on in the other room?

A. No, sir.

RE-DIRECT EXAMINATION:

Q. What were you doing in the line of carpenter 10
work there?

A. I built a shed on the back of the building, and put up shelves in the store.

Q. And what else?

A. I put in a couple of mangers in the barn.

Q. And what else?

A. That is all.

Q. How long were you gone to dinner?

A. An hour.

MORRIS A. GOLDSTEIN, called and sworn for 20
Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. You are a brother of Max Goldstein's?

A. I am.

Q. And you know the building where you and your brother have a store?

A. Well, practically I am in partnership with my brother, but it is in my own name?

Q. Do you remember moving there from his other 30
place?

A. I do.

Q. Do you know when it was?

A. It was the end of August or the beginning of September. The reason why I remember that, too, was after he moved in—

MR. MILLS: Leave that out, we don't care about that.

Q. Did you help him move?

A. No, sir, I didn't.

Q. Were you around there at the time?

A. Oh, yes, I was around there.

Q. Do you conduct a store in Butler?

A. I do.

Q. How far is your store from Max's?

10 A. I don't know exactly the distance, but I think it is about a city block, an ordinary, but not a large one.

Q. Two or three hundred feet?

A. I don't think it is quite as much as that.

Q. Is there any obstruction between the front of your store and the front of his store?

A. We can see the front of it all the time.

Q. Who did help him move when he moved from the old place?

A. A number of them; why we had Foster Hargreaves and one by the name of Whitmore and three
20 or four small boys; Keel and Degraw.

Q. Who helped Max run his store?

A. He had different ones at different times.

Q. At that time who was helping him?

A. I believe Foster Hargreaves, and Archibald Whitmore and Nathan Goldstein, and he had his wife and my father helped him once in a while, he would come in there.

Q. Were you around there at the time he was moving?

A. Well, I went around.

30 Q. Did you go down to the store while he was moved in?

A. I did.

Q. Often?

A. If I was home I would stop in 3 or 4 times a day, but if I had to go to New York, I stopped in in the morning before I go to New York, and in the evening when I come back.

Q. Did you say that Max's wife worked in the store with him?

A. I did.

Q. How much of the time is she in there with him?

Objected to.

A. She is more than three-fourths of the time; she is mostly all the time with him.

Q. Did you see him go to work in the morning?

A. I saw Max was gone; I didn't see him go right in the morning. 10

Q. Where did he get his dinner?

A. He eats dinners with us.

Q. At your table do you mean?

A. At my table.

Q. Do you all live in the same building?

A. We all live in the same building, but they live on a floor higher up, and we live on the floor next below that one; they live on the fourth floor and we live on the third, in our new building. She was in the store so much, and we have quite a family, and the cooking don't make any difference whether it is a person or two more, so she eats it with us,—dinner every day. 20

Q. You all live in flats and they live over your flat?

A. They live over in a flat in our store.

Q. And that is the store which you say, is about 300 feet from his store?

A. Yes, sir.

Q. Since Max has been at his present place, do you remember seeing him alone in the store? 30

A. Not as I know of; there is always somebody inside with him.

MR. RATHBUN: Now don't volunteer.

Q. Do you know the situation and location of these two stores of Max's,—the two rooms?

A. I do.

Q. Do persons come in to trade, and how do persons come in to trade?

A. They come in by passing on Boonton avenue.

Q. Is there more than one front door?

A. There is only one,—one front door to get inside. There is another front door, but it is always locked there is no customers go in that.

10

MR. RATHBUN: I rule to strike out the last part of the answer; as he is in no position to know this.

Q. Are the two stores joined in the rear?

A. They do.

Q. Upon what street do you say, this store is located?

A. Boonton avenue, corner of Main street, but the street is off from the railroad track, between the building and the Main street, the New York, Susquehanna & Western Railroad tracks run between.

20

Q. How far is the corner of his store from the side of Main street?

A. I guess it is about 60, 70 or 80 feet, that is this side of Main street.

Q. What joins Max's store, if anything?

A. Well, Max's store joins another building, and in there he has two stores, one is occupied as a barber shop; it has been used now as a butcher store.

Q. In August, 1903, what was in there?

A. A barber shop.

30

Q. Where is the new bank in Butler?

Objected to.

Q. I show you photograph, marked Exhibit D 2, about how high is that counter in there?

A. Three feet.

Q. About how far is the rear of the counter from the shelving?

A. About two feet possibly, an inch or two over, or less.

Q. And does that counter extend along the rear of the store?

A. It does.

Q. With a space behind it?

A. There is a space just enough to walk through.

Q. Do you have to go behind a coffee mill to go in the office or cashier's desk?

A. He does.

Q. When you get into the office or cashier's desk, do you have to pass the door which opens into the other store?

A. He has got to go right near the door there.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. What is your business?

A. Well, I run a general dry goods store; a kind of a department store.

Q. And in your display windows, you have goods have you, dry goods?

A. Dry goods, and cloth, yes.

Q. So that you could not see from the inside of your store, over to Max's place?

A. Not from the inside of the store, but we can see from the upstairs of the store to Max's place.

Q. But during business hours you are generally in your store, aren't you?

A. Yes, sir.

JOSEPH GOLDSTEIN, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Are you the father of Max Goldstein?

A. Yes, sir.

Q. You live at Butler, New Jersey?

A. Yes, sir.

Q. And he lives in the same house with you?

A. Yes, sir.

Q. Do you remember when he moved from Main street to his new place?

A. He moved last year.

Q. Do you remember it?

A. I can't remember the day.

Q. Did you help him move?

A. I was in the store when they moved, and I fixed
10 them up.

Q. Which store were you in?

A. When I was in that store and the old store, in both of them.

Q. Who was helping you move?

A. The boys were there, and Foster and two of
them I don't know what is their names.

Q. You mean those boys who were on the stand?

A. The same boys.

Q. How long did it take you to move to the new place?

A. Oh, about 3 to 4, days, that s all.
20

Q. Are you in a store much?

A. I go every time; may be through a day ten times; every time and go in the store if I ain't got nothing to do, and I walk around from one store to the other.

Q. What do you do?

A. Nothing.

Q. You don't work, do you?

A. No, sir.

Q. Do you live in the same building with Max?

A. I live in one flat and he lives in the other flat.
30

Q. Do you eat your dinners together?

A. Yes, sir.

Q. Does any of Max's folks work with him?

A. His wife always works, she has got no children, and she always stays in the store.

Q. All the time?

A. All the time from the morning till the evening; that is, all when the dinner comes and they come both of them and they go both of them.

Q. How many times a day did you go to see him at the store?

A. I can't remember, I don't keep it in a book.

Q. How far was his store from where he lives?

A. I can see the building, but not in the store.

Q. Do you ever remember going in the store and finding him alone in there?

A. He is never all alone; always somebody there. 10

Q. Does he do a large business?

A. Yes, he does a fine business,—he has lots of it; he is always busy.

CROSS EXAMINATION, by Mr. Rathbun:

Q. Do you spend most of your time at home?

A. Yes, sir; I have been home, of course.

Q. What do you mean by that?

A. I am walking around somewhere,—always away, what I mean; I don't know, I don't understand that what you mean. 20

Q. You spend most of your time at the house?

A. No, sir, I am walking around from one store to the other.

Q. You are in the street then?

A. Yes, sir, always in the street.

Q. Now, when you are in Max's store, in what part of it do you stay?

A. I am walking all around in that store, in the inside and all over in the back.

Q. You walk in and walk out?

A. I walk in and out and I walk in. 30

WILLIAM A. WITTY, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Where do you live?

A. Butler, New Jersey.

Q. Do you know Max Goldstein?

A. I do.

Q. What is your occupation?

A. Barber.

Q. Did you ever have a barber shop next to his store?

A. I did.

Q. When?

10 A. From the 4th of December, 1900, until the 28th of last July.

Q. July of what year?

A. 1904.

Q. Have you been in and out of his store much?

A. Quite some, yes.

Q. Do you ever remember seeing Max in there alone?

A. I don't remember of seeing him alone.

Q. Does he do much of a business there?

A. I should judge he did by the appearance.

20 Q. Just explain to us the location of your barber shop with his store?

A. The location of my barber shop?

Q. Yes?

A. Well, my barber shop is on the side up the street toward the bank, and the American Hard Rubber Company, and there is a board partition between that and the old store,—it was occupied as a candy store and then in the rear of that you go into the rear entrance by the door.

30 Q. Then, if that door was opened, which goes from the main store to the old store, there would be only a board partition between his store and your barber shop?

A. Yes, sir.

Q. Does part of his old store run around the rear of the barber shop?

A. It did at that time, and I occupied it.

Q. How far would you say your front door was from his front door?

A. From the old store, or the main store?

Q. The old store first?

A. About three feet between the two.

Q. And the main store?

A. I should judge that was probably fourteen feet; I don't know just exactly.

Q. What street do you say his grocery store is on?

A. Boonton avenue.

Q. Does Boonton avenue have much travel? 10

A. Quite some travel.

Q. How does the travel on Boonton avenue compare with that of Main street, in Butler?

A. I think there is more travel on Main street than Boonton avenue, where people has got some occasion to go to the bank, past the grocery store.

Q. And people living on the south side of Butler have to pass through to Boonton avenue?

A. They do if they go by the road, that is the road that the people travel in the south part and cross in on Main street, except there is a little path coming down to the Race Way. 20

Q. And how do they go to the school?

A. They practically pass my barber shop.

Q. When we talk about the old store, you don't mean the old store from where they moved on the main street?

A. No. I call the old store that which I occupied, a part of it, at the time.

Q. (Showing witness Exhibit D 5) That is what you mean, is it?

A. That is it. 30

Q. And this picture, Exhibit D 5, which I have just shown you, is the building, the corner of which is shown in Exhibit D 4, which I now show you?

A. That is it, that is part of the old building.

Q. Look at Exhibit D 4, and show the jury where your barber shop is?

A. (Indicating) It is on this side of that store there.

Q. Holding the photograph as I do now, you say that the door to the barber shop is about 14 feet from the door to the main store?

A. I think so; I never measured it, I could not tell exactly.

Q. I will show you Exhibit D 4 again, and ask you if you recognize the window in the side of the building?
10

A. I do.

Q. Is that window plainly seen from Main street, in Butler?

A. It is.

Q. About how far from the railroad track is Main street?

A. I could not say, it is just across the railroad track.

Q. Is there any obstruction between Main street and that window?

A. Nothing more than the lamps and the telegraph post, that is all I know of.
20

Q. As you come down Main street, in Butler, how far back can you see Goldstein's store, down Main street,—how far?

A. How far back?

Q. Yes?

A. I can see coming down Main street, I can see pretty near the whole rear; that is this side of the way, to the rear.

Q. Isn't it in view for half a mile?

A. I don't know.
30

Q. A quarter of a mile?—Several blocks?

A. No, about a block I should judge, coming down Main street. About from Day's Hotel I should judge, you could see it.

Q. You have seen Mrs. Goldstein in the store, I suppose?

A. Yes, sir, I have seen her.

Q. Would you go into Max's store very much?

Objected to.

A. I would carry my water from there—I had to carry my water from there, I had no other water than that.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. Would you get it by the pail?

A. By the pail, or two pails.

Q. And you only went in there when you ran out of water? 10

A. I didn't wait for the supply to run out; I used it for drinking water, too.

Q. Do you remember going into the store with Mr. Ridsen one evening shortly after Mr. Goldstein had moved to his present place?

A. I was in with Mr. Ridsen one time, I don't remember what time of day it was.

Q. At that time do you know whether he was alone? 20

A. Mrs. Goldstein was in there and Mr. Ridsen and I; I believe I was buying cake or crackers; I believe it was in the forenoon.

Q. Don't you remember going in there with Mr. Ridsen one time shortly after he moved there and Max was alone? 30

A. No, I don't remember that.

Q. You would not say it was not so?

A. I don't remember anything about it: I could not tell you when I would go in there, and other people might go in and I would not take any notice about that, because it was neighborly and it was a common occurrence for me to go in there. 30

HARRY POST, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Do you know Max Goldstein?

A. Yes, sir.

Q. What is your occupation?

A. I am working in the Hard Rubber Mill.

Q. In what occupation were you, the latter part of October, 1903?

A. I drove a bakery wagon.

Q. Did you deliver bread at Max Goldstein's store?

A. Yes, sir.

Q. How often?

10 A. Every morning.

Q. Did you ever see Max in there alone?

A. Never that I remember of.

Q. Do you ever remember going in there and not seeing Mrs. Goldstein there?

A. That I could not say; she was there nearly every morning.

Q. You think she was there nearly every morning?

A. Yes, sir.

Q. About what time did you go there?

A. Anywhere between 8 and 10 o'clock.

20

CROSS-EXAMINATION, by Mr. Rathbun:

Q. Whose wagon did you drive?

A. George Luker's at the time.

Q. Where from?

A. Butler.

Q. You would not be in there very long?

A. I would just go in and put the bread in the box, and get the money and come out.

Q. Where was the bread box?

30

A. In the old part, through the new part in the old part.

Q. When was this that you drove the wagon?

A. I began on the 15th of September and I left on the 26th of March, if I remember right.

Q. September 15th, 1903?

A. 1903.

Q. To March, 1904?

A. Yes.

THE STATE: I will move that the evidence of this witness be stricken out. It appears that he drove the wagon, only from September 15th, 1903, to March, 1904, which is after the time alleged in the indictment.

MR. CUTLER: It is agreed then, that the date is confined to the 29th of August. 10

THE COURT: As it has not been fixed as to any one day, the Court will allow the evidence to stand.

IDA GOLDSTEIN, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Do you live in Butler?

A. Yes, sir. 20

Q. You are Max Goldstein's sister?

A. I am.

Q. What is your occupation?

A. I work in my brother's store, in the Goldstein Brothers' store.

Q. You work in the clothing and dry goods store?

A. I work in the millinery department.

Q. You live in the same building with your brother Max?

A. Yes, sir.

Q. How far is that from his grocery store? 30

A. Well, we can say it is a block, like you call it in the city.

Q. And from the building where you live, can you see his place?

A. We can see his place, yes, sir.

Q. Do you go to his store very often?

A. Sometimes I go three times a day, or four; or something more than that.

Q. Did you ever see him in his store alone?

A. Never, not as I know of.

Q. Who works in his store with him; does his wife work with him?

A. Well, his wife is always there.

Q. You see her in the store yourself?

A. Yes, sir, positive.

10 Q. You see her going to and coming from the store?

A. She generally goes with him for dinner and she comes home nights with him.

Q. Do you eat your dinner together, all of you?

A. We are all at the table.

Q. Does your brother do much business?

A. Well, I guess he does.

CROSS-EXAMINATION, by Mr. Rathbun:

20 Q. Max and his wife live on the top floor?

A. They live above us.

Q. They occupy part of the house, upstairs, then?

A. Yes, sir.

Q. And you live with your father?

A. With my father and mother and brothers.

Q. And does your brother Morris live with you?

A. My brother Morris, certainly.

Q. How many servants has Max's wife in her employ, in her house?

A. She has not any.

30 Q. Who attends to your millinery department when you are out?

A. I have two more girls upstairs, besides me.

Q. Your department is upstairs, is it?

A. Yes, sir.

Q. And yet you leave your department and go down stairs, and across to Max's store, 3 or 4 times a day?

A. I don't know exactly; I know sometimes I generally go for the mail and bring the mail,—that is

twice a day in the morning, and I am in the habit of going to get fresh candy, and I get it every day; that is my only pleasure I have got.

Q. When are the mails delivered in Butler?

A. Well, I generally go seven o'clock, and sometimes when I get up, then I go at nine o'clock again, and I go between times sometimes, too.

10 Q. Last year, in 1903, isn't it a fact, that you only had two mails a day in Butler, one in the morning and one night?

A. I don't think so; I don't remember that.

Q. How do you remember that you went there 3 or 4 times a day?

A. I remember bringing the mail, and even if there wasn't any mail, I would go there anyway.

Q. You are judging this from what you are doing at the present time, isn't that it,—it is because you do these things at the present time?

20 A. I do it all the time that way.

Q. You don't recall what you did in August, 1903, do you?

A. You mean every day?

Q. In August, 1903?

A. I did the same thing I am doing now. When I am at home I am in the store and I go for the mail, sometimes mamma gets out of things there and she would ask me to run over to the store and I like to get a little fresh air; I feel better for it.

30 Q. You spent a good deal of time at your brother's store?

A. I go there quite often.

RE-DIRECT EXAMINATION:

Q. Of course you get your groceries of your brother?

A. Of course we do; do you think we would get them from anybody else.

Q. And your father is there at Max's store?

A. Yes, sir; he is there, too.

RE-CROSS EXAMINATION:

Q. Does your father get the groceries?

A. I do sometimes when mamma gets short of something, but he is running back and forth, and he
10 is going around from one store to the other, and mamma, she knows I like to go in there.

Q. You live right in the same place, and right over the store?

A. We live right there, and that is the only place I go, everybody knows that.

Q. Do you know this man?

A. That is Mr. Risner.

Q. Do you know why he is taking such an interest in this case?

Objected to.

20

NATHAN GOLDSTEIN, re-called for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. I show you a photograph, marked Exhibit D 1, and ask you to tell us whereabouts in that store the soap was kept when you first moved in there?

A. To the right of the store as you go in, back of the coffee-mill,—the soaps and the powder and the different things like that.

30 Q. You say the soap was kept back of the coffee-mill?

A. Yes.

Q. Was any soap kept on the opposite side of the store?

A. No.

Q. Was any soap kept behind the counter?

A. Yes, sir.

Q. Where was the gold dust kept?

A. In the same place where the soap was.

Q. And the brooms?

A. In the old part of the building, the annex,—
that is the old store.

Q. I show you Exhibit D 5, and ask you if that
shows where the brooms were kept?

A. Yes, sir, it does.

Q. Show the jury where they are kept?

A. Yes, sir. (Witness points it out) This corner. 10

Q. From the time you moved in that store, have
you always kept the brooms in the old part of the store?

A. Yes, sir; no other place.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. Where do you keep the cases of soap?

A. We don't take,—we would not keep them in
cases.

Q. And the soap would be arranged on the shelves?

A. On the bottom shelves.

Q. How many cases would you get at a time? 20

A. Oh, five.

Q. And you put them all right on the shelves?

A. Right on the shelves, yes, sir.

ELEAZER CARD, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Where do you live?

A. At what they call Merrantown.

Q. Do you know Max Goldstein? 30

A. Yes, sir.

Q. Have you ever been in his store, where he is
located now?

A. Yes, sir.

Q. Often?

A. Yes, sir, pretty often.

Q. Did you ever see Max Goldstein in there alone?

A. No, sir.

Q. Did you ever see Mrs. Goldstein around there?

A. Yes, sir.

Q. Much?

A. Yes, sir; quite often.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. What is your business?

A. I work for the Hard Rubber Company.

10 Q. And most of your time is spent there, isn't it?

A. Yes, sir.

Q. What time do you go on to work?

A. Seven o'clock.

Q. And what time do you quit?

A. Well, sometimes we get done at six and sometimes at half past five.

Q. Where is Marrantown, how far from Butler?

A. I live about a mile and a half from Butler.

RE-DIRECT:

20 Q. The Butler Hard Rubber Company is right across the way from Max's store?

A. Right in front of the little store, yes, sir.

SARAH GOLDSTEIN, called for Defendant, and sworn.

DIRECT EXAMINATION, by Mr. Mills:

Q. Mrs. Goldstein, you are the wife of Max Goldstein?

A. Yes, sir.

30 Q. And you live with him in Butler?

A. Yes, sir.

Q. In what building do you live?

A. The same building as my brother-in-law keeps the store.

Q. It is called the Goldstein Building?

A. The Goldstein Building.

Q. And how long have you lived in that building?

A. About two year, since the building has got ready to move in.

Q. And what part of the building do you live in?

A. The fourth floor from the ground floor.

Q. Have you any family?

A. No, sir.

Q. Where do you take your meals?

A. I take my meals together with my parents,—
with his parents.

Q. In the same building, on the floor lower down? 10

A. On the floor below.

Q. How do you spend your time, Mrs. Goldstein?

A. All the time in the store.

Q. What time do you go to the store, mornings?

A. Oh, about half past seven or eight.

Q. And what do you do in the store?

A. I am most by the cash, and when we get busy I
walk out and help to tend the customers.

Q. Where was this cash kept?

A. Right in the middle of the store, on the left
hand when you walk in from the door. 20

Q. I show you Exhibit D 1, and ask you if you
have ever seen it before; do you recognize it as a pic-
ture of the store?

A. Yes, sir.

Q. And do you recognize where the cash register
is, the cash desk, or box, whatever you call it, where
you staid?

A. I guess this is it. (Indicating).

Q. And how long would you stay in the store with
your husband? 30

A. Until we closed up.

Q. Would you go to dinner?

A. Yes, sir.

Q. And what time would you go to dinner?

A. When my brother-in-law used to come in from
his dinner, and the rest of the boys, then we would go
for dinner.

Q. And who would go with you?

A. Max, my husband.

Q. And would you come back with him after dinner?

A. Yes, sir.

Q. And stay there until you closed?

A. Until we closed.

Q. Now, you say you came there in the morning about half past seven or eight o'clock, would your husband go to the store before that?

A. Yes, sir, he goes at seven o'clock.

Q. And would there be anybody in the store, besides your husband?

A. Yes, sir; my brother-in-law and the rest of the boys.

Q. And would they start out on their trips or routes before you got there?

A. No, sir.

Q. Do you know where they keep the brooms?

A. In the other side of the store.

20 Q. In the main store?

A. No, sir.

Q. In the annex, as they call it?

A. Yes, sir.

Q. And have they kept the brooms there ever since you have been in the store?

A. Yes, sir.

Q. How long have you been married?

A. It is going to be three years the 5th of January, —it is going to be.

A. The 5th of January, next January?

30 A. Next January, it is going to be.

Q. And have you lived with your husband all that time?

A. Yes, sir.

Q. And you are still living with him?

A. Yes, sir; I hope so that I will.

Q. When you refer to the place in the annex, or in the store, where you keep the brooms, just look at this photograph and tell us where you kept the brooms?

A. (Indicating) In this side of the store.

ADJOURNED, until Monday, November 21st, 1904, at 10 A. M.

MORRISTOWN, N. J., Nov. 21st, 1904.

CONTINUATION OF CASE, pursuant to adjournment.

10

APPEARANCES, as heretofore.

MRS. SARAH GOLDSTEIN, resumed the stand.

CROSS-EXAMINATION, by Mr. Rathbun:

Q. You frequently go to New York?

A. I generally go Sundays.

Q. When do you do your shopping in New York?

A. I don't have to do shopping; I have everything in the place we live. I only go to New York to see my friends.

20

Q. Don't you ever go to New York on week days?

A. I always used to go on holidays.

Q. Don't you go occasionally to New York at any time besides Sunday?

A. No, sir.

Q. And all your time is spent during the week between your own house and the store?

A. Yes, sir; I am attending to my business; I am a kind of stranger in Butler; I know those who come in the store, but I don't visit them; I only know my house, and my father-in-law's house, where we live. I have been acquainted with Mr. Ridsen, we lived on the back of the road there.

30

Q. How many clerks has your husband had all this time?

A. Most of the time, two in the store, always two; he has never been without two.

Q. In August, 1903, how many did you have?

A. I don't remember exactly; sometimes we would get one and he would leave in a couple of days; we don't have them steady all the time. We change sometimes, and they leave us, and sometimes we leave them, and we take another on in their place, and it takes a day or two to get another one always.

Q. What routes did they have?

10 A. They worked in the store.

Q. No,—where did they go after orders, and where did they deliver the orders?

A. Around Butler.

Q. How many teams do you have?

A. We have two generally; one would be going for orders and one team delivers the orders.

Q. How far did they go?

A. Not further there than Pompton.

Q. What time did you generally go to dinner?

A. We do not go exactly on the minute; we go
20 when we want, sometimes twelve and half past twelve, and sometimes the clerks go first for dinner, and sometimes we go first for dinner.

RE-DIRECT:

Q. What is your busy day,—what day of the week?

A. Saturday.

Q. Are you very busy all day Saturday?

A. All day Saturday we are busy; we hardly have time to eat.

30 MAX GOLDSTEIN, called and sworn in his own behalf.

DIRECT EXAMINATION, by Judge Cutler:

Q. Mr. Goldstein, where do you live?

A. Butler, N. J.

Q. And how old are you?

A. About 36.

Q. How long have you been in business in Butler?

A. About four years.

Q. Where were you in business before that?

A. Dover, New Jersey.

Q. And how long were you in business in Dover?

A. About six years.

Q. And where were you before that?

A. That was my first arrival in this country.

Q. Now, Mr. Goldstein, where were you keeping
store in the spring of 1903, a year ago this spring,
where did you keep your store? 10

A. Where I am now.

Q. A year ago this spring?

A. Let us see, no, sir; I will take that back.

Q. Where were you?

A. I kept it in Noble's Building, across the way
from the depot.

Q. How long did you keep store in the Noble
Building?

A. About three years. 20

Q. Then where did you move to?

A. I moved in my brother's building.

Q. Where is that?

A. In Main street at the corner of Boonton avenue.

Q. Do you know Eva Brennin, the witness who
was on the stand here?

A. I do not.

Q. Do you know her by sight?

A. I know her by sight.

Q. On the 29th of August last, in what store were
you doing business? 30

A. In the place where I am now.

Q. Did you on that day, expose your person before
that girl?

A. No, sir; I did not; I never did to anybody.

Q. Did you at any other time, ever expose your
person before Eva Brennin?

A. No, sir.

Q. What time do you go to the store in the
mornings?

- A. I am there at seven o'clock in the morning.
 Q. How many clerks did you keep in August last?
 A. Two or three besides me and my wife.
 Q. Who opened up the store mornings?
 A. My brother.
 Q. Was he one of your clerks?
 A. Yes.
 10 Q. What is his name?
 A. Nathan.
 Q. What time did he get to the store?
 A. A little before seven.
 Q. And what time did you get there?
 A. Just about seven.
 Q. When does your wife come to the store?
 A. At half past seven in the morning.
 Q. And how long does she stay in the store?
 A. As long as I stay.
 Q. Do you have a route that you send clerks
 20 out on?
 A. Yes, sir. Every other day they leave about nine
 or half past.
 Q. And so your wife, as you say, comes there
 about half past seven to the store?
 A. She comes to attend to the cash, and she gets
 business and waits on customers.
 Q. What time do you go to dinner?
 A. Sometimes we go at twelve and sometimes a
 little later, both together.
 Q. How about coming back in the afternoon?
 30 A. We always come back, both of us.
 Q. How about going home at night?
 A. We always go home, both of us together,
 nights.
 Q. How long have you been married?
 A. Three years next January, the 5th.
 Q. And are you and your wife living together?
 A. Yes, sir.
 Q. And you lived together last August?
 A. Yes, sir.

Q. How do you dress in that store?

A. I dress about the same as you see me here, and a big long coat top of it,—a big long duster, a linen duster what the butchers wear and it reaches down.

Q. What is that, Mr. Goldstein, (showing witness coat)?

A. This is my duster which I wear ever since I have been in the business; I have got a dozen of them, 10 they are all like this.

Q. Put it on and let us see how you look in it?

A. (Witness did so) I always got the habit of buttoning it up to keep the clothes clean.

Q. Turn around now, and stand with it unbuttoned and put your hands in your pockets?

(Witness did so.)

CROSS-EXAMINATION, by Mr. Rathbun:

Q. You have never seen Eva Brennin in your 20 store?

A. Yes, I did see her in the store. I don't know her, but I saw her. I know her by sight coming in.

Q. Did you know her name?

A. I learned her name since the trouble commenced.

Q. She has been in there in your store and bought things?

A. I don't know whether she bought things or whether she didn't.

30

BY JUDGE CUTLER: Just wait.

Q. You know her aunt, Mrs. E. E. Romain?

A. No, sir.

Q. When did you move to your present store?

A. I moved the last part of August.

Q. What time did you commence to move?

A. I commenced to move, I guess, the first of August, and I moved some part of it, and the last part

of August I have finished moving everything, the last week in August, because I had a lease and the lease did not expire until I guess October.

Q. You say you commenced moving the first of August?

A. I think I did, the first of August.

Q. What did you move then?

10 A. The things that we didn't use right away; we had a car of salt, and a carload of flour and feed, and we moved these things over there.

Q. Who looked after the things at the new place when the store was being run at the old place?

A. I had a good many boys, and there was me and my wife and my father and brother; and I had boys that worked for me steady, and two or three was in one place and one or two at the other place.

Q. Well, who were looking after the store in the Noble Building, and who were looking after the store
20 where you are now located?

A. I guess I was there the biggest part of the time until we moved into the place where we are now. I was in the Noble Building, where we were before.

Q. You are not quite sure?

A. I am pretty sure.

Q. You were going from one place to the other during the whole time of moving?

A. I was not going; I was moving, I was taking things from the shelves and putting them in boxes and handing them to the boys to take to the other place.
30 I was not going,—I was there.

Q. How many times did you go to the new place while you were moving?

A. I don't remember going there at all.

Q. You don't.

A. I had my brother there.

Q. Which brother?

A. The one that worked for me.

Q. What is his name?

A. Nathan.

Q. He is your brother, is he?

A. Yes, sir; he is my brother.

Q. And then you finished moving, when?

A. Saturday, the 29th of August we had finished moving our stock from the other place into the one I am now.

Q. You did some moving on Saturday, August 29th, did you?

10

A. We did.

Q. And some clerks were at the new store?

A. Some where there and some where down here.

Q. Where was your wife at that time?

A. I don't exactly remember whether she was in the Noble place; she was in one or the other places; I don't just remember, but she was in either one of those places.

Q. You are sure that you were moving that whole month?

A. Pretty sure of it.

20

Q. You are sure it took you a whole month to move?

A. Pretty sure of it.

Q. How many clerks did you have in your employ on August 29th?

A. I had Foster Hargreaves; I had Archie Whitmore; I had Tony Roach and three or four others helping move, just extra ones.

Q. Well, how long had they been employed by you?

30

A. Well, one of them was employed quite a while. One of them worked there about a week or two before I commenced moving.

Q. How long was Foster Hargreaves working for you?

A. He worked quite a while; I don't just exactly remember.

Q. Did he commence the first of August to work for you?

A. I don't think he did; I think he commenced way before.

Q. Way before the first of August?

A. Yes, sir.

Q. How long did he work for you?

A. I guess he was working about a year, if I can remember.

10 Q. How long did Tony Roach work for you?

A. Just for that work when we moved the last week in August.

Q. You had already moved the heavy stuff?

A. It didn't make any difference, we had a lot of other stuff to move.

Q. Wasn't it his particular work to move the heavy stuff?

A. I hired him to help me.

Q. Didn't you have him and those other extra ones, for the purpose of moving the heavy stuff?

20 A. I don't know whether I had them for the purpose of moving the heavy stuff or light stuff; they all helped me move.

Q. The heavy stuff was all moved in the earlier part of the month, you spoke about a ton or so, of salt; didn't you move that in the early part of the month?

A. Yes, sir.

Q. Didn't you have men like Tony Roach and these extra hands to do that?

30 A. He helped me move several things,—the molasses and sugar and vinegar in barrels.

Q. You are sure you didn't have him there in the first week in August?

A. Not as I know of.

Q. Who did you have to move in the first week of August?

A. Me, and my brother and two other fellows, which I cannot think of their names. I got George DeGraw and Frank Keel and John Hubbard.

Q. How old are these boys?

A. Well, I don't know exactly, 12 or 13 years old.

Q. All young boys?

A. And this was a big man 22 years old, John Hubbard.

Q. Who were the others?

A. Foster Hargreaves and Archie Whitmore, and Nathan Goldstein is a big man.

Q. I am talking about the extra men, or the extra hands, they were all boys, excepting one? 10

A. John Hubbard was a big man.

Q. And the others were boys?

A. Tony Roach was a big man.

Q. You say he was not working the first week in August?

A. No.

Q. When did he commence to work?

A. He worked for me the last week in August.

Q. When did Archibald Whitmore work for you?

A. A month or two before I moved. 20

Q. And when did he quit?

A. He quit when the school commenced.

Q. In September?

A. I don't know when school commences, I guess in September.

Q. Is that your signature (handing witness paper)?

A. No, sir.

Q. Whose signature is it?

A. I don't know. 30

Q. Just look at it again?

A. It is not my signature.

Q. Is it your brother's signature?

A. I don't know.

Q. Was it written by any clerk for you?

A. No, sir, it was not; I never had a clerk write that way.

Q. And you are sure you didn't write that?

A. I am pretty sure.

Q. Now, did you authorize any body to write that letter?

JUDGE CUTLER: I object.

A. It ain't my writing.

Q. Did you authorize anybody to write this letter?

A. I don't remember.

10 Q. Did you authorize anybody to send such a letter to Mr. Joseph Hinchman, as executor of the Noble estate?

A. I cannot remember it,—I cannot remember that.

Q. You write, don't you?

A. I write, but it is a little different than this.

Q. Do you know when you sent the last money to Mr. Hinchman, as executor of the Noble estate, or for the Noble Building?

A. I never sent any money.

20 Q. Well, did you send a check?

A. A check,—the last one I think it was August.

Q. What time in August?

Objected to.

THE COURT: I allow the question.

JUDGE CUTLER: I desire an exception.

30 THE COURT: Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)
Judge, &c.

A. I don't remember, I think it was the last part of August, if I can remember right; I am not sure.

Q. Now look at it again Mr. Goldstein, this letter, didn't you send a check with that letter?

JUDGE CUTLER: I object to that question. The witness has said that he didn't write that letter and that he didn't know anything about it.

THE COURT: He cannot remember authorizing any one to write it.

MR. RATHBUN: That is not the question. 10

THE COURT: If he does not repudiate it, the Court will allow the question.

Q. (Question repeated as follows) Now, look at it again, Mr. Goldstein, this letter, didn't you send a check with that letter; I want to know whether you sent a check with that letter?

THE COURT: If you know, you must answer. 20

A. I don't know that, this ain't my signature and it ain't my writing.

Q. Is it your wife's writing?

A. My wife don't write such a letter as this, I do all these matters myself.

Q. Did you see Eva Brennin in the store on August 29th?

A. No, sir.

Q. She was not there?

A. I have not seen her. 30

Q. You don't recall her having been there and purchasing the things which she has testified to?

A. No, sir; I didn't see her.

RE-DIRECT EXAMINATION:

Q. Where, in that store, did you keep the gold dust?

A. Behind the coffee-mill.

Q. Just step down and point out to the jury, where you kept your gold dust and where you keep your soap? Show them on the picture?

A. (Showing to the jury) Here is the coffee-mill; and here is that desk, my office, and right behind this in the shelves is where I keep the gold dust and soap; and this is the cashier's desk and this is the coffee-mill.

10 Q. Was there any soap or gold dust behind this counter over here (indicating)?

A. No, sir, there was not. I never kept no gold dust behind this counter.

Q. Or soap?

A. Or soap.

Q. Where were the brooms kept?

A. The brooms were kept in there, in the annex.

Q. How do you get from one store to the other?

A. We have a big door.

Q. Where is that door,—point it out?

20 A. Well, the door,—I can explain,—there is a big door goes in right behind this coffee-mill, and where this desk is, a big door goes into the other room; it is a big door right behind the desk.

Q. I hold in my hand a book, what is it, do you know? (Handing witness book.)

A. This is my day book which I kept when I was in the other place.

Q. I show you that book, now can you tell by looking at that when you paid Roach for his work?

A. Yes, sir, I can.

30 Q. When?

A. August 29th, I paid him \$6 cash.

JUDGE CUTLER: I don't suppose the book is competent, but we are willing to have it offered, if the other side don't object.

THE STATE: The book does not seem to be complete.

RE-CROSS:

Q. Did you enter in this book the payments made on account of the store or the rent?

A. No, I have not put it in this book.

MR. RATHBUN: It is not a complete book.

10

SAMUEL R. DONALD, called and sworn for Defendant.

DIRECT EXAMINATION, by Mr. Mills:

Q. Where do you live?

A. Bloomingdale.

Q. Do you know Max Goldstein?

A. Yes, sir.

Q. How long have you known him?

A. I guess six or seven years.

20

Q. What is your occupation?

A. I am in the real estate business now.

Q. What was your occupation heretofore?

A. I conducted a bakery and I sold to Max Goldstein.

Q. Did you sell to him during the year 1903?

A. Yes, sir.

Q. Where did you sell to him during that year?

A. I sold to him in both stores.

Q. You sold at his old place until he moved?

A. Yes, sir.

30

Q. And continued to sell to him after he moved?

A. Yes, sir.

Q. How often did you go to his place?

A. Every day.

Q. Do you ever remember of seeing him in that store alone?

A. No, not to my recollection.

Q. You are a justice of the peace, are you?

A. Yes, sir.

NO CROSS-EXAMINATION.

JUDGE CUTLER: We offer all these photographs in evidence.

MR. RATHBUN: They are not admissible.

10 THE COURT: I will allow the photographs to be offered.

DEFENDANT RESTS.

JOSEPH HINCHMAN, called and sworn in rebuttal, for the State.

DIRECT EXAMINATION, by Mr. Rathbun:

Q. You are a member of the Bar?

A. Yes, sir.

20 Q. And one of the executors of the Noble estate?

A. Yes, executor of Charles E. Noble.

Q. The Noble estate owned the building, the Noble Building?

A. Mr. Noble owned it until it was sold to Mr. Frederick R. Casterline.

Q. Mr. Max Goldstein was a tenant there?

A. He was a tenant from a little previous to November 1st, 1900.

Q. And have you frequently received letters from him?

30 A. Yes, sir.

Q. Will you look at this letter,—how did you come in possession of that letter (handing witness paper)?

JUDGE CUTLER: I object. Let me see the letter.

MR. RATHBUN: It has not been proved yet.

THE COURT: The Court will allow the counsel to see the letter.

Q. (Question repeated.) (Will you look at this letter?) How did you come in possession of that letter?

A. I received it by mail from Max Goldstein.

MR. CUTLER: I object to that answer. 10

Q. Enclosed, was it?

MR. CUTLER: That answer is not responsive to the question. The first part is all right that he received it by mail; but the second part the witness cannot possibly know that.

MR. RATHBUN: Strike the last part of the answer out, from "Max Goldstein". 20

Q. How was it enclosed?

A. It was enclosed in that envelope, in the usual way, and also a check of Max Goldstein's with it, in payment on account of his rent, \$25.

Q. What became of the check?

A. It was deposited in our account, in behalf of the account of the executors of Noble estate and collected.

Q. And Max Goldstein, the defendant, has not made any protest as to that check, has he? 30

A. No, sir.

Q. And has he at any time disclaimed that that check was not his?

A. No, sir, he has not.

MR. RATHBUN: Now, I offer this letter.

JUDGE CUTLER: I object to it.

THE COURT: On what ground?

JUDGE CUTLER: It is not shown to be in Max Goldstein's handwriting, and Mr. Goldstein has been asked about it, and he has said that he did not authorize anybody else to write it. Now, they produce a letter, which Mr. Hinchman says he received by mail, and it is not shown that it is in Mr. Goldstein's handwriting.

10

Q. Do you say you have received other letters from Max Goldstein?

A. Yes, sir; I have received them in regular course from the time he became a tenant to the time we closed the last of the accounts and I recognize this letter from my knowledge of what his letters are, or through that acquaintance with his letters.

20

Q. And this handwriting, does it resemble the other?

A. Yes, sir.

Q. And from your knowledge it is the same handwriting that the other letters were in?

Objected to.

Q. Judging from your former correspondence with Max Goldstein, in your opinion, whose letter is that?

30

Objected to.

THE COURT: Ask him if he recognized the signature to the letter?

Q. How was the check signed?

JUDGE CUTLER: I object to that now; it is a written instrument.

MR. RATHBUN: He has said that it is Goldstein's check.

THE COURT: The question is whether he recognizes Goldstein's handwriting.

Q. Can you tell whether or not, this is Max Goldstein's handwriting?

JUDGE CUTLER: That is objected to.

10

THE COURT: I will allow the question.

JUDGE CUTLER: I would ask an exception.

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (LS)

Judge, &c.

20

A. Judging from my correspondence with him, extending over four years, I should say it was. The correspondence extended from the fall of 1900 to the fall of 1903, and the letters appeared to me to be uniform. He always signed Max Goldstein and he enclosed Max Goldstein's checks and accounts.

JUDGE CUTLER: I ask that that answer be stricken out.

THE COURT: Yes, I think the explanation is incompetent, and it is stricken out.

30

Q. For how long a time have you been in correspondence with Max Goldstein?

MR. CUTLER: I object to that as immaterial.

Objection overruled.

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (1s)
Judge, &c.

10 A. About November, 1900, or a little to it, until about the middle of August, 1903.

MR. RATHBUN: Now, we offer this letter.

JUDGE CUTLER: We object to it.

THE COURT: On what ground is that competent? The witness has not identified this as Mr. Goldstein's signature.

20 Q. Are you familiar with the handwriting of Max Goldstein?

A. No, except by this correspondence, extending from the fall of 1900, to the fall of 1903, I received many letters during that time; by many, I mean at least one a month on an average.

Q. And some of these letters were in response to letters from you?

A. Yes, sir, it was a correspondence from me to him and back, and answers back and forth.

30 MR. RATHBUN: I submit that that makes a man sufficiently familiar with the handwriting of a man. Here is a correspondence extending over a period of three or four years, and it should certainly make him competent to testify as to the handwriting.

JUDGE CUTLER: There is no evidence that he ever saw Mr. Max Goldstein write, or that he knows that any

one of the letters he ever received was written by Max Goldstein.

Now, here is a letter, and the prosecutor has had Mr. Goldstein on the stand and he says that he didn't write it and that he cannot remember authorizing anybody to write it; and he then puts Mr. Hinchman on the stand and he says he has received letters during a period of time with reference to this store from Mr. Max Goldstein, but he does not swear that it is his handwriting, he does not swear to it at all; he simply says judging from my correspondence with him, covering this period of time, that he presumes that Mr. Max Goldstein wrote this letter. Now, we don't presume in the Courts of Law.

10

20

THE COURT: As I understand Mr. Hinchman's evidence, he has testified that he received these letters from Max Goldstein.

JUDGE CUTLER: Suppose some one else wrote the letters.

CROSS-EXAMINATION:

Q. This was a joint lease, that is the other tenant was not a surety; it was a joint lease, wasn't it?

30

A. Of Max Goldstein and some brother.

Q. Now the executors of the Noble estate, did not rent to Max Goldstein alone?

A. It was not to Max alone, but Max alone paid the rent.

Q. You don't know that Max paid any of it?

A. We got his checks for it.

Q. Do you know that Max ever signed those checks?

A. I believe he did.

Q. Do you know, Mr. Hinchman?

A. Sometimes a man can doubt his own eyesight, but I think so. I have seen him write when he was in his store, but not to pay attention to it, that is all.

THE COURT: I will admit the question and allow you an exception.

10

Exception allowed. Let it be sealed and it is sealed accordingly.

ALFRED ELMER MILLS, (ls)
Judge, &c.

MR. RATHBUN: I will read the letter: "Find check enclosed for rent of July, the payment up to date, as I was through with the building August 1st. As I understood you sold the building to Casteline, so kindly let me know if you want the key, or shall I give it to his possession?"

20

Yours truly,

MAX GOLDSTEIN."

Q. Had you sold the store at that time to Casteline?

A. We contracted to sell it.

Q. Did you reply to that letter? _____

30

A. Yes, sir.

Q. Just look at this, is that a reply (handing witness paper)?

A. Yes, sir.

Q. You don't consider that the store was vacant at that time?

A. I considered he was bound for rent, I don't know whether it was vacant or not.

Q. And you didn't consider that he should stop paying the rent?

A. No, sir, but he has never paid me any since.

Q. Not to you, or to any one else?

A. No, sir.

Q. Look at that check and see if you can recognize the signature?

A. It is similar to the ones I have recognized before as Max Goldstein's signature.

Q. And if one was written by Max Goldstein, you have not any doubt about the other? 10

A. No, sir.

Check marked for identification, for the State.

IRVING E. SALMON, called and sworn in re-buttal, by the State.

DIRECT EXAMINATION, by Mr. Rathbun:

Q. You are a member of the Bar? 20

A. Yes, sir.

Q. Did you have a case before Justice Blanchard, between Max Goldstein and Francis E. Cook?

A. I did.

Q. Did Nathan Goldstein testify that time in the case?

A. Yes, I think he did.

Q. Do you recall what he said in regard to his relationship with Max Goldstein?

JUDGE CUTLER: I object to that; 30
it has not been called to the attention of Max Goldstein.

THE COURT: That is not competent.

HORACE RICKER, called and sworn in rebuttal for the State.

DIRECT EXAMINATION, by Mr. Rathbun:

Q. Where do you live?

A. Butler.

Q. Were you ever in the employ of Max Goldstein?

A. Yes, sir.

Q. And have you ever been in his store since your employment?

10 A. Yes, sir.

Q. And at any of these times when you have gone into his place, have you ever found Max Goldstein alone?

Objected to; let him state the time.

Q. When were you in there?

A. I was in there three weeks ago last Friday night and found him alone.

Q. Have you ever seen him in there alone?

20

Objected to.

Q. How many times before that?

A. Two or three times before that.

Q. Were you in there in the fall of last year, 1903?

A. No, sir.

Q. Have you been in there the beginning of this year, and ever found him alone?

30

JUDGE CUTLER: I object to that, may it please the Court. I think the question ought to be limited as to time.

MR. RATHBUN: The defense would have this jury believe that this man was never alone, and he has put in the testimony of several witnesses, but he didn't seem to rely upon any particular period, and Mrs. Goldstein, Nathan Goldstein, Morris Goldstein, and I think Joseph Goldstein, all were asked

whether they ever saw him there alone, and they all said no, and they would have the jury believe that this defendant is never there alone. Now, here is a witness brought by the State to show that that is not so.

JUDGE CUTLER: I shall object to this unless the State shows that it is within the time alleged in the indictment, or practically during the time covered by the indictment. 10

THE COURT: The objection is sustained.

CROSS-EXAMINATION, by Judge Cutler:

Q. You and Goldstein are not on good terms?

A. Well, we are on speaking terms. 20

Q. That is all?

A. Well, there is a little old grudge.

Q. You let their horse run away and smashed up the wagon and they wanted you to pay for it?

A. They tried to make me.

Q. They wanted you to pay for it and tried to keep it out of your wages?

A. Yes, sir.

MRS. ZILLA SMITH, called and sworn in re-buttal by the State. 30

DIRECT EXAMINATION, by Mr. Rathbun:

Q. You live in Butler?

A. Yes, sir.

Q. Do you know Max Goldstein?

A. Yes, sir, by sight.

Q. Do you know where he carries on the grocery business?

A. Yes, sir.

Q. Have you been in his store?

A. Yes, sir.

Q. Did you ever visit his store in the fall of 1903?

A. No, sir; I never was in his store until last April.

Q. You were there then?

A. Yes, sir. I have been in there many times.

10 Q. On any of these occasions did you ever find him there alone?

Objected to.

Objection sustained.

MRS. MARTHA ROMAIN, called and sworn in rebuttal for the State.

DIRECT EXAMINATION, by Mr. Rathbun:

Q. Where do you live?

20 A. Smith Mills.

Q. You are the aunt of Eva Brennin?

A. Yes, sir.

Q. Did she make any report to you in regard to anything that might have transpired at Max Goldstein's store?

Objected to.

THE COURT: How is that competent? In this case the Court cannot allow it, but where it is part of the res
30 gastae, it might be allowed.

FRANCES E. COOK, re-called in re-buttal, for the State.

DIRECT EXAMINATION, by Mr. Rathbun:

Q. Where do you live?

A. Butler.

Q. And you are a constable?

A. Yes, sir.

Q. Do you know Max Goldstein?

A. I do.

Q. Have you been in his place very often?

A. Yes, sir.

Q. Do you know where he carries on his grocery business?

A. Yes, sir, I traded with him for a year and over. 10

Q. Have you ever in the fall of 1903, found Max Goldstein alone in the store?

A. I have been several times in there previous to the past six months. I have been in there several times that he has been, but not within the last six months.

CROSS-EXAMINATION, by Judge Cutler:

Q. You are not on very good terms with Mr. Goldstein?

A. I don't know why. 20

Q. Didn't Mr. Goldstein sue you for a bill and get judgment against you?

A. Yes, he sued me.

Q. And he got judgment?

A. Yes, sir.

Q. And you have not paid him yet?

A. I think he is paid.

Q. Did you have any talk with Mr. Mills about this case, Mr. Cook?

A. Mr. Mills?

Q. Yes? 30

A. I don't know but what I have.

Q. Mr. Mills was trying to collect this bill from you of Goldstein's?

THE COURT: What has this to do with this case?

Q. Didn't you say to Mr. Mills that Mr. Goldstein was in no position to ask you to pay this bill or enforce it?

A. That he was in no position?

Q. That he was not in any position, and if he undertook to collect this bill of you he would be very sorry for it, and it would be worse for him, or words to that effect?

A. I said to him that he sold me light weights and measures.

10 Q. Just answer my question?

A. It is a mistake. I cannot answer that question.

JUDGE CUTLER: If you cannot answer that question, that is all I want.

STATE IN REBUTTAL RESTS.

FRED R. CASTERLINE, called and sworn in rebuttal for Defendant.

DIRECT EXAMINATION, by Mr. Cutler:

20 Q. You live in Butler?

A. Yes, sir.

Q. And you are the Mr. Casterline referred to as having bought the Noble Building, that was formerly occupied by Max Goldstein?

A. Yes, sir.

Q. Do you remember when you got your deed?

A. I think I got the deed along the middle of September.

Q. Did you collect rent of Goldstein after you purchased it?

30 A. Yes, sir; September to October's rent; I was to have the deed on the first, but I didn't get it.

Q. And you only had one month's rent?

A. That is all, and that was September rent.

DEFENDANT IN REBUTTAL RESTS.

STATE RESTS.

CASE CLOSED.

STATE

VS.

MAX GOLDSTEIN.

CHARGE OF COURT.

MILLS, J.,

GENTLEMEN OF THE JURY:

10

This case is important to the Defendant, important whether he is guilty or innocent, and especially important to him if he should be convicted on so serious a charge. It is important to the State, because if he is guilty, the crime is of such a serious nature, that if such crimes were allowed to continue they would debauch the community.

The indictment in this case charges that Max Goldstein, on the 29th day of August, 1903, at Butler, did, in the store of said Max Goldstein, a place open to the public, and into and out of which people were constantly going and passing, commit notorious acts of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, by then and there unlawfully, wickedly and lewdly exhibiting and exposing his private parts to the view of one Eva Brennin, and all other persons then and there being and passing to the evil example of all others in like case offending.

20

Now the act under which this indictment was drawn provides that it must appear that the place where such an exposure took place, was a public place. The Court is satisfied from the evidence that the place where this exposure is alleged to have taken place, is a public place. It is a place where people were liable to come in and out at any time of day, as appears from a large number of witnesses, and in the opinion of the Court, it comes within the definition of a public place.

30

Before you would be warranted in convicting the defendant of this crime,—you must be satisfied that

this exposure was intentional. Of course if the defendant accidentally exposed himself to the public without knowing it, there is no crime. There must be an impure mind to warrant you in convicting him of this crime. You must be satisfied that there was an exposure with impure mind and not a simple or accidental exposure.

10 In this case, as in all criminal cases, the defendant is presumed to be innocent, until he has been proved guilty beyond a reasonable doubt. A reasonable doubt is not a possible doubt, not a conjectural doubt, or an imaginary one, not a doubt of the absolute certainty of the guilt of the accused, because everything relating to human affairs and depending upon evidence, is open to conjectural or imaginary doubt, and because absolute certainty is not required by law. A reasonable doubt is such a doubt as exists in the mind of a reasonable man, after a full, free and careful examination and
20 comparison of all the evidence. It is such a doubt as exists when a man of common sense, with sedate and quiet mind, having contemplated all the evidence and compared it together, and weighted it with the utmost care, yet finds his judgment unconvinced of the guilt of the accused. If such a doubt exists in your minds as to the guilt of defendant, you should acquit, but if you have no such doubt, you should convict.

The State has put on the stand one witness, Eva Brennin, the young girl who you heard on the stand. She is the only witness called in the main case, and
30 of course, you can see that it is of vital importance to scrutinize the evidence from every standpoint to see whether she was telling the truth, and to determine whether there was an intentional exposure. If she has not told the truth, of course the case ends at once. Therefore, it becomes your duty to scrutinize the evidence very closely and if you are satisfied from her evidence that there was an exposure, then you must determine whether that exposure was accidental or intentional, and in arriving at that conclusion, you must

take all the circumstances into consideration. Consider her evidence, what she has told you, about defendant coming outside of the counter and going around the store, and about the touching of her hand, and how far it was intentional, or otherwise, and how far it throws any light on the question.

The defendant has gone on the stand and contradicted that evidence. It is for you to say whether he has told you the truth, and also whether the exposure happened without his knowing that his private parts were exposed. All these facts you must carefully consider in this case. You must take all the evidence and consider it carefully, and if, after a careful consideration of all the evidence, you are satisfied beyond the reasonable doubt, that the Court has laid down, that the defendant is guilty, you should convict; but, if after that same careful consideration of all the evidence, you are not satisfied beyond a reasonable doubt of his guilt, you should acquit.

Counsel for the defendant has requested the Court to charge as follows:

I. The store of the defendant was not a public place.

THE COURT: The Court has already charged you in regard to that.

II. There can be no conviction unless the exposure was made in a public place.

THE COURT: That is the law, gentlemen. The Court has already charged you in regard to its opinion of that place.

III. There is no evidence that the defendant ever wrote the letter, or authorized it to be written.

THE COURT: You must determine, gentlemen, whether he did or did

not. The only evidence the Court recalls on that point, is the evidence of Mr. Hinchman. He has given his evidence in regard to that letter, and you are to judge how far his evidence is correct.

10 IV. If the defendant is not guilty, it is immaterial when he moved out of the store.

The Court so charges.

JUDGE CUTLER: I desire to take a general exception to the Court's charge, and an exception to his not charging as I have requested.

Also an exception to what the Court has charged as to the store being a public place.

20

THE COURT: You may have such exceptions.

EXCEPTION. All these exceptions allowed. Let them be sealed and they are sealed accordingly.

ALFRED ELMER MILLS,

[SEAL]

Judge, &c.

30 I hereby certify that the foregoing is the entire record had upon the trial of the cause of the State against Max Goldstein, except the opening address of the Prosecutor and the summing-up of counsel to the jury at the close of the case.

ALFRED ELMER MILLS,

Judge, &c.

NEW JERSEY SUPREME COURT.

February Term, 1906.

THE STATE,

Defendant in Error,

vs.

MAX GOLDSTEIN,

Plaintiff in Error.

10

*Rule
for
Judgment*

20

This cause having been duly argued at the February Term, nineteen hundred and five, of this Court by Williard W. Cutler and John M. Mills, of counsel for the plaintiff in error, and Charles A. Rathbun, of counsel for the defendant in error, and the court having considered the same and finding no error in the record of the proceedings in the Court of Quarter Sessions of the County of Morris,—

It is thereupon ordered and adjudged that the judgment of the Court of Quarter Sessions of the County of Morris removed by the writ of error in this cause be affirmed with costs ; and that the record be remitted to the said Court of Quarter Sessions of the County of Morris to be proceeded with in accordance with this judgment and the practice of said Court.

30

Entered March 1, 1906,

On motion of

CHARLES A. RATHBUN,
Attorney of defendant in error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	THE STATE, Defendant in Error, vs. MAX GOLDSTEIN, Plaintiff in Error.	} <i>In Error.</i> <i>Joinder in</i> <i>Error.</i>
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20 And thereupon, afterwards, to wit., on this day the said The State of New Jersey, by Charles A. Rathbun, Prosecutor of the Pleas of the County of Morris, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and the State of New Jersey therefore prays that the Court may here proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid, assigned for error and that the judgment aforesaid, in manner aforesaid given, may in all things

30 be affirmed, &c.

CHARLES A. RATHBUN,
Prosecutor of the Pleas and of Counsel with De-
fendant in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

 THE STATE,

Defendant in Error,

vs.

MAX GOLDSTEIN,

 Plaintiff in Error.

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*In Error,
Assignment of
Errors.*

And now, at this day, the plaintiff in error assigns the following causes of error :

1. Because the judgment was given for the State and against the said Max Goldstein, when by law of the land the judgment aforesaid should have been given to the said Max Goldstein.

2. Because the evidence of the State at the trial of said cause failed to establish that a crime had been committed.

3. Because the State at the trial of said cause failed to show by affirmative evidence the commission of a crime as laid in the indictment.

4. Because the Trial Judge, at the close of the State's case should have dismissed the indictment.

5. Because the Trial Judge refused to quash the indictment.

6. Because the said indictment does not properly allege the commission of crime.

7. Because the Trial Judge, at the close of the whole

case, should have directed a verdict in favor of the defendant.

8. Because the Trial Judge admitted testimony against the defendant which was illegal and contrary to law.

9. Because the said Court refused to admit testimony on the part of defendant which in law it should have done.

10 10. Because the New Jersey Supreme Court, in giving judgment in said cause, failed to consider that the evidence on the part of the State failed to establish that a crime had been committed.

11. Because the said Supreme Court failed to consider that the State failed to show by affirmative evidence that a crime was committed as laid in the indictment.

20 12. Because the said Supreme Court erred in finding that the Trial Court did not admit testimony which was illegal and contrary to law.

13. Because the Supreme Court erred in finding that the Trial Court did not err in refusing to admit testimony on the part of the defendant which should have been admitted.

14. Because the Trial Judge refused to charge the jury "that the store of the defendant was not a public place."

30 15. Because the Trial Judge charged the jury as follows: "Now, the act under which this indictment was drawn, provides that it must appear that the place where such an exposure took place was a public place. The Court is satisfied from the evidence that the place where this exposure is alleged to have taken place, is a public place. It is a place where people were liable to come in and out at any time of the day, as appears from a large number of witnesses, and in the opinion of the Court, it comes within the definition of a public place."

16. Because the Trial Judge refused to charge the jury "that there was no evidence that the defendant

ever wrote the letter or authorized it to be written," but instead charged the jury as follows: "You must determine, gentlemen, whether he did or did not; the only evidence the Court recalls on that point is the evidence of Mr. Hinchman. He has given his evidence in regard to that letter, and you are to judge how far his evidence is correct."

17. Because the Trial Judge admitted illegal evidence, to wit: a letter purporting to have been written by Max Goldstein, after the defendant had denied having written the letter, and without any proof that it was in the handwriting of the said defendant. 10

18. Because the Trial Judge rejected legal evidence in that it refused to allow the defendant to be asked on cross-examination, questions that would tend to show that she was not a person of good moral character.

19. Because the Trial Judge compelled the defendant after an objection, to testify as to his last payment of rent to the executors of the estate of Charles E. Noble, deceased. 20

20. Because the Trial Judge admitted illegal evidence, allowing one Joseph Hinchman to answer the question, "Can you tell whether or not this is Max Goldstein's handwriting?" referring to a letter afterwards offered in evidence, when it did not appear from the evidence that that said Hinchman had ever seen the handwriting of said Goldstein or was acquainted with the same. 30

21. Because the Trial Court allowed the said Hinchman to answer the question, "For how long a time have you been in correspondence with Max Goldstein?" when it did not appear he had ever received a letter in the handwriting of said Goldstein.

22. Because the charge of the Trial Judge to the jury was erroneous and prejudicial to the defendant, and gave his opinion as to the evidence.

23. Because the said Supreme Court erred in finding

that the Trial Court did not charge the jury contrary to law.

24. Because of manifest error in this that the judgment and sentence of the said Court of the said Max Goldstein was given and past against him when by the laws and customs of New Jersey no judgment or sentence ought to have been given and passed on the said defendant below upon said indictment, record and proceedings.

27. Because for divers other reasons, the said judgment is erroneous and contrary to law.

For the errors aforesaid and other reasons in the records and proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, the said Max Goldstein was given and passed against him sentence may be reversed, annulled and altogether held for nothing, and that he may be restored in all things which he has lost by the occasion thereof.

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JOHN M. MILLS,

Attorney and Counsel for Plaintiff in Error.

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NEW JERSEY SUPREME COURT.

 THE STATE

vs.

 MAX GOLDSTEIN.

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WRIT OF ERROR TO THE MORRIS QUARTER
SESSIONS.

Argued at February Term, 1905, before GUMMERE,
Chief Justice, and Justices Fort, Garretson and Pitney.

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For plaintiff in error, WILLARD W. CUTLER.

For defendant in error, CHARLES A. RATHBUN,
Prosecutor of the Pleas.

The opinion of the court was delivered by GUMMERE,
C. J.

The defendant was indicted for and convicted of the
crime of indecently exposing his person in a public place.

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The exposure was made in the grocery store of the de-
fendant in the Town of Butler, on the 29th day of Au-
gust, 1903, in the presence of one E. B., a girl about fif-
teen years old, who had gone there to purchase goods. It
appeared from testimony submitted on the part of the de-
fendant that, in the front of the store, were two plate
glass windows, four feet and ten inches in width, and six
feet in height, and a third one three feet six inches in

width, and six feet in height, and that the bottom of each of these three windows was about three feet above the sidewalk.

It further appeared that there were double doors opening from the store into the street; that the lower part of those doors, to a point about three feet above the sidewalk was made of wood, and that the remaining portions thereof were of glass.

10 According to the law of this offense, the place where it is committed is a public one, if the exposure be such that it is likely to be seen by a number of casual observers. *VanHouten v. State*, 46 N. J. L. 17. That a store to which the public is invited for the purpose of trading, and the interior of which may readily be seen by people passing by along the street, is such a place, seems to us not a matter of doubt; and consequently an instruction by the Court to the jury to the effect is not erroneous. Van-
 20 Houten v. State, supra. The assignment of error, therefore, which is based upon the assumption that the trial judge should have left it to the jury to determine whether or not the place where the exposure was alleged to have been made was a public one, must fail.

The defendant, being called as a witness in his own behalf, denied having committed the offense charged against him, and, for the purpose of substantiating that denial, testified that, during the latter part of August, 1903 and particularly on the 29th day of that month, he was engaged in moving his business from a store occupied by
 30 him in a building in Butler, belonging to the "Noble Estate," into the store in which the indecent exposure was said to have taken place, and that during all of that time, whether he was at the one place or the other, he was never alone, some of his employes being always present at each of the two stores. In order to break the force of this testimony the Prosecutor of the Pleas, on cross examination of the defendant, exhibited to him a letter addressed to the executor of the "Noble Estate," and signed "Max Goldstein,"—the body of which contained

a statement that his (Goldstein's) tenancy had expired on the first of August, and referred to the fact that a check was enclosed in settlement of the rent due to that date—and asked him if the signature to the letter was not in his handwriting. The defendant denied that it was, or that the letter had been written by his authority. After the close of the defendant's case the State called Mr. Hinchman, the executor of the "Noble Estate," as a witness, and he testified that the defendant had been a tenant of the Estate for nearly three years, and that during all of that period a business correspondence had been carried on between himself and the defendant, letters passing between them at least as frequently as once a month on the average. The letter which had been exhibited to the defendant, being then shown the witness, he expressed the opinion that it was in the latter's handwriting. Counsel for the defendant interposed an objection to the witness being permitted to express an opinion as to the authenticity of the letter, on the ground that his testimony failed to show that he had ever seen the defendant write, or that he knew that the letters which he had received during Goldstein's tenancy were written by him; and error is assigned upon the overruling of the objection. Except for the fact that counsel has earnestly contended before us that this testimony was improperly admitted, we should consider the assignment so frivolous as not to be entitled to specific mention. A reference to any text book in which this object is discussed, will disclose that it is universally admitted that a witness who has a proper knowledge of a party's handwriting, may declare his belief in regard to the genuineness of a writing which is in question; and that such knowledge may be acquired, not only by having seen him write, but also by having had correspondence with him concerning business or other matters transacted between them. In *West v. State*, 22 N. J. L. 212, the rule is thus tersely stated: "To prove handwriting, in general, a witness

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must know it by having seen the person write, or by having corresponded with him."

Two other errors are assigned, one of which challenges the legality of a question asked of the defendant on his cross examination, with relation to the date of the last payment of rent made by him to the "Noble Estate," and the other of which is directed at the refusal of the trial court to quash the indictment because, as alleged, it failed to aver that the offence charged against the defendant was committed in a public place. These assignments were not strongly pressed before us upon the argument as affording ground for reversal, and our examination of the case leads us to the conclusion that the question objected to was properly admitted, and that the indictment sufficiently avers that the exposure of his person by the defendant was made in a public place.

The conviction under review should be affirmed.





