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Testimony for the State.

Testimony for Defendant.

State's Rebuttal.

WRIT OF ERROR TO SUPREME COURT.

Filed April 10, 1920.

New Jersey Court of Errors and Appeals

10

NEW JERSEY, *ss.*

THE STATE OF NEW YORK, to our Justices of our Supreme Court, GREETING:

(SEAL) Because in the record and proceedings and also in the giving of the judgment upon a certain indictment which was in our Supreme Court before you, between the State, defendant-in-error, and Aaron M. Dichter, plaintiff-in-error, on a writ of error issued out of the Supreme Court, to the Judges constituting the Court of Quarter Sessions in and for the County of Essex, as is said, manifest error hath intervened to the great damage of the said Aaron M. Dichter, as from his complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Aaron M. Dichter, do command you that if judgment be given, then you send distinctly and openly under your seal, the entire record, proceedings and indictment aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof, on the twenty-fifth day of March instant, and this writ, and that the record and proceedings aforesaid being inspected we may cause to be further done what of right and according to law ought to be done.

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WITNESS, EDWIN ROBERT WALKER, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the eighth day of March, in the year of our Lord, One Thousand Nine Hundred and Twenty.

THOS. F. MARTIN,
Clerk.

40

EDWARD SCHOEN,
Attorney.

Return to Writ.

RETURN.

Filed April 10, 1920.

The answer of the Justices of the Supreme Court of the State
10 of New Jersey, within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said state, in a certain schedule to this writ annexed, as within we are commanded.

WILLIAM S. GUMMERE (L. S.)
C. J.

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WRIT OF ERROR.

Filed.

New Jersey Supreme Court

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NEW JERSEY, SS.

The State of New Jersey, to our Judges of our Court of Oyer and Terminer, of the County of Essex, constituting the Court of General Quarter Sessions, in and for said County, GREETING:

Because in the record and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey, against one AARON M. DICHTER for receiving stolen goods, in the City of Newark, in the said County of Essex, found in our Court of Oyer and Terminer and in and for said County heard and determined, manifest error hath intervened to the great damage of him, the said AARON M. DICHTER, as for his complaint we have received information, we being willing in that behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said AARON M. DICHTER, do command you that if judgment be thereupon given that then you do send the record and proceedings aforesaid, together with all things touching and concerning the same, to us, under your seal, distinctly and openly, and this writ, so that we may have them before our Supreme Court of Judicature, at Trenton, on the twelfth day of April next, that inspecting the records and proceedings aforesaid, we may further do thereupon for correcting the error that which of right and according to law, shall be fit to be done.

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WITNESS, WILLIAM S. GUMMERE, Chief Justice of our said Supreme Court, at Trenton, the Twenty-fourth day of March, in the year of our Lord Nineteen Hundred and Nineteen.

ENOCH L. JOHNSON,
Clerk.

40

BLATT & LESSER,
Attorneys.

NATHAN ERLICH,
Of Counsel.

Indictment.

Presented in open court this 25th day of March, A. D. 1919.

H. V. OSBORNE,
Judge.

10

RETURN.

STATE OF NEW JERSEY
COUNTY OF ESSEX } *ss:*

I, Harry V. Osborne, Judge of the Court of Quarter Sessions in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the judgment record and proceedings, together with the entire record of the proceedings had at the trial, and
20 all things touching and concerning the same, as by the within writ to me directed, I am commanded.

In witness whereof, I have hereunto set my hand and
(L. S.) seal of said Court at Newark, N. J., this 12th day of April, A. D., 1919.

H. V. OSBORNE,
Judge.

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INDICTMENT.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } *ss.*

Be it remembered that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the third Tuesday of September, in the year of our Lord, one thousand nine hundred and eighteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer
40 and Terminer, in and for the County of Essex, New Jersey, by the oath of Halsey M. Larter, Philip Lindeman, Fred J. Ogden, Chas. S. Wood, Dr. F. Edsall Riley, Robert H. Baxter, Harry T. Wolf, Samuel Gray, Lyndon E. Stoutenburgh, E. W. Soleau, Montrose D. Hesse, Charles H. Graessle, Emil C. Mertz, George

W. Foster, Eugene B. Hedden, Sol Berla, H. H. Caruso, John M. Judge, Samuel H. Levy, Raymond C. Swain, William Bittles, Wm. H. DeMott, Herbert H. Peters (Rev.), good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit: 10

Essex County, to wit:

The Grand Inquest for the State of New Jersey, and for the body of the County of Essex upon their oath.

Present that Aaron Dichter, late of the City of Newark, in the said County of Essex, on the seventh day of September, in the year of our Lord one thousand nine hundred and seventeen, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this Court, one thousand 20 pounds of rubber bands, each pound of the value of one dollar and twenty cents, twenty-five gross of erasers, each gross of the value of two dollars, forty-five gross of lead pencils, each gross of the value of eight dollars, in all of the value of twelve hundred and fifty-three dollars and sixty cents of the goods and chattels of Alexander von Faber Castell and Ottilie von Faber Castell then and there being found, unlawfully did steal, take and carry away, 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. 30

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that the said Aaron Dichter, on the seventh day of September, in the year of our Lord one thousand nine hundred and seventeen, in the city and county aforesaid, and within the jurisdiction aforesaid, one thousand pounds of rubber bands, each pound of the value of one dollar and twenty cents, twenty-five gross of erasers, each gross of the value of two dollars, forty-five gross of lead pencils, each gross of the value of eight dollars, in all of the value of twelve hundred and fifty-three dollars and sixty cents of the goods and chattels of 40 Alexander von Faber Castell and Ottilie von Faber Castell before then feloniously stolen, taken and carried away, unlawfully and feloniously did receive and have he the said Aaron Dichter, then and there well knowing the said goods and chat-

Plea.

tels to have been feloniously stolen, taken and carried away, 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.

J. H. HARRISON,
10 *Prosecutor of the Pleas.*

On the thirteenth day of November, A. D., 1919, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of General Quarter Sessions, in and for the said County of Essex, and then and there the said indictment was duly delivered and duly filed by the clerk of said Court and an entry of such order and delivery and filing was there and then
20 made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

PLEA.

And afterwards, that is to say, on the twenty-seventh day of November, A. D., 1918, at the Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable Harry V. Osborne, presiding Judge of the Court of Common
30 Pleas, Aaron Dichter in the custody of John R. Flavell, Sheriff of the County of Essex aforesaid, and the said Aaron Dichter being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the County, &c., and J. Henry Harrison, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

40 Therefore, let the jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for the County of Essex, on the fourth day of December, A. D., 1918, then next ensuing, twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex

aforesaid, above the age of twenty-one years and under the age of sixty-five, by whom the truth of the matter may be better known and who are not of kin to the said Aaron Dichter to recognize upon their oath whether the said Aaron Dichter is Guilty of the premises in the said indictment specified or Not Guilty because the said J. Henry Harrison, Esq., Prosecutor, &c., as the said Aaron Dichter puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And now, that is to say, the sixteenth day of December, nineteen hundred and eighteen, to which date the trial of said issue was postponed, at the same Court of Quarter Sessions holden before the Honorable Harry V. Osborne, Judge of the Court of Common Pleas, comes the said J. Henry Harrison, who prosecutes as aforesaid, and the said Aaron Dichter, and the jury of whom mention is before made, and by the said John R. Flavell, Sheriff of the County of Essex, for this purpose empanelled and returned, to wit: After the following number of challenges were exhausted, By the State 2, by the defendant 2, Jacob Stoppe, Arthur Crater, George W. Otis, John Wright, Frederick C. Rein, LeRoy Leeds, William D. Hudson, Frank H. Stevens, Leroy M. La Vake, William S. Campbell, Robert B. Stoutenburgh, George B. Simpson, who being called, were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the seventeenth day of December, nineteen hundred and eighteen, when the jury returned into Court do say upon their oath they cannot agree upon a Verdict, and so they say all and thereupon the jury was discharged and a new trial ordered by the Court on motion of J. Henry Harrison, the Prosecutor of the State.

And now on this day, that is to say on this seventeenth day of March, nineteen hundred and eighteen, Therefore, let a jury thereupon come before the Court of Quarter Sessions to be holden at Newark in and for the County of Essex on the seventeenth day of March, nineteen hundred and nineteen on which day a new trial was commended, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known

and who are not of kin to the said Aaron Dichter to recognize upon their oath whether the said Aaron Dichter is guilty of the premises in the said indictment specified or Not Guilty because the said J. Henry Harrison, Esq., Prosecutor, &c., as the said Aaron Dichter puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

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And now, that is to say, the seventeenth day of March, nineteen hundred and nineteen, at the same Court of General Quarter Sessions holden before the Honorable George K. Large, Judge of the Court of Common Pleas, comes the said J. Henry Harrison, who prosecutes as aforesaid, and the jury of whom mention is before made, and by the said John R. Flavell, Sheriff of the County of Essex for this purpose empanelled and returned to wit: After the following number of challenges were exhausted, By the State 4, by the defendant 5, Charles B. Hudson, Joseph D. Holmes, William D. Coburn, Frederick A. Morey, James N. Jones, Ernest G. Randel, John C. Bowely, John J. Collins, Gregory A. McCormick, Matthias O. Dickerson, Lawrence Benson, Thomas A. Kelly, who being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the twenty-first day of March, nineteen hundred and nineteen, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath they find the said defendant Guilty of Receiving, and so they say all.

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Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is on this twenty-first day of March, nineteen hundred and nineteen, Ordered and adjudged that the said Aaron Dichter be committed to the County Penitentiary of this County for a term of one year at hard labor and pay a fine of one thousand dollars upon this conviction and stand committed until the said fine and costs are paid, which said costs are taxed by the Clerk at the sum of one hundred and twenty dollars and ninety-five cents and the defendant be in mercy, etc.

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Essex County Court of Common Pleas

STATE OF NEW JERSEY

vs.

AARON DICHTER.

10

Transcript of testimony taken on the nineteenth day of March, nineteen hundred and nineteen, before his Honor, George K. Large, Judge of the above-mentioned court, at the Court House, Newark, New Jersey.

Appearances:

John A. Bernhard, Esq., prosecuting attorney.

David Yontiff, Esq., and Louis B. Lesser, Esq., representing defendant. 20

HENRY FERA, JR., being duly sworn according to law, on behalf of the State testified as follows:

Direct examination by Mr. Bernhard.

Q Where do you reside, sir? A New York City.

Q What is your business? A Manager of A. W. Faber.

Q And where is their place of business? A Corner of Dickerson and Hecker street, city of Newark. 30

Q How long have you been manager of their plant here in Newark? A I have been sole manager since 1911.

Q What were duties as manager, Mr. Fera? A General supervision of the business.

Q What product does Faber manufacture at this Newark plant? A Rubber bands and rubber erasers.

Q Do they deal in any other goods? A They deal in lead pencils.

Q Whose lead pencils? A Their lead pencils, which are made in Europe. 40

Q Through their Newark manufactory? A The Newark manufactory was a sole agency for the European factory.

Q And do you know whether or not on or about the seventh day of September of last year, they had any of those pencils here? A Yes, sir, they did.

Q Do you think you would be able to recognize some of the product of the paper company if I showed it to you? A Yes.

Q Is there any distinguishing way of recognizing these elastic bands as being the product of the Faber Company? A Yes, there is.

Q I show you a box of assorted elastic bands and ask you whether or not you can recognize the manufacture of them? A Yes, they are our bands.

Q Will you tell the Court and jury, please, the basis for that statement? A In the first place, the way the bands are seamed; we seam them in a different way from any other manufactory, and secondly the general appearance of the bands, it is different from other bands.

Q Then you say that they are your product, do you? A Positively; yes, sir.

Q The box that I show you seemed to be assorted; what have you to say as to that? A Why, I believe they must have been assorted after they were taken out of our plant.

Q Are they in that shape down at your plant? A No; we keep each size separate.

Q I show you another pasteboard box of bands, red and white, and ask you whether or not you recognize these as your manufacture? A Yes; they are.

Q And you make that statement upon the same basis as you made the other? A Yes.

Q Recognition? A The seam here is all improved and the general appearance.

Q The seam which you speak of; I notice you pointed to the side of the band; is that right? A No, where the band is joined together.

Q That is the distinguishing mark, is it, sir? A That is a distinguishing mark, the way it is joined.

Q Then you say that they were manufactured by your company, do you? A Yes, they were manufactured by us.

Q I show you a smaller pasteboard box containing fairly heavy bands, red onees and a lot of smaller white ones, and ask you whether or not you can recognize them? A Yes.

Q They are also, are they— A Yes.

Q Faber bands? A Yes.

Q I show you an assorted lot of erasers, red, white and blue ones, and gray and white ones, and ask you to identify them if

you can, and tell the jury how you identify them. A These red, white and blue ones were washed in the manufacture, and the other ones, I can also tell by their general shape; ours are squarer here than those made by a competitor of the Eberhard.

Q How do you identify the two different kinds of pencils by the outside of the box; can you identify them that way? A Yes. 10

Q I show you those two boxes and I ask you whether or not they contain the same kind of pencils? A The same kind and the same degree of hardness, both of these.

Q Will you open one of those boxes, please; what kind of pencils are they? A These are the best grade we manufacture, A. W. Faber Castell pencils.

Q What color are they? A The polish is green and the lead is black.

Q Now, I notice some yellow ones are here? A Those were not manufactured by us; nevertheless we had them in our plant. 20

Q How long did you have those yellow ones in your plant? A We had a considerable stock there for a period of a year, for a certain customer.

Q Where were those pencils kept? A In our pencil stock room on the third floor.

Q Where were the rubber bands kept? A In various parts of the factory, mainly on the third floor.

Q Where were the erasers kept? A On the third floor.

Q On the eighth day of September, 1918, were you familiar with the market prices, value of rubber bands such as I have shown you here? A Yes, sir. 30

Q What was the market price of the smaller band?

Mr. Lesser. I object.

Mr. Bernhard. I withdraw that. I ask that the box to which I first called attention be marked for identification.

(Box marked S. 1 for identification.)

Q I ask you if you were familiar with the market prices of the bands in that box? A Yes, sir.

Q What was the market price of these bands to which I called your attention, on September 8th, 1918? A Packed in bulk, one dollar and twenty cents a pound. 40

Q What do you mean by "packed in bulk"? A As we sold them to a customer; they are packed in one pound boxes, and

we sold thousands of pounds of that kind at one dollar and thirty cents, and packed in boxes such as those boxes there or in our big baskets or cases, they had a value of one dollar and twenty cents.

Q In what cases do you keep them down in the factory? A In both; it is packed in pound boxes and in bulk.

10 Q And in the bulk shape they were worth what? A One dollar and twenty cents a pound.

Q How about the smaller ones? A Price the same by size; we sold thousands of pounds of all kinds for a dollar twenty.

Q Was that S. 2 for identification? A Yes.

Q The same thing for S. 3? A Yes.

Q What was the market value on September 18th, 1918, of these erasers? A They were various sizes; the average value of that, without imprint and not packed in boxes, was two dollars a gross, the average values; there were various sizes there; there 20 was some there the value might be four dollars a gross.

Q What was the market value of the yellow pencils which I will designate with the Court's permission, as S. 4? A The yellow pencils we didn't manufacture, and I have not got the exact cost, but I know the market value was at that time of about three dollars and sixty cents a gross of the yellow ones.

Q Now, then, I think you opened a box of green ones in the pasteboard boxes and tin boxes, and they contain the green pencils, don't they? A Yes.

Q Did you say this was the best quality manufactured? A 30 Yes.

Q What was the market value of these on that day? A Eight dollars a gross.

Q Sometime after that date, September 8, was your attention called to an occurrence that had happened in your factory? A Yes, sir.

Q Did you have charge of the employees? A Yes, sir.

Q Do you know a man named Gluthe? A Yes, sir.

Q The man that answers the name of Gluthe, do you recognize him? A Yes, sir.

40 Q Do you recall his first name? A Charles.

Q Last name is spelled Gluthe? A Yes.

Q Was he ever in your employ? A Yes.

Q When? A From June, 1918, to September 7th, 1918.

Q In what capacity? A As night watchman.

Q What were his duties as night watchman? A He had sole charge of the factory after the closing hour and made his rounds, punched up time on the watchman's clock.

Q What were the rounds of the factory? A Every hour they made a round.

Q Whereabouts? A On all the various floors. 10

Q How many floors? A Four floors.

Q From the top to the bottom, then? A From the top to the bottom; yes.

Q Describe, if you will, please, the place where these rubber bands and these pencils and erasers were kept. A They were kept in the largest room on the third floor, and, of course, in making his rounds he passed through that room.

Q Did he or didn't he have access to that room? A Yes, full access. 20

Q What were his hours of employment? A From five until seven, I think it is seven; our superintendent can tell you exactly.

Q Do you know whether or not during that period of time any goods were missing from the plant of the A. W. Faber Company? A Yes, sir.

Q How did you determine that, Mr. Fera? A Why, the first knowledge I had of these goods being missing was a telephone call we received, on, I believe, it was the sixth of September, from some one asking the market price of bands, and 30 when we told them the market price, they said our price was entirely too high, that bands could be purchased somewhere in Newark at a much lower price.

Q Did you make an investigation? A Yes, sir, we made an investigation.

Q What did you ascertain as the result of the investigation? A We ascertained that some of the goods were missing.

Q How did you ascertain that? A By looking over our stock and talking to the stock clerks.

Q And comparing it with the stock you had on hand? A 40 Yes.

Q What goods did you find were missing? A We found the pencils were missing.

Q How many gross?

Mr. Yontiff. I object to that; there may have been a good deal more missing than could be accounted for through the larceny of Mr. Gluthe.

The Court. The objection is overruled.

Mr. Yontiff. I ask for an exception.

10 *The Court.* Allowed.

Q How much did you find was missing; can you tell the Court and jury without first refreshing your recollection from the memorandum? A I believe we discovered that forty-eight gross of the Castell pencils were missing and of the other ones, I have not got the record of it.

Q The Castell pencils are the green ones? A Yes, sir.

Q Eight dollars a gross? A Yes.

Q How many erasers did you discover, if any, were missing?
20 A Well, my estimate would be very conservative.

Q What is your estimate? A About twenty-five gross.

Q I forgot to ask you in what shape were these erasers kept? A They were also kept assorted, each individual size, and each individual size in its own bin.

Q Therefore, they were in a bin, were they? A Yes.

Q Each size separate? A Yes.

Q And were they in that room that you have told us about? A The majority of them were in there, that is the majority of our eraser stock; there were some erasers in other parts of the
30 building at that time.

Q Did you make a record or investigate as to whether or not any elastic bands had been missing? A Yes.

Q What did you discover as the result of your investigation? A We found that bands were missing.

Q How much? A Well, we couldn't ascertain exactly, but I would be very conservative when we say one thousand pounds.

Q And you say that as the result of your investigation? A Yes.

Q And comparison with your sales slips of the stock? A
40 Yes.

Q What did you do? A After receiving this telephone message, two gentlemen came in to see us the next day, but I wasn't present at the time they came in; I can only tell you from hearsay.

Q That will not do, I am sorry to say. Can you tell us just whom did they see, if you know? A They talked to our superintendent, Mr. Berkeley, who is here.

Q What further, personally, did you do? A I talked to Mr. Berkeley when I came to the office in the afternoon.

Q Did you see anybody after that talk with Mr. Berkeley; did you see any person? A No, excepting our office force and the various stock clerks with whom I took the matter up. 10

Q Then within what time from the time you received a telephone message, did you make this, and complete this calculation that you have just given to the Court and jury? A I think that was all done the same day.

Q Now, then, at that time, Mr. Fera, do you know whether or not Mr. Gluthe was still in your employ? A Yes, he was in our employ until the police arrested him.

Q When was that? A I believe that was on the eighth of September. 20

Q Now, then, before he ceased being in your employ, did did you have a talk with him or see him? A I had a talk with him and he confessed to me that he had stolen the goods, and he told me just how he had stolen the goods and where he had put them, and told me he had taken it to Dichter's place.

Mr. Lesser. I object to that.

The Court. Sustain the objection; the jury will disregard as to where he took them.

30

Q That's all.

Cross examination by Mr. Yontiff.

Q Mr. Fera, did your firm ever sell elastic bands in this condition (indicating)? A Well, as you have them in your hands?

Q I don't mean in the condition that these individual elastic bands are, but I mean as this box shows them to be assorted? A We have only sold defective bands in that condition, job lots.

Q Are these bands imperfect, or are they in perfect condition? A They were perfect bands.

40

Q Then you say you were not in the habit of selling bands in perfect condition assorted as these are? A Assorted bands only leave our place in our boxes with our own trademark.

Q They are sorted but not assorted? A They are sorted and also assorted.

Q But you didn't put them up for the trade in this way? A No.

Q Then there is no marked price with your firm for elastic bands in this condition, is there? A There is a marked price as they lay in our bins in that condition.

10 Q That is specially made with each customer, isn't it? A No, we have a price for every stage of manufacture, and when they reach that stage, the value is a dollar twenty.

Q But do you put the bands up in boxes, if they are all in good condition, in mixed sizes, such as these are? A Not as these are, but we have our own special assortments, containing a certain number of each size.

Q There will be a certain number of each size, a quantity of each size? A It depends on how the customer desires the bands; if a man wants all thread bands, they would be assorted 20 that way; we had assorted bands to suit the customer; we have what is known as a general assortment that contains wider bands than this, but if a man wants thread bands, we give him those just as they are in the boxes.

Q Have you any bins in the factory in which you could go and show us an assortment such as this? A Not in a bin, they are assorted on a table in the various sizes and taken out of the bins.

Q You would not be able to say that bands assorted as these are, or unassorted, would have a definite market price? A The 30 same price as the other; they cost identically the same to manufacture whether they are assorted or in individual sizes.

Q You mean, then, if you would sell them this way you would charge one dollar and twenty cents? A Yes, just the same as if they were in individual sizes.

Q Mr. Fera, you say there was a telephone call regarding the prices that you were getting for elastic bands, erasers, and pencils; do you know who called? A Why, I don't recall the call; our bookkeeper received it, and he told me that the man at the other end of the wire said that he was a man by the 40 name of Migatz, and subsequent evidence proved that apparently it was not Mr. Migatz.

Q Did you at any time have a talk with your Mr. Berkeley in regard to the missing goods? A Why, yes.

Q Was that before the investigation? A Yes, sir.

Q What did Mr. Berkeley tell you? A Regarding what particular point?

Q As to his having found that there was a shortage? A I didn't only talk the matter over with Mr. Berkeley, but also with the man who has charge of the rubber bands and eraser stock, and Mr. Berkeley, and, in fact, the whole organization was investigating. 10

Q Did Mr. Berkeley tell you that Doctor Warner and Mr. Thompson had come to him to get a price on these goods?

Mr. Bernhard. I object; that evidence is illegal; it is probably prejudicial to the defendant; I do not assume that it is my business to interrupt on the defendant's behalf, but it is a conversation which the State could not bring out.

The Court. They are not objecting to it. 20

Mr. Bernhard. All right, I withdraw.

A I don't remember anybody by the name of Mr. Warner, Doctor Warshawsky, I think it was, and Doctor Thompson, he told me they had called there and had a conversation with him, the details I do not recall.

Q That's all.

Mr. Bernhard. I now offer these goods in evidence and they have been marked for identification.

Mr. Yontiff. No objection. 30

The Court. They will be admitted.

CHARLES GLUTHE, being duly sworn according to law, on behalf of the State, testified as follows:

Direct examination by Mr. Bernhard.

Q Mr. Gluthe, how old are you? A Forty-nine.

Q Married or single? A Married.

Q Up to the time that you became a watchman for the Faber Company, what had been your business? A I was butcher and watchman. 40

Q Did you begin to work for the Faber Company? A Yes.

Q When? A Through last summer.

Q What part of last summer? A May, June and July, only three and a half months.

Q When, last summer, do you remember the month, what month? A May, June, July, August.

Q When did you stop working for the Faber Company? A When I got arrested.

Q Do you remember the day that you were arrested? A It
10 was September.

Q What day of the week in September were you arrested? A I don't remember, it is about the fifteenth, between the fifteenth and the seventeenth, something like that.

Q Where did you live at that time? A West street.

Q What number West street? A A hundred and thirty-three.

Q What were your duties at the Faber Company? A What?

Q What did you do, Mr. Gluthe? A Night watchman.

Q And what did you do as night watchman, there? A I
20 attended to the boiler and watched the place.

Q And in watching the place, did you have to make rounds from one floor to another? A Every hour.

Q Watching the place, could you get into any part of the Faber Company building? A From the bottom floor to the top floor, all over.

Q Do you know a man named Dichter? A Dichter?

Q Yes. A There he is right there (indicating).

Q When did you first know him? A I know him before when I buy some stuff, I didn't know that he was the boss or
30 not, I didn't know that.

Q Where did you first see him? A I cannot tell you.

Q Where was he when you say he bought the stuff the first time? A I bought some stuff for my family.

Q What kind of stuff did you buy from him for your family? A I don't know, some medicine.

Q Where was he when you bought the medicine? A From him.

Q What kind of a store did he have? A A drugstore.

Q Where was the drugstore? A Springfield avenue.

40 Q What number Springfield avenue? A I don't know the number.

Q How far up Springfield avenue? A Near West street, between West and Howard street.

Q When did you first buy medicine from Dichter at the drugstore on Springfield avenue? A I didn't get you that time.

Mr. Bernhard. I withdraw that.

Q At the time that you bought the medicine, did you have any talk with him? A No.

Q Did you ever go back to his place after the time you bought the medicine? A I got back and I had some stuff in my pocket and I asked him— 10

Q What stuff did you have in your pocket when you went back and asked him? A Small package rubbers.

Q Which kind of rubbers did you have in your pocket? A Small ones.

Q These that I show you from S. 2? A Yes, they are just like that.

Q How many of these did you have in your pocket? A I don't know, a small package.

Q Loose or in a package? A In a small package. 20

Q What kind of a package, a pasteboard package? A Like you buy a pound of sugar or something like that, small stuff.

Q And when you went into his store with this small package of small erasers, did you see Dichter? A I seen him, yes.

Q What time of day was it when you saw him, when you had these elastics? A In the afternoon.

Q Whereabouts in the store did you see him? A Inside of the store.

Q How did you happen to go into the store with these elastics? A I asked him if he needed some of that stuff.

Q Showing him the elastics? A Yes. 30

Q What did he say? A "I take that from you, if you want to give it to me."

Q He said, "I take that from you, if you want to give it to me?" A Yes.

Q Did you give it to him? A Yes, I give it to him.

Q Was there any further talk about it? A Then he asked me if I had some more, if I had some, if I couldn't get some of that stuff.

Q And you said what? A I said, "I get you all you want."

Q What did he say when you said "I will get you all you want?" A He said, "Bring me all you can get." 40

Q Now, Mr. Gluthe, do you remember what month it was last summer when you had this talk with him, the first time, about these elastics? A What month?

Q Yes. A It was the middle of the summer, it was July, I guess.

Q Perhaps this would be better, could you tell us how long you had been working at the Faber plant when you had the talk with him about the elastics? A No, not the first time.

10 Q When you showed him these elastics, had you ever taken, before that time, anything from the Faber plant? A No, that was the first time.

Q When he told you to bring some more, what did you say? A I say, "I bring you."

Q Did you tell him when you would bring them to him? A He told me, "If you can bring me some, bring me some." I brought him.

Q Did you bring him any? A I bring him any.

Q How long after the afternoon when you had this afternoon
20 talk did you see him; did you talk to him some more? A Next morning.

Q What time the next morning? A Eight o'clock.

Q How did you know what time to go to his store at eight o'clock the next morning? A He told me he make it open himself at eight o'clock in the morning.

Q What did you take to him the next morning at eight o'clock? A Well, when he opened the store I said, "Here is some rubbers," and he said, "Well, all right, I give you fifty cents a pound," and then after a while he give me a quarter a pound.

30 Q On the morning at eight o'clock when you took some rubbers to him, he paid you how much a pound? A Fifty cents a pound.

Q How many pounds did you take to him? Q About five or six pounds, something like that.

Q What kind of elastics did you take to him? A Them small ones.

Q Where did you get them from? A I get them from Faber's place; I steal them.

Q The place where you worked? A Yes.

40 Q Where did you steal them; in what part of the building? A Second story, second building.

Q When did you steal them? A The night when I had time.

Q How did you carry them away? A I took them in a small box.

Q Where did you take the box after you left the factory? A When I go from the car I put them in the saloon on the corner of West street and Springfield avenue.

Q And after you left the box in the saloon at West street and Springfield avenue, where did you go? A I had my drink and then I go home for breakfast.

Q After you had your breakfast, what did you do? A I go back and get it and brought it to him. 10

Q What time did you get to his place? A Eight o'clock.

Q What time did you stop work on that morning? A Six o'clock.

Q Can you give the Court and the Jury some idea of the size of the package in which you carried the elastics home on that morning that you reached there at eight o'clock? A About seventeen and a half or eighteen inches.

Q About that size, was it? A Yes. 20

Q About seventeen or eighteen inches, about that, was it? A Yes.

Q In what were they wrapped, in any paper or pasteboard box? A No, in pasteboard box and I had put the rubbers right in.

Q Dumped the rubbers right in? A Yes.

Q And is that the shape in which you took them to Dichter's store? A Yes.

Q When you got there, whom did you see? A Mr. Dichter.

Q Anybody else in the store except Dichter? A I don't know whether he is working every day or not. 30

Q You had the talk with Dichter, did you? A Yes, I had the talk with Dichter.

Q How much money did he pay you that morning? A I couldn't tell that for sure.

Q How did you agree upon fifty cents a pound? A Fifty cents a pound he give me.

Q How did you reach that figure? A Oh, now, listen, I make a mistake, the first morning I guess he was in his house and I have to carry them over in his house and show it to him, that was the first morning. 40

Q That was the first morning, was it? A Yes, I make a mistake, now, I just remember.

Q Now, where was his house? A The first street you go, one block, then downtown to the Court House and the boy sent

the boxes upstairs and showed it to him, and said, "I come right after."

Q And did he come on after? A Yes.

Q Where did you meet him? A I met him in the store, then.

10 Q How did you arrange at fifty cents a pound? A Fifty cents a pound he paid me then.

Q How did you agree upon a price? A Well, he told me, "How much you want for it, fifty cents a pound"?

Q He said that he would pay you fifty cents a pound?

Mr. Yontiff. If your Honor please, that was not the testimony.

Q Who said fifty cents a pound? A He did.

Q Then it was Dichter who said fifty cents a pound and 20 not you? A Not me.

Q Did you go back at any time after that? A Not the same day.

Q When did you go back? A A couple of days after.

Q How did you happen to come back a couple of days after? A He told me, "If you can get more, bring me all you can."

Q Did you take him any more? A Yes.

Q Two days after? A Two days after.

Q What did you take him two days after the first time? A Big ones and small ones, mixed up rubbers.

30 Q Big ones and small ones like this (indicating) in this box marked S. 1? A Yes, like that.

Q Like this? A Some bigger ones.

Q Bigger ones? A Yes, like that.

Q Like that big red one? A Yes.

Q How many did you take the second time? A I cannot remember that, sometimes I brought a box like that, sometimes two small boxes.

Q Where did you get them from? A I got it from the same factory.

40 Q What do you mean you got it from the factory? A Where I was watchman.

Q Stole it? A I stole that, yes.

Q When you went the second time, who did you see? A Dichter.

Q Do you remember the time of day that you saw him? A In the morning.

Q And how did you get the elastics to him from the factory? A The same like the first time.

Q Took them from the factory in these packages and left them in the saloon? A Yes, went home, got my breakfast and come back again. 10

Q Now, then, upon the second occasion, you found Dichter at the store, did you? A Yes.

Q What did you give him, what did you hand him? A Rubbers.

Q Did you get anything for them? A No, only rubbers.

Q Yes, but did he pay you anything? A He paid me.

Q How much did he pay you? A I cannot tell that.

Q How much a pound did he pay you? A After a while he paid me a quarter a pound. 20

Q After a while he paid you a quarter a pound? A Yes.

Q But I am only talking about the second time you were there, do you remember how much he paid you at that time? A He paid me fifty cents then, then he started kicking, he wanted it cheaper.

Q Upon the second occasion he started to kick, did he? A Yes.

Q What did he say? A He said, "I get it cheaper, if you want to give it to me for a quarter," and I said, "All right," he said, "All right". 30

Q Did you ever go back after the second time? A I went back.

Q When did you go back the third time? A The first week I was there, those two times, the next week.

Q How many times during the second week? A I don't know, about three times a week.

Q Three times a week for how long a period of time? A A month and a half.

Q Is that right? A Something like a month and a half.

Q So that for six weeks, as I understand you, you went to Dichter's store with this Faber Company goods, three times a week or eighteen times in all? A Well, over a dozen or a dozen and a half, something like that. 40

Q How did you happen to go those many times to Dichter's store, Mr. Gluthe, how did you happen to come back from

time to time? A Well, he couldn't get enough, he bothered me all the time, "Get me more, get me more".

Q Whom do you mean bothered you all the time? A He wants more.

Q Who? A Dichter.

10 Q How do you know? A He asked me.

Q What did he say? A "Can you bring me more, I got a little wagon, couldn't you carry them with you, make a little wagon full".

Q When did he tell you that he had a little wagon, when, what time? A When I brought him stuff.

Q I know, but after you had been there how many times did he first tell you that? A A couple of times.

Q Did you take a wagon? A No.

Q Did he show you the wagon? A Yes.

20 Q What kind of a wagon did he show you? A A little wagon (indicating four feet) little cart.

Q How many wheels on it? A Four wheels.

Q Did you ever see it? A No.

Q Did you ever take him anything else instead of elastic bands? A He asked me if I had some pencils.

Q Who asked you that? A Mr. Dichter.

Q When did he ask you? A In the middle, when I brought him the stuff.

Q What did you tell him? A I said, "I give you some

30 pencils.

Q Did you? A I did.

Q Where did you get them from? A I got them from the same place where I got the rubbers.

Q Stole them? A Stole them.

Q Are these (indicating) some of the pencils that you took to him? A Yes.

Q In these boxes? A Yes.

Q Mr. Gluthe, can you tell us when you began taking pencils to him? A After I was half a dozen times in the

40 store.

Q Did you ever take anything else to him? A Them erasers.

Q How did you happen to take these erasers? A I only brought around one box full.

Q Does this look like the box you brought him? A No, bigger box.

Q Do you know how many erasers were in the box you brought him? A A thousand box.

Q Where did you get them from? A Stole them.

Q Stole them from Faber Company? A Yes. 10

Q How many pencils did you take to him, Mr. Gluthe? A About three or four times, I give him eight or nine boxes, like that.

Q These pencils that I show you here (indicating S. 5) were packed in pasteboard boxes, weren't they? A Yes, the same like that.

Q How many of these pasteboard boxes did you take him altogether, do you think?

Mr. Lesser. I object to what he thinks, the testimony should be to what he knows. 20

Q To the best of your recollection, how many did you take? A Twenty-five or thirty.

The Court. Do you mean the small boxes or pasteboard boxes?

Witness. Twenty-five or thirty.

The Court. Twenty-five or thirty of these pasteboard boxes.

Witness. Yes. 30

The Court. Do you mean like this (indicating) or like they are packed in?

Witness. No, that kind (indicating Exhibit 5).

Q So you took him three different kinds of product from the Faber Company, pencils, elastics and erasers, is that right? A Erasers only one time.

Q Did you get anything for the erasers? A He gave me, I think, seventy-five cents or something like that.

Q Seventy-five cents for what? A For the whole shooting match. 40

Q So that you took in one thousand erasers and you got seventy-five cents for it? A I think so, I am not sure, I think there was, he would not give me nothing at first.

Q Didn't want to give you anything? A No.

Q How much did you get for the pencils, if anything? A He gave me seventy-five cents a hundred.

Q Seventy-five cents for a hundred pencils? A Yes.

Q Do you know how many hundred pencils you took to him altogether, which made thirty boxes? A Wait a minute; I got to figure you that out; there are siz dozen in a box, seventy-two in one box, about two thousand pencils.

Q About two thousand pencils? A Yes.

Q Now, how did you agree upon the price about these pencils? A Well, he counted five dozen, see, and he had five dozen, there was a box and a half like that, he paid me seventy-five cents.

Q That would be seventy-five cents a hundred, wouldn't it, Mr. Gluthe? A Seventy-five cents a hundred.

Q Can you tell us how many times you went to Dichter's store carrying pencils? A I never carried pencils alone without having rubbers.

Q So that you always had rubbers every time you went there? A A couple of pencils and a couple of rubbers.

Q Can you tell us, even though you did carry rubbers, how many times you carried pencils? A No, I cannot tell you that.

Q What was the last hundred that you took to his store, pencils, erasers or rubbers? A It was pencils and rubbers.

Q When was the last visit you made to his store before you were arrested? A In the middle of the week, Wednesday or Thursday.

Q How many days before? A Before I got arrested?

Q Yes. A Two days before, I suppose.

Q Around the eighteen times that you went to Dichter's store did you always see Dichter? A Not always, once in a while he was out.

Q How many times during the six weeks and a half that you went to his store did you see Dichter? A Maybe I didn't see him two or three times, every time I see him though, all the time.

Q All except two or three times, is that correct? A Yes. Yes.

Q Did you ever during any of the time that you went there, see any of these goods in his store? A I buy once in a while, I buy some stuff, that is all.

Q What I want to find out from you is, after you had been taking the pencils and the erasers and the rubber bands, if you saw any of them in Dichter's store? A I sold some other people, you mean?

Q What did Dichter do with these things after you took them to him, do you know? A He put them away.

Q Whereabouts did he put them? A I didn't know whereabouts he put them. 10

Q Did you see any of them? A Sometimes he had one box there left in the back room.

Q When you were talking to Dichter, Mr. Gluthe, where did you usually talk to him? A In the middle of the store.

Q In the store? A Yes.

Q You pleaded guilty? A I pleaded guilty.

Q To stealing these goods from Faber Company, didn't you, Mr. Gluthe? A Yes.

Q When? A I pleaded guilty. 20

Q Yes, when? A Last summer.

Q Did you ever have any conversation with Dichter about where these goods came from? A He never asked me before, after a while he said, when he gets the pencils, he see the name on them, and he asked me, "That is Faber's factory you get them pencils from?" I said, "Yes," and that is all right, it is Faber's, so if he is the kind of man who has got a little sense, he would ask me right away, "What is this?"

> *The Court.* That last part of the answer may be stricken out and the Jury will disregard it. 30

Q Did you ever talk to Dichter about having any of these things in his store? A He had in behind the window.

Q How do you know? A I passed here when I go down to the shop and I see them behind the window.

Q What did you do when you saw them behind the window? A I went down to my shop.

Q What did you do when you went down to your shop? A I telephoned up to him, when he asked me who this is, I said, "Charlie," I said, "Why put that stuff behind the window, do you want to get into trouble?" He said, "All right, what's the matter with that stuff, why can't I leave it there?" I said, "You give it away for nothing." He said, "Never mind, I will fix that, bring me more tomorrow morning;" I 40

said, "I will not give you nothing until you put them out of the window." The next day I go there, he put them out of the window.

Q So that after you had telephoned him, I understand they had been removed from the window? A Yes.

Q After that did you still continue to take him stuff? A He
10 took them out.

Q Did you take him any more goods after that? A No, not any more.

Q How long after that was it you were arrested? A The next day.

Q You used the words "giving away", didn't you, didn't you just say something about giving away? A I forget.

Q What was Dichter doing with these things in his window? A He put it behind the window and when people buy this stuff for a quarter or something like that, he want to give
20 them all the erasers away.

Mr. Lesser. I object to that.

Q Was there any sign on these goods in the window? A There was a sign there.

Q What did the sign say? A If a man buys, I don't know how much, so and so much stuff, he wants to give erasers with that free.

Q How much did Dichter pay you altogether, Mr. Gluthe for everything that you took to his place? A About fifty,
30 sixty dollars, seventy-five, something like that.

Q And what is the most money he ever gave you at any one time? A Seven dollars, eight dollars.

Q What is the smallest amount he ever gave you at any one time? A Two dollars.

Q So that the payments to you ran from two to five or six or seven dollars, is that right? A Yes.

Q Did Dichter ever ask you where you got these things from? A No, not the first time.

Q Did he ever at any time ask you where you got them
40 from? A When I brought the pencils, he see the name on the pencils, and he said, "They came from Faber's?"

Q Did he ask you where Faber's was? A No.

Q Did you tell him how you got them from Faber's? A No, I didn't do that.

Charles Gluthe, cross.

Q Did you ever get a receipt or did you ever give him a receipt for any money? A I did the first or the second time, I cannot make sure.

Q How much was that receipt for, Mr. Gluthe? A Five or seven dollars, something like that.

Q And that receipt was for the first lot of elastic bands that you took to his place, is that correct? A Yes. 10

Mr. Lesser. If your Honor please, the exhibits in this case were left with the Jury at the first trial and we have received back everything excepting that receipt and it is a very material element, I would like the production of it, if possible.

Mr. Bernhard. So would I, I have not got it.

Cross examination by Mr. Lesser.

Q Mr. Gluthe, how long do you know Mr. Dichter? A I know him so long I sold him stuff. 20

Q And before that how long had you known him? A I seen him in the store, that's all.

Q How many times did you see him in the store before you sold him the goods? A I cannot tell you that.

Q Five or six times? A Yes, maybe.

Q You were a customer in his drug store, weren't you? A Once in a while I would come and buy some stuff.

Q And your wife came in and bought goods there, too, didn't she? A My wife sent me. 30

Q Yes? A I don't know, maybe she come in the store and maybe not.

Q Didn't your wife ever come in with you? A My wife was with me in his store?

Q Yes? A Never.

Q Do you remember ever telling Mr. Dichter before you sold him any goods that you were a fireman? A I told him that, yes.

Q Before you bought the goods? A I told him.

Q Do you remember telling him you shovelled fifteen tons of coal every night in a factory? A Yes, that was what I told him. 40

Q Do you remember showing him how strong you were? A Well, that has nothing to do with it.

Q Did you do that before this transaction? A No, sir, after, when I was friends with him.

Q You were friends with him before, weren't you? A No, sir.

Q The first sample of goods you brought to his place, who was there at the time that the sample that you gave to him, who was in his place besides you and Mr. Dichter when you brought him the sample? A Him.

Q And nobody else? A I don't know.

Q Wasn't his clerk there? A Oh, the working man?

Q Yes. A He was, well, he was sitting, he had nothing to do with that.

Q But he was in the shop? A Yes, in the store.

Q Where did you get the first rubber bands you gave him, those you made him a present of? A I had it in my pocket.

Q Where did you get it? A I took it from the place.

Q Did you steal it? A Yes.

Q And before you had anything to do with Mr. Dichter, you had already stolen some goods? A Yes.

Q How much had you stolen at that time? A Well, a pound.

Q That is all you had? A Small package.

Q Didn't you tell Mr. Dichter you had two hundred pounds of rubber bands in your house? A Yes, he asked me if I had some more and that was all.

Q You told him you had a room full, didn't you? A I had a house full.

Q A room in your house? A No.

Q Didn't you tell him you had some more at your house? A No, I said I got them home.

Q Do you remember the first time his asking you where you got the goods that you sold him? A He asked me? No.

Q And how you got it, didn't he ask you that? A No. he didn't ask me where I got them from.

Q What did you tell him about a bankruptcy, tell us that? A I didn't go for bankruptcy.

Q Didn't you tell him, didn't you tell Mr. Dichter before he bought any of your stuff, that you were working for a concern that owed you a lot of back salary and they went into bankruptcy and paid you with these goods? A A bankrupt firm, I told him I worked, the people was bankrupt.

Q And what else? A And they were paying me back salary and I got rubbers from them.

Q They owed you back salary and they gave you that stuff for it? A Yes.

Q Didn't you tell him that before he bought any goods? A No.

10

Q When did you tell him this? A When I had only rubbers, when he got the pencils, he knew where they came from.

Q When you brought in the pencils? A He knew where they came from.

Q Why didn't you tell the Court, when Mr. Bernhard asked you what you told him as to where you got it, why didn't you tell the Jury and Court about the bankruptcy story? A He asked me the first time where I got it from and I told him—

Mr. Lesser. I ask that that answer be stricken out as not responsive.

20

Q Why didn't you tell us before, when Mr. Bernhard asked you for the whole conversation between you and Mr. Dichter, why didn't you then tell us about a bankrupt concern? A Nobody asked me.

Q Aren't you here to tell all the truth? A I tell the truth.

Q Why didn't you tell it before? A I told the truth.

Q Why didn't you tell it before? A I did, nobody asked me where the stuff came from.

Q You told Mr. Dichter that these goods were given to you by a concern you worked for that went bankrupt and couldn't pay you your salary? A Yes, that is right.

30

Q That they owed you a lot of back salary? A Yes, that is right.

Q And that is how you explained you had so much goods? A Yes.

Q Did you ever tell Mr. Dichter that you stole these goods? A After these pencils—

Q Yes or no? A No.

Q Do you know this man, Mr. Stickel? A I saw him on the street.

40

Q Did you ever see him in Mr. Dichter's store? A I seen him in the street, that is all.

Q When you brought the goods once? A I don't remember that.

Q You don't remember whether you got some money on the day he was there, do you? A This man?

Q Yes. A He never handed me money.

Q No, he was there when Dichter handed you money, wasn't he? A I don't know, maybe he was there, I don't know.

Q It might have been, might it not? A I know him from
10 the street.

Q Will you say that you didn't see Mr. Stickle in Mr. Dichter's store one day when you brought the goods? A He was there when I brought the goods.

Q When you brought the goods to Mr. Dichter one day, will you say that Mr. Stickle was not there at one time? A He was not there at one time, I don't understand you.

Q Was Mr. Stickle ever in Mr. Dichter's drugstore when you came there with some goods, with rubber bands or pencils or erasers? A This first fellow, here?

20 Q Mr. Stickle? A I didn't see him, I know him on the street, he knows me, too.

Q Wasn't Mr. Stickle in the drugstore when you got two hundred and fifty or two hundred and fifty-five dollars from Mr. Dichter? A I got nothing, I didn't, if I had that money I had to pay my dentist to fix my teeth.

Q Do you remember testifying in this same case at the trial, do you remember that you testified on this same case tried before? A Yes, I state the truth, the same thing.

Q What was the price you told us that Mr. Dichter paid you
30 for rubber bands at the last trial, the first time? A The last time he paid me twenty-five cents a pound.

Q No, at the last trial you told us that he paid you the first time you brought rubber bands fifty cents a pound? A (Witness does not answer).

Q Are you positive of that? A Fifty cents.

Q Didn't you say forty cents? A Fifty, I said fifty before.

Q Didn't you say forty cents until I showed you a receipt and then said you made a mistake? A Showed me a receipt, I don't know, it is a year ago, I don't know that no more.

40 Q As a matter of fact, you don't know how much you got for the first package, fifty or forty, do you? A For the first package?

Q For the first batch, I am speaking of the time you sold him fifteen pounds of rubber bands? A The first time?

Charles Gluthe, cross.

Q Yes. A I don't know, between five or seven dollars.

Q But you don't know how much you got a pound, do you? A Fifty cents a pound.

Q Didn't you say at the last trial that you got forty cents a pound? A I never did.

Q You are positive? A Yes.

Q Do you know the gentleman who just came in? A I know this man from the street, that is all. 10

Q Did you ever have a talk with him? A I had a talk with him on the street.

Q Did you ever sell him rubber bands? A No, sir, only talked about the war, that is all.

Q Never spoke about rubber bands to Doctor Warner? A When I seen this man in the street, I told him about the war, that is all.

Q You never spoke to him about rubber bands? A No, sir, not with this man. 20

Q Do you know this man (indicating Migatz)? A I don't do I know of that man?

Q Did you ever see him before? A I don't know who he is.

Q Were you here during the whole of the last trial? A (Witness does not answer).

Q Weren't you here during the whole of the last trial? A (Witness does not answer).

Q Weren't you here during the whole of the last trial? A I was here.

Q Didn't you see that man? A Maybe I see him, but what do I know about that man? 30

Q Didn't he testify in the last trial? A He was for a witness.

Q Yes, was he the witness? A Maybe, it is a half year ago, now, I cannot remember that.

Q When was the last trial? A I don't know.

Q Wasn't it December of this year? A Before Christmas.

Q Right before Christmas? A Well, all right, before Christmas.

Q Well, is that a half year? A Well, they put me away, I got more in my head than that. 40

Q But can you remember that man? A No.

Q Can you remember me of the last trial? A I remember you.

Q I was there, wasn't I? A You, I never speak with this man, I never see him before.

Q Did you see him sitting in the witness stand at the last trial? A Maybe I seen him, I don't know.

Q Were you a witness in the last trial? A I was there, yes.

Q Do you know Mr. Silver? A The same as this man, I don't know him.

Q Wasn't he here at the last trial? A You got me, I don't know it.

Q Do you know Mr. Thompson? A I don't know this man, either, I see him, maybe, I did, maybe not.

Q Do you mean to say that all these men, if they were here in December and testified in a case where you were the witness and the chief witness, you would not remember them? A No, I would not remember that.

Q You don't remember them? A No, I cannot remember.

Q How do you remember so clearly how many times you came to Mr. Dichter's place? A Because I told him that—excuse me one second, if I talk with this man before, I know his face, then, I remember he was on the witness stand, this is the first time I see this man, I cannot remember that face right away.

Q Do you remember saying at the last trial that you sold Mr. Dichter goods four or five times or don't you? A That, after what?

Q Do you remember telling us in Court the last time that you sold Mr. Dichter goods four or five times and no more? A Four or five times?

Q Yes. A All of them?

Q Yes, altogether? A No, sir.

Q You didn't say that? A I never said that.

Q Didn't you tell that to your lawyer, to Mr. Bernhard's man? A No, altogether four or five times?

Q Yes. A No, two or three times a week.

Q You didn't tell that to Mr. Bernhard? A Three times a week, two or three times a week. I mean a week, that is what I said.

Q The last money you ever got on any occasion was seven dollars and fifty cents, that is the last he ever paid you at one time? A How much?

Charles Gluthe, cross.

Q The last Mr. Dichter ever paid you for goods at one time was either seven dollars or seven dollars and fifty cents, is that right? A Maybe nine, sometimes eight, five, four, two.

Q Maybe twenty? A Never.

Q Never as much as a hundred, he never gave you one hundred dollars at one time? A No, sir.

Q At one time? A What one time? 10

Q Yes. A I would not talk to you if I had a hundred dollars.

Q You had pleaded guilty of stealing these goods before the last trial, hadn't you, you already told the prosecutor that you had stolen these goods before the last trial, didn't you? A I don't get you, come over here, you know I ain't got no teeth, I don't hear you.

Q Did you or didn't you tell the Court that you stole these goods and pleaded guilty before the last trial, before you were a witness the last time? A I pleaded guilty, sure, what am I going to do? 20

Q Before that you had already pleaded guilty, hadn't you? A Yes.

Q Before the trial started? A Yes.

Q When were you sentenced? A Tenth of February.

Q That was after the last trial, was it? A Yes, guess so.

Q How long before the last trial that you pleaded guilty? A How long?

Q Yes. A Five and a half months. 30

Q Do you remember having an argument with your wife in Mr. Dichter's store as to who should get the money? A I asked my wife for a dollar, she gave me a dollar.

Q Didn't you and your wife come in Dichter's store one day when Dichter paid you sixteen dollars, and your wife took the money and gave you a dollar? A My wife was in the store.

Q Yes. A Never.

Q Didn't she have an argument with you in the store? A No, before his store.

Q In front of his store? A Not in the store, in front of the store. 40

Q You came out with money from Dichter? A No, he didn't hand me money at all.

Q What was the argument about? A It was nothing, I wanted to get a dollar from my wife, that's all.

Q What were you doing in Dichter's store that morning? A Nothing, I just passed there and I stopped in.

Q What were you doing in Dichter's store that morning? A Give him some rubber, some stuff.

Q You brought him some stuff? A Yes.

10 Q Didn't he pay you for it? A I don't know that, I guess he does; he paid me right away all the time.

Q What did you want a dollar from your wife for if he gave you some money? A That is my business.

Q What did you want a dollar from you wife for if he gave you some money? A Because I am spending money.

Q Didn't you have spending money from Dichter? A I gave that to my dentist.

Q Didn't you have that in your pocket when you asked your wife for it? A No, I had no money in my pocket.

20 Q And didn't you make a lot of noise in Mr. Dichter's store? A Not in the store.

Q Didn't he ask you and your wife not to make any disturbance in front of the store, that he didn't care who got the money? A My wife didn't go to the store; I wasn't in the store with the wife.

Q I direct your attention to a box of rubber bands, Exhibit S. 2, and ask you when you stole them were they all mixed together like this; where did you take them from? A From Faber.

30 Q From what part of Faber's plant did you take them? A Second story.

Q Did you take them as they are, all from one bin? A No, a couple from here and a couple from there, and a couple from there.

Q And then you threw them together in a box? A Yes.

Q And then you took the box to him? A No, I didn't take the box to him.

Q Where did you take the box? A I took the box in a saloon, I told you this morning, I tell you again, I put it in the

40 saloon, after I go home for my breakfast and then I bring it to him.

Q Where is this saloon? A The saloon?

Q Yes. A You hear that this morning.

Q Where is this saloon? A Corner of Springfield avenue and West street.

Q And where is Mr. Dichter's drugstore? A On the same side, at Springfield avenue.

Q How far away in blocks, how many blocks away? A Only three minutes' walk.

Q How many blocks away? A One block.

Q Between what streets is Mr. Dichter's drugstore? A There is the saloon, there is the butcher shop and then comes the store, the third house from the street is— 10

Q Is it the next store from Howard street? A Yes.

Q And Mr. Dichter's place is between Howard and Broom, isn't it? A Yes.

Q On the same side of the street as you left the rubber bands in the saloon? A Yes.

Q Who is the owner of that saloon? A I don't know who.

Q Is he here? A I don't know him.

Q How did you happen to leave the rubbers with him? A The bartender was there, I have nothing to do with it? 20

Q Is the bartender here? A If I seen him, maybe I know him.

Q Didn't you know him when you left the rubber bands there? A I brought the box in and I had my eye upon it, and then I went home to breakfast.

Q And you left the box there, and what did you say to the bartender? A I said nothing, "I leave that here until I come back."

Q How many times did you leave such a box? A So many I sold the stuff to him. 30

Q What is the name of the bartender? A I don't know.

Q Do you know his first name; how did you call him? A I don't know; John, Bill, or Gus or William; I don't know.

Q Have you ever been convicted of a crime before this? A I don't get you.

Q Were you ever convicted of a crime before this? A (Witness does not answer.)

Q Do you know what a crime is? A No.

Q When you break the law, you commit a crime? A You ain't got no right to ask me that. 40

Q Were you ever convicted of a crime before this? A You have no right to ask me.

Mr. Bernhard. Mr. Gluthe, you must—

Witness. I got to do three years in Trenton and no lawyer can ask me that.

Mr. Bernhard. He is not speaking of the crime which you are now serving.

Witness. I was arrested before.

10 Q And were you then convicted, Mr. Gluthe; were you convicted on your last arrest, were you sent to jail after your last arrest? A I was in jail, yes.

Q What was that crime for?

Mr. Bernhard. I object; the law is well settled that you can ask a witness if he has ever been convicted of crime and that is as far as you can go.

The Court. (After argument.) You do not contend that it is perjury?

20 *Mr. Lesser.* That we do not know; I cannot say that it is perjury.

The Court. You have already said that it is not perjury, haven't you?

Mr. Lesser. I don't know whether it is or not; I cannot say that it is perjury; I cannot say whether it is or not.

Mr. Bernhard. In order to save the time of the jury I will withdraw the objection.

The Court. The objection is withdrawn.

30 Q What were you convicted for? A I don't get you.

Q What were you arrested for the last time? A What I was doing?

Q Yes, what were you sent to jail for the first time? A Not supporting my family, if you want to know it.

Q On these eighteen different times that you sold Mr. Dichter goods, where did you do your business, what part of the store? A Middle of the store.

Q In the front of the store where the customers were, is that right? A Yes, he was there and I give it to him; he give me the money; "Good-bye, Good-bye."

40 Q Customers came in and bought while you were dealing with him? A Sometimes one was there, sometimes a man was there and sometimes nobody was there.

Q Did he deal with you in his back room? A He took me in the back room, I guess.

Q When? A Any time.

Q Where did you weigh the goods and where were you paid? A In the front where the scale was or there is a little scale in the back room.

Q He had a big scale in front, there is, isn't there? A Yes, but he had a little one behind there. 10

Q But in the front of the store he paid you the money and you said, "Good-bye" and went out? A Yes.

Q And that happened every time you sold? A After this?

Q Every time you came in, it was the same way? A Yes, we looked after it.

Q Or you would count out the packages and he pay you for what you gave him? A Yes, he pay me.

Q To go back to the last trial when you were a witness before, did you tell us that you went to Mr. Dichter's house with the first package? A Yes. 20

Q At the last trial did you say that? A I might have forgot it then.

Q But you didn't say it? A I remember now before I told—

Q You have got to make an excuse, then, if you didn't say it. A I remember that now, I told Mr. Bernhard I told him before I make a mistake and I was in his house, I brought him up and I saw him, but the first time I wasn't—

Q How did you get to his house from your house; give me the names of the streets you walked over? A A little boy 30 directed me over.

Q Whose boy? A A little boy working in his store took me over.

Q Then you went first to his store and you didn't find him there and then you went back to his house, is that right? A Yes.

Q Then what happened at the house? A The boy gone up and the boy brought me back to the store again.

Q Did you go up into the house, or didn't you? A No, I did not, I stayed before the door. 40

Q You stood downstairs? A Yes.

Q On the street? A Yes.

Q Waiting for the boy to come back? A Yes.

Q And then you went back to the store and waited for Mr. Dichter to come back there? A Yes.

Q What time did Mr. Dichter come in? A I don't know what time , if he came in or not; I don't know sure if his man pay me or not; I don't think so.

Q You don't know even whether he came the first time, whether Mr. Dichter was there the first time? A I remember so much, if it is the first time or second time, wait a minute, I guess you are right; the first time he didn't come back at all.

Q He didn't come back to the store? A His clerk is going to telephone and telephone over to him and he telephoned over to his clerk, that is right; that is the first time, and his clerk had to pay me.

Q How much did his clerk pay you? A Between six and seven dollars.

Q Before you said seven fifty, which was right? A The same day he was there.

Q Which is right, six or seven or seven fifty? A I cannot swear to that now.

Q Did you see the receipt I had in the court the last time? A That was the first—

Q You wrote on that card, didn't you? A The short card?

Q Yes, a little card? A Yes.

Q And wasn't that a receipt for sixteen pounds of rubber bands, at fifty cents? A No, he didn't give me fifty cents; it was between six and seven dollars because it was mixed up.

Q I am trying to get you to tell the jury and the Court exactly what was on that card. A I cannot do that.

Q Wasn't there an item of sixteen pounds of rubber bands at fifty cents, eight dollars; wasn't that one item on there, wasn't there one hundred and fifty-five pencils at four dollars and twenty-five cents? A On the first cards?

Q Yes. A He never seen pencils the first time.

Q Wasn't there fifty-five rubber erasers on this card? A He never seen erasers the first time.

Q You are sure they were not on the card? A No, no pencils nor erasers.

Q What was on the card, you wrote it? A Rubber bands, that is all I know.

Q That is all? A That is all.

Q Didn't your little statement amount to sixteen dollars when you added it up altogether? A What, the first time, ten dollars.

Q On that card? A Two weeks, three weeks, I get that from him each four weeks.

Q Do you remember ever bringing the goods in a pushcart or wagon? A No, I never had no cart.

Q How many pounds of rubber bands did you bring? A What?

Q How many pounds of rubber bands did you bring? A Why, I got to go to High School to remember that. 10

Q Try to remember it without going to High School give it to us now. A I cannot remember that, sometimes ten pounds, sometimes five pounds, sometimes eight pounds.

Q Don't you remember anything about this case? A Well, sometimes a box like that, maybe holds eight pounds.

Q Well, you weighed the goods, didn't you, in Mr. Dichter's store, before he paid you? A Yes, that is what I told you, that is what I say. 20

Q How many pounds altogether did you bring to Mr. Dichter? A The whole shooting match.

Q Yes, how much altogether was it, one thousand pounds? A No.

Q Was it fifteen hundred pounds? A No.

Q Was it two hundred pounds? A A couple of hundred pounds, yes.

Q Was it more than a couple of hundred pounds? A No.

Q All you brought was Faber's goods? A A couple of hundred pounds, that is all. 30

Q You told us before you brought two thousand pencils, is that right? A Yes.

Q Did you count it up? A Yes, sir.

Q And that is all the pencils you brought? A Yes.

Q And you remember how many pencils; tell us how many pounds of rubber bands. A That is what I tell you, a couple of hundred pounds.

Q And you never on any occasion, you are positive, brought this stuff in a pushcart? A No, I never did.

Q What time of day were these deliveries made? A 40

Q What time of day were these deliveries made? A

Eight o'clock.

Q Every morning? A Every morning? Not every morning.

Q I mean every morning that you came it was about eight o'clock? A Yes.

Q Didn't you know that Mr. Dichter is never in his place of business before ten? A He told me, I didn't make it up before eight o'clock.

Q Do you know who closed that business at night, the drugstore at night, or who closed it when you were selling him rubber bands? A I don't know, maybe he closed it, maybe his clerk.

Q You don't know? A I don't know.

Q Didn't Mr. Dichter tell you that he closed late and he couldn't get in early in the morning because he closed at twelve o'clock at night? A He didn't say anything to me, only he said to me, "Don't come before eight o'clock; I am here at eight o'clock."

Q When you came there at eight o'clock you found the clerk and had to go to his house, isn't that right? A Maybe the clerk was there a couple of times.

Q What was the latest you ever got there in the morning? A The regular time.

Q How late was the latest time you came in the morning when you made these deliveries, at eight o'clock or after? A Sometimes ten minutes, fifteen minutes.

Q Did you ever stay there until eleven o'clock before you went away? A Before eleven o'clock.

Q Didn't you ever stay in Mr. Dichter's drugstore until eleven o'clock? A No, sir, never; I was home sleeping.

Q You said on your direct testimony that you delivered one thousand rubber erasers, is that right; one package of rubber erasers, is that right; didn't you say that you brought one box of rubber erasers? A One big box.

Q And that is all the erasers you brought? A That is all the erasers I brought.

Q And for that box he gave you seventy-five cents? A Sometimes he would not give me nothing.

Q How much did he give you? A Seventy-five cents.

Q Why do you say seventy-five cents, because I said so or because you know it? A I know it.

Q You are sure it wasn't fifty cents? A Not fifty; it was seventy-five cents.

Q And it wasn't a dollar? A It wasn't a dollar.

Q You have told us that you called him up on the telephone a night or two before you were arrested, do you remember that

you called Dichter on the telephone a night or two before you were arrested? A Yes.

Q Why did you call him? A I want him to take that stuff from the window.

Q He had it in his windows? A Yes.

Q What did he have there, the pencils? A Yes.

Q And erasers? A Yes. 10

Q Didn't he have any rubber bands? A No.

Q Didn't he also have perfumes in his window at that time? A I don't know, I only see that there.

Q But you didn't see any bottles of perfume? A No, I only seen there if a man buys a quarter altogether, he give him a rubber.

Q What else was in the window besides pencils and erasers? A Well, some stuff I don't know what it is

Q What else was in the window besides pencils and erasers? A Only pencils and erasers, no rubebr bands. 20

Q You are positive of that? A No rubber bands.

Q Why did you call him up if these things were in the window, what made you call him up? A I called on the shop the night before, I saw that stuff there and his clerk fix them up in the window and he said, "Now, we get the people come for this," and I called him up on the telephone and I said, "Why did you put that stuff in the window," because the clerk was there, I asked him, "Why put that stuff behind the window, you get into trouble." He said, "Why, what is the matter, come tomorrow morning, I see you tomorrow morning, 30 bring me some stuff tomorrow morning;" I said, "I will not bring it any more because you have it behind the window."

Q What were you afraid of? A I was afraid the same he was afraid.

Q You were afraid because you stole the stuff and if somebody saw it in the window, it might show where you stole it? A That is all right.

Q That is why you called him up? A I called him—

Q And did you tell him who it was calling? A He knew that. 40

Q Did you tell him who was calling? A Yes, I told him in the phone.

Q Do you remember telling him you would break his window if he didn't take it out? A I never seen—the same day, put it right in the window.

Q Do you remember telling him you would break his window if he didn't take it out? A No, I never said that; do you think I want to break his window?

Q How did you know you were talking to Mr. Dichter on the telephone? A How I know, because I hear him talk.

Q Had you ever spoken to him on the telephone before? A I called him before, once.

Q When was that? A A couple of weeks before.

Q What did you say then? A I would not bring him any stuff tomorrow; he said, "Why, what's the matter?" I said, "Well, I ain't got no time." He said, "Well, you come around again, bring me some," that's all.

Q How many times did you call him up on the telephone? A Two times.

Q How many times did you call him up on the telephone about taking the stuff out of the window? A Once.

Q And did he take them out? A The next time they were out.

Q When was the next time you saw it? A The next morning.

Q Didn't call him the day before, too, did you? A I called him the day before to take it out.

Q And before that, didn't you call him, once again? A Two weeks before.

Q No, the day before, the day before you called him to take the stuff out, didn't you call him again to take the stuff out? A No, I didn't call him again.

Q Did he take the goods out after you spoke to him the first time about taking them out of the window, did he take them right away after you telephoned? A He took it out, that is what he told me, he wanted to take it out.

Q Instead of calling him up on the phone why didn't you come in to see him? A (Witness does not answer.)

Q Instead of calling him up on the phone, why didn't you come in to see him, to speak to Mr. Dichter about it? A What is that?

Q Why didn't you come in the store instead of calling up on the telephone? A I couldn't leave the factory, and go in his lousy store.

Q Didn't you see the goods that morning? A I saw it in the daytime.

Q Why didn't you go in in the daytime when you passed? A The clerk was there.

Q You went in? A I didn't go in.

Q How did you know Dichter wasn't there if you didn't go in? A I was right in the door and I seen the clerk there and I talked with the clerk; I didn't see him.

Q In front of Dichter's door? A In the middle, I looked in.

Q Are you sure Dichter wasn't there? A I see he wasn't there in the store.

Q Did you tell the clerk to take it out of the window when you spoke to him? A No.

Q Why didn't you? A I had no time; I want to go to the shop.

Q But you had time to call him up? A I imagine when I seen the stuff he told me something and I laughed.

Q Why didn't you tell the clerk to tell Dichter to take it out? A Because I wanted to talk to him, the clerk had nothing to do with that, that is the reason I wanted to talk to him, call him up.

Q Isn't it because you were afraid to tell the clerk that you would break the window and you wanted to tell it to Dichter himself? A No.

Q Weren't you afraid to tell the clerk that you would break the window when you spoke to him, because he would know who it was? A No, I never said that.

Q And isn't that the reason why you didn't tell Dichter who was calling on the telephone, because you were going to break his window if he didn't take the stuff out, and you were afraid to give your name? A I want to break his window? He is a liar if he told that to you.

Q Isn't it a fact that you didn't give your name to Mr. Dichter on the telephone because you were afraid he would know who threatened to break the window? A No, sir; I would not break his window, I never say a word about breaking the window, I only said to him, "Take that stuff out," and that's all.

Q Did you tell him you would make some trouble for him if he didn't take it out? A That is what I said, maybe he will get into trouble; he said, "All right, we will not get into trouble, come tomorrow morning."

Q Did you come tomorrow morning? A No, sir.

Q But you didn't come to talk to him the next day, did you? A Sure, I come, I see the stuff was out and the next day I got arrested.

Q But you didn't talk to Dichter the next morning, did
10 you? A No.

Q Did you tell him you were coming the next day? A No, I said I would not come because he had the stuff behind the window.

Q That's all.

Re-direct examination by Mr. Bernhard.

Q Why did you want this money that Dichter was paying you for this stolen goods? A I give some part to Doctor Herman.

20 Q For your teeth? A For my teeth.

Q That's all.

Re-cross examination by Mr. Lesser.

Q Mr. Gluthe, you said that you didn't remember Mr. Migatz, is that correct, you don't remember him from the last trial? A Maybe I see him, I don't know.

Q Didn't you before the last trial and before you sold Dichter any goods, try to sell Mr. Migatz some goods, do you know a stationery store two doors away from Mr.
30 Dichter's place? A (Witness does not answer.)

Q Is there a stationery store near Mr. Dichter's store where they sell pencils and papers? A I don't know; I never asked this man.

Q Isn't there a stationery store where they sell rubber bands and pencils and paper and erasers and blank books, two doors away from Mr. Dichter's place? A I seen the windows, maybe there is a store there; I don't know.

Q There is a store there, isn't there? A There may be.

Q And isn't Mr. Migatz, this man here (indicating), the
40 owner of that store? A I am—

Q Did you go into that store and try and sell some rubber bands? A Never.

Q You are positive of that? A Never, that is good enough.

Q Did you go any place else to sell rubber bands? A No.

Q The only place you went to was Dichter? A Only Dichter, I never went anywhere else.

Q Do you know Doctor Herman? A Yes.

Q Is Doctor Herman your dentist? A Yes.

Q Did Doctor Herman visit you in jail? A He saw me in jail, yes. 10

Q That's all.

FRED A. THOMPSON, being duly sworn according to law, on behalf of the State testified as follows:

Direct examination by Mr. Bernhard.

Q Mr. Thompson, where is your business place? A 161 Springfield avenue.

Q How far is that from Dichter's store? A That is about two doors above. 20

Q And your business, Mr. Thompson, is what? A We manufacture a corn-fix for corns, bunions and so forth.

Q How long have you been located close by the Dichter store? A Since nineteen twelve.

Q And at times have you gone into the Dichter store? A Yes, very frequently.

Q So that you know Mr. Dichter, do you? A Yes, sir.

Q Have you ever had any business transactions with him? A Yes, sir. 30

Q With reference to any rubber bands? A Yes.

Q Will you tell us, tell the Court and jury about it? A I bought some of them.

Q When? A Last August.

Q How much did you buy? A Approximately four hundred pounds.

Q Of what kind of bands? A Various sizes.

Q Such as the assorted bands? A Yes.

Q The larger bands and the smaller? A Yes, just like you have there (indicating). 40

Q From whom did you buy them? A Mr. Dichter.

Q How much did you pay for them? A Fifty cents a pound.

Q Do you remember whether you paid in cash or check? A Checks.

Fred A. Thompson, cross.

Q And have you the checks with you? A No, I have not got them with me.

Mr. Lesser. I admit that there were checks.

Q How much was there altogether? A I paid him right close to two hundred dollars altogether.

10

Q How many transactions did you have with him with reference to the rubber bands? A Two lots.

Q Two separate lots? A Yes.

Q And how close were those transactions together? A About two weeks apart.

Q Did your transactions with him relate to any of these other articles that are here? A I didn't buy any of those others, although I was considering to buy some pencils.

Q Did you get as far in the negotiations with reference to the pencils, Mr. Thompson, as to get a price? A Yes.

20

Q When you speak of pencils, do you speak of the yellow ones or the green ones? A The green ones, the yellow ones were not of much value, I don't think, at all.

Q What price did Mr. Dichter want for the green ones? A As near as I can recall, it was about forty-five cents.

Q For how many? A Why, that is a dozen, I believe, forty-five cents a dozen, or in the neighborhood of forty-five cents.

Q For a dozen pencils? A I think it was by the dozen.

30

Q You didn't buy any? A No, the reason I didn't buy them was on account of this "Made in Germany" mark on them, and I was afraid that I would be unable to re-sell them.

Q You felt that there was no market for them? A Yes, that was what I was afraid of.

Q What became of the bands that you bought? A I sold those in New York.

Q To whom? A To the Empire Supply Company.

Q At No. 206 Broadway, is that right? A I think that is the address, right at the corner of Fulton street.

40

Q That's all.

Cross examination by Mr. Lesser.

Q Mr. Thompson, you paid by check, didn't you? A Yes.

Q Where were the goods weighed? A On a scale in the front of the store by the window.

Q Whose store? A Mr. Dichter's store.

Q Customers come in and out while the transaction was going on? A Oh, yes.

Q Anything hidden about this? A No.

Q Where did he keep the goods? A Right in the center, in the front part of the store, you know.

Q That covered pencils and erasers, both, and the rubber bands you speak about? A The pencils were stacked up on a shelf, as I remember, I think some were sitting on the floor in the beginning; then I remember seeing some stacked up on a shelf where he keeps the kodak supplies.

Q Did you ask him where he got them? A Yes, I did.

Q Did he tell you where he got them? A Yes.

Q What did he tell you?

Mr. Bernhard. I object; it is immaterial what Dichter told this defendant.

The Court. I don't see where that is material; I sustain the objection.

Q Did you have any negotiations with Mr. Dichter prior to the purchase? A Yes, we talked and dickered on the price.

Q What did your dickering consist of, what was there to the dickering? A He originally asked me seventy-five cents a pound for them and I didn't want to bother with them, and I didn't know if it was possible to sell them or I didn't know what the value was or I would not take them, and they stood there in the store, I imagine, for a couple of weeks and each time that I would go in I would, as a rule, mention to him if he had—I would say, "Well, I see you have not sold them," expecting that probably I would be able to buy them still cheaper, so it developed that nobody would buy them, or something like that, so finally he says he will give them to me for sixty cents, I think it was, and I still didn't take them, so then they stood for a quite a while longer and he finally said if I would take them off of his hands he would give them to me at what they actually cost him, which he declared up and down was fifty cents a pound, he says on account of them being mixed up this way, various sizes and colors altogether and put up in this manner, that it was impossible almost for him to sell them, so I then thought the matter over and inquired as to what the retail prices were, so I decided that I would buy

them at fifty cents a pound, thinking that I would be able to realize still a little profit on them, so that was the end of it; after that we paid him the same price.

Q Did you sell them over again? A Yes.

Q What did you get for them? A Sold them for eighty
10 cents a pound, delivered in New York.

Q Did you have any difficulty in selling them? A Yes, considerable.

Q Is that the reason why you didn't buy them for two or three weeks? A Yes, we first tried to locate some customers in Newark and could not sell them here at all, and then, after they had laid in our place for so long and we had our money tied up in them and we were beginning to need the money, I decided that I would go out and try to sell them at any price, even though I would have to sacrifice some and I thought to
20 sell them back to Mr. Dichter at the price I paid them after a ten days' or two weeks' period, so finally I located this one customer in New York who would buy them and then he still would have bought more if I would have had them.

Q Did Mr. Dichter refuse to take a check when you gave it to him? A No.

Q Did he ever protest about payment by check? A Oh, no, in fact the last time I didn't pay him for two or three days after we had taken them.

Q Was there anything furtive or concealed about this
30 transaction between you and Mr. Dichter? A Nothing at all, everything was open and above board.

Q Did you know Mr. Gluthe? A Yes, just through seeing him here, that is all.

Q Did you know him before you bought the goods? A I only knew him just by seeing him once there; I wasn't of course, personally acquainted with him.

Q Did you ever have a talk with him prior to the purchase of the goods? A Not I.

Q Did anyone on behalf of you have a talk with him? A
40 Yes.

Q With reference to the purchase of goods? A Yes.

Q Did you know when these goods came from Gluthe to Mr. Dichter, did you know that Gluthe was selling to Mr. Dichter? A Yes, finally.

Fred A. Thompson, re-direct.

Q Did you suspect anything about the way they were procured by Gluthe? A No.

Mr. Bernhard. I object as immaterial what he suspected.

The Court. The question is answered.

10

Q Did you ever see any deliveries by Gluthe to Dichter, personally? A No, not personally, I didn't.

Q Would you have bought these goods from Gluthe direct if he had offered them to you?

Mr. Bernhard. I object.

The Court. I sustain the objection.

Q Did you make an effort to purchase from Gluthe? A Yes, I did; yes.

Q Were you alone in this business, Mr. Thompson? A No, sir.

20

Q In the corn-fix? A No, sir.

Q Who was with you at the time? A Why, it is a corporation.

Q Who are the active participants in the corporation? A Doctor Warner and myself.

Q Formerly called Doctor Warshawsky? A Yes.

Q And was Doctor Warner authorized by you to try to make a purchase of these goods from Gluthe if he could? A Yes, sir.

30

Q How long had you known Dichter? A Since February, nineteen eighteen.

Q That's all.

Re-direct examination by Mr. Bernhard.

Q You sold these goods at an increase of thirty cents a pound on what you had paid for them? A Yes.

Q And after you found that you could make thirty cents a pound on these goods then you and Warner tried to buy more goods of Gluthe, is that right? A I would have been willing to have bought them.

40

Q That's all.

FRANK E. BREX, duly sworn according to law, on behalf of the State testified as follows:

Direct examination by Mr. Bernhard.

Q Mr. Brex, you are a member of the Police Department of the City of Newark? A I am.

10 Q How long? A For fifteen years.

Q At the present time connected with what department? A Special investigator for Commissioner Brennan, Department of Public Safety.

Q Did you investigate the matter of the loss of certain goods from the Faber Company? A I did.

Q When was the matter first called to your attention? A On Saturday, September 7th, last year.

Q Anyone assigned with you? A Why, Detective Smith.

20 Q What did he do? A About two-thirty in the afternoon, accompanied by Detective Thomas Smith, we went to defendant Dichter's drugstore at 155 Springfield avenue. We found the defendant in the store. I introduced myself and told him that we were there for the purpose of getting a lot of rubber goods; that a man named Gluthe was in custody and that he had confessed stealing a large amount of rubber bands, pencils and erasers, and that he had sold them to Mr. Dichter. Just prior to that I asked Mr. Dichter to step in the rear because I didn't want to hold this conversation in the presence of some

30 customers in the store. On entering the rear and giving him the aforesaid information, I noticed on the stool there was a cooking pot loaded with pencils and rubber bands, and so forth.

Q Where was that stool? A In the rear of the prescription counter. I walked over and I said, "Here is some of the stuff now, is that so?" He said, "Yes." I said, "We would like to get all the stuff you bought," so he directed his clerk and after some time we got up a large case full of goods, which I informed Mr. Dichter later on which Mr. Berkeley

40 had appraised at a hundred and twenty-five or a hundred and fifty dollars' worth.

Q That particular case? A Yes.

Mr. Lesser. I ask that that part be stricken out as to informing and so forth.

The Court. You move to strike it out because it is not responsive to his question?

Mr. Lesser. The appraisal is hearsay and is not proper evidence of the value of these goods.

The Court. The objection is overruled.

Mr. Lesser. I ask for an exception. 10

A I continued and asked Mr. Dichter under what circumstances he purchased these goods. He stated that the defendant, Gluthe, had come into his place and informed him that his company, Gluthe's company, went bankrupt and as payment they were paying him off in rubber bands and lead pencils, and so forth. I questioned him relative to a telephone call the night prior. I said, "Why did you remove your goods from the window last night, Mr. Dichter," and he said, "Why, I got a telephone around eight o'clock." "Well, what was 20 the nature of that telephone?" He says, "Somebody called me up, I don't know who it was, and says, if I don't take these goods out of the window, the pencils and stuff, rubber bands, that they would break the window." I said, "Did you notify the police?" He said, "I did not." I said, "Why didn't you, in view of the fact that your property was about to be destroyed?" He said, "I was too busy, I was reading a book." We then brought the defendant, Dichter, to police headquarters and confronted him with Mr. Gluthe, who was sitting in the detective room. I asked Mr. Gluthe as to 30 whether he knew Mr. Dichter and he said, "Yes," and he hung his head in this manner (indicating) and he started to sob and he said, "That's the Jew son of a bitch who always kept saying, 'Bring me some more, bring me some more,' that's the man who made trouble for me." I said, "What have you got to say for this, Mr. Dichter?" He said, "You should not believe it." I said, "Dichter, what did you pay for all that you got?" He said, "I paid forty or fifty dollars at a time." Gluthe said he got about seventy-five dollars for all the stuff he had sold Mr. Dichter. I talked to him in the 40 presence of Mr. Dichter. Gluthe said that he sold the pencils for seventy-five cents a hundred to Dichter and that the rubber bands he sold for twenty-five cents a pound. Mr. Dichter says that he paid Gluthe thirty-five cents a dozen for the pencils and fifty cents a pound for the rubber bands. That was

about the substance of the whole conversation and then the defendant, Dichter, was placed in a cell.

Q Who was present at the time this conversation took place? A Detective Smith.

Q When you went to Dichter's store on the day that you have told us about, did you happen to look in the front window? A As the result of a conversation which I had with Detective Smith I did look in there at half-past two in the afternoon, but I didn't find any rubber bands or any of the matter at issue there in the window.

Q Then you did look into it? A Yes, at that time.

Q What became of the things you took from Dichter's store? A We brought them with the defendant to Police Headquarters.

Q Are these the goods (indicating)? A Yes.

Q Did you trace any more of the goods? A We did.

Q Where? A We got in touch with Mr. Thompson and as the result of a conversation with him we got in touch with the Empire Supply Company of New York and as the result of a conversation with them people there was some rubber goods, several hundred pounds, received at the Newark Police Headquarters.

Q Which were turned over to the Faber Company? A Well, I don't know if it was returned to Faber Company, but held subject to the trial of this case at Police Headquarters.

Cross examination by Mr. Lesser.

Q How did you get all your information as to where all these goods were, Lieutenant? A Why, it would be hearsay if you want me to mention it.

Q Yes, I am perfectly willing. A Why, we learned that Mr. Migatz had purchased some goods; he is a stationery storekeeper some distance below the defendant.

Q How much had he purchased, had you learned? A Why, probably a lot comprising five or six pounds all told; I am not definite about that; it may be a little more or a little less; he, in turn, notified us about a man named Silver, who ran a curiosity shop up on Springfield avenue, who acted as an agent for Dichter and received a bonus of ten dollars for disposing of all these goods.

Q You mean selling, don't you? A Not from what Mr. Silver told me.

Q To sell, you mean? A Well, acting as an agent and to profit for his trouble.

Q You don't quite get my point; didn't you mean that Mr. Dichter paid Mr. Silver ten dollars to act as an agent to sell some of those goods? A Mr. Silver was instrumental to cause the sale and he reimbursed him with ten or fifteen dollars for his trouble. 10

Q But not to dispose of, to sell goods? A Sell goods, that is what I meant to imply.

Q Isn't it a fact that Mr. Dichter gave you Mr. Thompson's name as one of his purchasers? A No.

Q And didn't he also give you Mr. Silver's name? A Mr. Migatz was the informer.

Q Didn't Mr. Dichter in response to a question tell you that Mr. Silver had sold some goods for him and that he had sold some goods to Mr. Thompson of the Corn-Fix Company? A No, the first we learned that Thompson had any was when Mr. Warshawsky came to Police Headquarters prior to our visit to defendant's place and he gave us some information about him or his partner named Thompson, making a big purchase of goods from Mr. Dichter. 20

Q Did you ask Mr. Dichter whether or not such a purchase was made? A I cannot recall that.

Q You took some notes at the time? A Some notes, yes. 30

Q Were your notes complete as to the conversation? A Yes, I would say it is complete, probably my notes would not contain my whole evidence.

Q But the gist of your evidence? A The notes I had will refresh my memory on the whole case.

Q But as a matter of fact, didn't you ask Mr. Dichter whether or not he had sold to Doctor Warner or Mr. Thompson of the Corn-Fix Company? A No, because he had informed me that he had purchased altogether only forty or fifty dollars worth of goods from Mr. Gluthe and I heard from them that practically at that period they had obtained— 40

Q Never mind, didn't Mr. Dichter tell you that a Mr. Halperin in New York purchased some of these goods? A No, Mr. Silver informed me of that.

Frank E. Brex, cross.

Q You are positive that these names were not given to you by Mr. Dichter? A No, he was a very reluctant witness.

Mr. Lesser. I ask that the latter part of that answer be stricken out.

Mr. Bernhard. I have no objection to it being stricken out.

10

The Court. The response will be stricken out and disregarded.

Q In the first place, what led you to make the arrest in this case? A I might say this to qualify the matter of my connection with this case: I originally was not assigned to this case; I was requested by Detective Smith, who, in company with Detective Lindeman, had been given the assignment, and owing to Detective Lindeman having some other duty to perform, Smith asked me if I would not come in. I came in at the Dichter arrest. They had, prior to that, made the Gluthe arrest.

20

Q Did you attend the conference at the Faber plant with reference to these goods? A No.

Q When you had come into the store, what was the first thing you said to Mr. Dichter? A I informed him of who we were; I told him my name and Mr. Smith's name; I told him the purpose of our visit was to get back the stuff that Mr. Dichter had sold him.

30

Q Did you tell him you were going to take back the stuff or did you ask him where he had purchased it? A I told him I wanted the stuff that Gluthe had sold him, the rubber bands, pencils and erasers.

Q What did he say in response to that question; you didn't do all the talking at once; he made responses to your questions, didn't he? A I spoke to him originally in the store and as we were walking back I continued talking to him.

Q Who suggested you walk back? A I did; I didn't want to embarrass him on account of the customers and told him the purpose of our visit. I said, "Come back here, I want to have a talk with you." When we got back to the rear of the prescription counter I mentioned then about the purpose of our visit, that we were there for the purpose of reclaiming that stuff that Mr. Gluthe had sold him, and at that period I noticed a big cooking pot laden down with some of these goods,

40

and he told me that he had purchased them from Gluthe and Gluthe had told him that he was working for some defunct firm that went into bankruptcy and that they were paying him off with rubber bands, pencils and erasers, and that in all he had purchased about forty or fifty dollars worth.

Q When you first came in you told him you and your companions were members of the Police Department that came to receive and return some goods purchased by him from Gluthe, is that correct? A That is the substance of it. 10

Q Did he admit that he purchased these goods from Gluthe? A Yes, he did.

Q Did he show you where the goods were? A I showed him first.

Q Did he try to sell them? A No.

Q Where were they? A They were in shelves and counters all over the rear part of the store. 20

Q They were not hidden from view at any point? A They were in packages on shelves.

Q Perfectly open to view? A Well, if you would remove the covers.

Q Weren't they in the same situation as a package of Malted Milk in his store, on his shelf? A No, they were in concealed packages, in closed packages.

Q Packages like this (indicating)? A No.

Q In cartons, big cartons? A Yes.

Q Did you see boxes like that there (indicating S. 2)? A Yes. 30

Q Did you see the contents of them? A That covers it, some were below the shelving and some were on top and in various parts of the rear part of the store, all of this stuff here was covered up there.

Q But was anything secreted, hidden so that you couldn't find them? A Well, we found them.

Q Let us get that frankly, you didn't have to hunt or search for any of this stuff, did you? A I didn't make any personal search, we directed Dichter to gather up this stuff. 40

Q And he brought you all he had? A He directed his clerk to do it.

Q Was any brought from the cellar? A No.

Q It was all on the first floor, wasn't it? A Yes.

Q And some of it had just been taken out of the window and put in the store? A That stuff was stuff which had been taken out of the window and a large pot full, it was on a stool, I asked him where that came from, he said that was the pot that came from the window.

Q And he told you he took it from the window in response to
10 a telephone message he just got? A No, he didn't mention about a second call he only mentioned they called up and they threatened to break his window.

Q Did he say why they threatened to break his window? A No, he simply said the man said, "If you don't take them rubber goods out of the window, we will break your window," and I said, "Did you notify the police".

Q No, I just want—if you please, be more specific in response. Do you know what else was in the window the day you looked in? A That would be a pretty hard thing for me
20 to remember, I probably saw two or three napkins, I do remember seeing napkins there.

Q Weren't there perfumes, powders? A There may have been, my attention was called to one specific place in that window and when I looked at that, I didn't find any rubber goods, and it was far from my mind to make a mental note of anything in the window at that time.

Q Then your recollection is not clear as to what else there was in the window? A Well, there was no more rubber goods of this nature.

30 Q That is admitted that there were no more rubber goods in the window on the morning you made the arrest. A As the result of the conversation I had with Mr. Smith, we looked for signs of these goods in the window and we didn't find any.

Q Was the window bare? A No, it was not, it was filled up with display.

Q How many pounds of rubber bands did you find the day you were there? A I didn't weigh them.

Q But about how much in bulk, give us some idea? A There might have been probably twenty or thirty pounds.

40 Q Only twenty or thirty pounds? A Probably might have been more, I don't know.

Q Just boxes about like this? A About that, yes.

Q Would all you found be contained in these two boxes? A I don't know.

Q And do you know how many of these you found? A No, I do not, I expected to get a list, a copy of the inventoried list which Mr. Berkeley had taken that day, but unfortunately I didn't get it.

Q But you don't know how many you found when you came into Mr. Dichter's store and he turned it over to you? A No, but that box was filled right up to the top with the articles he took in question, that large case there. 10

Q May I direct your attention to the evidence as to the bankruptcy, see if this is what was said, didn't Mr. Dichter tell you that Mr. Gluthe told him that he was in the employ of a concern that had gone into bankruptcy and that they owed him back wages and paid him in these rubber goods and pencils? A That was about the substance of it.

Q And that was the thing he told you immediately when you came in the store and told him about the stolen goods, isn't that so? A I told him the purpose of our visit and asked him under what circumstances he purchased them and he remarked that the man had stated that he worked for a bankrupt company and they were paying him off in rubber bands, pencils and erasers. 20

Q And that conversation was had in the presence of Mr. Smith? A Yes, Detective Smith.

Q And was Dichter's clerk in the store? A Yes, he was in the store, but not in the back room.

Q It was you who suggested that you go in the back room? A Yes, to save him from personal embarrassment. 30

Q But Mr. Dichter was perfectly willing to talk in the front of the room? A Well, he didn't object, I, in fact, commanded him to go in the back room, yes.

Q You ordered him? A Yes.

Q He was perfectly willing to talk in the front after you disclosed your identity? A He didn't show any unwillingness.

Q That's all.

Re-direct examination by Mr. Bernhard. 40

Q You started to say before that you called his attention to something. A I called his attention to the name of Faber on these goods, I questioned him whether he ever called up these people to get any information and he said he thought it was all

right as long as the man told him it was all right, he thought it was all right.

Q And did he say when the telephone message came to him, what hour? A About eight o'clock the night prior.

Q Did he say when he had removed the goods from the window? A I cannot recall that, either eleven o'clock that night just prior to closing up or early in the morning.

Q That's all.

THOMAS A. SMITH, being duly sworn according to law, on behalf of the petitioner testified as follows:

Direct examination by Mr. Bernhard.

Q Mr. Smith, you were with Mr. Brex, weren't you, at this visit to Dichter's store? A Yes, sir.

Q Had you been there previously to that date? A Yes.

Q When? A The night previous.

Q What time? A Friday night about nine o'clock in the evening.

Q With Lieutenant Lindeman? A Sergeant Lindeman.

Q When you went to the store that night, was it open or closed? A Open.

Q What did you do when you got there? A I didn't go inside, I went by and seen this stuff displayed in the window.

Q What did you see displayed in the window? A Pencils and rubber erasers.

Q Anything else? A Different other articles pertaining to the drugstore.

Q Any signs in the front windows? A There were.

Q Did they bear any relation to these pencils and erasers? A They did.

Q What did they say? A Any twenty-five cent purchase one of them be given away free.

Q One of them, you mean— A An eraser or a pencil.

Q Well, what did you do after you saw them? A Why, I went on down Springfield avenue.

Q Yes? A Went to—you want to hear the original story?

Q I thought I was coming to that, was Gluthe at that time under arrest? A He was not.

Q Go ahead. A Mr. Fera called up Captain Conlon, of the Detective Bureau and reported.

Thomas A. Smith, cross.

Mr. Lesser. I object to the report.

Q Well, you did something? A The following morning, we decided to place Gluthe under arrest, which we did. We went up to his house and got him out of bed and brought him to headquarters; questioned him. He made a general denial of any wrong-doing with the Faber concern and we detained him there. Sergeant Lindeman, who was assigned with me, was taken away and was ordered behind the desk by the Captain. I asked Lieutenant Brex would he help me through in the case and he agreed to do so. That afternoon we went to Dichter's drugstore on Springfield avenue about two thirty.

Q When you got there, what did you see? A The stuff was taken out of the window.

Q Then what did you do? A We went inside.

Q Were you with Lieutenant Brex at the time these things happened which he has already described on the witness stand? A Yes, sir.

Cross examination by Mr. Lesser.

Q Now, you tell us the conversation that took place between yourself and Lieutenant Brex and Mr. Dichter when you came into his drugstore? A The Lieutenant made known who we were, we told him we were from headquarters, we were up there to recover the goods that had been stolen from the Faber concern, so the Lieutenant suggested we go in the back of the drugstore, which we did, prescription department, and on a stool there was a sort of a cooking utensil filled with rubber erasers and pencils. On the prescription counter there were a number of these boxes setting on there.

Q Small boxes such as this is (indicating)? A Yes.

Q Where were they, you say? A Some of them were on the prescription counter in the rear of the partition and on another shelf there were others.

Q Did Mr. Dichter tell you that he had just taken those boxes and the pencils and the erasers out of the window? A Well, yes, he did, that was in a cooking utensil.

Q He told you so and he told you why he took them out of the window? A Yes.

Q What did he tell you? A Someone had called him up the night previous and told him if he didn't take them out he

would break his window. Lieutenant said, "Why didn't you notify the police;" he made the remark he was busy that evening.

Q Did you go down to Police Headquarters with Mr. Dichter or Lieutenant Brex? A I did in the automobile.

10 Q Were you present at the conversation when Dichter and Gluthe were brought together? A Yes.

Q What happened? A Gluthe was sitting in the detective's room down there.

Q What happened there? A He stood up and sort of hung his head and says, "Well—"

Q Who stood up? A Mr. Gluthe, Mr. Dichter was standing along in the hall leading out into another room, he said, "If it wasn't for you, you Jew son of a bitch, I would not be in this difficulty, tell me to bring more and more all the time."

20 Q You went up to Mr. Dichter's place as the result of a confession of Gluthe, didn't you? A He had not admitted it at that time.

Q He had not admitted it? A No, sir, until he seen Mr. Dichter.

Q And at that time, did Mr. Dichter tell you this bankrupt story? A Mr. Gluthe.

Q Yes, didn't Mr. Gluthe tell you that he told Mr. Dichter that he had gotten these goods from a bankrupt concern? A No.

30 Q Did Mr. Dichter tell you that when you asked him where he got the goods? A He made that remark.

Q Did Mr. Dichter ask you to go to the back room or was he asked to go in? A The Lieutenant asked him on account of two or three customers.

Q Mr. Dichter was satisfied to talk in the front of the store, wasn't he? A He was satisfied to go back, too.

Q Were any of these goods secreted in any way so that you had to search for them? A No.

Q How much of these goods did Mr. Dichter say he had purchased? A Well, I don't recall the amount.

40 Q You were there when Lieutenant Brex was there throughout these conversations, weren't you? A I would not be positive about that.

Q Lieutenant Brex says that Mr. Dichter claimed that he had purchased from Gluthe forty-five or fifty dollars worth of

this stuff and that Gluthe said that he had paid him seventy dollars, do you remember that? A Gluthe admitted at headquarters he had received between sixty or seventy-five dollars worth, the exact amount that Dichter stated he paid Gluthe, I would not say.

Q You would not say it was less than fifty dollars, would you? A I would not say that. 10

Q You would not know because you don't remember hearing the amount that Dichter said? A I don't recall, I know it was some amount which I don't recall.

Q That's all.

Mr. Bernhard. The State rests its main case but desires the retention of this witness for rebuttal.

HARRY MIGATZ, being duly sworn according to law, on behalf of the defense testified as follows: 20

Direct examination by Mr. Lesser.

Q Mr. Migatz, what is your business? A Commercial stationery.

Q Where do you keep your place of business? A 149 Springfield avenue.

Q How far away is it from Mr. Dichter's place of business? A Two doors.

Q Do you know Mr. Gluthe? A I seen him once, I don't remember his name very well, but when I seen him on the stand I went home on that day and I said to my wife— 30

Q Never mind what you said to your wife. A That I remember him, that he was in my place to sell rubber bands and I was too busy and I didn't purchase none.

Q Mr. Migatz, did you testify at the last trial of this case? A Yes, sir.

Q Were you a witness here last? A Certainly.

Q Did you see Gluthe at the last trial? A Yes, on the stand, yes.

Q Were you there throughout the whole case? A Yes, sir. 40

Q Where were you sitting with reference to Gluthe? A I was sitting where I am sitting now.

Q Was Gluthe in the court room when you testified? A When I testified?

Q When you were a witness was Gluthe in the court room? A I don't know, I cannot say if he went home or not.

Q Well, you were on the witness stand, wasn't Gluthe in the— A I don't remember seeing him.

Q When was the first time you saw Gluthe, is that the time you refer to when he tried to sell you rubber bands? A Yes, sir.

Q Tell us what happened at that time? A I was busy in the store at that time and I was standing behind the counter, my wife called me over, "There is a man to see you about rubber bands." I went to the door and she says, "He was here before." Well—

Mr. Bernhard. I object to that and ask it be stricken from the record.

The Court. The words "here before" will be stricken from the record and Jury will disregard it.

Q Did you have a talk with Mr. Gluthe? A I said, "I will not buy them," I had a lot of talk—

Q Did you have a talk with him? A No, he said that he had lots of rubber bands.

Q Did he say, "I have got lots of rubber bands?" A Yes.

Q And you said you are too busy, you couldn't buy them? A I didn't need them, I couldn't buy them now.

Q Did he have a sample with him? A He didn't show me a sample.

Q You were too busy to bother with him? A Yes.

Q But you are positive it was Mr. Gluthe? A Yes, I can recognize his face.

Q Do you remember what month this was? A Something, the same time, spring or summer, June or July.

Q June or July of nineteen eighteen? A Something like that.

Q Mr. Migatz, did you call up the Faber Company, talk to them about prices of rubber bands? A Not that I can remember.

Q You heard Mr. Fera on the stand? A The salesman comes to my place, I didn't have to call him up.

Q You heard Mr. Fera on the stand say somebody called up and said he was Mr. Migatz? A I heard very well, but I don't

remember calling up Fera, I know Fera's salesman comes to my place.

Q Do you know the manager of the Faber Company that was here on the stand this morning? A I know him here from the Court.

Q From the last trial, you mean? A Yes.

Q And at that time did you give Lieutenant Brex any information about the names of people, who had purchased from Mr. Dichter? A I don't know anything about it. 10

Q No, Lieutenant Brex, do you know who he is? A Yes, I know him very well.

Q Did you tell Lieutenant Brex about a Mr. Silver? A Not that I remember.

Q Do you remember telling Mr. Brex about a Mr. Halperin in New York? A No, I don't know that firm.

Q Did you ever know that there was a Mr. Halperin in New York? A Seen him the last time here at the trial. 20

Q But you are sure you didn't tell Mr. Brex about a Mr. Halperin? A No.

Q Did you tell Mr. Brex about a Mr. Thompson? A No, sir.

Q Or a Doctor Warshawsky? A No, not a bit, not a bit.

Q How long have you been in this business? A Sixteen years.

Q And have you been dealing in rubber bands regularly? A All the time.

Q You buy rubber bands like this (pointing to S. 2)? A Well, I buy them assorted, I don't buy them mixed. 30

Q You buy them in separate sizes? A Separate numbers, all in numbers.

Q Do you know what is the value of mixed sizes like this in bulk, or is there a market value for mixed sizes? A Very little value, value like that is no more than ninety cents or a dollar, the highest, because I would not give that money, too.

Q When was it worth ninety cents or a dollar, you mean, today? A Well, I don't know, I didn't bought anything for about three months. 40

Q Let me direct your attention to September or August? A About that time, I think.

Q August, nineteen eighteen, what could you have bought, if you could have bought a pound of these mixed, what would

you have bought it for? A I bought other assorted ones, I paid at that time one dollar and fourteen cents.

Q For assorted ones? A Yes, one dollar and fourteen cents at that time.

Q Is this what you call assorted? A No, this is mixed, this is seconds, too, these are not firsts.

Q Have you seen these before? A I should think so, didn't I purchase five pounds.

Q From whom did you purchase five pounds? A From Mr. Dichter.

Q I show you some of these rubber bands; look at them. A I know them, I seen the goods before; they are nothing but seconds.

Q How do you know they are seconds? A They are crooked cut.

Q You mean that the cut is not even throughout? A Not even; no, sir.

Q I show you some of these red rubber bands, Exhibit S. 3; see if these are seconds or firsts? A They are mixed, some are straight, some are crooked.

Q Some are good goods and some are seconds? A Yes, some are seconds; they are mixed.

Q I show you some pencils, Exhibit S. 4; look at those pencils; what was the value of those pencils? A I didn't handle them pencils.

Q In August, nineteen eighteen? A I didn't handle them pencils.

Q Why didn't you handle them? A I didn't handle them.

Q What quality are they, if you know? A Them pencils are worth maybe about two dollars a gross; that is all they are worth, the highest.

Q Is it a good grade of pencil or a cheap grade? A That is a cheap grade, a cheap grade of pencil; I didn't handle them.

Q I show you the A. W. Faber Castell pencil and ask you if you know anything about those? A They are worth the price; ten dollars a gross.

Q When? A At a time about a year ago, a year and a half.

Q It is a very good pencil? A Yes, sir.

Q Now, you bought some rubber bands from Mr. Dichter; tell us how that came about; tell us how you happened to buy some rubber bands? A Mr. Dichter was before that time at my store and he told me he has got some rubber bands and I told him I am purchasing American rubber bands, and so and so, and he said he has got some rubber bands, so I said I don't need some, but still as he is a neighbor of mine, I will go into his store and see them. I went inside and I said, "I have not got much use for them, because they are mixed and they are seconds," and he said, "Can't you use none of them?" "Well," I said, "I will take five pounds; how much you want for it?" He said, "Seventy-five cents." "All right." I give him three dollars and seventy-five cents cash and took them in five pounds, and that is all what I know about it.

The court met pursuant to adjournment this 20th day of March, 1919.

Appearances as heretofore.

MORRIS SILVER, sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. Lesser.

Q Who subpoenaed you to come to court today? A What is that?

Q Who subpoenaed you to come to court? A The State.

Q You are a witness for the State that was not called? A Yes, sir.

Q Did you, about August or September of 1918, sell some rubber goods, or pencils and erasers, rubber bands, or pencils or erasers, for Mr. Dichter, to anybody? A Yes.

Q Tell us how it came about? A Certainly. One morning I saw rubber bands laying right in front of the door, so I asked Mr. Dichter what he was doing, and he says he is selling them. I said to Mr. Dichter, "I am going to a man to sell these rubbers, come"; and I brought over Mr. Halpern, from New York, and he bought these rubbers.

Mr. Bernhard. I object.

Q Where were these rubber bands that you saw with reference to the store; what part of the store? A As soon as I opened the door, on the right-hand side of the store.

Q How much was there that you saw? A There was about two or three boxes.

10 Q How big were the boxes? A Well, about that size (indicating).

Q Filled with rubber bands? A Yes, sir.

Q Did you see some pencils there? A Yes, sir.

Q You saw some rubber erasers? A Yes, a little.

Q Did you undertake to sell any of these for Mr. Dichter? A Yes, sir.

Q What did you do towards selling them; what did you do with reference to selling them; did you sell them? A Yes, sir; I brought Mr. Halpern and Mr. Halpern bought the goods of Mr.

20 Dichter.

Q Who is Mr. Halpern? A (Indicating.) Right there.

Q What is his business, if you know? A His business is in the same line of business.

Q You mean general stationery business? A General stationery business, yes.

Q Where does he live? A He lives in New York.

Q Did you go to New York for him? A Yes, sir.

Q You brought him where? A Brought him right to—he came to my store first, and then I brought him in to Mr. Dichter.

30 Q Did he enter into an arrangement for the purchase of any of these articles from Mr. Dichter?

Mr. Bernhard. Objected to.

Mr. Lesser. Question withdrawn.

Q What happened between Mr. Halpern and Mr. Dichter with reference to the purchase? A I don't know; I brought in Mr. Halpern to Mr. Dichter, and Mr. Halpern bought the goods off Mr. Dichter.

Q What did he buy, if you know? A He bought some rubber

40 pencils and rubber bands.

Q Rubber pencils? A I mean pencils and rubber bands.

Q How much did he buy altogether, if you know? A That I don't know; I was not there.

Q Were you paid for your trouble in bringing a purchaser? A Yes.

Q How much did you get? A $10.00.

Q That was your commission for procuring a man to buy these things? A Yes.

Q How often did you see these things displayed in Dichter's store—how many times? A Pretty near about two weeks or three weeks. 10

Q Did you also see them displayed in the window or any part of it? A Yes.

Q Was it made part of the regular window display in Dichter's drugstore? A Yes, sir.

Q Did Mr. Halpern pay him for the goods in your presence? Were you there when Mr. Halpern paid him? A Yes.

Q Did he pay him cash or check? A By check.

Q Did Mr. Dichter raise any question about the check? A No, sir. 20

Q Was there any argument about a check being paid? A No, sir.

Cross examination by Mr. Bernhard.

Q What is your name? A Morris Silver.

Mr. Lesser. It appears that the receipt we spoke about has been found. I would like to have Mr. Gluthe recalled by the State to identify this.

Mr. Bernhard. He will be recalled at the proper time.

Mr. Lesser. I think it should go in now. 30

Mr. Bernhard. There is no necessity of bringing it in right at this minute.

HARRY MIGATZ, heretofore sworn on the part of the defense, recalled and further examined as follows:

Direct examination (continued) by Mr. Lesser.

Q Were you subpoenaed to appear in court in this trial? A Certainly.

Q Who subpoenaed you? A The defendant or the State—I am not sure. 40

Q Have you got your subpoena with you? A Yes, sir; I have got it.

Q Let us see it. A (Produces paper.) Here it is.

Harry Migatz, cross—re-direct.

Q Did anybody from my office give you a subpoena to come here? A No, sir.

The Court. What difference does it make? You are calling him as your witness.

Mr. Lesser. The State has brought him here and has not seen fit to put him on the stand.

The Court. That is entirely improper, and I caution you not to repeat that remark, and I ask the jury to disregard it.

Cross examination by Mr. Bernhard.

Q When did you purchase four pounds of elastic bands from Dichter? A Some time in July; I cannot remember the date; or it was August, something like that.

Q You think it was in July or August? A Somewhere about that time; the same time when he had the rubber bands.

Q Did you make more than one purchase? A One purchase, only five pounds.

Q You talked to Lieutenant Brex, did you not? A Yes, sir.

Q Did you not tell him that the reason you did not make any more purchases from Dichter of elastic bands was because you were satisfied that Dichter did not get them right? A I do not remember saying such a thing—

Q You have answered the question. A No, sir; I don't remember saying such a thing as that.

Q That is, you don't know—"No, sir"? A No, sir.

Re-direct examination by Mr. Lesser.

Q Did you ever have any more talk with Mr. Dichter about rubber bands after the first time you bought them? A None.

Q Why didn't you buy any more?

Mr. Bernhard. I object to that as immaterial.

The Court. I do not see that it is.

Mr. Lesser. It becomes material after the question asked by Mr. Bernhard, "Q Didn't you tell Mr. Brex that the reason you did not make any more purchases was because you were satisfied that Dichter did not get them right?"

The Court. In explanation of the previous answer it may be.

Harry Migatz, re-cross.

Mr. Bernhard. My cross examination was limited to a conversation.

Mr. Lesser. I withdraw the question as it has been asked and will reframe it.

Q Did you tell Mr. Brex why you did not buy any more? A The goods was no good and I did not buy any more; I did not need— 10

Q Did you tell Mr. Brex that? A I do not think he ever asked me.

Q You are positive you did not tell Brex? A No, sir; that is a made-up story.

By Mr. Bernhard.

Q What is that? A I don't think so.

Q What did you just say? A What I said, I don't know. How can he tell such a thing when I did not say it? 20

Q Didn't you say it was a made-up story? A I don't know what it was; I did not say it at all.

Q Did you talk to Lieutenant Brex yesterday afternoon? A Yes, sir.

Q Did you tell him not to tell this Court and jury that you had made the statement to him that I have just asked you about? A I told him that? I told him why—

Q Did you tell Mr. Brex yesterday afternoon, after he had been on the witness stand, that he ought not to have told the Court and jury that you gave him the information about who had purchased these goods—yes or no? 30

Mr. Lesser. I object. It is not cross examination. My re-examination was directed to a conversation that Mr. Bernhard brought out between Lieutenant Brex and Mr. Migatz prior to this. And Mr. Bernhard directs him now to a new conversation and is making this witness his own witness. I submit that if he testifies at all on this it will be as the State's witness; I will not be bound by it. 40

Mr. Bernhard. You don't have to be bound by it. The State is attempting to lay a foundation for a contradiction.

The Court. Objection overruled.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

10 *Mr. Bernhard.* I will ask the stenographer to repeat the question.

Q (Question repeated by the stenographer as follows): "Did you tell Mr. Brex yesterday afternoon, after he had been on the witness stand, that he ought not to have told the Court and jury that you gave him the information about who had purchased these goods—yes, or no"? A No, sir.

Q Did you tell Mr. Smith, Officer Smith—do you know Officer Smith? A Yes, sir.

20 Q Didn't you tell Officer Smith in the corridor of this court room yesterday afternoon, in the presence of Mr. Brex—did you say, "Officer, you ought not to have told the Court and jury that I gave you the information of persons who purchased the goods from Dichter"?

Mr. Lesser. The same objection.

The Court. Objection overruled.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

30

[L. S.] GEORGE K. LARGE,
Judge.

A I can answer you if you want.

Q Did you or didn't you? A No, sir. If you want me to tell you what I said I will tell you, but not this at all. I told him why he made me an enemy of my neighbor—

By Mr. Lesser.

Q Tell us what did happen between you and Mr. Brex and
40 Mr. Smith yesterday afternoon?

Mr. Bernhard. I object. The proper way to bring out that conversation, if it is necessary to bring it out, is on rebuttal. I have merely laid the foundation for a contradiction. No explanation is necessary at this time. It

would come in as rebuttal after Lieutenant Brex and Officer Smith testified.

The Court. I sustain the objection.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly. 10

[L. S.] GEORGE K. LARGE,
Judge.

HARRY H. HERMANN, sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. Lesser.

Q You are a practicing dentist in the State of New Jersey? A Yes.

Q Where are your offices? A 116 Springfield avenue, city. 20

Q In your practice did you have any occasion to do any work for Mr. Gluthe? A I did.

Q Do you know the Mr. Gluthe I mean? A Yes, sir.

Q Where was he the last time you did any work for him? A The last time I did work was down at the county jail.

Q Did you visit him there? A I did.

Q At whose request? A At Mr. Gluthe's request.

Q And did you at that time have any conversation with Mr. Gluthe? A I did. 30

Q Concerning the purchase and sale of some rubber bands by Mr. Dichter for Mr. Gluthe? A I did.

Q Tell us how it came about, what happened, what was said? A I received a letter from Mr. Charles Gluthe at the county jail, requesting me to call and to do work at the jail. While I was working on him I asked him what the trouble was about. Well, he says to me that he had sold some goods to Mr. Dichter, the druggist, and that he was arrested for stealing that stuff. I said to him, "How did you come to sell that to Mr. Dichter?" He says, well, he says, he had a certain debt coming to him for some work he had done and he was given merchandise for money due him. I says, "Did Mr. Dichter know that the stuff was stolen?" He says, "Not at first, not after I had sold the stuff." I says, "Why did you then mix Mr. Dichter into the matter?" He 40

says, "Well, he squealed on me;" he had told the detectives he had stolen the stuff.

Q How long had you known Mr. Dichter before you went to the jail? A About one or two months.

Q Had you had any close friendly relations with Mr. Dichter prior to that? A Absolutely none.

Q Have you had any since that time? A Absolutely none.

Q Prior to your visit to Mr. Gluthe in the jail, you were treating his teeth, were you? A I was.

Q Did you have any talk with him concerning rubber bands before this time? A When he first came to my office he had spoken in reference to the price of certain gold work in his mouth. He said he wanted the best. I gave him a figure of close to one hundred dollars for the work, and he told me he was not in a position at the present time to undertake that, but if I could procure a customer, that he had some rubber on hand, pencils and rubber bands; he said he would undertake to make a set of teeth for $100. I told him it was none of my business; and that whenever he wanted any business and told me to go ahead, that I would go ahead. I asked him if he had very much, and he said he had six or seven hundred dollars' worth. I asked him where they were and he told me that he kept them in his room. One Saturday he came and told me that he had enough money now. I did not know what he had. He said that he had just got another—

Q (Interrupting.) Can you recall when that conversation took place, that you were to procure a purchaser for rubber bands? A That was during July and August—the next time he came to me was August 5th.

Q It was between the latter part of July and August 5th? A Well, about the 15th or 20th of July.

By Mr. Bernhard.

Q Where is your office? A 116 Springfield avenue.

Q Where is Dichter's drugstore? A 155 Springfield avenue.

Q In the next block? A Well, about a block and a half.

Q How long have you had your office there? A A little over a year.

Q How long has the Dichter drugstore been there? A I could not tell you. I used to deal with Warshofsky people before that.

Q Where did you meet Dichter? A I met him in the drugstore.

Q Whose drugstore? A His own drugstore now.

Q He told you, did he, that at first Dichter did not know where he got the goods from, is that right? A That is what he told me in jail, not exactly that; he had told me in jail that he told Dichter that he, the said Gluthe, had received the stuff from some other party, but did not tell Mr. Dichter that he had stolen that stuff until after he had been arrested.

(At this point recess was taken until two o'clock in the afternoon.)

RALPH HALPERN, sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. Lesser.

Q Where do you live? A 239 Fourth avenue.

Q What city? A New York.

Q What is your business? A Wholesale stationer.

Q Do you conduct your business in New York or Newark? A Newark.

Q Did you have any occasion to purchase any stationery from Mr. Dichter? A I did.

Q How did it come about? A Mr. Silver came over to see me and he said he had—

Mr. Bernhard. I object to what Silver said.

By the Court.

Q You purchased it because a salesman came to you? A Yes.

The Court. The witness cannot give the conversation.

By Mr. Lesser.

Q And tell us what you did? A It was through Mr. Silver that I got to Mr. Dichter.

Q Did Mr. Silver direct you to Mr. Dichter's place in Newark? A He did.

Q Did you come to Mr. Dichter's place in Newark? A I did.

Q For the purpose of purchasing goods? A Yes.

Q Did you see the goods there? A I did.

Q What did you see? A I saw a lot of pencils, some
10 rubber bands and some erasers.

Q How much of rubber bands did you see? A There was fifty pounds.

Q In what condition were they? A They were loose assorted.

Q Size by size, or were all sizes thrown together? A Mixed.

Q Were they mixed as to color or just as to size? A A few red ones in them.

20 Q I direct your attention to this box here, Exhibit S. 2; is that the condition you saw these rubbers in? A Yes.

Q You examined them? A I did.

Q How long have you been in the stationery business? A About sixteen years.

Q And in the course of your experience have you purchased and sold rubber bands? A Yes, thousands of bands.

Q Are you dealing in them at this time? A I am.

Q In the condition that you saw those rubber bands in Mr. Dichter's place, what were they worth per pound? A At the
30 highest, fifty cents.

Q How do you arrive at that sum of fifty cents? A Because they are not salable in the mixed sizes; they are salable in separate sizes and boxes uniform.

Q Were they offered to you for sale? A They were offered to me, yes.

Q At what price? A They wanted sixty and they agreed to fifty.

Q You bought some at fifty cents? A Yes.

Q How much did you buy? A Fifty pounds.

40 Q Did you buy any pencils? A I did.

Q What brand pencils did you buy? A Castelle, A. W. Faber, made in Germany.

Q Were the pencils marked "Made in Germany?" A Yes, sir.

Q Were you at the trial yesterday? A I was.

Ralph Halpern, direct.

Q Did you see the green pencils that were shown yesterday? A Yes.

Q Were they the pencils that you purchased? A Yes.

Q How much did you pay for them? A Thirty-five cents a dozen.

Q Were they readily salable in the market at that time? 10 A They were not.

Q Why? A On account of the German name on them.

Q On account of the German name on them? A Yes.

Q How much money did you pay Mr. Dichter for the purchases that you may? A $178.30.

Q Did you pay that in cash or how? A By check.

Q Did he object to taking a check? A No.

Q What part of the store did you see the goods in? A In the front.

Q What kind of a store is this that you came into? A 20 Regular drugstore.

Q In what part of the drugstore were these boxes that you speak of with rubber bands? A They were in the rear—not in the rear, but towards the back of the store.

Q Not behind any partition, were they? A No.

Q Where were the rubber bands weighed? A On a scale on the counter.

Q On a scale where? A At his counter.

Q In the front of the store? A In the middle of his store.

Q But in the front part of the store? A Yes. 30

Q It was not behind the partition? A Not behind the partition, no.

Q Where were the pencils counted? A Right in the store.

Q Did the whole transaction take place right in the front of his drugstore, right in the center part? A Yes; in the center of the store.

Q Were customers coming in and out at the time? A They were.

Q Did Mr. Dichter's clerk see them? A He did.

Q Taking care of the trade as it came in? A Yes. 40

Q Was Mr. Silver there? A He was.

By the Court.

Q Did you say how many dozens of pencils you purchased? A 408 dozen.

Ralph Halpern, direct.

Q At 35c a dozen? A Yes.

Q All green? A All green; yes, sir.

By Mr. Lesser.

Q How did you come to come to court this time?

10 *Mr. Bernhard.* I object. He is here.

Mr. Lesser. It is material to know whether he is here voluntarily or by subpoena. It shows his interest, and I wish to urge the question.

Mr. Bernhard. The real object was indicated by the previous questions, whether or not he was subpoenaed by the State. When I closed the State's case, I specifically stated that I desired the retention of all the witnesses.

The Court. I do not think it is material. He is your
20 witness. It is not a material question.

Counsel for the defendant prays an exception to the ruling of the Court which is allowed and the same is sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Q What was the market value of the Castell pencils you purchased from Mr. Dichter at the time of the purchase? A There was no market value for them at that time.

30 Q Why? A On account of the imprint on them of Germany.

Q Could you have purchased any pencils like them elsewhere at the same time? A Only at a sacrifice price.

Q Was 35c a dozen considered the price to pay for them? A The highest.

Q What was the highest that you would have paid for rubber bands at that time in the condition you saw them in? A Not over fifty cents.

Q You paid the topmost figure when you gave fifty cents a pound? A I did.

40 Q How did you dispose of these German pencils? A I have got a lot of foreign countries that buy them.

Q Are you in the export business? A I am.

Q How long have you been engaged in that? A Just a few years.

Ralph Halpern, direct.

Q Did you dispose of these pencils to foreign trade? A No, these pencils I have not disposed of; I had to give them back to headquarters; they were returned to the—

Q (Interrupting.) These goods have been returned; is that right? A These goods have been returned; yes.

Q Do you have a means of disposal for goods which cannot be generally sold in the open market? A I have, yes. 10

Q Have you ever before purchased rubber bands in the condition in which you found these?

Mr. Bernhard. I object to that as immaterial.

The Court. It is a question of knowledge as to the value or price.

Mr. Lesser. It is not offered for that purpose. It is offered to show whether or not they are ever offered for sale. That is the purpose of it.

Mr. Bernhard. I object to it. 20

Q Have rubber bands in the condition of these that I indicate here, Exhibit S. 2, been offered to you for sale on previous occasions? A They have.

Q And did you pay for them the market value of boxes separately assorted, or did you pay a different price—I mean separtely sorted as to size and color, or did you pay a different price? A As a job lot; we consider them as a job lot; we pay a lot price for them.

Q What was the market price for first-class rubber bands, separately put up in boxes of a pound or an ounce or a half pound, at that time? A $1.20 was the market price. 30

Q What was the market price at the same time for rubber bands in the same condition? A There is no market price for these.

Q What was the most that could be got; what was the most that a jobber would pay for them? A It is what the manufacturer can get for them. Some people try to get what they can. I would not pay over fifty cents, in that condition.

Q You have been dealing in them? A I have. 40

By the Court.

Q What was the amount of your bill? A $178.30.

Q If you paid fifty cents and— A It is sixty-five cents for the rubber bands I paid, not fifty cents.

Ralph Halpern, cross.

Q You paid sixty-five cents? A That is an error of mine —sixty-five cents, $32.50.

Q What did you pay for the pencils? A Thirty-five cents.

Q For 408 dozen? A Yes, sir. $142.80 for the pencils.

Q That is $175.30; you said you paid $178.30? A $175.30—
10 that is correct.

By Mr. Lesser.

Q When you bought these goods from Mr. Dichter did you asked him where he got them? A No.

By Mr. Bernhard.

Q How do you account for the fact that you paid more than the market price for them? A For what?

Q These rubber bands. A I did not pay more than the
20 market price.

Q You said the market price was fifty cents, didn't you? A The market price is as low as you can buy a job lot; there is no market price for jobs, you buy as cheap as you can.

Q You said the market price was fifty cents. A I did not; I said the market price was $1.20 for regular goods.

Q Didn't you say that the market price for these goods, Exhibit S. 2, in the condition in which they are, was fifty cents? A Fifty cents is all we ought to pay for them; there is no market for miscellaneous rubber bands.

30 Q Didn't you testify here a minute ago that the market price for these goods in the condition they now are in, was fifty cents a pound? A I did not say the market price, no.

Q You did not mention fifty cents a pound for these goods, did you? A That is all I would pay.

Q How much did you pay? A Sixty-five cents.

Q You paid more than the market price, didn't you? A I did.

Q Did you say that elastic bands are not put up in assorted sizes? A Not to my knowledge. They are put up by special
40 request.

Q They are never sold in assorted sizes, is that so? A Only by request. People order them that way.

Q That is all. A When people order them that way they put them up in sizes.

Ralph Halpern, cross.

By the Court.

Q Do I understand you to say that when put up in one size they are worth $1.20 a pound? A Yes, sir.

Q You think it is worth the difference between fifty cents and a dollar and twenty cents to sort them, per pound? A I do not get you. You mean it would be the difference if they were sorted separately? 10

Q Mixed, at fifty cents a pound— A Yes.

Q And if you took the trouble to sort them into different sizes, it would be worth $1.20 a pound? A Yes; regular goods.

Q Seventy cents to sort them? A They do not sort them that way; they generally make a run of one size. The only way they get these bands is odds and ends; they put them in a case; they make up a lot in one case and sell that as a job lot, a mixed lot, miscellaneous sizes. 20

Q They might be put up in a mixed lot and that would not make them a job lot? A To my knowledge we cannot sell them that way, mixed, only some people ask for them specially.

Q Is there anything the matter with these bands? A Can I look at them?

Q Yes. As to quality? A No, those bands are all right, outside of being mixed.

Q First-class bands you mean? A Yes; the quality is all right. The only thing is they are a mixed lot. 30

By Mr. Bernhard.

Q Then, these bands, the red and the white ones, by being put together, make the difference in price per pound between $1.20 and 65 cents, did they? A They did.

The Court. I would like to know the date of this transaction.

Mr. Bernhard. I think he said in August. 40

The Witness. August 29th.

By the Court.

Q What is the date of the check? A August 29th.

Ralph Halpern, cross.

By Mr. Lesser.

Q Now, the bands you see here, after having examined them and found them in good condition, what was the most they were worth on August 29th, in the condition in which you find them? A About fifty cents.

10

By the Court.

Q And you paid sixty-five cents? A I did pay sixty-five cents. If I could not have got them for sixty-five cents I might have paid seventy cents.

Q If they were worth only fifty cents? A We buy goods as low as we can get them, when it comes to a job lot and regular goods—

Q Why would you have paid seventy cents for stuff that is worth fifty cents? A In a job lot you will have to look for a buyer that will want that particular line of goods.

20

By Mr. Bernhard.

Q Now that that subject is opened, we might as well go into it. Tell us, by reason of your sixteen years' experience, what difference there is between the use of red or white bands as far as the trade is concerned? A No difference in the use of them; the only difference is in the selling of them.

Q What is the difference in selling a white or a red band among the trade? A Well, the people prefer to buy one kind; when they come to buy a pound of bands, they don't want to get a mixture.

30

Q Why? A Because the customer does not ask for it; it is not customary.

Q What practical disadvantage is there in using red or white bands? A It is not practical to sell them; the manufacturers are not making them assorted; the trade is not using them being mixed.

Q What is the practical disadvantage of using a red or a white band?

40

Mr. Lesser. I object; it is a matter of argument; the witness has testified as to why they are not.

The Court. It is a question of knowledge. Objection overruled.

Ralph Halpern, cross.

Defendant's counsel prays exception to the ruilng of the Court, and the same is allowed and signed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

10

Q What practical disadvantage has there ever come, to your knowledge, in the sale of these bands, because of depreciation in price between them when they are mixed together? A The use is the same; they can use the red as well as the gray; the only thing is the red are not in the market as much as the gray, and I think the red costs a little more.

Q I want to know the practical disadvantage of using the red or white band so as to cause depreciation in price when they are mixed together? A There is no disadvantage in the use of either band at all.

20

By Mr. Lesser.

Q What is the reason for the depreciation—just because they are red and gray together? A No; the small and large sizes mixed.

By the Court.

Q Do you class these goods the same as all rubber bands? A No; I class them as a mixed lot.

Q These rubber bands and Faber pencils have a value in the trade, do they? A Today?

30

Q Yes; at that time? A At that time, very little value on account of the name.

Q How about the quality? A The quality is there; the quality never failed.

Q What is that? A The quality is all right, A-1 goods. The thing is hard to sell in these days.

By Mr. Bernhard.

Q Pick out of this box the many different sizes you were telling us about? A Do you want to know the different sizes in there?

40

Q Pick them out. You were telling us about them? A Five—

Aaron Dichter, direct.

Q They all sell for $1.20 a pound in the box or separate? A Individual sizes; yes, sir.

By Mr. Lesser.

Q Is there any way in which you could distinguish who made that band? A No.

10 Q Look at one of them and see if by the seam you can distinguish any special feature? A You cannot—not the rubber bands.

Q Have you ever seen rubber bands made with special types of seams? A Yes.

Q Who makes them, do you know? A The American Lead Pencil Company.

Q The American Lead Pencil Company has a special type of seam? A On their wide ones; the narrow ones, you cannot

20 tell; the wide ones you can tell easily.

Q The narrow bands generally you cannot tell who makes them? A No; you can't tell who makes them.

Q Can you tell by the texture of the rubber? A No; Goodrich makes a somewhat similar band today.

Q What is that? A Goodrich Rubber Company.

AARON DICHTER, the defandant, sworn as a witness in his own behalf, testified as follows:

Direct examination by Mr. Lesser.

30 Q You are the defendant in this case? A Yes.

Q Where do you keep your place of business? A 155 Springfield avenue.

Q In the city of Newark? A Yes.

Q How long have you been there? A A year.

Q What date, if you know, did you go in there? A It would be about March 2d.

Q March 2d, 1918? A Yes.

Q Since that time you have conducted that drugstore? A Yes.

40 Q From whom did you purchase it? A From Warshofsky.

Q Where were you engaged in business before that time? A Harrison.

Q Did you have a drug store there? A Yes.

Q Where was your store there? A 400 Second street.

Q How long were you there engaged in business? A Seven years.

Q Are you married? A Yes, sir.

Q Have you any children? A Yes, sir.

Q How many? A Two. 10

Q Do you live in Newark? A Yes.

Q Where do you live? A 36 Sterling street.

Q Do you know Mr. Gluthe? A Yes, sir.

Q Where was the first time you ever met Mr. Gluthe? A Why, it was about the first time when I bought the store, I saw him a few days after.

Q What was he doing there? A He was a customer of the store.

Q Did he come in as a customer? A Yes. 20

Q To buy something? A Yes.

Q Do you remember whether you waited on him or not? A I personally did.

Q Did you have any talk with him that time of any consequence? A Except that he told me he had trouble with his teeth, and I gave him some medicine for it.

Q And he left the store? A He did.

Q How often did you see him after that? A Mostly about every day.

Q Did you become friendly with him? A Yes; he used to 30 buy cigars in the store.

Q Tell us about some of your experiences with him? A He used to come into the store and show us his strength, telling us he was special guard for the Kaiser. We used to have fun with him.

Q Did he ever bare his arm and show you his muscle? A Yes.

Q And tell you how many tons— A Yes; he told me he shovelled about twenty tons of coal every night.

Q Did he tell you where he lived? A Yes, he told me 40 he lived over on the west side.

Q Did his wife ever come in the store? A His wife was a customer once in a while.

Q Do you know his wife? A Yes; I know her.

Q Is she in the court room? A She is.

Q Tell us the first time he came in with some rubber bands—tell us the first time? A Well, it was some time about August, between August 15th and 20th. He came in one day and got his cigars and he had a prescription from Dr. Hermann for a mouth wash and I made it for him, or rather the clerk made it, and the clerk asked me how much to charge him, and I made a price for him, and then he told me he will pay in a few days because he got no change. I says: "All right." He asked if he could have some cigars of me, and he got half a dozen.

Q Tell us about the rubber bands? A Then he asked me: "Do you use rubber bands in the store?" I said, "No; I do not." He said, "Would you use any?" I said, "Well, I have no use for it, but if they can save me any expense, I might." He takes out from his pocket a bundle about a pound and a half or two pounds and shows me. He says he has a room full in his house of it.

Q What did he say? A He said that he had a room full in his house of it. I says, "Well, I cannot use too much, I will try a few pounds or so for my store." He said, "I will make you a present of this package. You treat me right." I says, "I do not want any presents. I will pay for it. What do you want for it?" He says, "Seventy-five cents a pound it has been selling for." I said, "Where did you get them?" He says he worked for a store for years and he is making them himself, and they owed him some money for salary and because they went in bankruptcy they paid him off with goods, because it is a German firm, and he is the only German that works there, they did not want him to lose any money; then they gave him rubber bands and he got also some pencils. I says, "I will not use a pound a week; they last for years and they dry up." I bought a pound and a half that time, and he left the store. A couple of days later the man from whom I bought the store came in—

Q Which man? A Dr. Warshofsky, and sees me using bands, and he says, "Why—"

Mr. Bernhard. I object.

Q You had a talk with Dr. Warshofsky about rubber bands? A Yes; I did.

Aaron Dichter, direct.

Q As a result of your talk with Dr. Warshofsky, were you interested in purchasing rubber bands? A I was.

Q When was the next time that you talked to Gluthe about rubber bands? A It was a couple of days later. He came in again and asked me what about those bands. I said: "What is your price on them?" He says he wants 75 cents a pound; I says, "Well, I will see if I can get some one who will buy them; then I might buy them off you." I showed them to different people; to Dr. Warshofsky and Mr. Marcus and asked what it is worth. He told me it is worth about 50 cents; 60 cents the highest. They asked me whether they had sorted the different sizes, and told them this is a sample; they told me it is not worth over 60 cents, or 75 cents at the highest, if anybody needs them.

Q Did you ever deal in rubber bands before? A No; I did not.

Q In your eight years' experience as a drugstore owner, had you rubber bands in your drugstore? A No, sir; I did not.

Q How did you happen to buy so many rubber bands on this occasion? How much did you buy all together? A All together I believe about one thousand pounds.

Q How much did you pay for them? A Fifty cents per pound; the first sixteen pounds; I paid about fifty-five or sixty cents; I don't remember.

Q You never sold rubber bands in pound lots in your store, did you? A No, sir; I did not.

Q What did you intend to do with these rubber bands? A The business simply I did.

Q The big amount that you had? A I bought them for to sell them to Dr. Warshofsky; he asked me to buy them for him and he will sell them to the trade in pound packages.

Q Did you sell any to Dr. Warshofsky or to Dr. Warshofsky's concern? A I did.

Q How much? A I could not say how many pounds; possibly three hundred; I am not sure how much.

By the Court.

Q What is that? A I am not sure how many pounds. About three hundred or four hundred.

Aaron Dichter, direct.

Q To whom? A To the company with which Dr. Warshofsky is connected.

Q Is that the same company Mr. Thompson was in? A Exactly.

By Mr. Lesser.

10 Q How many times did Mr. Gluthe bring you rubber bands or pencils or erasers? A Four times in all.

Q Four times in all? A Yes, sir.

Q The first time he brought you how much? A The first time he brought me sixteen pounds.

Q And the next time he brought you how much? A I could not be sure how many rubbers it was; how many pencils, but it was a big quantity.

Q How did he bring them to your store? A He brought
20 them in a push cart.

Q Were they weighed out in your store? A Yes.

Q Did you pay him for them? A I did.

Q How did you pay him the first time? A I paid him the first time in cash.

Q How much did you pay him the first time? A The first time I paid him about eight dollars or so.

Q For rubber bands? A Yes.

Q How much did you pay him altogether for that first order? A About fifteen dollars and fifty cents, I believe.

30 Q What else was included in the first order? A There was pencils.

Q Were there also some rubber erasers? A A Few.

Q How much did you pay him the second time? A The second time I paid him $255.00

Q $255.00? A Yes.

Q Where were those rubber bands weighed out? A In the front of the store.

Q Who was there? A The clerk and the salesman was present that time.

40 Q The salesman from what concern? A The Herkolin Company.

Q What is the name of that salesman? A Mr. Stickle.

Q Did he see the things weighed out? A He did.

Q Was he present when you paid Gluthe? A He was.

Q How much money did you give Gluthe? A $255.00.

Q Check or cash? A By cash.

Q How did you come to give him cash? A He refused to take a check. He said it will cost too much to cash it, and if he goes anywhere to get it cashed it will cost five or six dollars to get it cashed.

Q Was there something said about a saloon at that time? A Why, yes; he said he would have to go in a saloon and pay five or six dollars for cashing the check. 10

Q Was Mr. Stickle there when you turned over the money to him? A Yes, sir; he was there.

Q Was your clerk there? A Yes, sir; my clerk was in the time when I weighed it, although—why, he saw me paying the money.

Q He was in the store at the time the transaction took place? A Yes; he was there.

Q Front of or behind the prescription counter? A Yes; it was in the front part of my store. 20

Q Where were the goods weighed? A Right in the same place; the front part of the store.

Q What was the next time Gluthe brought some goods? The next time, four days later, I believe, he brought another quantity over in the push cart, for which I paid him $165.00.

Q Who was present at that time? A The clerk. There was another man on the soda counter; the fellow that is working for the Rambler shoe store.

Q What is his name? A Eisenberg.

Q Is the Rambler shoe store near your place of business? A Two doors away. 30

Q While the three transactions you have testified to with Gluthe were taking place, were people coming in and purchasing goods in your place? A Yes, sir.

Q What time of the day was it? A Why, the first time, when he delivered them in a pushcart, it was about half-past twelve.

Q You mean the first pushcart delivery? A Yes.

Q Let us go back to the first delivery of sixteen pounds? A Yes, sir.

Q What time of day was that? A Between ten and eleven. 40

Q How do you know it was later than eight o'clock? A I am never in the store before half-past ten.

Q Why do you get in the store so late? A Because I personally close the store at twelve.

Q Did you get in after ten o'clock that morning? A I always do.

Q Did you have a boy working in the store at that time? A A boy after school only.

Q Was there a boy came to your house on the morning of the day when the first delivery was made of the eight pounds of rubber bands and other goods and informed you that Mr. Gluthe was waiting for you? A No, sir.

Q Do you know anything about Gluthe waiting for you in your store? A No, sir; I do not.

Q Was Gluthe waiting for you when you did get there? A He was not there when I came in.

Q He came after that? A A few minutes after that; yes, sir.

Q Were any purchases that you made from Gluthe made before ten o'clock in the morning? A Never.

Q Now, let us go to the fourth time; you said the third time—what else did you get besides rubber bands when you paid him $165.00? A Pencils.

Q The pencils that were shown here in evidence? A Yes, sir.

Q Now, the fourth time, what did you buy and about how much? A Rubber bands and pencils.

Q How much did you pay this time? A $85.00.

Q Who was present at that time? A Myself, the clerk, and there were customers in the store.

Q Do you know whether or not your clerk saw you paying the money? A Sure, my clerk saw me paying the money.

Q Now, you say there was one more delivery; or was that the last? A That was the last.

Q And you paid him $255.00 altogether— A Correct.

Q And $166.00? A Correct.

Q And $80.00, did you say? A $85.00.

Q And $15.50 for the first delivery? A $15.50. He was together with his wife that time when I paid him.

Q The first time you say his wife was present? A Present; outside in front of the store.

Q She did not come into the store? A No; she did not.

Q Did anything happen with reference to that money between himself and his wife? A Yes, sir; he got the money and went outside, and his wife grabbed the money from his hand and she did not want to give him any, and he asked at least for $5.00; and he called her different names; they had an argument, and

finally he said, "Please give me money to pay the cigars." He came into the store and slammed the door and started hollering in German. I asked him to go out; I did not want an argument in the store, and people were in the store, and I asked him to walk out of the store.

Q That was the first occasion? A The first occasion. 10

Q When was it that Mr. Gluthe told you that he had worked for a store that went into bankruptcy and paid him back salary with rubber bands; was it before you had made any purchases of him or after? A No; it was before; he told me that many times before.

Q Did you believe him? A I did; I had no reason not to believe him.

Q The first time he sold you some goods did you ask him for a receipt? A I did.

Q I show you a card and ask you in whose handwriting that is, if you know? A Yes; that is in his handwriting. 20

Q Did you see him write it? A Yes, sir; I did.

Q And what is that? A It is a receipt for sixteen pounds of rubber and 152 pencils. It was the first occasion he sold it to me.

Q How much is it for? A $15.50.

Mr. Lesser. I offer it in evidence.

Mr. Bernhard. No objection. 30

(Paper is received in evidence and is marked Exhibit D. 1.)

Q Did he give you that when you paid him the first time? A Yes, sir.

Cross examination by Mr. Bernhard.

Q Where did you live in June, July and August, 1919? A Why, 36 Sterling street.

Q The same place that you live now? A Yes, sir. 40

Q What part of the building did you live in? A One flight up.

Q So, it is true, is it, that you lived on the second floor of the building where you now reside, at that time? A Exactly, sir.

Aaron Dichter, cross.

By the Court.

Q This store is in the County of Essex? A City of Newark; yes, sir.

By Mr. Bernhard.

10 Q You paid Gluthe altogether $520.50? A Yes, sir.

Q You paid him all that in cash, did you? A Yes, sir.

Q You always knew when he was coming around to see you, I suppose? A No, sir; I never knew when he might come.

Q How did it happen that you always had so much cash in your pocket? A I always carried several hundred dollars in my safe.

Q So that you paid him in cash, did you? A Yes, sir.

Q Did he tell you why he wanted this money? A No, he did not.

20 Q Didn't he tell you that he wanted it for his dentist? A No; he did not.

Q You knew that he was then having a dentist take care of his teeth? A Yes; I knew that.

Q Now, just for a minute; didn't he tell you that was the reason he wanted this money? A No, sir.

Q Are you pretty sure? A I am positive.

Q Was that the only occasion that you paid him $15.50 in cash and he gave you a receipt for it? A Yes, sir.

Q The next time you paid him $255.00 in cash; is that right?

30 A Yes.

Q And did not get a receipt for it? A I will explain to you the reason why.

Q Is that right? A Yes, sir.

Q The third time you paid him $165.00 in cash, and did not take a receipt for it at that time? A No, sir.

Q The fourth time you paid him $85.00 in cash and did not take a receipt for it then? A No, sir.

Q Now, then, go ahead with your explanation? A I asked him for a receipt, and he says: "Well, when I deliver all I have

40 got I will give you a bill for all of it." At the same time I had witnesses of the amount of money I gave him. I thought I am safe so far as that is concerned.

Q Let us have that over again.

Mr. Lesser. Objected to.

Mr. Bernhard. I asked the witness to repeat it. I have a right to do that.

Q When did you give him the first receipt? A I didn't give him any receipt.

Q Didn't you? A I didn't give him any receipt; he gave it to me.

Q He gave you that receipt? A Yes.

Q When did he give it to you? A The first occasion when I bought of him.

Q Why did you ask for that receipt? A Why, I asked for it simply at that time, I believe, myself in the store—or the clerk—I wanted to know who I am buying of; I want to know he has got his money.

Q I understood you to say the reason you did not take a receipt the other times was because you had witnesses? A Exactly.

Q Didn't you have witnesses to the first occasion? A I did have a witness.

Q If you had a witness to the first payment, why did you take a receipt? A He might demand the money again.

Q Might it not be the same thing every time? A It might be.

Q If it was the same thing, why didn't you ask for a receipt eich time? A I did ask him, and he said he would give me a bill "Paid in full" when he delivered all the goods.

Q Then, why did you ask for a receipt for the various payments? A I asked that each time, and he said—

Q How did you come to make a distinction between the first and second payment? A I did not make any distinction.

Q You did not? A No, sir.

Q Well, the result is, anyhow, that you took a receipt the first time? A Yes.

Q Why? A Simply I wanted to know that he got paid for it.

Q If you wanted to know it the first time, why didn't you want to know it the second time?

Mr. Lesser. The witness has answered as well as he could.

Q If you wanted to know the first time, why didn't you want to know the second time? A As I said, he promised to bring a bill when it is paid in full, when he brings the goods he will bring a bill for everything.

Aaron Dichter, cross.

Q If you wanted to know the first time, why didn't you want to know the third time? A For the same reason.

Q The fourth time? A The same reason.

Q Why did you take a receipt for $15.50, but you did not take a receipt for $505.50? That is right, is it? A Yes.

10 *By the Court.*

Q After the fourth payment, did you expect to have some more goods delivered yet? A Certainly; he told me he had over 3,000 pounds.

Q You expected to get 2,000 more pounds? A Exactly.

Q From a man who said he was a laborer? A He said he had got it in his house, in his possession.

Q From a laborer, who told you this was to pay him back salary, and you understood that he had 3,000 pounds? A That
20 is what he told me.

Q You believed that? A I did; I was foolish to do it.

By Mr. Bernhard.

Q How much did he tell you was owed him in back salary? A He did not mention any amount.

Q Did you ask him? A He told me he worked there for five years.

Q Did you ask him how much he had been getting a week? A Yes, sir, I did.

30 Q What did he tell you? A He told me he was getting $45.00 a week.

Q So that, knowing from what he said that he was getting $45.00 a week, you paid him for ten weeks' back salary; is that right?

Mr. Lesser. Objected to.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the Court, which is allowed and the same is signed
40 and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Q You paid him for ten weeks' back salary, didn't you? A I don't know how many back weeks; I paid him $520.

Q That represented what you thought was back salary that had been due him; is that right? A Yes.

Q Now, then, did you ask him how long that money had been owed to him? A No, I did not.

Q Why not? A I was not interested in his affairs.

Q You were interested enough to ask him to bring these goods to you, were you not? A I didn't ask him. He brought them. 10

Q You did not ask him to bring it? A No.

Q Did you ever tell him you did not want any more? A I did not tell him nothing.

Q Did you ever tell him you did not want any more? A No, sir.

Q You were glad to get it? A I was not glad to get it.

Q Why did you take it? A I did not buy for my own purpose; I bought for the purposes of other people. 20

Q Is that right? A Yes.

Q Did you buy it for yourself or somebody else? A I bought it for myself to sell to somebody.

Q You had a part for yourself and a part for somebody else; is that right? A Pretty near.

Q What do you mean by "pretty near"? A I bought for myself to sell to somebody else.

Q You bought part for yourself and part for somebody else? A If it was an advantage to use these. 30

Q Then you bought some of these goods to use yourself? A Yes.

Q And part you bought to sell to somebody else; is that right? A Yes.

Q This part that you sold to somebody else, you expected to make a profit on, didn't you? A Yes.

Q You knew, at the time you bought these goods, that you could sell them to somebody else and make a profit on them, didn't you? A Yes, sir.

Q How much did you expect to make? A Well, I have been told it is worth about 65c a pound. 40

Q How much did you expect to get? A 65c.

Q Where is your profit? A I paid 50c; there is my profit.

Q So that before Gluthe brought these goods you had a customer? A Yes, sir; otherwise I would not buy it.

Q That was the reason you did not ask Gluthe where he got them? A I did not ask him where he got them.

Q That is the reason that you did not ask Gluthe where he got them? A Yes; I did ask him.

Q That is the reason you did not ask Gluthe how much salary was due him, is it? A I did not think anything about his salary.

Q Didn't you ask him where he was located; where he worked? A No; I did not.

Q Why not? A I did not think it necessary; I did not think anything about it.

Q You did not want to know? A No, sir; I did not.

Q Not any time; from the time that Gluthe first came into your store until the day you were arrested, you made no effort at all to find out where Gluthe got these goods? A I did not have to. I knew, because he told me.

Q You expected to make 15c a pound, did you? A Yes, sir.

Q And yet you paid Silver $10.00 for procuring Halpern as a customer for you, didn't you? A Yes.

Q Was that exclusive or inclusive of your profit? A I paid him from my profit.

Q You paid him all your profit? A I paid him from my profit.

Q You paid him from your profit? A Yes.

Q You say you bought some of these goods for Dr. Warshofsky, did you? A Yes.

Q And of course you expected to make a profit out of him, too, didn't you? A I did.

Q How much profit did you make out of Dr. Warshofsky? A I did not make any.

Q You sold to Warshofsky at the same price you paid Gluthe, did you? A Yes.

Q You did not expect to make any profit? A I did expect to, but I was glad I was able to make a sale at the price I was offered.

Q When did you sell Warshofsky? A I could not remember the date; it was about a couple of weeks after I had them.

Q When did you open for the first time the pencils that came into your store? A Why, I opened them in a couple of days after, I believe.

Q So that you knew in two days after Gluthe brought these goods to you that these pencils came from A. W. Faber, didn't you? A Yes.

Q Did you call them up? A I did not.

Q Did you investigate to find out whether Gluthe came into possession of those unlawfully or not? A Why, I asked him about it. 10

Q Did you or didn't you? A I asked him about it.

Q Did you call up Faber to find out? A No, sir, I did not.

Q Why not? A Because I did not think Faber was in this country; I thought they were in Germany; I did not know—

Q How much profit did you make? A I lost ten cents on each dozen.

Q How much did you expect to make? A I expected to make five or six cents. Ten cents less I got. 20

Q Had you an order for the pencils before Gluthe brought them to you? A No, sir.

Q Why did you sell to Warshofsky the rubber bands at the same price that you paid for them? A Because when I bought them the first time Warshofsky came in the store; he said possibly we can sell them in the retail and after I had them he looked them over and said they were mixed; he could not be bothered with them; he would not want to buy them.

Q Were they not mixed when they first came to you? A No, sir; they were mixed when they came to me; the first sixteen pounds were mixed, small sizes only; and the other sizes were big and large and very large. 30

Q You mean like this Exhibit S. 3; that Warshofsky would not buy these? A Yes; there were some larger sizes than these which a drugstore cannot use.

Q So that what you sold to Warshofsky you did not expect to use yourself, did you? A No, sir; I did not.

Q How much did you ask Warshofsky for them? A 75c a pound.

Q So that you wanted to make on Warshofsky 25c a pound? A Yes. 40

Q 25c a pound? A Yes.

Q Did you sell Warshofsky before you sold Thompson? A That was the same thing.

Q What do you mean? A That was the same company.

Q I know, but you sold some to Thompson, didn't you? A Yes.

Q You sold some at 15c profit and some at 25c profit? A I didn't sell any for 25c profit.

Q You sold to Halpern at an increase of how much? A 15c
10 a pound.

Q Had you sold to Halpern before you tried to sell Warshofsky? A No; I did not.

Q Are you sure that you sold to— A I sold to Warshofsky first.

Q And then you sold to Warshofsky for what you paid for them? A Yes.

Q And then you sold to Thompson at an increase of 15c a pound? A Yes.

20 Q Mr. Dichter, did you really and truly ever have any conversation with Dr. Warshofsky about these rubber bands? A I did.

Q Didn't you do your business with Mr. Thompson? A Afterwards, yes.

Q With whom did you do business first? A Dr. Warshofsky.

Q How was this money paid to Gluthe? A Which money?

Q All the money you paid him? A What do you mean; how it was paid?

30 Q Paid in cash? A In cash.

Q Small bills? A Large bills.

Q Always in the presence of some witness? A Yes, sir.

Q Why did you always have a witness present? A They happened to be in the store; I could not help that.

Q You could not help that? A No, sir.

Q You paid him in cash because he said he could not get a check cashed? A Yes, sir.

Q Didn't you think it a bit strange when he gave you that excuse? A Not in the least.

40 Q Did you ask him what he had done with the money you have paid him? A No; I did not.

Q What was the longest interval of time between any separate transaction? A I could not say exactly how many days.

Q You were there? A Yes; I was there.

Q Why cannot you tell? A A few days.

Q From the time you paid him $15.00 had many days elapsed before you paid him the $255? A About three or four days I believe.

Q From the time you paid him $255 how long a time passed until you paid him $165? A Within two days.

Q How much? A Within two days.

Q How much time before you paid him $85? A Within another three or four days. 10

Q So that within a period of ten days or two weeks you paid him $525? A Yes.

Q And never asked him what he did with the money? A No, sir.

Q During that length of time he wanted to get credit in your store for half a dozen cigars— A It was before that.

Q How long before? A A week before.

Q Did you know that week before whether or not he was working? A Whether I knew he was working? 20

Q Yes. A He always told me he was working.

Q Didn't you think it strange that working he had to get credit for a little candy and half a dozen cigars? A I don't know; I suppose he gets short in his allowance or something.

Q What did you think he was working at the week before? A He told me he is night fireman in the Prudential Building.

Q What time of day did he come on the first occasion? A On the first occasion it was about a quarter before twelve.

Q Was his wife with him when he came with the push cart? A No, sir. 30

Q Was there anybody with him? A No, sir; he was alone.

Q At any time was there anybody with him? A On the first occasion there was his wife.

Q Then he didn't have the push cart? A No.

Q Did you ask him anything about the push cart? A Yes.

Q What did he say? A He had to pay 75c for it, he demanded that in addition.

Q Did you ask him where he had hired it? A Nothing.

Q What kind of a pushcart was it? A It was an ordinary three-wheel push car about eight feet long. 40

Q Three wheels? A Yes, sir.

Q When these goods came in the push cart how were they wrapped? A In boxes.

Q All of them? A Yes, sir.

Q Is that right? A Yes, sir.

Q They were all loose? A Yes, sir.

Q And none of the boxes had the names of the makers of the rubber bands, did they? A No, sir.

Q Did you think that strange? A Not in the least.

Q Why not? A I never dealt in them; I did not know how they must come.

Q Do you mean to tell us that during the time you have been in the drugstore business you have never known a druggist to use elastic bands in doing up packages? A I did not.

Mr. Lesser. I object as not proper cross examination.

The Court. Objection overruled.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed and is signed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Q So that during the eight years that you have been in the drug business you never knew any other drugstore in Newark that used elastic bands to tie up packages; is that right or not?

Mr. Lesser. Objected to as not proper cross examination.

The Court. Objection overruled.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed and the same is signed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

A I personally never used them.

Q Did you know of any other drugstore using them? A No, sir.

Q So that up to the time that Gluthe came to you with these elastic bands you did not know of any use to which you could put them? A I know, because we used to use them in Europe.

Q Then you do know? A Yes, sir; in Europe but not in this country.

Q You never knew anybody in this country to use them? A No, sir; I did not see any.

Q What use did you intend to put these bands to? A Well, for wrapping packages, for personal uses.

Q Did you use them for any purpose? A I did.

Q Did you have any idea for how many years you could wrap up packages with one thousand pounds of these elastic bands? A I did not buy the whole thousand pounds for personal use. 10

Q How much did you buy for personal use; how many for personal use? A Sixteen pounds.

Q Then, after you bought these bands you discovered you could make a profit? A Yes, sir.

Q Then you wanted more? A Yes.

Q You told Gluthe to bring more, didn't you? A He asked me whether I would buy more.

Q You asked him to bring more, didn't you? A I did not ask him. He asked me. He asked me would he bring more and I said yes. 20

Q When you found you could make a good profit, no mistaking it, you told Gluthe to bring more? A No, sir, I did not.

Q How did he happen to bring more? A He came and offered them for sale and I bought them.

Q Why did he come the second time? A He came and asked whether I could use more.

Q What did you say? A I said I could not use at the time any more; for sale, I could.

Q How was it the third time? A The same way.

Q The fourth time? A The same way. 30

Q And didn't you tell Gluthe you were making 15c to 25c a pound profit?

Mr. Lesser. I object to that as immaterial.

Mr. Bernhard. It shows knowledge.

The Court. Objection overruled.

Counsel for the defendant prays an exception to the ruling of the Court and the same is signed and sealed accordingly.

[L. S.] GEORGE K. LARGE, 40
Judge.

Q Did you tell Gluthe that you were making 15c to 25c a pound profit on it? A No, sir; I did not.

Q Why not? A I did not think it necessary to tell him my business.

Q On the day you were arrested and taken to the police station at the City Hall, did you or did you not say in the presence of Officer Brex and Officer Smith that all of the money that you had ever paid Gluthe was about $60 or $75? A I did not.

Q Did you tell them how much you had paid him? A I did.

Q Are you sure? A Positively.

Q Then, when they say— A They marked on a piece of paper—

Q Then what they say you said, is not true, you say? A What?

Q When they say you said about $75, you say is not true? A Positively.

Q Didn't you hang your head?

Mr. Lesser. I object. The testimony was that Gluthe hung his head.

The Court. I do not think it is material.

Q What position were you in when you were asked down at the police station as to how much money you had paid? A I was sitting at the desk.

Q How far away was Gluthe? A Gluthe, I did not see him until they put me in the other room.

Q You received a telephone message? A I received two, yes.

Q You received two of them? A Yes, sir.

Q When? A One right after the other.

Q How long before you were arrested? A Two days previous.

Q From whom? A I don't know.

Q Are you sure? A Positive.

Q You had talked to Gluthe in your store for a long period of time, had you not? A Sir?

Q You had talked to Gluteh for a long period of time, had you not? A Yes, I did.

Q You knew his voice? A Yes.

Q Was it Gluthe who talked to you on the telephone? A No, sir.

Q Are you sure? A Positively.

Q Is that right? A Positive.

Q You took the goods out of your window, didn't you? A I did.

Q Was it Gluthe who told you to take them out? A No, sir.

Q Then why did you take them out? A Because I was threatened to break my window. 10

Q What? A I have to take the German goods out of my window.

Q Is that right? A Yes.

Q Is that the only reason? A The only reason.

Q Then why did you take the elastic bands and the erasers out of the window? A I took everything.

Q If that was the only reason, why did you take the erasers out of the window? A Because I was afraid the windows would be smashed. 20

Q You said a moment ago that the only reason you took these goods out of the window was that they were German marked goods? A I suppose it was for that reason.

Q That is right? A Yes.

Q Why did you take the erasers out, that were not marked? A I took everything out from the window; I did not want to leave part in the window.

Q Did you take everything out? A Everything.

Q Every single article? A No, sir; not every single article.

Q Why not? A As long as I removed the pencils and erasers I was sure that the window would not be broken. 30

Q What had the erasers to do with German marked goods? A I did not only have erasers; I had also pencils.

Q Why did you take the erasers out of your window? A Because I was threatened the window will be smashed.

Q Why did you take out the erasers? A Because I took out the pencils I took out everything.

Q Couldn't you take out the pencils without taking out the erasers? A I did not think to.

Q How was it you did not take any other things? A Why not? 40

Q The reason you took these things out of your window was because these were the goods you had received from Gluthe and Gluthe telephoned you? A No, sir.

Q Is not that the reason? A No, sir; absolutely not.

Q Are you sure? A Positive.

Q You were threatened your window was going to be broken? A Yes.

Q Why didn't you notify the police? A I did not think the first occasion when he called Thursday and Friday I received the other telephone, and this time I supposed it might be— (Interrupted.)

10

Q Why didn't you notify the police? A I was busy that evening and I know—

Q You were too busy to notify the police, yet you were not too busy to take these things out? A I took them out before I closed the store.

Q Why didn't you notify the police? A Because I did not think it was necessary.

Q Was it because you did not think it was necessary or because you were too busy? A I was too busy, first, and then I thought it was not necessary.

20

Q If you thought it was not necessary, why did you take the things out? A For my own protection.

Q The police station is right around the corner? A I don't know where the police are.

Q You do not know how far the nearest police station is to your place of business? A I never had occasion to be in there.

Q Do you mean to tell the Court and jury you do not know where the police station is? A No, sir; I do not.

30

Q Why, Officer Brex asked you why you did not call up the police station or walk around, that it was only two or three minutes— A No, sir; he did not.

Q And didn't you say, "I know it"? A I did not say it; he asked me why I did not call up and I said it was not necessary. That was all as far as I know.

Q How long have you been there? A I have been in business there a year.

Q Do you mean to tell this Court and jury that you do not know where the nearest police station is? A I didn't know; I did not know it at that time.

40

Q How long had you been in that drugstore? A One year and two months.

Q Where were you before? A Harrison.

Q Did you ever hear of Seventeenth avenue? A No, sir.

Aaron Dichter, cross.

Q Did you ever hear of Belmont avenue? A Yes.

Q How far is it from your store? A About four or five blocks.

Q Did you ever hear that one block down Belmont avenue the police station is? A I never did.

Q Five blocks away? A Never. 10

Q Not the slightest idea? A Not the slightest idea.

By the Court.

Q How many pencils did you buy? A I could not exactly tell how many. I believe all that I bought is what I sold to Halpern and what were in the place of business which were taken.

Q About how many was that? A It might be 600 dozen or so.

Q You sold Halpern 408 dozen? A Yes, sir. 20

Q And then how many were left at your place? A I could not tell exactly.

Q About how many? A It was about fifty dozen or a hundred dozen.

Q From fifty to a hundred dozen? A I believe so.

Q What was in the fourth transaction—how many pounds of rubber or how many pencils were in that transaction when you paid $85? A I could not tell how many there was altogether; what I bought amounted to eighty-five dollars and some cents. 30

Q Eighty-five dollars was the amount you paid? A Yes.

Q Were there some pencils? A Yes.

Q Some erasers? A No erasers; just rubber bands and pencils.

Q There could not have been over 170 pounds of rubber? A One hundred and seventy—no; I don't think it was.

Q You do no think it was that much? A No.

Q Do you think there was 150 pounds of rubber? A No; I do not think it was—about seventy-five or eighty, possibly one hundred. 40

Q Not more than 80 pounds? A Possibly 100; I could not exactly tell.

Q There was 100 pounds in the last delivery when you paid him $85? A Yes, sir.

Aaron Dichter, re-direct.

Q And you paid 50 cents a pound for rubber? A Yes.

Q On the first occasion you paid him for sixteen pounds of rubber? A Yes.

Q So that in the first and last delivery he delivered 116 pounds of rubber; is that right? A About that much.

10 Q Then in the second and third deliveries you received 884 pounds of rubber? A About that much in all.

Q You had one thousand pounds altogether? A I could not tell exactly.

Q That is what you testified to? A Why, I am not positive how many pounds there was.

Q This rubber was delivered in a hand push cart? A In a hand push cart.

Q What part of the 884 pounds was delivered in the second delivery? A I really could not exactly say how many pencils

20 there were.

Q Was half delivered then? A I think there was more pencils than rubber.

Q Then, if the rubber was evenly divided in the second and third delivery, there was received 244 pounds in each delivery? A It might have been that.

Q Do you mean to say that there was at least 442 pounds on a hand push cart? A It could not have been possibly that much rubber.

Q Do you say that this defendant the first time he brought

30 anything to you said the concern he worked for was in bankruptcy? A Yes.

Q And that they were, therefore, paying him with the goods? A Correct.

Q Did it occur to you that if the firm was in bankruptcy that the goods would not be available to him? A The reason everything was taken away from them and he is the only German in the employ, and they wanted to pay him off so he would not lose anything after they were in bankruptcy? A Yes; I did; I was foolish to do that.

40 *Re-direct examination* by Mr. Lesser.

Q When was the first time you discovered these goods were stolen? A When I was arrested.

Q When were you arrested? A It was on Saturday, I think.

Q Who arrested you? A Lieutenant Brex and Smith.

Q What happened when they came in the store? A They came up with an automobile to the store and came in the store and I was sitting at a table reading a book, and it was a holiday, the Jewish holiday that day; it was quiet in the store; my clerk was off that day. 10

Q Tell us what happened. A They told me that they are showing me their badge and telling me for what purpose they came. I said, "All right, gentlemen; sit down if you want to talk with me." I put the chairs for them. They said, "Did you buy any goods?" I said, "Yes." They said, "Do you want to talk out here or in the back?" I said, "It don't make any difference." They said, "Better go in the back." Lieutenant Brex said, "Did you buy any of that goods?" "Yes." He said, "Have you got any of them now?" I said, "Yes, sir; I have got some." There was standing there still part of the 20 pencils and rubbers that I took out of the window the night previous. I told them they were part of them. They were standing in front of the prescription counter; some pencils, rubber bands. They got them and they told me to take everything—to get everything together—and they took me to Police Headquarters. They asked me if I sold any of the goods. I gave them the names and everything.

Q What names? A Mr. Halpern that Mr. Silver sent to me; Mr. Thompson, Dr. Warshofsky.

Q When you speak of Thompson and Warshofsky, you are 30 speaking of the company, are you? A Yes.

Q That was one sale, was it? A Yes, that was one sale.

Q You told Lieutenants Brex and Smith the names of the people to whom you sold? A Absolutely; they marked them on a piece of paper.

Q Did you or did you not tell Lieutenant Brex how much you paid Gluthe for the goods? A He asked me how much, and I told him about $500.

Q Was that the best recollection you had at that time? A 40 Absolutely.

Q Gluthe asked in your presence how much he got for the goods? A I cannot remember that, because they told me to look through the room and told me to look at the right side,

and Gluthe was sitting there, and I looked at him; that is all I seen of Gluthe.

Q Did Gluthe say anything to you? A No, sir; nothing at all.

Q Did Gluthe make any accusation against you while you
10 were there? A Not that I could hear.

Q Were the rubber bands and pencils in when the detectives came there? A Right in front of the prescription department in the store.

Q Was any of it hidden behind any drawers? A No, sir.

Q Any of it in the cellar? A No, sir.

Q Did you hesitate about telling from whom you purchased? A Not in the least.

Q You told them from whom you purchased? A I told immediately.

20 Q You told them Gluthe, didn't you? A I certainly did.

Q Did you believe that it was stolen property on the day you were arrested, until your arrest? A I did not.

Q Would you have purchased more if you could have gotten them? A I would.

Q Did you try to sell any of these goods to the stores in this city? A I did.

Q Through whom? A Through Mr. Stickel.

Q Did Mr. Migatz try to sell them? A Yes; he did.

Q Did Mr. Silver sell some for you to a New York con-
30 cern? A He did.

Q Did Mr. Stickle try to sell any in Newark? A He did.

Q To whom? A Public Service, Bamberger's, Bee Hive, Baker Brothers, and many other houses.

Q Did you authorize Mr. Stickle to do this for you? A I did.

Q Ready to take the profit on these goods if you could? A Certainly.

Q You were ready to take as big a profit as you could, were you not? A Certainly.

40 *By the Court.*

Q Whom else did you sell to? You sold Thompson 400 pounds; is that right? A Yes.

Q Who else? A Halpern.

Q The New York stationer? A Yes.

Q Fifty-three pounds? A Yes.

Q Whom else did you sell to? A I sold to Mr. Migatz.

Q Five pounds? A Yes.

Q What else? A That is all, and the rest was left in the store and taken away from there. 10

Q Is that all the sales you made? A That is all.

MAX H. SIEGEL, sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. Lesser.

Q You live where? A 276 Eighteenth avenue, Newark.

Q Were you in the employ of Mr. Dichter during the time of these transactions with Mr. Gluthe? A Yes. 20

Q What time did Mr. Dichter get down to his store mornings? A About ten or ten-thirty.

Q Who closed the store? A Mr. Dichter.

Q Who opened it? A I did.

Q Do you remember any of these transactions? A I do.

Q How many times do you believe you saw Mr. Gluthe in Mr. Dichter's store, if you remember? A Several times—three or four times.

Q You remember three or four times? A Yes.

Q Do you remember anything like eighteen times? A No, sir. 30

Q Was Gluthe there eighteen times? A Not to my knowledge.

Q How were the big deliveries made, if there were any? A Two deliveries were made in push carts.

Q What kind of push carts were those? A Regular peddler's push carts.

Q What part of the store were the goods weighed and counted in? A There is a large scale at the door, to the right, and they were all weighed there, most of them. 40

Q Is that a public scale? A Yes; a public scale.

Q Do you remember the rubber bands being weighed in the store? A Yes, sir.

Q Do you remember conversations between Dichter and Gluthe concerning the price? A Oh, not exactly having a

conversation; part of the conversation, fifty cents, something like that.

Q What were you doing in the store? A Waiting on trade, filling prescriptions.

Q Was trade coming in and going out all the time? A Yes.

10

Q Did Mr. Dichter pay Mr. Gluthe on these occasions? A He did.

Q Where did he take the money from to pay him, if you know? A From the safe, on two occasions.

Q Do you know whether or not Mr. Dichter carried large sums of money in that safe? A Yes.

Q What sums do you know of? A Well, I have never tried to find out much, but I know he carried big sums.

Q Would you say hundreds of dollars? A I have seen him pay out big money from the safe.

20

Q How high have you seen him pay from the safe? A Well, the largest amount I have seen him pay out was to Gluthe at the time he paid out two hundred and some odd dollars.

Q Were you present when this payment was made? A Yes.

Q Who else was present at this time? A At which time do you mean?

Q When this $200 payment was made? A Then there was someone came in after that.

30

Q Do you know Mr. Stickle? A Yes.

Q (Calling "Mr. Stickle, stand up.") Do you know that man? A Yes.

Q Was he present in the store when that $200 was paid? A Yes.

Q Are you positive of that now? A Yes. He generally came in regularly selling Mr. Dichter goods.

Q What is his business? A Candy line.

Q Was he a salesman? A Yes.

Q Did he come in to sell Mr. Dichter goods? A Yes.

40

Q He also handles pharmaceuticals? A Mr. Stickle?

Q Yes. A I don't think so.

Q Did you ever buy from him yourself; did you ever make any purchases from him? A Not from Mr. Stickle.

Q He was a salesman that came around to the store? A Yes.

Q Are you sure he was in the store on the morning of the big delivery of Mr. Gluthe? A He was not when Mr. Gluthe came in, a few minutes later.

Q Did he come in before Mr. Gluthe went out? A He did.

Q Do you remember whether he was there before Gluthe was paid? A Yes, sir; he was there before Gluthe was paid. 10

Q Do you remember the first occasion when Mr. Dichter bought sixteen pounds of rubber bands; do you remember that? A Yes; I was there attending to a customer, and there was some verbal argument between Mr. Gluthe and his wife with regard to some allowance.

Q Was that outside of the store? A At the entrance, the vestibule.

Q Were the doors open at the time? A The door was open; it was warm.

Q This was in the summer time? A Yes. 20

Q There was a verbal argument between Gluthe and his wife? A As to some allowance that he wanted, and she told him he could not have, I believe.

Q Had Mr. Gluthe been in the store before the argument took place; did Mr. Gluthe get any money in the store before the argument between himself and his wife took place? A Yes, sir; Mr. Dichter paid him for the goods he brought in that time.

Q Are you working for Mr. Dichter now? A No, sir.

Q You testified for him on the last trial? A No. 30

Q Where do you work now? A Mr. Rausch.

Q Mr. Rausch? A Yes, sir.

Q A druggist in this city? A Yes.

Q You are employed with him? A Yes.

Q When the money was paid on the occasion that you speak of, were they out in the center of the store, or did they go in the back room? A Why, the safe is right there in the center of the store; that is where the money was paid, at the counter.

Q Where were the goods kept in the store? A Why, sometimes, for a couple of days they were kept right at the entrance; other times it was in the prescription department; other times at the head of the prescription department. 40

Q Do you remember the window display of pencils and erasers? A Yes, sir.

Q They were displayed in the window? A Yes, sir.

Cross examination by Mr. Bernhard.

Q The largest amount of money that you ever saw Mr. Dichter pay in cash to anybody was paid to Gluthe; is that right? A Yes, sir.

REUBEN W. WARNER, sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. Lesser.

Q Your name has been Warner, has it not? A Yes, sir.

Q Warner, you are the gentleman referred to in these proceedings as Dr. Warshofsky? A Yes.

Q Do you know Mr. Gluthe? A Yes, sir.

Q Did you ever have a talk with Mr. Gluthe? A Yes; on one occasion.

Q Did you ever have a talk with Mr. Gluthe about rubber bands and the purchase of them? A Yes.

Q Tell us about that conversation? A Mr. Thompson and I were on the sidewalk—I was preparing to go to New York when we noticed Gluthe walking out of the drugstore.

Q What time was this in the day? A It must have been shortly after eleven o'clock, for it was the twelve o'clock train I took that day. I had followed Mr. Gluthe upon the suggestion of Mr. Thompson, and asked him whether he could not sell us any rubber bands. I caught up to him just around the corner, counting money in his hand, and he was sort of excited when I approached him; he said yes, he would come around to see me. I asked him where he lived. He said, "85 Monmouth street" in a half-excited way; and I asked him whether he would not be back the same day, and he said no. He said "No." I said, "What goods have you got?" He said, "I have Faber's bands." That was the substance of the conversation.

Q Did he tell you how much he had? A No.

Q You wanted to purchase these bands from him? A I did.

Q You were the owner of the drugstore now owned by Mr. Dichter? A Yes.

Q You sold to him in March, 1918? A Yes.

Q Was Mr. Gluthe a customer at your store? A I believe he was; I had quite a transient trade.

Q When you see him now do you recognize him as one of the men who came in your place? A I believe I have seen him before. I cannot say with absolute certainty.

Q How did you know he had rubber bands? A I had seen him in the store on previous occasions.

Q Had you discussed the rubber bands with Mr. Dichter? A Mr. Dichter asked my opinion about these. 10

Q Had you discussed the purchase of rubber bands with Mr. Dichter? A In fact, at one time Mr. Dichter asked my opinion about these. I told him they looked all right; and I suggested I would like the same line. I was glad— (interrupted).

Q Did you suggest that they ought to be put up in pound bags and sold? A Yes.

Q Did you suggest the price he ought to pay for them? A I cannot recollect. 20

Q Do you remember whether or not you suggested sixty-five cents would be a good price? A I have no recollection of it at all.

Q You were ready to buy from Gluthe, were you not? A Yes.

Q How much would you have bought if he had sold it; how many rubber bands did you want? A I would have taken all he sold me; for I had already sold a quantity in New York with a fair profit.

Q Had you even seen these bands displayed in the drugstore of Mr. Dichter? A I did. 30

Q How many times between August and September? A Why, almost every day; I am an oft visitor in that place, inasmuch as our laboratories are right alongside of it.

Q Whenever you came in you saw these goods; where would you see them displayed in the store? A Everywhere around the store; in the center, on the shelves.

Q Was any of this hidden away? A Not that I noticed.

Q Did you ever see Mr. Gluthe make any delivery; can you recall any deliveries? A I do not know that I have seen Mr. Gluthe in the store while the rubber bands were around him. 40

Q You went up to the firm of A. W. Faber & Co. in Newark? A I did.

Q How did you know that Faber had these goods to sell? A In fact, it was from this man I learned it. It was upon the suggestion of this man. He said he would call, and he did not.

Q Did he tell you that they were Faber's goods? A He did. That is what made me call.

Q Why? A We wanted to buy the goods for sale.

Q You went to Faber's? A Yes.

Q Did you go to A. W. Faber's, Newark? A Yes, sir.

10 Q Did you see Mr. Berkeley? A Yes.

Q Was he in court this morning? A He was in the corridor.

Q Did you talk to him about purchasing rubber bands? A I did.

Q What did you say? A I asked him the price of rubber bands.

Mr. Bernhard. I object to any conversation.

The Court. The answer may stand. He merely asked him the price of the bands. That is harmless.

20 Q What did you ask Mr. Berkeley about rubber bands? A I asked him the price of his bands, of which I produced a sample.

Q Was that sample similar to what— A (Interrupting.) From the stock by Mr. Dichter.

Q What did he quote you? A I believe it was a little over one dollar.

Q How were they to come wrapped? A That I do not question.

Q Did you ask for a mixed lot? A That I cannot remember.

Q What did you tell him when he said that?

30 *The Court.* I do not think this conversation is admissible. It has gone too far.

Mr. Lesser. I wish to show that we have not got the correct story as to how these proceedings started. Mr. Fera testified to this.

The Court. Mr. Fera only testified to the conversation that he had. You are trying to prove a conversation this witness had with some other person.

Q Did you ever have a talk with Mr. Fera or A. B. Faber about this matter? A No, sir; never seen the gentleman before
40 until in this court room yesterday.

Q Whom did you talk to of the A. W. Faber Company? A The gentleman I indicated before; I do not know his name.

Q The gentleman, Mr. Berkeley; the gentleman with the little beard? A Yes, sir.

Q Did you ever call up the A. W. Faber Company on the telephone? A I might have; I don't remember.

Q Did you ever go to A. W. Faber Company and introduce yourself as Mr. Migatz? A No, sir; no reason for me to do that.

Q Will you state again what was the purpose for which you went to the Faber plant? A To buy rubber bands. 10

Q Did you come at the invitation of anybody to talk over this situation?

Mr. Bernhard. Objected to as leading.

Q Did you go voluntarily or because you were asked? A Voluntarily.

Q You went to buy rubber bands? A Yes.

Q Why did you want to buy them from Faber? A Because I learned from Mr. Gluthe it was Faber's band he had, inasmuch as he had sold them, and Mr. Thompson and I both wanted to buy them. 20

Q Did you at that time suspect there was anything wrong about the bands you purchased?

Mr. Bernhard. Objected to as immaterial.

The Court. Objection sustained.

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is signed and sealed accordingly.

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[L. S.] GEORGE K. LARGE,
Judge.

Q It was after your talk with Gluthe that you went to Faber & Company to purchase rubber bands; is not that correct? A Yes, sir.

Q Did you see Gluthe down at Police Headquarters the day of Gluthe's arrest? A Yes.

Q Were you in court yesterday when Gluthe testified? A I was.

Q Did you hear Gluthe say that he did not know you? A I believe I heard that. 40

Q What is that? A I believe I heard that.

Q You went up to the police station to identify Gluthe? A Right.

Reuben W. Warner, cross.

Q At the request of Lieutenant Brex and Officer Smith? A Yes, sir.

Q And did you identify him? A I did.

Cross examination by Mr. Bernhard.

Q You found some rubber bands that you thought were cheaper than could be purchased anywhere, and you started to investigate? Is that right? A That was not the case.

Q What is that? A That was not the case. I will relate just why I have investigated. I was away on my vacation. When I returned I found that Mr. Thompson had bought 200 pounds or more of rubber bands of a size very large and wide; I thought they could not be sold at all. I had no knowledge of bands outside of the small bands I used as a retail druggist.

Q You used small bands as a retail druggist? A Yes, sir; I did.

Q Most druggists do? A I do not know that most druggists do, but a great many do.

Q Go on? A It was the sight of these large bands that made me think we might not be able to sell them. Mr. Thompson said he would see what could be done. It was an experiment. He went to New York and after a time he succeeded in selling the bands at eighty cents a pound. When he came back, on the face of it we had $100.00 profit; it looked good to me.

Q You started to investigate and see if you could not get another bargain? A Yes; and I went to Faber's to buy the goods.

Q When you went to the police court and identified Mr. Gluthe, do you remember making a statement at that time that the whole thing looked crooked? A That what?

Q That the whole thing looked crooked? A At that time it did.

Q You did make that statement? A Yes.

By Mr. Lesser.

Q That statement was made after you were informed that Gluthe had stolen the goods? A Yes.

Q And about what were you talking when you made that statement? A In reference to the goods that we got.

Q What did you mean was crooked? A I said the whole transaction was crooked.

Reuben W. Warner, cross.

Q What transaction? A The rubber bands.

Q Who was involved in the crooked transaction by that statement? A That I was not prepared to tell. It did not look well to me.

Q You had been told that Gluthe was accused of stealing the bands? A Yes.

Q And when he was arrested it looked crooked to you? A Yes, sir; I had already had information before his arrest that he was going to be arrested.

Q Did you know at that time that Dichter was involved in this; was Dichter arrested then? A Well—

Q Was Dichter then arrested? A No.

Q Did you expect that he would be arrested in these proceedings? A Judging from the source of the goods.

Q Judging from the fact that the goods that he had were stolen goods, you expected Dichter would be arrested; is that correct? A Yes, sir.

By a Juror.

Q Mr. Thompson made the transaction with the Empire Novelty Company? A Yes.

Q What was the date of that? A That I could not recollect; Mr. Thompson could give you the date.

Mr. Bernhard. Mr. Thompson, what was the date of this transaction?

Mr. Thompson. It was about the middle of August. There were two transactions, August 13 and August 29.

The Juror. Is it proper to ask if the Empire Novelty Company were ready to take more of these goods?

Mr. Bernhard. That is the testimony.

By Mr. Bernhard.

Q You were ready to take more of them if you could get them? A Yes, sir.

Q I show you a letter-press copy of a letter from the Empire Supply Company, and ask you if that is addressed to your concern? A By reading, it is addressed to my concern.

Q Will you read it?

Mr. Lesser. I object unless I have an opportunity to cross examine.

John Stickle, direct.

By Mr. Lesser.

Q Do you know the signature of the Empire Supply Company? A I do not know.

Q Do you know Alfred M. Ems? A I do.

Q Do you know his signature? A I do not.

10

By Mr. Bernhard.

Q Was this received by your concern? A I am not prepared to state that. There was more than Mr. Thompson or myself in the office; everyone has authority to receive and open mail.

Q You personally do not know? A No.

Mr. Bernhard. I offer the letter in evidence.

Mr. Lesser. I object upon the ground that it is not proved; it is not the best evidence.

20

Mr. Bernhard. Offer withdrawn.

JOHN STICKLE, sworn as a witness on the part of the defendant.

Direct examination by Mr. Lesser.

Q Where do you live? A 570 Hawthorne avenue, Newark, N. J.

Q How long have you lived in Newark? A All my life.

Q What is your business at this time? A I am the manager of the Herkolin Company.

30

Q What do they sell? A We put up three preparations—

Q Did you sell those to the drug trade? A Yes, sir.

Q Did you sell those and other preparations to Mr. Dichter? A Yes.

Q For how long a time have you been selling to Mr. Dichter? A At that store ever since Mr. Warshofsky sold out to him. I sold Mr. Warshofsky first—

Q How long have you been selling Mr. Dichter? A Ever since he has been in business—

40

Q Did you deal with Mr. Dichter before he bought that store? A Yes; I know him about eight years.

Q Where did you deal with him first? A I was then in a different line, Stickle & Company, calendars, and I went to see him in Harrison; I believe it was Second street.

Q He kept a drugstore there? A For years.

Q When he came there you came in as a salesman to sell these preparations? A Yes; right.

Q Do you know Mr. Gluthe? A I do.

Q Did you ever see Mr. Gluthe in the drugstore of Mr. Dichter? A I did. 10

Q What time of the day was it—what year was it when you saw him in there? A It was in August, 1918.

Q What time of the day was it? A About eleven o'clock in the morning; somewheres around that.

Q You heard Mr. Gluthe say he was never there after eight o'clock; will you, in the face of that, say positively that this was eleven o'clock when you saw him there? A It was close to eleven o'clock.

Q Who came in the store first—you or he? A In the store?

Q Into Dichter's store? A Why, he was in there. 20

Q When you came he was in there? A Yes.

Q What was he doing in the store? A Coming in the store, this is Springfield avenue; here is the display window and there is a display window; there is the entrance; now this side going in is the cigar stand—on this side, where I usually buy his cigars; and then there is a scale, and they were weighing rubber bands, I think.

Q How much? A There were six or seven cases there.

Q Were they big cases? A Why, I should judge a foot square, brown corrugated board. 30

Q Did you stay there during the whole of the weighing, from the time you came in until they were through weighing? A Why, I stayed there and there was a little discussion as to the allowance for the weight of the boxes, seventy-five cents or so; Mr. Dichter wanted a reduction.

Q How much money, if you know, was spoken about in payment after they were delivered, if you know? A $245 or $250; I cannot recollect; it was very close to $250.

Q Who mentioned the amount of $250, if you remember? A Mr. Dichter. 40

Q And did Gluthe say anything about it? A Why, he did not want a check; he thought he could not cash it.

Q Were you there at the time when he said he did not want a check? A Yes.

Q What did he say concerning a check? A Well, it would be difficult in cashing it, owing to the fact that it was a big amount, and he would probably have to go somewheres and spend money to redeem it.

Q You mean to cash it or exchange it? A Yes, sir; to change it; so Dichter asked him first, he wanted him to take a check. He said he could not use it. He says, "Well, I will give it to you in cash." So then he went back to the safe. I saw him paid, but I could not tell in what form. I saw greenbacks.

Q Did you see Gluthe take greenbacks? A Yes.

Q How many greenbacks were there? A About that many. (Indicating.)

Q Did Gluthe take these greenbacks? A Yes, sir.

Q Did he leave the store with these greenbacks? A He did.

Q And you heard them talk of $245 or $250; is that correct? A Yes.

Q That is the best of your recollection? A Yes.

Q Did you testify at the last trial? A I did not.

Q Why were you not a witness? A I am a traveling man and was in Schenectady in December and January.

Q And when did you get back? A I got back in January.

The Court. I want to caution the jury not to discuss this case with anyone during recess. Do not permit anyone to discuss it with you and disregard anything that you may see in the newspapers.

At this point an adjournment was taken to Friday, March 21, 1919, at ten o'clock in the forenoon.

(Court met pursuant to adjournment, this 21st day of March, 1919, at ten o'clock in the forenoon.

Appearances as heretofore.

JOHN STICKLE resumed the stand.

Direct examination (continued) by Mr. Lesser. 10

Q I direct your attention to the day when you came in and found Gluthe there delivering certain goods and receiving certain money, as you have testified. Do you remember how the goods were delivered, in what manner? A Why, I see a cart outside the store, and, as had been my custom, when I went into the store I bought a cigar at the stand to the left and I saw boxes about a foot square corrugated brown board, and open, with bands, rubber bands in them, various colors, and I got a cigar from Mr. —the clerk—I forget his name. 20

Q You are going a little further than the question. You say you saw a cart in front of the store? A Yes.

Q What kind of a cart was it? A Well, I could not recollect whether it was two wheels or three wheels, but I should judge it was a cart about seven feet long.

Q Is that what is commonly termed a push cart? A Something like that.

Q How high up did it stand, if you remember, from the floor? A Probably two and a half to three feet. 30

Q Did you have anything to do with the sale of any of these goods for Mr. Dichter? A Yes, sir; it was in the middle of August and Mr. Dichter, after he had placed an order with me for ten or twelve gross of "Corn Fly," he said "Mr. Stickle"—

Mr. Bernhard. I object to any conversation between this witness and the defendant.

The Court. Objection sustained.

Q Did you, as a result of a talk with Mr. Dichter, attempt to sell these goods? A Yes, sir; he gave me a sample of an aluminum lead pencil box containing a dozen, six in a row, with tissue between the first row, a green pencil termed "Castile." I am in doubt as to the initial letter; there were different brands; I think this was "H", and rubber bands I also took a 40

sample of them in a two-ounce pill box—red and drab, I think two colors, and gave me a quotation on them. He says, "John, if you sell these—" I asked him about the quantity—he said, "John, if you sell them above my price, we will go fifty-fifty, split the profit," so I visited Bamberger's, Bee Hive, Mr. Brandt, corner of Mulberry and Market, Mr. Baker and Carl Kniep.

Q Whom did you see at Bamberger's, if you remember? A Why, a lady, I think her name is Miss Silverman.

Q What did you offer to sell her?

Mr. Bernhard. I object on the ground that it is immaterial.

The Court. I think it is immaterial.

Mr. Lesser. I think it is decidedly material to show in what manner we tried to dispose of these goods, whether we sold them in a devious, hidden manner, or whether we went out and offered them publicly in the City of Newark, for sale.

The Court. The testimony now shows that he went out and tried to sell what he had.

Q Did you succeed in selling the pencils? A I did not, not at Bamberger's.

Mr. Bernhard. Objected to.

The Court. That is not material.

Q Did these pencils bear an imprint "Made in Germany" on them? A Yes, sir.

Q Did you return to Mr. Dichter and inform him that you could not make sales? A I spent at least four days in endeavoring to sell them. I could have sold them in small quantities, but I am not a small seller; I deal in large quantities. He told me he had something like 1,500 dozen and two or three hundred pounds of bands, and that he would be able to get as high as a thousand. I offered the pencils to Mr. Brandt; I know the young man who does the buying. I did not want to deal with him because I wanted to sell all; so Mr. Brandt came down and looked at the pencils, so he said—

Mr. Bernhard. Objected to.

The Court. Do not give the conversations that you had with these various gentlemen.

Q You could not succeed in selling him? A I offered them at sixty cents to Mr. Brandt and he says—

Mr. Bernhard. Objected to.

Q Did Mr. Brandt buy any pencils at the price you offered? A No, sir.

Q What was the offering price? A Sixty cents a dozen for the pencils.

Q What did you ask for the rubber bands? A $1 a pound.

Q Were any of these purchased? A No, sir.

Q Did you try to sell the rubber erasers? A I had no erasers.

Q During these four days were you in and out of Mr. Dichter's drugstore? A Why, I did not return until I made a round of the people that I knew, that I thought would buy them, then I returned and I told him I could not sell any.

Q How many times between August and September—how many times in the month of August were you in Dichter's drugstore? A Oh, probably half a dozen times.

Q On coming into the store did you see any of these articles displayed? A I did. I saw the display in the window to the right; in there I saw erasers, but I did not handle them.

Q Did you see any rubber bands in the window? A I did.

Q Did you see pencils? A The same grade of pencils I had.

Q You saw pencils and erasers? A And there was a sign that they were given away with a specific amount of purchase, they would get one of these displayed articles.

Q And how were the goods such as you see here distributed about the store—in front of it? A I don't know what you mean.

Q I refer to the rubber bands and these boxes? A I saw them a dozen in a box.

Q You mean the pencils? A Yes, sir. The erasers were displayed around there, different articles, toilet articles and water bags, different things of that description.

Q I want to draw your attention again to the time of the purchase by Dichter, what time of the day was that? A It was approximately around eleven o'clock in the morning.

Q You are positive it was not any earlier? A Not any earlier than eleven, because I never got to Mr. Dichter's before

eleven o'clock. He is the hardest man I ever tried to sell in the morning. I never could see him before eleven.

Q Are you dealing with Dichter for a long time? A Yes, sir; I did an extensive business with him.

Q How did he pay you?

10 *Mr. Bernhard.* I object to that as immaterial.

The Court. I think not.

Mr. Lesser. Question withdrawn.

Q Has he ever paid you a large sum of money in cash?

Mr. Bernhard. I object to that as immaterial.

The Court. Objection sustained.

Q Do you know whether or not Mr. Dichter had kept large sums of money in his safe in the drugstore? A I do, because 20 I have repeatedly seen where he has went to the safe and taken out cash. He has paid me several times cash, $150 and another time $225, and the reason I asked for cash is—

Mr. Bernhard. I object to that as immaterial.

The Court. It is immaterial.

Q Did you receive any offers for the rubber bands that you offered for sale—any offers as to price? A Why, no; they told me I was high. Mr. Hauser told me that. I saw three men in the Bee Hive, a lady is the buyer over in Bamberger's 30 and she called a gentleman and they talked it over and they objected to the imprint—

Mr. Bernhard. I object to this. These are all conversations which your Honor has ruled out.

The Court. Don't you understand when you are told not to tell conversations, that you are not to tell them.

Q Were you not informed by your prospective purchasers that the price of $1 per pound was too high?

Mr. Bernhard. Objected to.

40 *The Court.* That is improper. You are stating that which the Court has ruled out.

Mr. Lesser. He has told without objection that he did ask a certain price. I think the jury is entitled to know whether it was a proper price.

Mr. Bernhard. The objection I have is that counsel is stating conversations that have been overruled, and also my objection is that the question is leading.

The Court. Objection sustained.

Q Did you receive any offer for the rubber bands, as to price? A I did not. 10

Q Could you sell them for $1 a pound, that you asked?

Mr. Bernhard. I object. That is another way of imposing upon the Court after the Court has ruled. It is immaterial.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly. 20

[L. S.] GEORGE K. LARGE,
Judge.

Q To how many people did you offer them at $1 a pound? A Bamberger's, Bee Hive, Brandt, Baker Bros. and Carl Kneip, five people.

Q And none of them purchased? A No, sir.

Q Did you offer it at any smaller or lower price? A I agreed to reduce the price, if they took them all.

Q What was the new price you offered them at? 30

Mr. Bernhard. Objected to. That is simply trying to circumvent our Honor's ruling.

The Court. You seem to lose sight of the fact that the charge is whether or not this man received stolen goods?

Mr. Lesser. Knowingly.

The Court. What this witness did or did not do, does not show anything with reference to that.

Mr. Leeser. Does it not show— 40

The Court. You may argue to the jury.

Mr. Lesser. How can I argue if I do not get the evidence?

The Court. What is the question?

(The stenographer being requested, repeated the question as follows: "What was the new price you offered them at?")

Mr. Bernhard. That is objected to for the reasons I have stated.

10 *The Court.* Objection sustained.

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Q Did you try to sell these rubber bands at a lower figure than $1 a pound? A I did.

Q Could you sell them? A I could not.

20 Q How low did you try to sell them?

The Court. That is the same question.

Mr. Lesser. I want to bring it out in three different forms.

Mr. Bernhard. You are preparing a record, are you?

Mr. Lesser. I am, if it should be necessary; but I do not think it will be.

The Court. Objection sustained.

30 Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

No cross examination.

FRED. THOMPSON, a witness heretofore sworn on the part of the State.

40 *Direct examination* by Mr. Lesser.

Q You were associated with Mr. Warshofsky in the company that purchased these rubber bands? A Yes.

Q You heard Dr. Warshofsky testify on the stand yesterday? A Yes.

Q You heard him testify as to the conversation with Mr. Gluthe? A Yes, sir.

Q Do you remember when that took place? A It was in August, I should say; as near as I can fix the date, it would be the latter part of August, possibly around from the 20th to the 25th, around there. 10

Q Now, with reference to the time of that conversation that Dr. Warshofsky had with Gluthe, was it before or after that conversation that you purchased rubber bands from Dichter? A Why, we purchased some before and some after.

Q Was that conversation reported back to you by Dr. Warshofsky? A Yes, sir.

Q And after the holding of that conversation, you still purchased rubber bands from Dichter? A Yes, sir.

No cross examination. 20

AARON DICHTER, recalled.

Direct examination by Mr. Lesser.

Q How much business a month did you do in your drugstore?

Mr. Bernhard. Objected to as immaterial.

The Court. I will hear you.

Mr. Lesser. I won't argue it. I press the question. 30

The Court. I will sustain the objection.

Counsel for defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Q Did you or did you not carry sums of money in excess of $250 in your safe in your drugstore? A I did.

Q Where did you bank? A First National, East Newark. 40

Q How often did you deposit? A Sometimes every third day; sometimes twice a week.

Q And how large are the sums that you have kept in your safe in the regular course of your business during the months

of July and August, 1918, if you can remember? A Between five and six hundred dollars.

Q Was it from the sums of money that you had there that you paid Gluthe? A Yes, sir.

No cross examination.

10 *Mr. Lesser.* There is one more witness that I do not think will be here before eleven o'clock. May I reserve the right to call that witness until after Mr. Bernhard has completed his rebuttal?

Mr. Bernhard. I have no objection. Rebuttal will take about two minutes.

DEFENDANT RESTS.

20

REBUTTAL.

FRANK E. BREX, a witness heretofore sworn on the part of the State, recalled in rebuttal, further testified as follows:

Direct examination by Mr. Bernhard.

Q Did or did not Mr. Migatz, at the time you had the conversation with him, state to you that the reason he did not buy any more rubber bands from Dichter, was because it did not 30 look right to him?

Mr. Lesser. Objected to as leading.

Mr. Bernhard. I offer it for the purpose of contradiction. The foundation was laid.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the Court, and the same is allowed and is sealed accordingly.

40 [L. S.] GEORGE K. LARGE,
Judge.

A He did.

Q In the corridor of this court house, on this floor, on Wednesday afternoon, did or did not Mr. Migatz come to you

after court had adjourned and state to you that you ought not to have told in court where you got your information from?

Mr. Lesser. Objected to as leading.

Mr. Bernhard. The foundation was laid.

The Court. Objection overruled.

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly. 10

[L. S.] GEORGE K. LARGE,
Judge.

A It was right in the court room.

Q Did he or did he not? A He did. I just arose from my seat in the lower court room. It was at a period when his Honor had left the bench and the jury had left the room. 20

Mr. Lesser. Objected to. The question has been answered.

Q Did you answer the question? A Yes.

Q Your answer was what? A He did.

No cross examination.

FRANK SMITH, a witness heretofore sworn on the part of the State, recalled in rebuttal, testified as follows: 30

Direct examination by Mr. Bernhard.

Q Did or did not Mr. Migatz, in the conversation that you had with him, say to you, in the presence of Mr. Brex, that the reason he did not purchase any more rubber bands from Dichter was for the reason that it did not look good to him?

Mr. Lesser. Objected to. The foundation was not laid for this question.

The Court. Objection overruled.

Counsel for the defendant prays an exception to the ruling of the Court, and the same is allowed and is sealed accordingly. 40

[L. S.] GEORGE K. LARGE,
Judge.

A I was present.

Q Did he so state? A Yes, sir.

Q Were you present with Mr. Brex in Judge Martin's court room on Wednesday afternoon when this conversation took place that he has testified to? A I was.

10 Q Then I will put the same question to you. Did Mr. Migatz, in your presence, say in Judge Martin's court room on Wednesday afternoon, that he ought not to have told in court where he got his information—yes or no? A He did.

No cross examination.

FRED A. THOMPSON, a witness heretofore sworn on the part of the State, recalled in rebuttal, testified as follows:

Direct examination by Mr. Bernhard.

20 Q Did you receive this letter from the Empire Supply Company, the people to whom you had sold these rubber bands?

Mr. Lesser. I object to the form of the question. He can only testify that he received that letter. He cannot say where it came from. A letter must be proved in a certain way, the signature of the sender, to the knowledge of the witness.

The Court. I think the question should be: "Did you receive that letter purporting to come from the Empire Supply Company?"

30 *Mr. Bernhard.* Yes.

Q Did you receive this letter purporting to come from the Empire Supply Company? A Yes, sir; I believe I did. I received one similar, and it looks like it.

Mr. Bernhard. I ask that it be marked for identification.

(Letter is marked S. 6 for identification.)

Mr. Bernhard. With the exception of offering the

40 letter in evidence, the State rests.

We now offer the letter in evidence.

Mr. Lesser. I object upon the ground that it has not been properly proved. The question of formal proof is a matter well settled by decision.

(After further argument.)

Mr. Lesser. I withdraw my objection. I will let that letter in.

(Letter heretofore marked S. 6 for identification is received in evidence and marked Exhibit S. 6.)

10

STATE RESTS.

Mr. Lesser. I request that Gluthe be recalled. I ask that the Court rule that Mr. Gluthe be recalled for cross examination.

Mr. Bernhard. The proper course is to appeal to your Honor for permission to re-examine Mr. Gluthe.

Mr. Lesser. I am doing that.

CHARLES GLUTHE, heretofore sworn as a witness on the part of the State, recalled for cross examination. 20

Cross examination by Mr. Lesser.

Q Did you see Mr. Stickle on the stand, who testified before? A I do not understand.

Q (Calling on Mr. Stickle to stand up.) Did you see that man before? A This man I know him from the street.

Q Did you see him in the store? A Never.

Q You are positive of that? A No.

Q You never were there when he was there, when you got some money? A No, sir. 30

Q Did you see Dr. Warshofsky on the stand yesterday when he testified? A Here on this stand?

Q Yes. A Warshofsky—is he here?

Q No. A What kind of a looking fellow is he—a fat fellow?

Q A little stout fellow? A I saw him, yes.

Q Did you ever have a talk with Dr. Warshofsky? A No.

Q You never had a talk with him? A No.

Q He never stopped you on the street? A No. 40

Q He never did? A I do not know this man.

Q He never asked you to sell him rubber bands? A A No.

Q You never said they were Faber bands? A No.

Q I show you this card. In whose handwriting is that? A That ain't the first card, the first time.

Q You are sure that it— A No; it ain't the first time; I never gave him pencils the first time.

Q Just look at it and see again; that is not the card that was at the first trial, not the first time I offered to him rubber bands.

10 Q I asked you who wrote the words on that card? A I put them.

Q What does it say? A 16 pounds rubber.

Q How much? A 16 pounds rubber and 52 pencils.

Q What is that "100" under the "52"? Does not that say that he was to get fifty, that you delivered fifty-two, and that there was one hundred? A I delivered fifty-two pencils, is it?

Q Let me see. Two pounds rubber and one pound allowance for the boxes—is not that there, is that not what it means? A No; 16 pounds.

20 Q Tell us what it means? A 16 pounds rubber and box 1 pound "Gut" I do not know that—net 15 pounds—15 pounds $8.50—

Q $8.50; is that right? A That is right.

Q "Got 52 pencils," and 100 still to be delivered, $7.50; is that right? A Paid me for 100 pencils, 75 cents.

Q Is not that $7.50? A That is what I got for them—

Q You got $7.50? A All together.

Q There is $8.50 up above; here is $8.50? A $8.50.

30 Q Down here is $7.50 for the pencils; didn't you get $16.00 the first time? A No, sir.

Q Didn't you say at the last trial that you got $16? A No, sir; I did not.

Q Didn't you say at the last trial that you made five deliveries? A No, sir; I did not.

Q Didn't you tell Mr. Bernhard that you made five deliveries? A Who is Mr. Bernhard?

Q This gentleman sitting here. A Altogether five deliveries?

Q Yes. A In a month and a half; no, sir.

40 Q Didn't you say that at the last trial? A No; I did not say that. He did not get pencils off me the first time when I came in his store, at all.

Q How many pencils did you deliver?

Mr. Bernhard. It is not re-cross examination.

Mr. Lesser. It appears from the evidence that the defendant admits 450 dozen. The witness for the State has said 2,000 pencils at the first delivery. I want to clear that up.

The Court. You may ask that question.

A 2,000. 10

Q That is all you delivered? A Well, thirty pounds, 72—five dozen in one box—figure that up.

HARRY MIGATZ, a witness heretofore sworn on the part of the defendant, recalled in rebuttal, further testified as follows:

Direct examination by Mr. Lesser.

Q Did you have a talk with Lieutenant Brex in the hall of this court room on the first day of this trial? A Not in the hall; in the court. 20

Q What did you say to him and what did he say to you in that conversation? A Why he makes me an enemy for nothing; why he said that I said about Mr. Silver, because he is my neighbor, and I do not want to have enemies; Mr. Silver is angry because I said it to him in court as a witness; why could he not keep it to himself.

Q You suggested Silver's name to Brex? A Mr. Brex—

Q Did you suggest Silver's name to Brex as a witness in this case the first time? A Let me answer that. 30

Q Did you or did you not? A Not that way; let me tell you.

Q Who mentioned Mr. Silver's name to the officer? A Not that way.

Q You mentioned Mr. Silver's name to the officer? A Mr. Dichter, the first thing.

Q Mr. Dichter first? A Yes, sir. I know about it.

Q Did Lieutenant Brex say to Mr. Silver that you mentioned his name? A Mr. Silver told me so. Yes, the things I said.

Q Is that why you asked Lieutenant Brex why he made an enemy of Silver? A That is all. 40

Q Is that the conversation you had? A That is the only conversation. Everybody heard it. You heard it. I think you were standing by. Everybody else heard it. I did not want an enemy.

Q Did you tell Lieutenant Brex and Lieutenant Smith the reason you did not buy any goods from Dichter was because it was not straight?

Mr. Bernhard. Objected to.

10 A Not a bit; that I did not say.

Mr. Bernhard. He has denied it already.

The Court. The answer is in. It may stand.

Mr. Lesser. If the Court please, the witness we were waiting for has arrived.

The Court. You may call him.

LOUIS EISENBURG, sworn as a witness on the part of the defendant, testified as follows:

20 *Direct examination* by Mr. Lesser.

Q Where do you live? A 43 Boston street.

Q Newark? A Yes, sir.

Q Where are you employed? A At the Rambler Shoe Company.

Q What is the the address of the Rambler Shoe Company? A 161 and 163 Springfield avenue.

Q How far away from Mr. Dichter's drugstore? A Half a block, right in the middle of the block.

30 Q Were you employed there in the summer of 1918? A Yes, sir.

Q Were you employed during July, August and September, 1918? A Yes, sir.

Q Do you see here some rubber goods, some pencils? A Yes.

Q Did you ever see those things before? A Yes, sir.

Q Where did you see them? A In Dichter's drugstore.

Q Will you tell us the occasion when you saw them? A I 40 came into the drugstore on my lunch hour, between twelve and ten after twelve; I was in there eating my lunch, when I saw a man come in with a pushcart, with six or seven packages, I believe, something like that, and he was bringing them inside, and he had three or four bundles at the front, and I asked Mr. Dichter what that was and he told me that they were pencils.

Q Could you recognize the man if you saw him in the court room? A Yes, sir.

Q Do you see him here? A Yes, sir.

Q Where? A Right there in the corner.

Q Do you know his name? A No, sir, I do not.

Q Do you know my name? A No, sir. 10

Q After he brought it in what happened to the goods; what was done with them? A Why, I seen him weighing it up.

Q Where was it weighed—in what part of the store? A Right in the center of the store, at the counter.

Q Did you stay throughout the whole weighing? A Why, I stayed there about three-quarters of an hour.

By the Court.

Q How many pounds did you see weighed? A About seven or eight; I think there was ten in a package. 20

Q That is ten pounds in a package? A Yes.

Q How many boxes? A I do not recall how many—seven or eight boxes.

Q Eighty pounds you saw weighed? A Eighty pounds.

By Mr. Lesser.

Q Did you see any money pass? A Why, I seen—why, Mr. Dichter said to the gentleman he would give it to him in a check, and the man refused to take a check, and Mr. Dichter said to him that he would sign the check for him and it would be all right to cash it, but he would have nothing but cash, so 30 Mr. Dichter then gave him the cash.

By the Court.

Q How much cash? A I could not just tell you how much.

No cross examination.

DEFENDANT RESTS.

CASE CLOSED.

40

Mr. Lesser. I move, if your Honor please, for a dismissal of the indictment. I move, first, for the direction of a verdict on the indictment of larceny, on the ground that there has not been the slightest testimony that, inferentially, or any other way, will involve the defendant Dichter.

The Court. I understand that. I do not suppose the State will insist on that. You will consent to that motion, Mr. Bernhard?

Mr. Bernhard. Certainly.

The Court. Eliminate the first count.

10

DEFENDANT'S REQUESTS TO CHARGE.

Counsel for defendant requests the Court to charge the jury as follows:

1. The purchase of goods which had previously been stolen without knowledge on the part of the purchaser that the goods were stolen is not a crime.

20 2. The burden of proof in this case is upon the State to show that the defendant knew that the goods had been stolen. Unless the evidence in this case convinces you beyond a reasonable doubt that the defendant knew the goods were stolen, you must acquit.

3. The proof must be that the defendant had knowledge, not that he had suspicion. *State* v. *Goldman,* 65 N. J. L. 394.

4. If you find from the evidence that the defendant paid substantial prices for the goods you may consider that as tending to show good faith and absence of knowledge on the part
30 of the defendant.

5. If you find from the evidence that the defendant displayed the goods openly you may consider that as tending to prove want of guilty knowledge.

6. If you find from the evidence that the defendant offered the goods for sale through and to many reputable persons, you may consider that evidence as tending to prove absence of guilty knowledge.

7. If you find from the evidence that the defendant never concealed nor denied his possession of the goods, you may
40 regard that as a piece of evidence of want of knowledge that the goods were stolen goods.

CHARGE OF THE COURT.

Gentlemen of the Jury:

The grand jury of the County of Essex has indicted this defendant on two counts. The first count in the indictment charges the larceny of some of these goods, and the second count charges him with receiving 1,000 pounds of rubber bands, each pound of the value of $1.20; 25 gross of erasers, each gross of the value of $2.45, and lead pencils; in all of the value of $1,263.60. The date laid in the indictment is the seventh day of September, but, of course, that particular date is not essential, so long as it is in the neighborhood.

Now, the law of the State of New Jersey is that any person who shall receive or buy any goods or chattels that shall have been stolen from any other person, knowing the same to have been stolen, whether such goods or chattels shall be received or bought from the thief or robber or person so obtaining or taking or converting them, or from any other person, shall be guilty of a misdemeanor.

There are two elements to the crime of receiving stolen goods. First, the goods and chattels must have been stolen; second, the person who receives them must have known that they were stolen, and that knowledge must be proven as of the time they were received. Knowledge may be proven either by direct evidence or by facts and circumstances which impute guilty knowledge. Suspicions are not sufficient, but such guilty knowledge may be found by the jury if the defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen. Suspicious circumstances may be a part of the situation from which guilty knowledge may be inferred, but the jury must be satisfied that those circumstances were of such a character, when taken in connection with the whole transaction, as to lead to the conclusion that the defendant knew that the goods were stolen.

In his case, the defendant's counsel admit that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe, but they contend that he did not know that they were stolen at the time that he purchased them. The question, then, for you to determine is: Were the facts and circumstances surrounding the purchase, delivery and receipt of the rubber bands, erasers and pencils of such a character as to satisfy a man of ordinary intelligence and caution that

they were stolen? In reaching your conclusion you have a right to take into consideration the value of the goods and the price paid for them, and the fact that the goods were new, the manner of delivery, the probability of a man of Gluthe's appearance and walk in life having such a large quantity of new rubber bands, erasers and pencils, lawfully in his possession, and any other circumstances connected with the case, that would tend to satisfy a man of ordinary intelligence and caution as to the legality or illegality of the transaction. Would the delivery of approximately 1,000 pounds of new rubber bands and a lot of new erasers and new pencils, at a drugstore, in the manner described by the defendant, be a circumstance that would indicate to a man of ordinary intelligence and caution that the goods were not lawfully in the possession of the seller and that they were stolen. The mere statement by the thief that the goods he offers for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances, although, of course, statements made by the thief may be considered by you in reaching your conclusion.

Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it will be your duty to convict.

The defendant states that there were only four transactions, while Gluthe says that there were three or four per week, probably eighteen in all. Do you believe that the quantity admittedly received by the defendant could have been delivered in four deliveries as testified to by the defendant? If you believe that the first goods purchased were purchased in good faith and without knowledge that they were stolen, do you believe that this situation continued until hundreds of pounds were delivered to the defendant? Would a man of ordinary intelligence and caution buy approximately 1,000 pounds of new rubber bands and a quantity of pencils and erasers from a man like Gluthe and pay him $520 in cash without having his suspicions aroused

as to the legality of the transactions? Mr. Fera, superintendent of the Faber factory, testified that fully 1,000 pounds were missing, and that conservatively they were worth $1,200. The defendant admits that he purchased approximately 1,000 pounds of rubber bands at fifty cents a pound, while Gluthe says that for the bands, erasers and pencils he was paid seventy-five dollars in the aggregate. The value of the goods and the price paid are generally important, because they throw some light on the question of knowledge. The fact that Mr. Thompson and others purchased some of these goods from the defendant does not relieve him from his obligation, since the buying of such things from a druggist such as the defendant might be quite different than buying from a man like Gluthe. The defendant having purchased them, he naturally wished to sell them. Does the manner of offering goods of this description for sale by the defendant indicate to your minds that he believed they were or were not stolen goods. Apparently, the bands had no distinguishing mark to indicate to the casual observer the name of the maker. The gist of the case is not what was paid for the goods purchased or sold, but, did the defendant know that they were stolen when he received them? Of course, the price paid for them and the price at which they were sold may be considered. Should he have known that they were stolen from the circumstances surrounding the transactions? Do you believe that he bought the articles in good faith? Do you believe that he thought he saw an opportunity to make money, and in his desire to make money closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution? It is for you to say, gentlemen. You are the sole judges of the facts, and you should rely upon your own recollection of the testimony. It is your duty to weigh all of the testimony and to reconcile it if you can. If there be an irreconcilable conflict of testimony, you should take that testimony which you think worth of credit and give it such weight as you think it entitled to. You are the sole judges of the credibility of the witnesses, and in judging their credibility you must carefully scrutinize their testimony.

The burden rests upon the State to satisfy you beyond a reasonable doubt of the defendant's guilt. If, after consideration of all the evidence in this case, you cannot say that you have an abiding conviction to a moral certainty of the defendant's guilt,

it will be your duty to acquit. If, on the other hand, you are so satisfied beyond a reasonable doubt, then it will be your duty to convict. A reasonable doubt is not any possible doubt. It must be a doubt founded in reason. The defendant is presumed to be innocent until proven guilty.

10 Defendant's counsel presented to me several requests to charge after he had summed up, and at the conclusion of the State's summing up, which I have been unable to read, I decline to charge except as I have already charged.

Mr. Lesser. I ask an exception.

Exception allowed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Mr. Yontiff. I would like to take the following exceptions to
20 the charge of the Court:

I except to the statement of your Honor in the charge that buying from the druggist by Thompson is different from buying by the druggist from Gluthe, in that it tends to give the jury the impression that the difference was one of opposites, and that the purchase by Thompson must have been an innocent one, and by contract the purchase by Dichter must have been a guilty one.

The Court. The language of the Court was that it might be quite different, not that it was.

Exception granted and sealed accordingly.

30 [L. S.] GEORGE K. LARGE,
Judge.

Mr. Yontiff. I except to the statement by your Honor that the mere fact that the thief said the goods were not stolen is not enough. The evidence was not that he said: "I did not steal these goods." The evidence was that there was failure of the thief to say that he had stolen the goods. There is a difference.

The Court. I think the language of the Court was that the
40 mere statement by the thief to the purchaser to the effect that they were not stolen was not sufficient to relieve the purchaser from responsibility.

Exception allowed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

Exceptions to Charge.

Mr. Yontiff. I except to that on the ground that there was no statement that he did not steal the goods.

The Court. Very well.

Exception allowed and sealed accordingly.

[L. S.] GEORGE K. LARGE,
Judge. 10

Mr. Yontiff. I except to your Honor's charge that a man of ordinary intelligence is the test of whether there was sufficient proof to put the defendant in a position of having guilty knowledge. It is not a question whether a reasonable man should have known that these goods were stolen. It is a question whether this particular defendant on trial, after considering all of the evidence, did himself think that the goods were stolen.

The Court. Very well.

Exception allowed and sealed accordingly. 20

[L. S.] GEORGE K. LARGE,
Judge.

Mr. Yontiff. I ask a general exception to the charge.

The Court. Very well.

Exception allowed and saled accordingly.

[L. S.] GEORGE K. LARGE,
Judge.

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CERTIFICATE OF COURT STENOGRAPHER.

STATE

vs.

10 AARON DICHTER.

ESSEX COUNTY, *ss.*

I, F. S. Adams, the official stenographer of the Essex County Court of General Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the *State of New Jersey* v. *Aaron Dichter,* which trial was held before the Honorable George K. Large, Judge of the Essex 20 County General Quarter Sessions Court, in and for the County of Essex, and a jury, on March 19 and 20, 1919, at Newark, New Jersey.

F. S. ADAMS.

CERTIFICATE OF JUDGE LARGE.

STATE

30 *vs.*

AARON DICHTER.

ESSEX COUNTY, *ss.*

I, George K. Large, Judge of the Essex County Court of General Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-40 error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

GEORGE K. LARGE,
Judge of the Essex County Court of General Quarter Sessions.

ASSIGNMENTS OF ERROR.

Filed November 20, 1919.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY *vs.* AARON DICHTER.	*On Error to Essex Quarter Sessions.* *Assignments of Error.*

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Afterwards, to wit: On return of the writ of error issued in this cause, comes the said Aaron Dichter, plaintiff-in-error, by Edward Schoen, his attorney, and says:

That in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions; and also in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

20

1. Because the Trial Judge erroneously refused to permit the defendant to ask the following questions:

Q "Did he tell you where he got them?" A "Yes." I did."

Q "Did hte tell you where he got them?" A "Yes."

Q "What did he tell you?"

2. Because the Trial Judge erroneously permitted the witness Migatz to be asked the following question:

30

Q "Did you tell Mr. Brex, yesterday, after he had been on the witness stand, that he ought not to have told the Court and jury that you gave him the information about who had purchased these goods? Yes or no."

3. Because the Trial Judge erroneously permitted the witness Migatz to be asked the following question:

Q "Didn't you tell Officer Smith in the corridor of this court house, yesterday afternoon, in the presence of Mr. Brex—did you say, 'Officer, you ought not to have told the Court and jury that I gave you the information of the persons who purchased the goods from Dichter?' "

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Assignments of Error.

4. Because the Trial Judge erroneously refused to permit the defendant to ask the witness Migatz, the following question:

Q "Tell us what did happen between Mr. Brex and Mr. Smith yesterday afternoon."

5. Because the Trial Judge erroneously refused to permit the witness Halpern to be asked the following quesetion:

10

Q "How did you come to come to court this time?"

6. Because the Trial Judge erroneously permitted the witness Stickle to be asked the following question:

Q "What did you offer to sell her?"

7. Because the Trial Judge erroneously refused to permit the witness Stickle to be asked the following question:

Q "Could you sell them for $1 a pound that you asked?"

20

8. Because the Trial Judge erroneously refused to permit the witness Stickle to be asked the following question:

Q "What was the new price you offered them at?"

9. Because the Trial Judge refused to permit the witness Stickle to be asked the following question:

Q "How long did you try to sell them?"

10. Because the Trial Judge erroneously permitted the witness Brex to be asked the following question:

Q "Did or did not Mr. Migatz, at the time you had the conversation with him, state to you that the reason he did not buy any more rubber bands from Ditcher was because it did not look right to him?"

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11. Because the Trial Judge erroneously permitted the witness Brex to be asked the following question:

Q "In the corridor of this court house, on this floor, on Wednesday afternoon, did or did not Mr. Migatz come to you after court had adjourned and state to you that you ought not to have told in court where you got your information from?"

40

12. Because the Trial Judge erroneously permitted the witness Smith to be asked the following question:

Q "Did or did not Mr. Migatz, in the conversation that you had with him, say to you, in the presence of

Mr. Brex, that the reason he did not purchase any more rubber bands from Dichter was for the reason that it did not look good to him?"

13. Because the Trial Judge erroneously charged the jury as follows:

"In this case the defendant's counsel admits that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe." 10

14. Because the Trial Judge erroneously charged the jury as follows:

"The mere statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances." 20

15. Because the Trial Judge erroneously charged the jury as follows:

"Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it will be your duty to convict." 30

16. Because the Trial Judge erroneously charged the jury as follows:

"The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his obligation, since the buying of such things from a druggist such as the defendant might be different than buying from a man like Gluthe."

17. Because the Trial Judge erroneously charged the jury as follows: 40

"Should he have known that they were stolen from the circumstances surrounding the transaction?"

18. Because the Trial Judge erroneously charged the jury as follows:

> "Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?"

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Wherefore said plaintiff-in-error, Aaron Dichter, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid and upon the giving of judgment and passing of sentence aforesaid be reversed, cancelled, and held for nothing, and that the said Aaron Dichter may be restored to all things by him lost on occasion thereof.

EDWARD SCHOEN,
Attorney for Plaintiff-in-Error.

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Service of a true copy of within assignments of error acknowledged *nunc pro tunc* this 18th day of November, A. D. 1919.

J. H. HARRISON,
Prosecutor.

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SPECIFICATION OF CAUSES AND REASONS FOR REVERSAL.

Filed November 20, 1919.

Plaintiff in error assigns the following reasons or causes for the reversal of verdict and judgment of conviction in the above stated action upon the whole record. 10

1. Because there was no evidence tending to establish the guilt of the defendant.

2. Because there was no evidence to sustain the charge contained in the indictment.

3. Because manifest wrong and injury has been suffered by the defendant by the action of the Trial Judge in directing the Jury to disregard the following question and answer, directed to the witness Migatz: 20

> Q Did anybody from my office give you a subpoena to come here? A No, sir.
>
> *The Court.* What difference does it make? You are calling him as your witness.
>
> *Mr. Lesser.* The State has brought him here and has not seen fit to put him on the stand.
>
> *The Court.* That is entirely improper, and I caution you not to repeat that remark, and I ask the jury to disregard it." 30

4. Because the Trial Judge admitted improper evidence, and more particularly permitted the witness Warner to be asked the following question:

> Q "When you went to the Police Court and identified Mr. Gluthe, do you remember making a statement at that time that 'the whole thing looked crooked'? A That what?
>
> Q That the whole thing looked crooked? A At that time it did.
>
> Q You did make that statement? A Yes." 40

5. Because the Trial Judge failed to charge the jury that the testimony of an accomplice should be scrutinized with great care.

Specification of Causes.

6. Because the Trial Judge erroneously failed to charge the jury that proof of other acts of the defendant are evidential merely to prove knowledge or intent.

7. Because the Trial Judge erroneously failed to charge the jury that evidence of other acts of the defendant may be considered to prove specific knowledge or intent, but not as substantive proof of the truth of the charge made in the indictment.

8. Because manifest wrong and injury has been suffered by the defendant by the action of the Trial Judge in permitting proof of other acts of the defendant to be shown without limiting the effect of such proof to the purpose for which it is competent, viz., That he had specific knowledge or intent.

9. Because the constitutional rights of the defendant were violated by charging him with several separate and distinct offences in one indictment.

10. Because the defendant was held to answer for a criminal offence, without the indictment of the Grand Jury, in violation of his constitutional rights.

11. Because the Trial Judge erroneously charged the jury as follows:

> "In this case the defendant's counsel admits that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe."

12. Because the Trial Judge erroneously charged the jury as follows:

> "The mere statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances."

13. Because the Trial Judge erroneously charged the jury as follows:

> "Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you

find, beyond a reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it will be your duty to convict."

14. Because the Trial Judge erroneously charged the jury as follows: 10

"The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his obligation, since the buying of such things from a druggist such as the defendant might be different than buying from a man like Gluthe."

15. Because the Trial Judge erroneously charged the jury as follows:

"Should he have known that they were stolen from the circumstances surrounding the transaction?" 20

16. Because the Trial Judge erroneously charged the jury as follows:

"Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?"

The said plaintiff in error for the causes aforesaid, in addition to the assignments of error, pray that the judgment aforesaid be reversed. 30

EDWARD SCHOEN,
Attorney for Plaintiff in Error.

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OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

November Term, 1919.

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STATE OF NEW JERSEY,

vs.

AARON DICHTER.

ERROR TO ESSEX SESSIONS.

Argued November Term, 1919.
Decided February Term, 1920.

20

J. Henry Harrison and John A. Bernhard, for State.
Edward Schoen, for defendant.

Argued before the Chief Justice, Minturn and Black, *J. J.*

Per curiam:

The defendant was convicted on an indictment charging him with receiving stolen goods. There are a number of assignments of error; one presents the contention that the constitutional rights of the defendant were invaded, and as to that it must suffice to say no such question was presented in the Court below, and therefore cannot be considered here. It is contended also that the Court failed to instruct the jury with relation to certain specified particulars. It is enough to say regarding this that no request for such instruction was submitted to the Trial Court, and they are therefore not before us. But our consideration of the matters themselves leads us to conclude that there is nothing of substance in them. The law was properly stated to the jury and the criticisms upon the charge are insubstantial.

30

Counsel challenges the correctness of a statement made by the Court to the jury, as follows: "The defendant's counsel admits that the goods purchased by the defendant were stolen from the Faber Rubber Co. by Gluthe," and contends that there is nothing in the case to justify any such statement of fact. We are unable from the case to say whether the statement is correct or not, for

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neither the opening of defendant's counsel nor his summing up appears in the printed case, and the question therefore is *coram non judice.* The presumption is that the statement was true, and this presumption is confirmed by the fact that the argument before us is not made by counsel who tried the case below, and who is charged with making the concession.

The only serious objection urged is that to the testimony of Migatz. He was asked by the State whether he had not told Officer Brex after he had been on the witness stand that he (Brex) ought not to have told the jury that he (Migatz) gave him the information about who purchased these goods. Migatz denied having told this to Brex. He was asked a similar question with relation to an alleged conversation between him and Officer Smith, which he denied. The State was subsequently permitted over objection of defendant's counsel to call Brex and also Smith to contradict Migatz's statement, and to prove that he had said to them what the questions to Migatz charged him with stating. We think if proper objection had been entered to this line of testimony, its admission would be erroneous, since the State was bound by the answer of its witness upon a collateral issue.

People v. *Stokes,* 53 N. Y. 164.

But the objection was not made on that ground, but on an entirely irrelevant ground, which did not present to the Trial Court the legal impropriety of the examination. The Trial Court had a right to have its attention called specifically to the legal impropriety of the question, and in the absence of such specific objection it is too late now to interpose the real substantial objection to the inquiry.

Baer v. *Lehigh Valley R. R. Co.,* 106 Atl. 421.

The case having been tried upon the theory that excepting for other reasons this testimony was not improper, the real legal reason cannot be interposed now as the basis for action by this Court, which action the Trial Court was not by any proper objection asked to consider, as a basis for the rejection of this proof.

Edgewater Co. v. *Valvolene Co.,* 76 L. 189;
Berg v. *Motor Co.,* 78 L. 724.

Finding no other legal difficulty in the case, we think the judgment should be affirmed.

REMITTITUR.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* AARON DICHTER, *Plaintiff-in-Error.*	*On Error.* *Remittitur.*

10

The above-stated cause having been submitted at the November Term, Nineteen Hundred and Nineteen, in the New Jersey Supreme Court, by J. Henry Harrison, Esq., attorney for the defendant-in-error, and Edward Schoen, Esq., attorney for the plaintiff-in-error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions, it is thereupon ORDERED and ADJUDGED that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed in all things, with costs, and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with according to law and the practice of said Court.

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Entered March 5th, Nineteen Hundred and Nineteen.

30

On motion of

J. HENRY HARRISON,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

40

ASSIGNMENTS OF ERROR.

Filed March 19, 1920.

New Jersey Court of Errors and Appeals

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STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* AARON DICHTER, *Plaintiff-in-Error.*	*On Error.* *Assignments of Error.*

Afterwards, on the return day of the writ of error issued in
20 this cause, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Aaron Dichter, plaintiff-in-error, by Edward Schoen, his attorney, and says that:

In the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

1. Because the Supreme Court affirmed the verdict and judg-
30 ment aforesaid, whereas the said judgment should have been reversed.

2. Because the Supreme Court erroneously upheld the Trial Judge in refusing to permit the defendant to ask the following questions:

> Q "Did he tell you where he got them?" A "Yes, I did."
> Q "Did he tell you where he got them?" A "Yes."
> Q "What did he tell you?"

3. Because the said Court erroneously upheld the Trial Judge
40 in permitting the witness Migatz to be asked the following question:

> Q "Did you tell Mr. Brex, yesterday, after he had been on the witness stand, that he ought not to have told the Court and jury that you gave him the information about who had purchased these goods? Yes or no."

Assignments of Error.

4. Because the said Court erroneously upheld the Trial Judge in permitting the witness Migatz to be asked the following question?

Q "Didn't you tell Officer Smith in the corridor of this court house, yesterday afternoon, in the presence of Mr. Brex—did you say, 'Officer, you ought not to have told the Court and jury that I gave you the information of the persons who purchased the goods from Dichter?' " 10

5 Because the said Court erroneously upheld the Trial Judge in refusing to permit the defendant to ask the witness Migatz the following question:

Q "Tell us what did happen between Mr. Brex and Mr. Smith yesterday afternoon."

6. Because the said Court erroneously upheld the Trial Judge in refusing to permit the witness Halpern to be asked the following question: 20

Q "How did you come to come to court this time?"

7. Because the said Court erroneously upheld the Trial Judge in permitting the witness Stickle to be asked the following question:

Q "What did you offer to sell her?"

8. Because the said Court erroneously upheld the Trial Judge in refusing to permit the witness Stickle to be asked the following question:

Q "Could you sell them for $1 a pound that you asked?" 30

9. Because the said Court erroneously upheld the Trial Judge in refusing to permit the witness Stickle to be asked the following question:

Q "What was the new price you offered them at?"

10. Because the said Court erroneously upheld the Trial Judge in refusing to permit the witness Stickle to be asked the following question:

Q "How long did you try to sell them?"

11. Because the said Court erroneously upheld the Trial Judge in permitting the witness Brex to be asked the following question: 40

Q "Did or did not Mr. Migatz, at the time you had the conversation with him, state to you that the reason he did not buy any more rubber bands from Dichter was because it did not look right to him?"

12. Because the said Court erroneously upheld the Trial Judge in permitting the witness Brex to be asked the following question:

> Q "In the corridor of this court house, on this floor, on Wednesday afternoon, did or did not Mr. Migatz come to you after court had adjourned and state to you that you ought not to have told in court where you got your information from?"

10

13. Because the said Court erroneously upheld the Trial Judge in permitting the witness Smith to be asked the following question:

> Q "Did or did not Mr. Migatz, in the conversation that you had with him, say to you in the presence of Mr. Brex, that the reason he did not purchase any more rubber bands from Dichter was for the reason that it did not look good to him?"

20

14. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "In this case the defendant's counsel admits that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe."

15. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "The main statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances."

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16. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it will be your duty to convict."

40

17. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his

obligation, since the buying of such things from a druggist such as the defendant might be different than buying from a man like Gluthe."

18. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

"Should he have known that they were stolen from the circumstances surrounding the transaction?" 10

19. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

"Do you believe that he thought he saw an opportunity to make money, and in his desire to make money closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?"

20. Because the said Court erroneously upheld the Trial Judge in directing the jury to disregard the following question and answer, directed to the witness Migatz: 20

Q Did anybody from my office give you a subpoena to come here? A No, sir.

The Court. What difference does it make? You are calling him as your witness.

Mr. Lesser. The State has brought him here and has not seen fit to put him on the stand.

The Court. That is entirely improper, and I caution you not to repeat that remark, and I ask the jury to disregard it.

21. Because the said Court erroneously upheld the Trial Judge in admitting improper evidence and more particularly in permitting the witness Warner to be asked the following question: 30

Q "When you went to the Police Court and identified Mr. Gluthe, do you remember making a statement at that time that 'The whole thing looked crooked?' A That what?

Q That the whole thing looked crooked? A At that time it did.

Q You did make that statement? A Yes."

22. Because the said Court erroneously upheld the Trial Judge in failing to charge the jury that the testimony of an accomplice should be scrutinized with great care. 40

23. Because the said Court erroneously upheld the Trial Judge in failing to charge the jury that proof of other acts of the defendant are evidential merely to prove knowledge or intent.

24. Because the said Court erroneously upheld the Trial Judge in failing to charge the jury that evidence of other acts of the defendant may be considered to prove specific knowledge or intent, but not as substantive proof of the truth of the charge made in the indictment.

10 25. Because the said Court erroneously upheld the Trial Judge in permitting proof of other acts of the defendant to be shown without limiting the effect of such proof to the purpose for which it is competent, viz., that he had specific knowledge or intent.

26. Because the constitutional rights of the defendant were violated by charging him with several separate and distinct offenses in one indictment.

27. Because the defendant was held to answer for a criminal offense, without the indictment of the grand jury, in violation of
20 his constitutional rights.

28. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "In this case the defendant's counsel admits that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe."

29. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "The mere statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve
30 the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances."

30. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

> "Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a
40 reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it will be your duty to convict."

31. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows.

> "The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his

obligation, since the buying of such things from a druggist such as the defendant might be different than buying from a man like Gluthe."

32. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

"Should he have known that they were stolen from the circumstances surrounding the transaction?" 10

33. Because the said Court erroneously upheld the Trial Judge in charging the jury as follows:

"Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?"

Therefore said plaintiff-in-error, Aaron Dichter, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid and upon the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing, and that the said Aaron Dichter may be restored to all things by him lost on occasion thereof. 20

EDWARD SCHOEN,
Attorney for Plaintiff-in-Error.

Service acknowledged March 18, 1920.

J. H. HARRISON, 30
Prosecutor.

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SPECIFICATION OF CAUSES AND REASONS FOR REVERSAL.

Filed March 19, 1920.

Plaintiff-in-error assigns the following reasons or causes for
10 the reversal of verdict and judgment of conviction in the above-stated action upon the whole record:

1. Because manifest wrong and injury has been suffered by the defendant by the action of the Trial Judge in directing the jury to disregard the following question and answer, directed to the witness Migatz:

> Q Did anybody from my office give you a subpoena to come here? A No, sir.
>
> *The Court.* What difference does it make? You are calling him as your witness.
>
> 20 *Mr. Lesser.* The State has brought him here and has not seen fit to put him on the stand.
>
> *The Court.* That is entirely improper, and I caution you not to repeat that remark, and I ask the jury to disregard it.

2. Because the Supreme Court erroneously upheld the Trial Judge in admitting improper evidence and more particularly in permitting the witness Warner to be asked the following question:

> Q When you went to the Police Court and identified Mr. Gluthe, do you remember making a statement at that time that "the whole thing looked crooked"? A That
> 30 what?
>
> Q That the whole thing looked crooked? A At that time it did.
>
> Q You did make that statement? A Yes.

3. Because the Trial Judge failed to charge the jury that the testimony of an accomplice should be scrutinized with great care.

4. Because the Trial Judge erroneously failed to charge the jury that proof of other acts of the defendant are evidential merely to prove knowledge or intent.

40 5. Because the Trial Judge erroneously failed to charge the jury that evidence of other acts of the defendant may be considered to prove specific knowledge or intent but not as substantive proof of the truth of the charge made in the indictment.

6. Because manifest wrong and injury has been suffered by the defendant by the action of the Trial Judge in permitting proof of other acts of the defendant to be shown without limiting the effect of such proof to the purpose for which it is competent, viz.: That he had specific knowledge or intent.

7. Because the constitutional rights of the defendant were violated by charging him with several separate and distinct offenses in one indictment. 10

8. Because the defendant was held to answer for a criminal offense, without the indictment of the Grand Jury in violation of his constitutional rights.

9. Because the Trial Judge erroneously charged the jury as follows:

> "In this case the defendant's counsel admits that the goods purchased and received by the defendant were stolen from the Faber Company by Gluthe." 20

10. Because the Trial Judge erroneously charged the jury as follows:

> "The mere statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances."

11. Because the Trial Judge erroneously charged the jury as follows:

> "Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a reasonable doubt, that any part of the goods mentioned in the indictment were received by the defendant knowing that they were stolen, it will be your duty to convict." 30

12. Because the Trial Judge erroneously charged the jury as follows:

> "The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his obligation, since the buying of such things from a druggist such as the defendant might be different than buying from a man like Gluthe." 40

Specification of Causes and Reasons for Reversal.

13. Because the Trial Judge erroneously charged the jury as follows:

> "Should he have known that they were stolen from the circumstances surrounding the transaction?"

14. Because the Trial Judge erroneously charged the jury as
10 follows:

> "Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?"

The said plaintiff-in-error, for the causes aforesaid, in addition to the Assignments of Error, prays that the judgment aforesaid may be reversed.

EDWARD SCHOEN,
20 *Attorney for Plaintiff-in-Error.*

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Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* AARON DICHTER, *Plaintiff-inError.*	*On Error to Supreme Court.*

BRIEF OF PLAINTIFF-IN-ERROR.

Facts.

This is an appeal from a conviction on an indictment charging the defendant with larceny and receiving stolen goods.

The indictment contained two counts. The first charged the defendant with having, on a certain day, to wit, on the 7th day of September, A. D. 1917, stolen certain property belonging to Faber Rubber Co., to wit: one thousand pounds rubber bands, forty-five gross of lead pencils, and twenty-five gross of erasers.

The second count charged the defendant with having, on the same day, received said goods.

Specification of Errors.

1. The admission of improper evidence.
2. Exclusion of evidence.
3. The charge of the Court.
4. Failure of the Court to instruct the jury.
5. The violation of the Constitutional rights of the defendant.

Argument.

Assignment No. 2.

This assignment relates to the refusal of the Court to permit the defendant to ask the following questions of the witness Fred C. Thompson: (See state of case, p. 47.)

Q "Did you ask him where he got them? A Yes, I did.

Q Did he tell you where he got them? A Yes.

Q What did he tell you?"

This evidence was competent and material to the defendant's case. It related to the conduct of the defendant with respect to the manner in which he handled the goods he is alleged to have received. If he handled the goods openly and did not conceal the source from which he obtained them, it was a circumstance which the defendant should have been permitted to show the jury, so that the jury might draw the proper inferences therefrom.

If the defendant, upon being asked the foregoing questions, had misstated the source from which he obtained the goods and endeavored to conceal the identity of the person from whom he received them, such conduct on his part would have created a fair inference of guilt, and would have been admissible for that purpose. Surely, therefore, questions tending to show that the defendant dealt openly with the goods, and frankly disclosed the name of the person from whom he received them, although that person subsequently was identified as the thief who actually stole the goods, should have been admitted by the Trial Judge for the consideration of the jury to determine from such conduct whether any inference of guilty knowledge of the character of the goods should be drawn from them.

Assignment No. 3. (See also Assignment No. 11.)

This relates to a question asked of the State's witness Migatz, and admitted over the objection of counsel for the defendant. The question was as follows:

> Q "Did you tell Mr. Brex yesterday, after he had been on the witness stand, that he ought not to have told the jury that you gave him the information about who had purchased these goods? Yes or no?" (See state of case, p. 69.)

This question was addressed to the witness for the purpose of laying a foundation to contradict him. It was addressed by the prosecutor to the State's own witness. It related to a conversation not in the presence of the defendant, and it was upon a collateral matter. For these infirmities the question should not have been permitted over the objection of the defendant. On the strict bill of exceptions, it was reversible error to admit it, and in addition it was clearly prejudicial and caused the defendant manifest wrong and injury.

Assignment No. 4.

This assignment relates to a question similar to the one named in Assignment No. 3 and the plaintiff-in-error makes the same

objection thereto as in Assignment No. 3. (See state of case, pp. 69 and 70.)

Assignment No. 5.

This assignment relates to the exclusion of the following question to the witness Migatz:

> Q "Tell us what did happen between Mr. Brex and Mr. Smith yesterday afternoon?" (See state of case, p. 70.)

Although the Trial Judge, over the objection of the defendant, had permitted the witness Migatz to be asked the direct questions specified in Assignments Nos. 2 & 3, and although the witness Migatz had answered both questions in the negative, the defendant's counsel, on re-direct examination, was barred by the Trial Judge from asking the witness to tell what did in fact happen.

Manifest wrong and injury was thereby done to the defendant's cause in the denial of the right to have the witness tell what did in fact happen after the prosecutor had opened the door by asking two direct questions upon the subject.

Assignment No. 6.

This assignment relates to the refusal of the Trial Judge to permit the witness Halpern to be asked this question:

> Q "How did you come to come to court this time?" (See state of case, p. 76.)

This question was asked for the purpose of showing the interest or bias of the witness—whether he came voluntarily or involuntarily; whether he was a friendly or hostile witness. Any question tending to show the interest or bias of the witness —whether he was friendly or hostile; and whether he came to court voluntarily or involuntarily under subpoena is admissible. There is no contrariety of view as to this in the decisions anywhere.

It was the clear right of the defendant to ask this question, and to have it answered. Its exclusion by the Trial Judge was a violation of such right.

Assignment Nos. 7, 8, 9 and 10.

These assignments relate to the exclusion of the following questions to the witness Stickle:

> Q "What did you offer to sell her?
> Q Could you sell them for $1 a pound that you asked?
> Q What was the new price you offered them at?

Q How low did you try to sell them?" (See state of case, pp. 120, 123, 124.)

The evidence shows that the witness Stickle was employed by the defendant Dichter to sell the goods named in the indictment after he had purchased them from Gluthe. The Court charged the jury that the price paid and the price for which sold, may be taken into consideration as a circumstance in determining whether the defendant had knowledge that the goods were stolen. But when the defendant sought to prove, by the foregoing questions, the price for which he endeavored to sell them, and the price offered him in open market, the questions were ruled out. If the defendant received goods of great value and paid a very small price for them the jury would be justified in taking the circumstance into consideration in determining whether the defendant had guilty knowledge. The question of the value of the goods and the price paid by the defendant was unquestionably material evidence. A State's witness had testified that the goods were worth $1 a pound. The defendant endeavored to show that the market value of the goods was not $1 per pound, but that they were valued more nearly at the price he actually paid for them. In support of this contention he offered the evidence of the witness Stickle, who went out into the open market to endeavor to sell the goods, and the questions specified in this assignment were addressed to the witness Stickle for that purpose. The refusal of the Trial Judge to permit the defendant to show the market value of these goods, by his refusal to permit the questions to the witness Stickle was a denial of a material and important right to the defendant, and caused manifest wrong and injury to him.

Assignment No. 11 relates to the admission of the following question to the witness Brex:

Q "Did or did not Mr. Migatz, at the time that you had the conversation with him, state to you that the reason he did not buy any more rubber bands from Dichter was because it did not look right to him?" (See state of case, p. 126.)

This question related to a conversation between the witness Brex and one Migatz, not in the presence of the defendant. It conveyed to the jury Mr. Migatz's impression of the transaction, and to that extent tended to prejudice the defendant. What relation could the opinion of Mr. Migatz as to how the transaction looked to him, have in the determination of the question of the guilt or innocence of the defendant Dichter? If this kind

of testimony is permissible the trial of criminal cases would soon develop into a chaotic affair, with both sides calling hosts of witnesses; one side affirming that the transaction looked right, and the other side asserting that it looked wrong. This question was clearly inadmissible from any point of view.

Assignment No. 12 relates to the following question asked of the witness Brex:

> Q "Did or did not Mr. Migatz come to you, after court had adjourned, and state to you that you ought not to have told in court where you got the information from?"

The witness Migatz was a State's witness. The prosecutor had asked the witness Migatz this question to lay a foundation for contradiction. It related to a conversation not in the presence of the defendant. It was a question upon a collateral matter, and having been asked by the prosecutor of his own witness, he was bound by the answer and could not contradict him by putting the question to the witness Brex. (See state of case, p. 126.)

The question related entirely to a conversation of a State's witness in the absence of the defendant, and could in no way be binding upon him. This testimony could have no other purpose than to prejudice the jury against anything in the testimony of Migatz, that might have been favorable to the defendant.

This assignment and Assignment No. 2 are co-related, and are admitted by the Supreme Court to constitute legal error, but the plaintiff-in-error is denied a reversal because the ground of objection "did not present to the Trial Court the legal impropriety of the examination * * *" (Opinion, p. .) Several cases are cited by the Court in support of its determination. It is respectfully submitted, however, that each of the cases so cited are civil cases, and it is not denied that the rules of evidence in civil cases require that the Trial Court shall have its attention called specifically to the legal impropriety of the question objected to. There is, however, a distinction between a criminal case and a civil suit. Section 136 of the Criminal Procedure Act provides that:

> "The entire record of the proceedings had upon the trial of any criminal case may be returned by the plaintiff-in-error * * * and if it appear from such record that the plaintiff-in-error, on the trial below, suffered manifest wrong or injury, either in the admission or rejection of testimony, *whether objection was made thereto or not*

> * * * *whether a bill of exceptions was settled, signed and sealed thereto or error assigned thereon, or not,* the Appellate Court shall remedy such wrong or injury, and give judgment accordingly, and order a new trial."

The entire record has been returned with this case, pursuant to the 136th Section, and the cause was submitted both upon the bill of exceptions and under the 136th Section.

It is respectfully submitted, therefore, that the limitations of the rules of evidence applicable to the civil cases cited by the Supreme Court in support of its determination are not applicable to this case. The errors complained of are not lost to the plaintiff-in-error because the ground of objection now relied upon was not stated to the Trial Judge. (Section 136, Crim. Pro.)

Assignment No. 13.

The same question as quoted in Assignment No. 11 was asked of the witness Smith, and the same objections made in Assignment No. 11 are here repeated. (See state of case, p. 127.)

Assignment No. 14 relates to the following portion of the Judge's charge:

> "In this case the defendant's counsel admits that the goods purchased by the defendant were stolen from the Faber Rubber Co. by Gluthe." (See state of case, p. 135.)

The defendant suffered manifest wrong and injury by this statement of the Trial Judge, because there is nothing in the case that such an admission was made by the defendant's counsel. On the contrary, the defendant claimed that Gluthe, the thief, had told him at the time of the purchase of the goods by the defendant that he was employed by a company which had to go into bankruptcy, and that they had paid him his back salary in the merchandise which he was endeavoring to sell to the defendant. (State of case, pp. 28-29-84.) There is nothing in the case (see state of case) to justify the unqualified statement of the Court that defendant's counsel admits that the goods received by the defendant were stolen. That the goods were stolen goods was an essential element of proof, and the jury should not have been misdirected by the Trial Judge to take it for granted that the defendant admitted that the goods were stolen. The jury should have been instructed that in order to convict the defendant it was necessary for them to find, beyond a reasonable doubt, as one of the essential elements in the

case, that the goods were in fact stolen, and the statement of the Judge that the defendant admitted this without anything in the record to warrant such an instruction was a clear error and prejudicial to the defendant.

> "It is error in law if, in the charge of a Judge in a criminal case, a fact of moment clearly connected with the merits is stated to be in proof, when such fact has neither testimony nor the color of testimony to support it." *Smith* v. *State,* 41 L., p. 370; *State* v. *Schuyler,* 75 L., p. 489.

The State answers this assignment of error with a statement *de hors* the record. The State as well as the defendant is bound by the record as submitted, and cannot supplement it by a mere statement of facts which does not appear in it. The rules of the Supreme Court provide an ample remedy to either party where there appears to be diminution of the record.

> (c) "In every case to be argued in Part I, two copies of the State of the Case shall be furnished the adverse party ten days before the bringing on of the hearing, and unless the adverse party gives notice of his objections thereto within five days, *it shall be deemed complete* unless the Court orders otherwise." (Supreme Court Rule 155.)

The State did not avail itself of this rule, and did not claim that there was diminution of the record, although this assignment of error was served upon the Prosecutor, in conjunction with the other assignments in the case, before the printed book was served upon him. The State therefore had ample notice that this portion of the charge was challenged by the defendant and relied upon as a ground for reversal, and if anything occurred in the trial of the case which justified the statement by the Trial Judge, the State should have taken the proceedings under the rules to have it incorporated in the record within the time prescribed by the rules and in the manner prescribed. Having failed to do this the inference should be that the record is complete and not that it is incomplete. Neither should a statement of facts *de hors* the record be received as a conclusive answer to an error manifest upon the record, not theretofore challenged by the State in the manner prescribed by the rules.

With due deference it is submitted that the Supreme Court in passing upon this assignment of error, also went outside of the record, as is clear from a reading of the Opinion. The Supreme Court says that it is unable to say whether the statement of the Trial Judge was correct or not, because neither the

opening of defendant's counsel nor his summing up appears in the case. Therefore, the Court presumed that the statement was true. The plaintiff-in-error respectfully urges that the Court was bound by what the record contained, and in the absence of anything in the record justifying such a statement by the Trial Judge, it cannot be assumed that the admission was made. It is fair to assume that if such an important admission was made in due and binding form either by the defendant, or in his behalf, by one authorized to do so, that the Prosecutor would have had the admission formally entered on the record. Again, neither an opening by defendant's counsel nor his summing up constitutes "evidence." *Smith* v. *State* (*supra.*)

> "Judicial admissions or those made in Court by the party's attorney generally appear either of record as in pleading, or in the solemn admission of the attorney made for the purpose of being used as a substitute for the regular legal evidence of the fact at the trial." (Greenleaf on Ev. 16 Ed., p. 339.)
>
> "An admission must be distinct and formal, or such as may be termed a solemn admission, made for the express purpose of relaxing the stringency of some rule of practice, or of dispensing with the formal proof of some document or fact at the trial." *Gallagher* v. *McBride,* 66 N. J. L., at p. 367.

The State of the Case must show a justifiable basis for the portion of the charge complained of. This Court has consistently refused to consider matters outside of the record, and to do so in this case would create a dangerous precedent. Instructions assuming a material fact to have been admitted, without a solemn and formal admission on the record to justify it, might be given with impunity if this Court rests its determination, as did the Supreme Court, upon the hypothesis that the State of the Case, against which diminution has not been alleged, is not complete. The plaintiff-in-error, if he is to be bound by an admission of an essential element of the crime charged against him, is entitled to have that admission appear in solemn form upon the record.

Assignment No. 15 related to the following portion of the Judge's charge:

> "The mere statement by the thief that the goods he offered for sale were not stolen, is not sufficient to relieve the purchaser from the responsibility imposed by law upon one who receives goods under suspicious circumstances." (See state of case, p. 136.)

This instruction in effect charged the jury the circumstances under which the defendant received the goods were in fact suspicious. Whether or not the circumstances under which the goods were received were suspicious so as to put a person of ordinary intelligence on his guard, was a question of fact for the jury, and forms the basis from which the jury might infer guilty knowledge if they determined that the circumstances under which the goods were received were in fact suspicious.

Again this portion of the charge, in effect, instructs the jury that the law imposes responsibility upon one who receives goods under suspicious circumstances. There is no criminal liability imposed by law upon one who receives goods under suspicious circumstances. The goods must in fact have been stolen, and the circumstances must have been such as to warrant the jury in drawing an inference of guilty knowledge from them. The Trial Judge in effect charged the jury that under the law it is a crime to receive goods under suspicious circumstances. The crime created by the statute under which this defendant was indicted is for receiving stolen goods, not merely for receiving goods under suspicious circumstances.

The Trial Judge should have left it to the jury to determine whether the statement by the thief, that the goods he offered for sale were not stolen was, under all the circumstances of the case, sufficient to justify the defendant in receiving them. The Trial Judge, however, took this fact away from the consideration of the jury by the unqualified instruction that the statement by the thief that the goods he offered for sale were not stolen is not sufficient to relieve the purchaser. It was a clear jury question, whether such statement was sufficient. At least, it was a circumstance for the jury to consider in determining whether such a statement was sufficient to relieve the mind of the defendant of any doubt as to the character of the goods. The instruction complained of forbade the jury from considering the statement sufficient.

Assignment No. 16 relates to the following portion of the Judge's charge:

> "Under the law the receiver may be convicted on this indictment if you find that he received any part of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the State to prove that the defendant knew that all of the goods were stolen at the time that he received them. If you find, beyond a reasonable doubt, that any part of the goods

> mentioned in the indictment were received by the defendant knowing that they were stolen, it will be your duty to convict." (See state of case, p. 136.)

The indictment in this case charged the defendant with having, on a certain day, received a certain definite quantity of goods, knowing them to have been stolen. The evidence produced by the State and that offered by the defendant is to the effect that no such quantity of goods was received on the day named in the indictment, nor on a day reasonably near it. The thief, Gluthe, testifies that he sold about two hundred pounds of the bands, two thousand pencils and one thousand erasers, at various times, and he thinks on about four occasions. (See state of case, pp. 23 & 29.)

The defendant testifies that he purchased various small quantities of goods from the defendant on at least four occasions. (See state of case, p. 86.)

If the goods were in fact stolen, and the defendant received them, knowing them to have been stolen, each purchase by him constitutes a separate and distinct crime, and there is no authority in the statute permitting the consolidation of several distinct crimes in one indictment. True, the date alleged in an indictment of this character is not material, and may be amended. In this case, however, no amendment was asked for by the prosecutor, nor was any amendment to the indictment made. In fact, the evidence of the State as well as of the defendant shows conclusively that on no day, at or near the day fixed in the indictment, did the defendant receive the goods specified in the indictment.

Assignment No. 17 relates to the following portion of the Judge's charge:

> "The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his obligation, since the buying of such things from a druggist like the defendant might be different than buying from a man like Gluthe." (See state of case, p. 137.)

Here again the Trial Judge practically decided a question of fact which was strictly within the province of the jury. The act of Mr. Thompson in purchasing the goods, the time, the place, the price, the manner and the circumstances under which the defendant sold them to Mr. Thompson were offered by the defendant as circumstances for the consideration of the jury to act as a guide in determining whether the defendant had guilty

knowledge of the character of the goods. The jury should have been instructed that these circumstances might be taken into consideration by them in determining the existence of guilty knowledge in the defendant. Instead, however, the Trial Judge decided the question and instructed the jury that they were not facts which would relieve the defendant from his obligation. Furthermore, the instruction, in effect, strictly instructed the jury that the purchase of the goods by Thompson differed from the purchase of the goods by the defendant, and that the purchase by Thompson was innocent, while the purchase by the defendant was criminal.

Assignment No. 18 relates to the following portion of the Judge's charge:

> "Should he have known that they were stolen from the circumstances surrounding the transaction?" (See state of case, p. 137.)

The question for the jury to determine was "*Did* he know that the goods were stolen?" This portion of the charge practically made it encumbent upon the jury to find the defendant guilty, if in their superior judgment they felt that the defendant *should* have known that the goods were stolen, even though they were not satisfied beyond a reasonable doubt from the evidence, that the defendant *did* in fact know that they were stolen.

Assignment No. 19 relates to the following portion of the Judge's charge:

> "Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?" (See state of case, p. 137.)

This portion of the Judge's charge was argumentative. There is no evidence in the case raising the issue whether the defendant thought he saw an opportunity to make money and that he desired to make money. Again, this portion of the charge in effect charged the jury that there were facts and circumstances in the case that would have been apparent to a man of ordinary intelligence and caution. The evidence in the case, however, admitted by the State's witness Gluthe, the thief, is that he told the defendant that the goods were received by him in lieu of wages from a concern which was practically bankrupt, and for whom he was working, and that because the goods had the "Made in Germany" imprint on them, they were unmarketable, and of little value.

Specification No. 1 relates to the action of the Trial Judge in directing the jury to disregard the following question and answer directed to the witness Migatz, and also to the remarks of the Court directed to defendant's counsel:

> Q "Did anybody from my office give you a subpoena to come here? A No, sir.
>
> *The Court.* What difference does it make? You are calling him as your witness.
>
> *Mr. Lesser.* The State has brought him here, and has not seen fit to put him on the stand.
>
> *The Court.* That is entirely improper, and I caution you not to repeat that remark, and I ask the jury to disregard it." (See state of case, p. 68.)

The question was entirely proper, because it sought to ascertain whether the witness was in court voluntarily or involuntarily—whether he came on behalf of the State or whether he came on behalf of the defendant. It was a proper question to determine the bias or interest of the witness. The question and answer should have been permitted to stand. The Court addressed the question: "What difference does it make?" to the defendant's counsel, and defendant's counsel had a right to reply to the Court in response to the direct question from the Court. The reply of counsel was certainly respectful and responsive to the question put to him by the Court. It was, therefore, prejudicial to this defendant for the Trial Judge to reply as he did, and to direct the jury to disregard it. The manner in which the reply was made to counsel for the defendant cannot, of course, be conveyed to this Court in cold type, but the effect on the jury and the manner in which the reply was made is fairly inferable from the quoted record. The defendant contends that manifest wrong and injury was suffered by him from this action of the Trial Judge.

Specification No. 2 relates to the admission of the following question to the witness Warner:

> Q "When you went to the Police Court and identified Mr. Gluthe, do you remember making a statement at that time that the whole thing looked crooked? A That what?
>
> Q That the whole thing looked crooked? A At that time it did.
>
> Q You did make that statement? R Yes" (See state of case, p. 114.)

The admission of this question and the answers caused manifest wrong and injury to be suffered by the defendant. It permitted the opinion of the witness Warner as to how the

transaction tooked to him, to be injected into the case. It is not material in determining the guilt of the defendant, how the act of the defendant looked to by-standers or third parties; whether it had an innocent or criminal aspect in their opinion. Such evidence is clearly inadmissible and prejudicial to the defendant. Furthermore, the statement of the witness Warner, about which he was interrogated, was not made in the presence of the defendant.

Specification No. 3 relates to the failure of the Court to charge the jury that the testimony of an accomplice should be scrutinized with great care. The proof that the goods in question were stolen goods, rested entirely upon the testimony of Gluthe, the thief. No other corroborative evidence was offered. While it is true that a defendant may be convicted upon the uncorroborated testimony of an accomplice, still it is the duty of the Trial Judge to caution the jury to carefully scrutinize the testimony of an accomplice. This the Trial Judge failed to do and in this there was manifest wrong and injury suffered by the defendant.

Specifications No. 4, 5 and 6 relates to the failure of the Trial Judge to charge the jury that proof of other purchases of the defendant is evidential merely to prove knowledge or intent. In this case the State proved a series of purchases by the defendant, the sum total of which the State claimed amounted to the total quantity of goods named in the indictment, with the receipt of which the defendant is charged. Only one specific crime can be charged in one indictment, however. *State* v. *Popick*, 83 L., p. 318, is authority for the doctrine that proof of other acts of the defendant may be adduced to prove that he had specific knowledge or intent.

The Trial Judge should, therefore, have instructed the jury that proof of other purchases by the defendant was admissible for a limited purpose only, viz.: the question of knowledge or intent. That the Trial Judge should so instruct a jury, whether requested so to do or not, where evidence is admissible for certain limited purposes, was decided in the case of *State* v. *D'Adame*, 84 L., p. 386. In this case Justice White laid down the rule in these words:

> "The Trial Judge will, upon request, *and should without request,* limit the effect of such proof to this purpose."

The failure of the Court to instruct the jury in this case as to the limitation of the purposes for which this testimony was admissible caused manifest wrong and injury to this defendant, because the Trial Judge and the State relied upon the sum total of the other purchases to make out the quantity of goods named in the indictment. In other words, this evidence was admitted and relied upon by the State as having substantive testimonial value as proof of the charge laid in the indictment. *State* v. *D'Adame*, at p. 396, directly strips such evidence of this effect and holds that the Trial Judge should so charge the jury.

Specification No. 7 relates to the violation of the constitutional rights of the defendant by charging him with several separate and distinct offenses in one indictment. The proof in the case shows a series of purchases by the defendant. No purchase of the quantity of goods named in the indictment on the day specified in the indictment or within a reasonable time from said date was shown. The State contended that the various purchases proved could be added together and the sum total of these various purchases amounted to the quantity named in the indictment. This clearly amounted to a consolidation of a series of separate and distinct crimes in one indictment. There is no statutory authority for such procedure. Aside from the violation of a strict right of the defendant by this procedure, manifest wrong and injury resulted to him by permitting the bunching of more than one offense in one indictment, thereby prejudicing the jury against the defendant in the consideration of the case. Undoubtedly the large quantity of goods named in the indictment had a prejudicial effect upon the mind of the jury. The evidence showed that the several purchases were each of a small amount of goods. If these several small amounts were each contained in a separate indictment and separately tried, as was the defendant's right, under the Constitution, the case would have presented an entirely different aspect.

Specification No. 8 also relates to the violation of the constitutional rights of the defendant in that he was held to answer for a criminal offense without indictment of the grand jury. From the evidence in the case it is clear that this defendant was convicted of several distinct purchases upon the one indictment. Each purchase, if made with knowledge of the fact that the goods were stolen was an indictable offense. His conviction of several purchases made on other days than the

one named in the indictment constitutes a conviction without indictment. In view of the fact that the Trial Judge did not, in his instruction to the jury, limit the purpose for which proof of other acts may be considered, viz.: to prove knowledge or intent, but left the jury free to consider such evidence as substantive proof of the truth of the charge made in the indictment, it is clear that manifest wrong and injury resulted to the defendant and that he was held to answer for criminal offenses without the indictment of the grand jury in violation of his constitutional rights.

These two specifications are disposed of by the Supreme Court with the statement that "no such question was presented in the court below and therefore cannot be considered here." It is admitted that the question was not presented in the court below by the attorney who tried the case. This, however, does not preclude the consideration of these specifications by the Appellate Court, inasmuch as the entire record has been returned with the Writ of Error, and the plaintiff-in-error relies upon the 136th Section of the Crim. Pro. as well as the strict bill of exceptions.

Specification Nos. 9, 10, 11, 12, 13 and 14 relate to the charge of the Court and have been discussed under the Assignments of Error.

In conclusion the plaintiff-in-error reasserts that all the errors alleged by him are substantial and caused him manifest wrong and injury. The Supreme Court admits that two of the errors alleged are substantial, but does not reverse for the reasons set forth in its opinion. It is respectfully submitted that those reasons are not dispositive.

For the reasons herein set forth, it is respectfully submitted that the judgment and verdict in this cause be reversed.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* AARON DICHTER, *Plaintiff-in-Error.*	*On Writ, &c.* *From Indictment.*

BRIEF OF THE STATE.

The defendant was convicted of receiving one thousand pounds of rubber bands, forty-five gross of lead pencils and twenty-five gross of erasers, all of a total value approximating three thousand dollars, knowing that they had been stolen.

Dichter owned a drugstore on Springfield avenue, Newark, and it was contended by the State that he purchased the articles from one Gluthe, who was the watchman employed by Faber Company, the owner of the stolen goods, and who, it appears, had access to the finished merchandise department. Gluthe was jointly indicted with Dichter, and upon a plea of non vult was sentenced to State's prison from four to seven years. There was no denial by the defendant that he received a substantial part of the goods which Gluthe stole and sold to him upon at least three occasions. According to the State's evidence, the amount paid was much less than the market value of the goods, and that Dichter, therefore, must have known that Gluthe did not come honestly in possession of them. Besides that incriminating circumstance, there was proof that the goods were so marked that Dichter would be bound to know that a man of Gluthe's standing could not possibly have acquired possession except by theft.

All of the assignments of error and reasons for reversal relate to

(a) The alleged admission of improper evidence.

(b) Exclusion of evidence.

(c) Error in charge of the Court.

(d) Failure of the Court to instruct the jury.

(e) Violation of the constitutional right of the defendant.

(f) Alleged lack of evidence of the defendant's guilt.

These points will be taken up in the order followed in the brief of the plaintiff-in-error.

A.

There was no error in the admission of evidence.

Assignment No. 1 relates to the refusal of the Court to permit the defendant to ask the following question of a witness for the State, Fred A. Thompson (p. 47):

> "Q Did you ask him where he got them? A Yes, I did.
> Q Did he tell you where he got them? A Yes.
> Q What did he tell you?"

Thompson purchased some of the goods from Dichter, and in his direct examination the State sought to prove that the amount which he paid Dichter for the goods was at a substantial increase over the amount for which Gluthe said he sold the same goods to Dichter and that Dichter received such an abnormal profit that the jury might consider this fact in connection with Dichter's knowledge of the value of the goods.

The State objected to any conversation that Thompson had with Dichter on the ground that it wade no material difference what Dichter told Thompson as bearing upon Dichter's guilt because the State could not be bound by any statement made by Dichter to a prospective customer.

The direct examination did not touch upon this subject, and the attempt to inquire into the matter on cross examination was improper.

Assignment No. 2 relates to a question asked by the State of a witness, Migatz, which was admitted over the objection of the defendant.

> "Q Did you tell Mr. Brex yesterday after he had been on the witness stand that he ought not to have told the jury that you gave the information about who had purchased these goods, yes or no" (p. 67)?

Migatz was a witness for the defendant, and the objection offered was that the answer was binding upon the State. It is obvious that so far as this part of the objection is concerned that there was no error in the ruling of the Court. The further objection was that it related to a conversation not in the presence of the defendant. It has never been the rule in this State that a question asked a witness as a foundation for a contradiction must have been asked in the presence of the defendant. That was the purpose of the question.

Moreover, there was no objection made to the ruling of the Court. Even if there had been an exception signed and sealed there was no harmful error, because in a subsequent question (p. 47, l. 26), the information sought to be elicited by the question objected to brought out a very full and elaborate account of how Dichter came in possession of the goods when taken in connection with following question and answer (p. 48, ll. 42 to 45):

> "Q Did you know when the goods came from Gluthe to Mr. Dichter?
>
> Q Did you know that Gluthe was selling to Mr. Dichter? A Yes, finally."

I notice in the brief for the plaintiff-in-error that counsel makes the statement that Migatz was a State witness and again says in that connection: "It was addressed by the prosecutor to the State's own witness." Printed case shows the following situation (p. 61, l. 15):

> "*Mr. Bernhard.* The State rests it main case but desires the retention of this witness Smith for rebuttal."
>
> Harry Migatz, being duly sworn according to law, on behalf of the defense, testifies as follows:

Therefore, it appears conclusively that counsel for defendant is in error when he contends that Migatz was a State witness, and, of course, this destroys the substance of his objection.

Assignment No. 3 relates to a similar question put to Officer Smith, to which the same argument applied (p. 70, ll. 20 to 23).

Assignment No. 4 concerns the exclusion of the following question asked of the witness Migatz (p. 67):

> "Q Tell us what did happen between Mr. Brex and Mr. Smith yesterday afternoon" (p. 69)?

The argument is that because the Trial Court had permitted the witness Migatz to be asked the direct questions set out in assignments 2 and 3, *supra,* and the witness had answered both questions in the negative, that it was error for the Court to exclude the entire conversation between Mr. Brex and Mr. Smith. Whether the objections made by the prosecutor to the question (p. 70) are sound, is immaterial, because the witness Migatz was called in rebuttal (p. 131) and asked and answered substantially the same question (ll. 18 to 40), so that the exclusion of the answer was not harmful to the defendant.

Assignment No. 5 relates to the refusal of the Trial Judge to permit the witness Halpern to be asked:

"Q How did you come to court this time" (p. 76)?

The question was asked of a witness for the defendant by counsel for the defendant, which it self is sufficient answer to the alleged error.

B.

Assignments 6, 7, 8, 9 under this head relate to the exclusion of the following questions asked of the witness Stickle, produced on behalf of the defendant:

"Q What did you offer to sell her?

Q Could you sell them for a dollar a pound that you asked?

Q What was the new price you offered them at?

Q How long did you try to sell them" (pp. 120, 123, 124)?

Stickle was a patent medicine salesman. The questions related to the sale of the stolen goods in the course of Stickle's business, and the objection raised the point that the refusal of the Trial Judge to permit the defendant to show the market value of these goods was a denial of a material right, prejudicial to him. But this objection overlooks an important feature of the State's case, viz: that Gluthe had testified to the actual price which he obtained for the stolen goods, and it was not material to the issue to show the market value of those goods at the time that Stickle tried to sell them, nor was Stickle in any way qualified to testify as to the market value.

Assignment No. 10 relates to admission of the following question asked the witness Brex on behalf of the State:

"Q Did or did not Mr. Migatz, at the time you had the conversation with him, state to you that the reason that he did not buy any more rubber bands from Dichter was because it did not look right to him" (p. 126, ll. 25 to 30)?

The objection is based on the theory that the question "conveyed to the jury Mr. Migatz's impression of the transaction, and to that extent tended to prejudice the defendant." As. Mr. Justice Kalisch said, in *State* v. *Young,* November term, 1919:

"It is a matter of common legal experience that testimony may be competent for one purpose and incompetent for another, but this never shuts out the admission of the testimony because it may be harmful."

The foundation had been laid for the admission of this evidence by the State asking Mr. Migatz, on cross examination, if he did not make the statement to Mr. Brex contained in the question (p. 69, l. 40), and saying:

> "The state is attempting to lay a foundation for a contradiction."

For that purpose the evidence was admissible.

Assignment No. 11 relates to the following questions asked of the witness Brex:

> "Q In the corridor of this court, on this floor, on Wednesday afternoon, did or did not Mr. Migatz come to you after court had adjourned and state to you that you ought not to have told the court where you got your information from" (p. 126, l. 142)?

Here, again, the State laid the foundation for the contradiction of Migatz by asking him on cross examination if he did not make the statement to Mr. Brex contained in the question just above set out (p. 69, ll. 30 to 35), and it seems to me that it was the proper course to pursue. The objection, as stated in plaintiff's brief (p. 5), is, "it relates to a conversation not in the presence of the defendant," and that it was upon a collateral matter. Whether or not it was upon a collateral matter depends upon the interpretation put upon it by the Court, and being in the discretion of the Court it is not now reviewable. In any event, the Court's attention was not called to the alleged error by a proper objection. The Trial Court had a right to be specifically informed as to the legal impropriety of the question, and in the absence to such specific objection it is too late now to interpose the specific objection to the inquiry.

> *Baer* v. *Lehigh Valley R. R. Co.*, 106 Atl. 421.

Moreover, the real legal reason cannot be interposed now as a basis for action by this Court.

> *Edgewater Co.* v. *Valvolene Co.*, 76 Law 189;
> *Berg* v. *Motor Co.*, 78 Law 725.

Assignment No. 12 presents a similar situation relating to question embodied in assignments 10 and 11, except that they were asked of a witness, Officer Smith, who stood by Officer Brex at the time Migatz made the above statement. The same argument in the support of the Court's ruling upon the question put to Mr. Brex applies with equal force to those put to Officer Smith.

C.

These alleged errors are to charge of the Court:

Assignment No. 13 relates to the following portion of the Judge's charge:

> "In this case the defendant's counsed admits that the goods purchased by the defendant were stolen from the Faber Rubber Company by Gluthe."

The attack upon this excerpt is based upon the theory that "there is nothing in the case to show that such admission was made by the defendant's counsel" (plaintiff's brief, p. 5). I think that is correct, but I am surprised that the point should now be raised, because at the trial defendant's counsel, Mr. Lesser, made the admission freely, in opening the defendant's case to the jury, that the goods were stolen by Gluthe from the Faber Company, and it was undoubtedly on the basis of that admission that Judge Large reiterated that statement in his charge. This assertion is supported by the fact that the defendant did not except to the portion of the Judge's charge or call his attention to the alleged error of which complaint is now made. The Court's attention, as is apparent from reading the case (pp. 138-139), was called specifically to certain other portions of its instructions to the jury, but no reference of any kind was made to what must have appeared as a most serious statement if it were not true.

Our answer to the alleged error is that the defendant cannot now avail himself of it, because there was no objection noted on the record and the Court's attention was not called to the matter in order to remedy any misstatement.

Assignment No. 14 attacks the following portion of the Judge's charge:

> "The mere statement by the thief that the goods offered for sale were not stolen is not sufficient to relieve the purchaser from the responsibility imposed by the law upon one who receives goods under suspicious circumstances."

That is the correct statement of the law as we understand the principle and does not take from the jury the question of fact as to whether or not the defendant actually knew that the goods received by him were stolen. It is said that the Trial Judge erred because he did not permit the jury to determine from the statements made by the thief, was sufficient to justify the defendant in purchasing them with an entire absence of guilty knowledge. In other words, it is argued that because the thief

told the receiver that the goods were not stolen that the defendant would be entitled to have the jury pass upon his guilt or innocence upon that isolated fact. That was merely a circumstance in the chain of proof and the Court in its charge told the jury that it could consider that element and all of the proof in the case in arriving at its verdict. It would be a strange law which would permit a defendant to be vindicated because the thief had told him untruthfully of the source from which he received the stolen goods. The truth or falsity of such a statement is essentially for the jury.

It is to be noted also that no specific objection was made.

Assignment 15 also criticises the following portions of the Judge's charge:

> "Under the law, the receiver may be convicted on this indictment if you find he received any of the goods referred to in this indictment, knowing that that part was stolen. It is not necessary for the state to prove that the defendant knew that all of the goods were stolen at the time that he received them.
>
> If you find beyond a reasonable doubt that any part of the goods mentioned in the indictment were received by the defendant, knowing that they were stolen, it would be your duty to convict" (p. 136).

The criticism, as I gather it from the brief, to this part of the charge is that the evidence of the State and the defendant indicated that the day upon which the defendant received the goods did not conform to the exact dates set out in the indictment, nor on a day reasonably "near it." Just how that argument applies to this brief excerpt of the Judge's charge is not readily apparent, but, however that may be, no objection was made, and it is, therefore, not properly before the Court.

Assignment No. 16 criticises the following portion of the charge:

> "The fact that Mr. Thompson and others purchased the goods from the defendant does not relieve him from his obligation since the buying of such things from a druggist like defendant might be different than buying from a man like Gluthe."

The objection offered is:

"The Trial Judge practically decided the question of fact which was strictly within the province of the jury." Exception was taken and sealed to this alleged error (p. 138, ll. 20 to 30).

If it be true that the Trial Judge decided a question of fact which should have been left for the jury and exception had been properly taken, it would follow that the ruling was improper, but not necessarily that it was harmful or prejudicial to the defendant. The fact is, as I see it, the Court decided a question of law upon a concrete statement of fact, and, of course, this was something the Court could have and should have done.

Assignment No. 17 relates to another portion of the Judge's charge:

> "Should he have known that they were stolen from the circumstances surrounding the transaction?"

and the objection is that Judge Large used the word "should" when he might have used the word "did." No exception was taken to this alleged error if it could be properly called an error, and is, therefore, not reviewable.

Assignment No. 18 relates to the following portion of the Judge's charge:

> "Do you believe that he thought he saw an opportunity to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution" (p. 137)?

An exception was taken to this portion of the charge and thereby called to the attention of the Court (p. 139). The objection is that this excerpt is argumentative. This objection introduces a new issue as a basis for alleged legal error and is opposed to well settled principles, which are numerous in our reported cases, that the Trial Court has a right to comment upon the evidence. It is perfectly proper to aid the jury by illustration or argument if confined to the testimony in the case.

D.

Specifications of Reasons.

These specifications charge:

> (a) That there was no evidence tending to establish the guilt of the defendant.
>
> (b) That there was no evidence to sustain the charge contained in the indictment.

In order to answer this contention fully it would be necessary to set out at length all of Guthe's testimony, where it appears time and again that he sold the loot to Dichter at a ridiculously nominal sum. For instance, after Gluthe had shown Dichter a

package of small erasers and elastic bands (p. 17, ll. 20 to 30), the following conversation occurred:

> "Q Was there any further talk about it? A Then he asked me if I had some more, if I had some, if I could not get some of that stuff?
>
> Q And you said what? A I said I can get you all you want.
>
> Q What did he say when you said 'I will get you some more?' A He said bring me all you can get."

The next morning Gluthe appeared at Dichter's store (p. 18, l. 20), about eight o'clock, with about five or six pounds of elastic bands, for which he received 50 cents per pound. Mr. Fera of the Faber Company, had previously testified that they were worth $1.20 per pound (p. 10, l. 12). There were three or four transactions of this kind between Gluthe and Dichter, and each time the price decreased and the amount that Gluthe brought to Dichter increased (p. 21, ll. 20 to 30). Dichter kept urging Gluthe to "get me more, get me more" (p. 22, l. 1), and upon one occasion said to him (p. 22, l. 10), "can you bring me more; I got a little wagon, could not you carry them with you, make a little wagon full"? These are only a few of the incriminating statements made by Gluthe, which seem to successfully defeat the contention that there was no evidence contained to establish the guilt of the defendant.

Specification No. 3 relates to the action of the Trial Judge in directing the jury to "disregard the following question and answer put to the witness Migatz, and also to the remarks of the Court to the defendant's counsel." The colloquy appears on page 68. In *State* v. *Hummer,* 81 L. 131, and *State* v. *Koettgen,* 89 L. 678, it is held, "A reversal is not justified for the improper admission or rejection of testimony unless it appears that timely objection was interposed and that there was a ruling of the Court that was objected to, and that the admission or rejection of testimony was harmful to the defendant." A reference to the printed book will make it clear that no objection was interposed to the question and that the only ruling of the Court related to a remark by Mr. Lesser, counsel for the defendant. "The State has brought Mr. Migatz here and has not seen fit to put him on the stand." Upon making this statement the Court of its own motion said, "That is entirely improper and I caution you not to repeat that remark and I ask the jury to disregard it." It is evident that the statement of Judge Large referred only to the improper remark of Mr. Lesser's, and that what

Judge Large told the jury to disregard was not the answer to the question, but to the statement made by the defendant's counsel.

Specification No. 4 relates to the admission of the following question asked of the witness Warner, produced on behalf of the defendant (p. 114).

> "Q When you went to the police court to identify Mr. Gluthe, do you remember making a statement at that time, that the whole thing looked crooked? A That what?
>
> Q That the whole thing looked crooked? A At that time it did.
>
> Q You did make that statement? A Yes."

Unless I misunderstand the principle laid down in *State* v. *Hummer* and *State* v. *Koettgen, supra,* the defendant cannot now argue that his testimony was improperly admitted because no objection was made at the trial.

Specification No. 5 criticises the failure of the Court to charge the jury that the testimony of an accomplice should be scrutinized with great care. The defendant's requests to charge are contained on page 134, and I cannot find there any such request as is made the basis of this specification. Nor does counsel point out any such request in his brief.

A defendant cannot avail himself of a failure of the Court to include in his charge some principle which may apply where no request was made to the Court to so instruct the jury.

State v. *D'Adame,* 84 L. 396.

Specification No. 6 relates to the failure of the Trial Judge to charge "that proof of other purchases of the defendant is evidential merely to prove knowledge or intent." What has just been stated with reference to Specification No. 5 applies with equal force to the error complained of here, and it becomes obvious after reading the defendant's request to charge that no such request was made to the Court.

Here again the alleged assignment is based upon the alleged failure of the Trial Judge to comment upon some particular feature of the evidence and to apply to that particular feature the well-settled principles of law and in support of that contention of *State* v. *D'Adame,* 84 L. 386, particular attention is

called to page 396, where the Court of Errors, by Judge White, is said to have laid down the principle:

> "The Trial Judge will upon request, and should without request, limit the effect of such proof to this purpose."

While I do not find the excerpt on page 396, I do find it in the syllabus, and it seems to me that it refers to an entirely different situation, and it is not applicable to the point under discussion. Only a part of a syllabus paragraph is quoted. Read in connection with the entire paragraph, it has an entirely different meaning.

Specifications No. 7 and 8 are subject to the same argument as those of Nos. 5 and 6.

Specification No. 9 charges the violation of the constitutional rights of the defendant by charging him with several distinct offenses in one indictment. Whether it does or does not is immaterial:

(a) Because there was no motion to quash the indictment.

(b) There was no motion for arrest of judgment.

(c) In a case of this kind it is perfectly proper to follow the procedure of indictment for all offenses from the date of the original offense down to the day of filing an indictment.

Specification No. 10 is not intelligible to me and I am, therefore, unable to reply to it. It seems, however, to relate to Specification No. 9, and if it does it is subject to the same argument.

All the other specifications have been argued under assignments of error.

For the above reasons it is respectfully submitted that the judgment should be affirmed.

June Term, 1920.

J. H. HARRISON,
Prosecutor of the Pleas.

JOHN A. BERNHARD,
Assistant Prosecutor.

n Bond